


Article

# Victims as Prosecutors: England 1800–1835

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**Abstract:** This paper examines the role of the victim through the prism of prosecutor in the first third of the nineteenth century when England did not have a public prosecutor or national police force and most crimes were prosecuted in the courts by the victim. The selection of cases is drawn from a larger investigation of female offenders punished by transportation to New South Wales, Australia. The cases demonstrate the diversity of victims, the power they held as prosecutors and highlight the process from apprehension to conviction. Historical records of regional English Assizes and Sessions were investigated to identify the victim and record the prosecution process.

**Keywords:** victims; women; crime; death penalty; transportation; historical records; archives

## 1. Introduction

Victimology is a relatively recent discipline, firmly established since the beginning of the twenty-first century within criminology, having developed over the previous fifty years. It responded to a need by the recipients of crime, the ‘victims’, to be given some recognition of the role this crime played in their lives, their need for recognition as part of the healing process, in some cases to receive compensation for their experience, and to recognize that they are part of the criminal justice system. Victims might also assist deterrence of further crime by an offender forced to face the crime they have committed and its effect on the victim. The victim is usually seen as a passive sufferer at the hands of the offender. Godfrey describes three historical phases of perception of the victim in debates about crime. Until the late nineteenth century, in England, the victim was the central figure in the prosecution of crime. However, in the late nineteenth century, the state took over both policing and prosecution, seeing the community at large as the ‘victim’ of anti-social behaviours. In the third, contemporary phase after World War Two, the emