

A Case of Life and Death: Crime and Self-Control in Gin Lane

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The views expressed in this paper, however, remain those of the author alone.

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“Should the drinking this Poison be continued in its present Height during the next twenty Years, there will, by that Time, be very few of the common People left to drink it.”

Henry Fielding, *An Enquiry into the Causes of the Late Increase of Robbers and Related Writings* [1751]¹

“It is a sad indictment on our society that we have been unable to manage and control the intake of alcohol. It is absolutely clear that unless we as [Northern] Territorians, with government leadership, take on and overcome the abuse of alcohol and the harm it causes to Aboriginal people, then the Aboriginal people and their cultures are likely to disappear within a generation or so.”

Patricia Anderson and Rex Wild, *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* 2007, 16.

During the eighteenth century, the threat posed to the virtue of self-control by the new spirit, gin, was a crux of medical, moral, political, economic, and legal thought. In this article, I am not attempting a work of legal history; my concern is to sketch some of the complex issues surrounding alcohol, crime, and morality in what, for convenience, can be called “Gin Lane”: the London parishes which formed the county of Middlesex, and the rural heaths and forests then extending north and west. These areas supplied defendants, prosecutors and witnesses to the Old Bailey, prisoners to Newgate, and convicts to Tyburn.

¹ Fielding 1988: 92

Of course, the problems associated with alcohol and crime are very much with us today. In some ways, the issues are at their starkest in Australia's remote indigenous communities. While it is pointless to press the similarities too far, we may note that, as in Gin Lane, these areas experience overcrowded living conditions, and, importantly, a generally insufficient police presence to enforce restrictions on alcohol sale and consumption.

My particular concerns will be:

- The role of alcohol, particularly gin, in a range of actual recorded crimes, with respect to both perpetrator and victim;
- The impact of alcohol on children;
- Religious and philosophical approaches to social order, virtue and crime; and
- Considerations of motivation to crime, and role of punishment in deterrence.

This paper is not a work of legal history, or a blueprint for reform of current alcohol and crime problems. Rather, it hopes to:

- Sketch some of the social and intellectual issues surrounding crime in Gin Lane, using, where possible, primary sources such as the Old Bailey Online databases (including the statements of perpetrators and victims);
- Show that the problems of alcohol and crime in Gin Lane should be taken seriously; and
- Show that the problems of alcohol and crime today are not unique, although clearly those in indigenous communities have particular causes and characteristics.

It is hoped that consideration of problems in the society from which, ultimately, Australia's first white immigrants – the convicts - emerged, may help to put in perspective some of the problems and solutions being canvassed today.

Gin-Shops: Locations of Crime

From my study of the Old Bailey transcripts, several key links emerge between crime and gin in that period, 1720 to 1750, when key legislation on spirits was passed.² For that reason, I have focused on those trials in which gin was mentioned during court proceedings. Of

² See the *Retailers of Spirits Act 1737* (11 Geo. 2) c. 19, addressing attacks on excise informers;

the total of the 10,000 Old Bailey cases between 1720 and 1740, only about 170 include the term “gin.” The impacts of gin on crime were, however, various, and in some ways had a “multiplier effect”, with one impact leading to others.

In the first place, gin-shops, which were open all night as well as all day, served as meeting places for the planning of crime. They were also the place where the proceeds of crime were often spent, on more gin. William Booth, giving evidence against fellow highway robbers in September 1732, says that they frequented “Buck’s Gin shop, where we all met, and where we use to be Night and Day”.³ Abraham Wild, who had turned evidence in a burglary case in 1733, describes visiting a brandy-shop at about four in the morning, and drinking “half a pint of Gin.”⁴

This was so much the case that, in evidence, “drinking with” an accused was code for collaborating with him. Samuel Elms, accused of highway robbery by his former mate Edward Powers (who had clearly turned evidence because the case against him was, by the low standards of the time, strong: that is, the victims clearly identified him by sight), asked “Where was I ever drinking in your Company, or in any Robbery with you?”⁵ Elms was found guilty, and sentenced to death.

Gin-shops were also the location where stolen goods could be fenced or pawned. Richard Casely pawned a stolen wig for 17 shillings, at Lingard’s Gin-shop.⁶ Sarah Hewlet was a “common Receiver of stolen Goods”, and sold gin to children, who gave evidence against her. George Dawson and one Perkins (first name not recorded) testified that Sarah Hewlet encouraged them to steal, and paid them for the goods, but made them spend the money on “Gin and Hot-Pots” at her shop. The court recorder notes that George Dawson and Perkins were “very little Boys of about 12 Years of Age (as they said) tho’ by their Stature

Spirits Act 1742 (16 Geo. 2) c. 8, imposing duties on manufacture and license fees on retailing; the *Sale of Spirits Act* 1750 (24 Geo. 2) c. 40, imposing additional duties to take effect after 25 March 1752 (database of legislation at <http://www.justis.com>).

³ Old Bailey Proceedings (<http://www.oldbaileyonline.org/>, 3 August 2008), t17320906-26. Subsequent reference numbers commencing with ‘t’ are to cases at the Old Bailey Online site; those commencing with ‘OA’ are to Ordinary’s Accounts at the same site. 2008 dates are those on which the database was accessed.

⁴ t17331205-22, 9 August 2008.

⁵ t17330404-43, 4 August 2008.

⁶ t17340630-1, 13 August 2008. Peter Kelly, charged with murder, attempted to pawn at a gin-shop two razors, which were later presented in evidence (t17290226-9, 31 July 2008).

one would have taken them not to be above 8 or 9.”⁷ Hewlet was fined and imprisoned.

Gin-shops were closely identified with prostitution, and the crimes, such as theft, which were associated with it. One very typical case among many is that of Elizabeth Scott, on trial for theft in October 1730, who was described as inviting the prosecutor – that is, the person complaining of the crime – to “give her a Dram” (buy her a drink at a gin-shop): he subsequently lost his watch. Elizabeth Scott was sentenced to transportation.⁸

Alcohol: Perpetrators and Victims

Alcohol featured in some of the worst crimes. The murder of John Hayes by his son Thomas Billings, with the involvement of his wife Catherine Hayes, became famous, with the details published in what appear to have been several editions.⁹ Thomas Billings, who claimed not to know that John Hayes was his father, told James Guthrie, the Newgate Ordinary (resident clergyman) that “he had never done it, if he had not been sottishly intoxicated with Liquor, so that he knew not what he was doing.”

Richard Lamb, sentenced in 1733 for the murder of his wife, told Guthrie that both he and his wife drank, and were always quarrelling: he “perpetually drinking to excess, and beating and abusing his Wife, in a most cruel Manner”; “being in Liquor every Day, when he was quite out of his Senses, and neither knew nor car’d what he did.” On the day of the murder, he had “taken a Dram by the way in a Brandy Shop.”¹⁰ As the Lamb case indicates, one important sub-class of the most serious cases consists of the cases where the *victim* of an attack was an alcoholic, as well as, often, the perpetrator.

Dr Jessica Warner, the most prominent writer on the impacts of the anti-gin legislation of the 1720s to the 1740s, admits that gin and crime were closely associated (Warner 2002: 56-59, 67). The most notorious of gin-related crimes, however, is entirely missing from Warner’s book. This is perhaps surprising, since it is believed to have inspired the centerpiece of Hogarth’s work *Gin Lane* (1751), which Warner reproduces on her

⁷ t17310428-64, 2 August 2008. Sarah Tooting, “about 11 years old”, was accused of stealing a silver coral (an ornament or teething toy made from coral), a silver spoon, and two razors; she took them to sell at the gin-shop of Elizabeth Hinds. Both were acquitted (t17360505-23, 19 August 2008).

⁸ t17301014-18, 2 August 2008.

⁹ The first edition appeared directly after the execution (OA17260509, 30 July 2008); a later instance is at OA17310616, 2 August 2008.

¹⁰ OA17331006, 9 August 2008.

front cover. Warner also discusses Hogarth's work in some detail (Warner 2002: 194-195).

The case was that of Judith Defour (also Delord, Defoy, or Dufour). She had a baby, Mary, whom she had given to be looked after in the local work-house. She regularly used to take the baby out into the fields for the day. On the 29th of January 1734, Judith Defour and her friend (known only as Sukey or Susannah) took Mary out. They took off Mary's new clothes, just issued by the work-house, and strangled her, with a final blow to the head, leaving her body in the ditch. Back in town, they sold the new baby clothes for a shilling and fourpence, and bought a quartem of gin with the proceeds.¹¹

Gin and Children

The most shocking aspect of the Defour case is the fact that the victim was a young child. Warner skates over the issue of child welfare, cheerily admitting that gin-drinking women "when they had children... often neglected them, if only because they had neither the time nor the resources to devote to their care" (Warner 2002: 66).

Older children were also victims, often as gin drinkers themselves. The most poignant cases involve children who drank and either committed crimes, or were the victims of crimes, or both. Joseph Barret murdered his eleven-year-old son James Barret in 1728. James had regularly stayed out at night, and "beg'd or got Money from People and bought Gin with it, drinking till he appear'd worse than a Beast, quite out of his Senses." His father beat him so savagely that he died.¹²

Another young drinker was Susan (or Sukey) Marshall, eleven years old in 1735. Susan would go with her friends to buy gin, several times a day, at a house where an older man bought her a drink, then had sex with her; she contracted venereal disease.¹³ (The man accused of carnal knowledge was acquitted.)

Crime and Religion

At first glance, there would appear to be no relation between moral theory and criminal practice in the mid-eighteenth century. Practice, however, is never entirely divorced from contemporary theory, and I believe the link here is to be found in the condemned cell at Newgate, in the Newgate Ordinary's Accounts.

¹¹ t17340227-32, 12 August 2008, also OA17340308, 12 August 2008.

¹² OA17280212, 31 July 2008.

¹³ t17351015-28, 14 August 2008.

James Guthrie, longest serving of the Newgate Ordinaries of the eighteenth century, made a report on his visits to the prisoners on death row, later published.¹⁴ He prefaced each report with the sermon he preached to the prisoners. Afterwards, he interviewed them individually, asking them about their background, education, and account of the crimes which had brought them to Newgate. It is clear that, in the enquiring spirit of the age, Guthrie was trying to establish a kind of natural history of criminal motivation.

Several New Testament texts were relevant. Paul had summarized the importance of self-control over the lusts of the flesh (e.g. Galatians 5:19-24). In addition, Old-Testament texts such as Proverbs 25:28 (“He that hath no rule over his own spirit is like a city that is broken down, and without walls”) meant that self-control was a key issue in Guthrie’s sermons.

As the philosopher and divine (and, some said, unbeliever) Samuel Clarke said, “Herein lies *the principal duty of man*, in keeping his passions subject to reason, and in governing his appetites by that understanding, wherewith God has distinguished him from the inferior creation.”¹⁵ Guthrie stressed that in order to secure the blessings of divine pardon, “it is necessary to deny our selves, wholly to renounce our sensual Appetites, and submit our selves to that Rule prescrib’d to us by the Laws of Christ.”¹⁶

Guthrie also appears to have tried to accommodate the “natural Religion” fashionable at the time, together with the more traditional claims of religion revealed. He was in good company here: Montesquieu responded to critics of early editions of *The Spirit of Laws* (first edition 1748): “Does [the critic] do well never to distinguish those who acknowledge only the religion of nature, from those [presumably such as Montesquieu himself] who acknowledge both natural and revealed religion?” (Montesquieu 1758: xii).

In addressing the group which included Joseph Barret, Guthrie noted that

“if they fell short in complying with the first Principles of natural Religion, which is insufficient for Salvation; how much greater must their guilt be, who being [descended] of Christian Parents, and living in the Middle of so great Light, had despis’d those

¹⁴ Linebaugh found that the Ordinary’s Accounts were generally reliable, despite being written in part for financial gain, and (above all) being the expression of ruling-class values (1977: 264).

¹⁵ Sermon of 1711, “The Government of Passion”, quoted in Brinton 1992: 57. Voltaire gleefully reported the story about Clarke’s reputed atheism: *Philosophical Letters* (1733), “The Socinians, or the Arians, or the Anti-Trinitarians.”

¹⁶ OA17380526, 28 August 2008.

glorious Revelations which were intended to elevate and perfect our deprav'd Nature?"¹⁷

His position, however, was difficult: his audience was about to be executed, so it availed them little to be told that they had violated the laws of God and of man.¹⁸ Guthrie's main aim remained to bring them to a proper sense of their situation, and to persuade them to ask sincerely for divine forgiveness.

The uncomfortable fact was that if his hearers had observed only the laws of "natural Religion", or even if they had been law-abiding atheists, their souls might not have had salvation, but at least their bodies would not have come to the condemned cell at Newgate. The point about natural religion, however, was that it was supposed to be naturally known to everyone. Each person, in seeking his own good, was supposed to know what is right. A classic contemporary statement was that of Matthew Tindal, in 1730:

"With relation to ourselves, we can't but know how we are to act; if we consider, that God has endow'd Man with such a Nature, as makes him necessarily desire his own Good...And, in a word, whoever so regulates his natural Appetites, as will conduce most to the Exercise of his Reason, the Health of his Body, and the Pleasure of his Senses, taken and consider'd together (since herein his Happiness consists) may be certain he can never offend his Maker; who, as he governs all things according to their Natures, can't but expect his rational Creatures should act according to their Natures."¹⁹

The question of how much influence on behaviour the prospect of rewards and punishments should have, was a key matter for natural-religion theorists. Samuel Clarke had addressed this, concluding that while rewards and punishments should not be the be-all and end-all, they should not be left entirely out of account, particularly in view of the fact that they are, in fact, "necessary to maintain the practice of virtue and righteousness in this present world."²⁰

¹⁷ OA17280212, 31 July 2008.

¹⁸ The condemned sermon was described by a contemporary as being on the subject of "Holy Dying; for to preach up Amendment of Life, would here be Eloquence thrown away" (quoted in Halliday 2006: 43).

¹⁹ From *Christianity as Old as the Creation* (1732 ed.), quoted at length in Gay 1968: 105. Montesquieu: "Have I not heard that we have all natural religion? Have I not heard that Christianity is the perfection of natural religion?" (1758: xii).

²⁰ From *A Discourse concerning the Unchangeable Obligations of Natural Religion* (1706), quoted at length in Rand (ed.), *The Classical Moralists* (317).

Aggressively challenging religious ethics of both traditional and natural varieties, in Book II of *A Treatise of Human Nature* (1739), David Hume went so far as to adduce the existence of human and divine systems of rewards and punishments as a support for his claim that human action is necessary, in the same way as material causes give rise to material effects.

“’Tis indeed certain, that as all human laws are founded on rewards and punishments, ’tis supposed as a fundamental principle, that these motives have an influence on the mind, and both produce the good and prevent the evil actions” (Hume 1976: 410).

Motivation and Deterrence

When it comes to translating these views into real policy, it is important to consider actual criminal motivation, with a view to deterring future offending.

Supposing a naturalistic view of criminal action such as Hume’s, are the causes which prompt people to commit crimes always intelligible? Several conclusions outlined in Hume’s discussion of calm and violent passions (Sections IV-VI) are relevant to motivation:

- a) To motivate a person, it is more productive to work upon [his] violent than his calm passions (419).
- b) Opposition can inspire greater passion: “Hence we naturally desire what is forbid, and take a pleasure in performing actions, merely because they are unlawful” (421).
- c) Custom or habit makes action easier, and thereafter creates a tendency to perform it (Section V: 422).
- d) Memory, particularly fresh and recent memory of pleasure, prompts ideas of future pleasure, exciting desires (Section VI: 426).

Of these considerations, (a) is relevant where someone is encouraged by another to commit a crime. And all these factors, particularly (b), may well have had influence on the Newgate perpetrators. But what was surprising to Guthrie, and remains so to us, is that neither the promptings of “natural religion”, nor the fear caused by the present threat of execution (and in some cases torture), nor by the prospect of eternal damnation, had acted as sufficiently strong emotional counter-forces.

Montesquieu’s view, indeed, was that where the threats held out by religion were relatively lenient (as he considered those of Christianity to

be), those offered by the human authorities should be that much harsher:

“As both religion and the civil laws ought to have a peculiar tendency to render men good citizens, it is evident that when one of these deviates from this end, the tendency of the other ought to be strengthened. The less severity there is in religion, the more there ought to be in the civil laws” (1758: vol. II, Book XXIV, chapter XIV, 156).

That neither the divine nor the human punishments operated to prevent much crime is the more surprising, for us as well as for Guthrie, because of the triviality – from our perspective – of the gains for which people were prepared to suffer death. This fact did not go unobserved, even by perpetrators. Edward Blastock, unwillingly persuaded by his brother-in-law to take to the highway, and on death row himself, concluded that “a Highwayman run[s] great Dangers for little Profit.”²¹

That motives remain, to a large extent, inscrutable and surprising, was admitted by Hume:

“Upon the whole, this struggle of passion and of reason, as it is call’d, diversifies human life, and makes men so different not only from each other, but also from themselves in different times. Philosophy can only account for a few of the greater and more sensible events of this war; but must leave all the smaller and more delicate revolutions, as dependent on principles too fine and minute for her comprehension” (438).

He bluntly disputed the claims of natural religion that vice and virtue are “matters of fact, whose existence we can infer by reason” (468):

“Take any action allow’d to be vicious: Wilful murder, for instance. Examine it in all lights, and see if you can find that matter of fact, or real existence, which you call *vice*. In which-ever way you take it, you find only certain passions, motives, volitions and thoughts” (468-469).

Criminal “passions, motives, volitions and thoughts” were problems which exercised the novelist, magistrate and reformer Henry Fielding. He quotes from that most sombre of Plato’s dialogues, the *Phaedo*, as he attempts to outline his view of British society as an organic whole, of which the poorest (and, he emphasizes, the most useful) part was suffering from the problems of addiction and crime (Fielding 1988: 66-67). One of the *Phaedo*’s themes is the proper attitude to impending

²¹ OA17380526, 28 August 2008.

death: this turns out to be relevant to Fielding's fears about society as a whole, and to his views on the death penalty.

Struggling to understand why the prospect of execution was so ineffectual a deterrent from crime, he turned to Montaigne's view that the prospect of death is more daunting to thinking people than to unthinking ones (Fielding 1988: 170, Montaigne 1913: 67, 83). In addition, he suggested that the sheer regularity of hangings at Tyburn reduced their impact. He pointed out that in Holland, where executions were far rarer, and were accompanied by more ceremony, they had a much greater effect.

The other factor which made it surprising that so many people committed capital crimes, was that most, we learn from Guthrie's interviews, were not the most disadvantaged in society. They were not vagrants, destitute, or (except in a very few cases) obviously mentally ill.²²

The majority had received a normal education, and had been apprenticed to a trade (Linebaugh 2003, 2006: 102-106). The following are representative accounts from Guthrie's extensive reports.

George Weedon, 22 years of age, had had "a good Education", and was apprenticed to a book-binder, but left before finishing the apprenticeship. "He staid at Home for some Time and behav'd indifferently well, but haunting Gin shops in a certain Place of the Town, he said they prov'd his Ruin." He then turned to house-breaking and street robbery, for which he was hanged in 1728.²³

Charles Oglebay, 26 years of age, had had a good education at school in Brentford, "in reading, writing, Accompts, and what other accomplishments were necessary to fit him for business." He spent some time in New York, "where he got very good Business in his Employment, and wanted for nothing", but returned to London upon hearing that there was an act of grace for the discharge of small debts. "Yet he could not be satisfy'd; but being too much addicted to Idleness, he associated himself with bad Company, who prov'd his Ruin..." He

²² Linebaugh 2003, 2006: 107. I have only come across two perpetrators who were clearly mentally ill: Roger Bow, tried for the murder of Thomas Field in 1734 (t17340630-16, 13 August 2008), although one witness apparently thought his "madness" was sham; and in 1738 John Wright, whose religious views apparently led him to commit blackmail (he was a Calvinist, and believed that as he was depraved anyway, he might as well commit a capital crime and have the state end his life: OA17380719, 28 August 2008). This case, understandably, caused some dismay to James Guthrie.

²³ OA17280212, 31 July 2008.

admitted to robbing a Mrs Scott on the highway, for which he was hanged in 1731.²⁴

George Brown, alias Samuel Burrard, “near 22 Years of Age”, had “had good Education at School in reading English, in Latin, writing, Arithmetick, Book-keeping, &c. to fit him for Business.” He went to sea on a man-of-war, serving on voyages to the West Indies and to Turkey. Returning to England, he was convicted for a robbery of a silver watch, two guineas, and other items. “He appeared to have been a young Man capable of Business, but own’d that he was sunk in Vice; that he was rotten with the Foul Disease;...he said, that he was such a wicked and profligate Youth, that he died justly, and did not desire to live longer.” Brown was hanged in 1732.²⁵

While Warner assumes that it was, simply, poverty which caused people to drink gin, and to commit crimes, the reality, as always, is far more complex (Warner 2002: 14, 57, 213). A classic study by J.M. Beattie in 1974 examined data of indictments from both rural and urban parishes in Sussex and Surrey, through the eighteenth century. As far as it was possible to make sensible inferences from the extremely discontinuous data, Beattie concluded, *inter alia*, that whereas in the rural parishes, robberies followed the trend of food prices, increasing as the food price increased, the opposite was observable in urban parishes (Beattie 1974: 88-89): that is, there was no apparent link with the rise in the cost of living.²⁶ Urban robberies, then, required some other explanation or explanations. One contributing factor was, in the intervals of peace during the century, an influx of newly demobilised soldiers and sailors (Beattie 1986: 213-215, Linebaugh 2003, 2006: 124-125).

Alcohol and Crime

Another factor which partially accounted for behaviour otherwise so difficult to explain, is the influence of alcohol, not only on single actions, but as a habit over time. Excessive alcohol intake was not only an example of lack of self-control in itself, but it weakened the ability of the individual to control other passions, such as anger, revenge, or jealousy. This aspect recalls the ancient Greek sense of *σωφρόσυνη*, meaning the “keeping safe” of the judgment. Aristotle summarized:

²⁴ OA17310616, 2 August 2008.

²⁵ OA17320306, 2 August 2008.

²⁶ A point downplayed in the relevant section of Beattie’s later book which drew, *inter alia*, on the same data (1986: 213ff).

“This is why we call self-control by this name; we imply that it preserves one’s practical wisdom [σωζούσα τὴν φρονεσίν]” (*NE* 1140b 10, W.D. Ross translation).²⁷

The impact of alcohol on crime, and the appropriate legal response, was also discussed by Aristotle. In both the *Nicomachean Ethics* and the *Politics*, he cited the ancient statute of the sage Pittacus that “if a drunken man do something wrong, he [should] be more heavily punished than if he were sober; he looked not to the excuse which might be offered for the drunkard, but only to expediency, for drunken more often than sober people commit acts of violence” (*Politics* 1274b 15-20).

The statement in the *Ethics* focuses more on the conscious decision to drink in the first place:

“Indeed, we punish a man for his very ignorance, if he is thought responsible for his ignorance, as when penalties are doubled in the case of drunkenness; for the moving principle is in the man himself, since he had the power of not getting drunk and his getting drunk was the cause of his ignorance” (*NE* 1113b 30-31).

Fielding, recalling these passages in Aristotle, praised the institution of Pittacus (Fielding 1988: 85). Guthrie described the effects of alcohol on crime:

“I explain’d also to [Richard Lamb] the great Evil of the sin of Drunkenness, especially in the dismal Effects thereof, as divesting a Man of the Use of his Reason, which was the Occasion of his committing this unaccountable Crime; for he told me, that he was very much in Liquor that Night he did the Murther.”²⁸

Another role played by alcohol was to deaden the unpleasant feelings of conscience. This was attested by George Sutton, hung in 1737 for a series of violent robberies. Sutton had been a close associate of his brother John, who had himself been hung. He told Guthrie:

“Although (says he) [we] are generally to[o] corrupted from our Childhood that we have no Sense of Duty to God [or] Man, nor the least Regard to Virtue, Honour or Honesty; yet we always have a Hea[vy weight] upon our Spirits, and are never without certain painful Apprehensions, which hang upon our Minds so constantly, that we can never enjoy any Ease or Quiet, till we have thoroughly

²⁷ Casey 1990: 160.

²⁸ OA17331006, 9 August 2008.

heated our selves with Liquor, and till we are (what we call half Seas over)...”²⁹

John Goswell, about to be executed for several robberies, wrote in a long confessional statement:

“I always lived an uneasy, dissatisfy’d Life, and when I got Money, I used to spend it idly and in bad Company. I was always afraid to walk the Streets, or look any one in the Face; and was always under a continual Uneasiness of Mind, till I cheared my Spirits, and raised my Courage with Liquors.”³⁰

Finally, liquor probably reduced the fear of death. Roger Bow, tried for murder, “said he had kill’d a Man, and was sorry for it; but Damn it, he was drunk, and the Liquor had done it, and he would dye with all the Pleasure in Life.”³¹

Property Crime and Classical Order

In relation to the significance of theft, James Guthrie – who had, in a previous occupation, been a schoolteacher of Latin - appealed to a classical ideal of cosmic order.

“I taught them some Things relating to Justice and Equity between Man and Man, and that the Laws enacted against Thieves and Robbers were most necessary for the Conservation of humane Society, without which no Order or Regularity in the World could subsist...since House-breaking, Attacking of People on the Highways and Street, and most of the different Kinds of Thefts were (in a Manner) Sins equal to Murder, as is frequently seen by the fatal Consequences of those Attempts; for how many have been left Dead on the Spot, cruelly and barbarously Murder’d by such vile Assassins, common and avow’d Enemies to God and all Mankind?”³²

While robberies sometimes did lead to murders, the majority – as Guthrie was aware – did not. It was, rather, that robbery represented a betrayal of trust, the basic glue of society. There are echoes here of a well known passage from Cicero’s most influential work, *de Officiis* III.5, no doubt known to Guthrie (and cited, *inter alia*, by Grotius in a discussion of natural rights):

²⁹ OA17370303, 19 August 2008.

³⁰ OA17371005, 20 August 2008.

³¹ T17340630-16, 13 August 2008: the speaker was the constable, William Kemp.

³² OA17310616, 2 August 2008. Guthrie as teacher: Linebaugh 1977: 249.

“To rob another or to act against his interests in order to promote one’s own is more contrary to nature than death, poverty, pain or anything else which can injure a man’s person or his estate; for in the first place it undermines the whole basis of human society.”³³

Hume, who clearly had Cicero in mind (he wrote to Francis Hutcheson in 1739 that he had *de Officiis* “in my Eye in all my Reasonings”³⁴), observes in an important passage that individuals are more likely to achieve their desires through restraint than through licence (*Treatise* Book III Section II ‘Of the Origin of Justice and Property’, 492). Hume points out that human consciousness of weakness of will is the reason that people adopt punitive systems of justice (*Treatise*, Book III Section VII, ‘Of the Origin of Government’, 537).

As we have seen, Fielding used Plato’s *Phaedo* to set the mood of his treatise.

In the 1760s, William Blackstone, for his part, traced the background of English property law to the Old Testament, with accretions on the way from the Romans, seeing the resulting framework as an inseparable complex:

“Necessity begat property; and, in order to insure that property, recourse was had to civil society, which brought along with it a long train of inseparable concomitants; states, government, laws, punishments, and the public exercise of religious duties” (*Commentaries* Book II, Chapter I, 8).

Ignoring this classical tradition informing English property law, the single most influential article on eighteenth-century history in our time - “Property, Authority, and the Criminal Law”, by Douglas Hay, 1975 - has taught that its rigours were of so recent origin that they were attributable to none other than John Locke (Hay 1975: 18).³⁵ At the same time, and with glaring inconsistency, Hay conceded that many of the severe penalties for property offences – such as death as punishment for theft – had dated from Tudor times or earlier (Hay 1975: 22, Langbein 1983: 99). The fact remained, though, that while some trends in judicial punishment had been, since the late seventeenth century, to reduce the kinds of offences which merited death rather than lesser sentences such as transportation, there remained a large number

³³ *The Rights of War and Peace, including the Law of Nature and of Nations* (Latin version 1625, translated by A.C. Campbell, 1814; quoted in Rand (ed.) 1910: 206-212; 206. Cicero 1967: 143.

³⁴ 17 September 1739, *Letters of David Hume* (1969), vol. i.34.

³⁵ Published as a radical polemic in 1975, ‘Property, Authority and the Criminal Law’ has of course become a standard university text: Muir 2006: 29.

of, from our viewpoint, relatively trivial offences against property, which were punished with death.³⁶

The reader will not learn from Hay or Linebaugh that this was a matter of real concern for their “ruling class”, supposedly united in a plot against working people.³⁷ In the 1760s, Blackstone could only account for the excessive prescription of the death penalty by conjecturing that statute development had been haphazard, thoughtless, and without consultation with experts:

“Had such a reference [to experts] taken place, it is impossible that in the eighteenth century it could ever have been made a capital crime, to break down (however maliciously) the mound of a fishpond, whereby any fish shall escape; or cut down a cherry tree in an orchard” (*Commentaries* Book IV, Chapter I, 4).

Yet he was not objecting to capital punishment for robbery, as such. His account stressed the extent to which robbery is an offence not only against private citizens (“were that all, a civil satisfaction in damages might atone for it”); but

“the public mischief is the thing <s>, for the prevention of which our laws have made it a capital offence” (*Commentaries* Book IV, Chapter I, 6).

There was also a long-standing belief that overly harsh punishments were not only ineffective but, in fact, counter-productive. Montaigne expressed this view (vol. II, Chapter II, ‘Of Drunkenness’). In *The Spirit of the Laws*, Montesquieu maintained that a just proportion between offences and crimes would mean that a perpetrator would be less likely to commit a worse offence:

“It is a great abuse amongst us [interpreted by Blackstone as meaning ‘in France’] to condemn to the same punishment a person that only robs on the high-way, and another that robs and murders. Surely for the public security some difference should be made in the punishment” (1758, vol. I, 131).³⁸

³⁶ Hay 1975: 52. “Benefit of clergy” and “clergyable offences”: Beattie 1974: 47; Langbein 1983: 109; Friedman *Making Sense*: 3. A person tried for murder, for which the penalty was death, might be found guilty instead of manslaughter, for which the penalty was branding: e.g. Mary Eager, tried for murder and found guilty of manslaughter: t17340911-4, 13 August 2008; John Bracket, tried for murder and found guilty of manslaughter: t17340227-51, 12 August 2008.

³⁷ In fact, it had been a matter of concern for ruling classes as far back as pre-classical Athens: Plutarch, *Solon* 17.2.

³⁸ Blackstone *Commentaries* Book IV, Chapter 1, 18, refers to this passage in Montesquieu, and to Beccaria’s influential proposal of a scale of punishments.

Fielding, clearly disturbed by the fact that people suffered the death penalty for small thefts just as if for murder, justified it thus:

“No Man indeed of common Humanity or common Sense can think the life of a Man and a few Shillings to be of an equal Consideration, or that the Law in punishing Theft with Death proceeds... with any View to Vengeance. The Terror of the Example is the only Thing proposed, and one Man is sacrificed to the Preservation of Thousands” (Fielding 1988: 166).

As Blackstone put it, following Cicero, “*ut poena (as Tully expresses it) ad paucos, metus ad omnes perveniat*” (*Commentaries* Book IV, Chapter I, 11).³⁹

A related, recent view is that where policing was virtually non-existent, the belief that the threat of capital punishment deterred at least some would-be offenders provided householders with some reassurance. On this view, public opinion demanded that, since few criminals were actually apprehended, the punishment for those who were should be the more severe.⁴⁰

Whether this is a plausible account, particularly in view of the general disquiet of contemporary thinkers about the situation, is questionable. Execution, whether or not it preserved anyone, certainly created a circle of innocent victims: usually the wife and children, thrown on the charity of relatives or other benefactors. Samuel Curlis, executed for the theft of a mare in 1731, wrote to his father to “Commiserate the loss my unhappy Wife will have, and my poor Daughter, which makes my Heart bleed within me, that I am oblig’d to leave them so Miserable and the want of Bread, Friends or Money.”⁴¹ Charles Connor, executed for the murder of his wife in 1735, left orphaned children.⁴²

Each crime and sentence, then, left widening circles of impact. A sense of what was at stake led some witnesses, even some victims of crime, to hesitate in identifying suspects. In 1732 Dorothy Blackstone was robbed by a band of five highwaymen who threatened her with a pistol; one

Beccaria’s *Dei delitti e delle pene* had only appeared in 1764, so it was very topical as Blackstone wrote.

³⁹ Cicero was referring to decimation, a feature of Roman military justice, as a metaphor for the action which should have been taken in punishing corrupt judges (*pro Cluentio* XLVI, 128), not to capital punishment generally.

⁴⁰ Langbein (1983: 116), following Radzinowicz, *A History of English Criminal Law and its Administration from 1750* (4 vols.), London 1948-68.

⁴¹ OA17310616, 2 August 2008.

⁴² OA17350922, 14 August 2008.

pulled off her apron. But because it was night-time, and she was very frightened, she could not be certain which of the group had done so:

“If I can judge (considering the Fright I was in) I think he in the middle [Viner White] was the Person that pull’d off my Apron; but it’s a Case of Life and Death and I would not be positive for the World.”

After the attack on Dorothy Blackstone, White and his companions (according to one who turned evidence) “went to a Gin-shop in Drury lane....There we pawned [Dorothy’s] Handkerchief for Half a Pint of Gin, and staid till 8 or 9 a Clock.”⁴³

Response and Reform

The problems related to the consumption of gin, therefore, were graver and more radical than modern readers are likely to learn from a work such as Warner’s. The reader will, however, amply learn that attempts to address them through repeated increases in licence fees, with breaches reported to authorities through the use of informants, were not successful.⁴⁴ Warner emphasizes, indeed celebrates, the often violent responses of Londoners to the activities of informers (1999; 2002: 135-178).

The ineffectiveness of the legislation was not lost upon observers at the time. Fielding dismissed the repeated Spirits Acts of the previous decades:

“It is not making Men pay 50l. or 500l. for a Licence to poison; nor enlarging the Quantity from two Gallons to ten, which will extirpate so stubborn an Evil” (Fielding 1988: 91).

Not that he had any convincing solutions to offer. The following suggestions seem to be tongue-in-cheek, given the exclamation marks:

“Suppose all spirituous Liquors were, together with other Poison, to be locked up in the Chymists or Apothecaries Shops, thence never to be drawn, till some excellent Physician calls them forth for the Cure of nervous Distempers! Or suppose the Price was to be raised so high, by a severe Import [sc. ‘Impost’], that Gin would be placed entirely beyond the Reach of the Vulgar!” (Fielding 1988: 91).

⁴³ T17320906-27, 3 August 2008.

⁴⁴ See note 2 above on the Spirits Acts.

More generally, he called for existing legislation against the problems related to licensed premises to be more thoroughly implemented (Fielding 1988: 86-87). Sale of alcohol to people already drunk was a recognized problem: the comment of “the Court” in one murder trial where the victim was drunk was

“It’s intolerable, that such poor Wretches should be suffer’d to drink till they have lost their Senses. The Houses that allow of such scandalous Practices ought to be suppress’d.”⁴⁵

From examination of the Old Bailey material, it seems obvious that two areas where increased regulation could have made a positive difference were in reducing trading hours, prevention of sale to patrons already the worse for liquor, and in restricting the sale of gin to children. In the absence of a functioning police force, however, none of these restrictions could have been enforced. (Trading hours for liquor, also, are unlikely to have been able to be separated from those for other businesses, and it is clear from the Old Bailey data that several other kinds of shops were open until midnight⁴⁶).

The system of criminal arrest and detection was haphazard, dilatory, and open to corruption. Constables, who were citizens serving in the role on a rotation basis, might be prevailed upon to apprehend a suspect, but simply finding a constable, and obtaining a warrant from a justice of the peace, could be time-consuming, even for people well versed in the system.⁴⁷ Sometimes bystanders, individually or as a group, carried out “citizens’ arrests”, and reformers such as Fielding wished that they were more inclined to do so (Fielding 1988: 146-7).⁴⁸

The night watch was a patrol whose role was partly to quell disturbances and arrest wrongdoers, but individual watchmen had few resources or support. Robert Clark, a watchman in the suburb of Kensington, suspected that the man who asked him the time between one and two o’clock on a Tuesday morning was, in fact, the highwayman who had robbed the Newbury coach the day before, but he was hesitant to take him on, having glimpsed a pistol concealed in the man’s clothing:

⁴⁵ Trial of Timothy Goyley, acquitted of the murder of Elizabeth Palmer: t17340227-13, 12 August 2008.

⁴⁶ Thomas Seymour kept a wig shop, selling wigs as late as midnight: t17340630-1, 13 August 2008. See note below on tallow-chandler and baker working in the early hours of the morning , as well, of course, as the gin-shop (t17330510-9, 9 August 2008).

⁴⁷ t17360225-33, 19 August 2008; t17341016-5, 13 August 2008.

⁴⁸ “The Mob” arrested Roger Bow, tried for the murder of Thomas Field: t17340630-16, 13 August 2008.

“So I resolv’d to get Help if I could and take [i.e. arrest] him. But that he might not mistrust me I staid a little to drink with him, and then told him I was going to call up some Market People, tho’, God knows my Heart, I was going for Assistance to apprehend him. I went to a Tallow Chandler’s and a Baker’s, and told their Men, who were at work, that there was a Highwayman at the Brandy Shop Door, and if they would assist me, we might easily take him. They seem’d then afraid to venture, and so I went back; but in a little while I found two of them (Paget and White) at the Gin-shop. We drank two or three Quarterns, and then I was for taking the Prisoner, tho’ they were still afraid, but I swore, - yes, I did swear, begging your Lordship’s Pardon, - that now was the only Time, and so I seiz’d him, took the Pistol out of his Breast, and clapp’d it to him.”⁴⁹

Thus even a watch arrest required the assistance of a gin shop, conveniently open at one in the morning.

There were some thief-takers, but these were more akin to bounty-hunters than servants of justice, as they stood to gain a reward from arrest. Some cases indicate that juries showed some reluctance to convict on the basis of a thief-taker’s arrest.⁵⁰ In the main, the prosecution of crimes was left to the victim, who, as Fielding pointed out, might not be prepared to make the effort, or go to the expense, of taking the matter to court (Fielding 1988: 151).⁵¹

Where prosecution was left to the victim, it is clear that crimes against children were relatively unlikely to find a prosecutor, and the same applied to lesser extent to those against women. Those women who did prosecute for sexual assault rarely appear to have secured a conviction. In the Old Bailey Online cases of sexual assault from 1720 to 1740, there were only thirteen guilty verdicts, as against fifty-two not-guilty verdicts.⁵²

⁴⁹ Trial of John Davis, found guilty of violent theft and highway robbery (t17330510-9, 9 August 2008). Highwaymen often packed state-of-the-art firearms at a time when they still represented a novelty.

⁵⁰ t17360505-85, 19 August 2008; t17340116-40, 12 August 2008; t17330628-31, 9 August 2008. On the need to reform the reward system: Beccaria 1764: 36.

⁵¹ Friedman argues that private prosecution may have worked relatively well. As with Friedman’s overall approach – in Appendix B to *Making Sense*, he constructs an elaborate quasi-economic model of eighteenth-century robbery which manages to omit any consideration of morality and motivations - this must be seen as a modern perspective completely divorced from contemporary views.

⁵² Among the not-guilty verdicts, see those of victims Susan Marshall (above, t17351015-28, 14 August 2008) and Eleanor Clay (below, t17380412-56, 22 August 2008).

Both Fielding and his brother John (principal magistrate for Westminster from 1754 to 1780) attempted to introduce, through their Bow Street office, better systems of intelligence and detection, some of which were adopted widely (Styles 1983: 129). Policing was, very gradually, being better funded and more centrally controlled.⁵³

In parallel, and directly as a result of reforming works such as those of Montesquieu and Beccaria (themselves informed by classical traditions), penal reforms began to be undertaken, with the death penalty imposed less frequently. Transportation (after 1788 to the new colony at New South Wales) increasingly became a sentencing option chosen over death, for offences such as theft and forgery.⁵⁴ In some senses, the problems associated with Gin Lane were transferred to the new location in New South Wales. One of the major problems which successive governors had to deal with was, of course, the importation, retail, and distilling of spirituous liquors.⁵⁵

There was also the impact on the indigenous inhabitants. At first, it appears that they and the survivors of Gin Lane were simply expected to co-exist. Macquarie's policy, from about 1815 onwards, was for integration. It was not long - in 1820 - before we read the first official concerns, expressed by the clergyman the Reverend Cartwright, that this might not have been in the best interests of Aboriginal people, in view of "the evil practises and examples of our depraved Countrymen".⁵⁶ Cartwright coyly does not specify, but clearly he meant their alcohol consumption and sexual manners.

Gin Lane Today

It seems obligatory, having discussed the eighteenth-century gin craze, to adduce a more modern parallel. Warner's purpose is made plain in her final chapter, where she compares concerns about drugs, particularly cocaine, among conservative politicians in the USA in the 1980s, to that of eighteenth-century reformers about gin. To Warner, any concern about addiction and its outcomes is a "moral panic" (which is to say, unjustified conservative disquiet: Warner 2002: 4, 193, 211, 217). Warner acknowledges her debt to Peter Clark, who first promulgated this view of the gin legislation in a now famous 1988 article. Warner in her turn has been followed by others, with this view

⁵³ Linebaugh deplores the development of a centralized police force (2003, 2006: 433).

⁵⁴ Classical influences, particularly Cicero's *de Officiis*, on Montesquieu (Gay 1966: 50-51). Beccaria's rhetorical style recalls Cicero's, and we know that he was strongly influenced by his reading of Hume (Beccaria 1764: 1).

⁵⁵ Lewis (1992: 6-7).

⁵⁶ Letter from Cartwright to Macquarie, enclosed in Macquarie to Bathurst, 24 February 1820, HRA 1.X.263-265.

now standard in the treatment of the topic.⁵⁷ Dillon, for his part, devotes a chapter to the parallels with Prohibition in the USA.

In fact, a more accurate parallel emerges from the sordid details of the Old Bailey cases. Like central London in the 1730s, it is a society with desperate alcohol problems, overcrowded living conditions, poor communications, and grossly inadequate policing.⁵⁸ Like Gin Lane, it is a place where 2-year-olds are diagnosed with gonorrhoea, and wives and girlfriends are beaten to death in alcoholic rage.⁵⁹

Where alcohol is a problem and policing is ineffectual, it is children and women who are most at risk from violence. The concern of eighteenth-century reformers about women's consumption of gin was, in part, a realistic recognition that the welfare of children depends upon that of their mothers.⁶⁰ Like them, the one man who has done most to draw attention to indigenous issues in our time, Noel Pearson, does not hesitate to appeal to an ideal of social order.

“The truth is that, at least in the communities that I know in Cape York Peninsula, the real need is for the restoration of social order and the enforcement of law. That is what is needed. You ask the grandmothers and the wives. What happens in communities when the only thing that happens when crimes are committed is the offenders are defended as victims? Is it any wonder that there will soon develop a sense that people should not take responsibility for their actions and social order must take second place to an apparent right to dissolution. Why is all of our progressive thinking ignoring these basic social requirements when it comes to black people? Is it any wonder the statistics have never improved? Would the number of people in prison decrease if we restored social order in our communities in Cape York Peninsula? What societies prosper in the absence of social order?” (Pearson 2000)

A recent report by the National Indigenous Times indicates that indigenous communities in Queensland have an assault rate from six to

⁵⁷ Clark (1988) is acknowledged by Warner in her Preface (2002: xi).

⁵⁸ Overcrowded housing as a factor in indigenous child sexual abuse: Anderson and Wild 2007: 195-198.

⁵⁹ 2-year-old with gonorrhoea (dying from assault): t17380412-56, 22 August 2008: Fitzroy Crossing, WA, 2008: Alana Buckley-Carr, 'Two-year-old Contracted STD', *The Australian*, 17 July 2008; reproduced in the draft Database of Indigenous Violence, <http://indigenou violence.org/dnn/>. Wives beaten to death by alcoholic husbands: OA17371005, 20 August 2008 (John Totterdale, hung in 1738): Alice Springs, NT: Paul Toohey, 'NT Killer Jailed for at Least 27 Years', *The Australian*, 27 August 2008 (Ronald Djana sentenced to 27 years in prison).

⁶⁰ Fielding (1988: 90), cited ironically by Warner (2002: 70).

forty-five times higher than the national average.⁶¹ Having a perpetrator serve one sentence, however, may do little to ensure community safety. Repeat offending (recidivism) among indigenous prisoners in the Northern Territory has been shown to average up to 45 per cent, compared with the national average of 15 per cent.⁶² Women in remote Aboriginal communities continue to appeal for a greater police presence.⁶³

Commentators have also argued from a harm-reduction perspective that, since remote areas lack the drug-and-alcohol education, prevention and treatment services available elsewhere in Australia, a vigorous enforcement effort to control supply – that is, in the first instance, by police – is “the only feasible and practicable arm of harm reduction available in these settings.”⁶⁴

The problems in Gin Lane, so easily dismissed by Warner, are well and truly with us today. In the absence of control, either self-imposed or externally imposed (the two aspects of the ancient concept of *akolasia*), the most basic and intimate relationships – between husband and wife, parent and child – break down. This is the prospect which so disturbed Socrates, having heard Callicles’ view of life, in Plato’s *Gorgias*. It was also the fear of eighteenth-century observers such as Fielding, who foresaw problems for the whole of British society arising from those of the working class. It is a reality for workers dealing with addiction and violence in remote, and less remote, communities.

At least part of any solutions must involve restriction of retailing (either legal or illegal) of alcohol, greater police presence, and serious thought about sentencing. Access to retail alcohol is a key issue, currently being tested in the courts in Queensland, where the State Government has attempted to close canteens in remote communities.⁶⁵ There may also be a stronger role for traditional indigenous justice and sanction systems, subject to consideration of what constitutes effective

⁶¹ Gabrielle Dunleavy, ‘Poor health and safety in Indigenous communities revealed’, 7 June 2008, <http://www.nit.com.au/breakingNews/story.aspx?id=15147>

⁶² *Recidivism in the Northern Territory*, NT Office of Crime Prevention, June 2005, http://www.nt.gov.au/justice/policycoord/documents/statistics/Recidivism_Paper_2005_09_01_EBook.pdf

⁶³ Sara Everingham, ‘Aboriginal communities call for police presence, one year on [from the previous Federal Government’s Intervention]’, <http://www.abc.net.au/am/content/2008/s2281691.htm>, 21 June 2008. See also the interview with Dr Geoff Stewart, a long-time health worker in remote communities, interviewed by Tony Jones on the ABC *Lateline* program in 2006, <http://www.abc.net.au/lateline/content/2006/s1668794.htm>

⁶⁴ Dr Alan Clough, quoted in Anderson and Wild 2007: 174.

⁶⁵ Padraic Murphy, “Fight over canteen closures: remote community [Aurukun] takes Government to court”, *The Australian*, 22 October 2008, 8. See also McKnight 2002 on the impact of the canteen on Mornington Island society.

deterrence and minimization of recidivism (Anderson and Wild 2007: 175-188). While we may not subscribe to the statutes of Pittacus, it is surely timely to regard alcohol not as an excuse for crime, but as a component of it.⁶⁶

Postscript

Since I wrote the above paragraph, one Australian jurisdiction is reportedly examining this kind of reform. The New South Wales Cabinet has reportedly considered a number of proposals aimed at reducing alcohol-related crime. They are made against a background of a survey which revealed that about 40 percent of police detainees claim that drinking contributed to their having committed a crime.

The proposals also include restricting liquor trading with mandatory 2 a.m. closing of hotels and clubs (a proposal currently being tested in the courts by several licensed premises identified as a locus for disturbance). Most significantly, the proposals include one to remove intoxication as a defence or a mitigating factor in crime, particularly in assaults. Instead, drunkenness would become an “aggravating factor” in sentencing. While it is unlikely that the drafters have consulted Aristotle, it is interesting that considerations from classical treatment of alcohol-related crime remain so very relevant.⁶⁷

⁶⁶ “Settled insanity” and “temporary insanity” caused by alcoholism and drug use are, of course, the subjects of considerable literature in criminal law. It is hoped that a later article will address the issues in more detail.

⁶⁷ Simon Benson, ‘Cabinet closing in on liquor laws’, *The Daily Telegraph* 15 October 2008, 9.

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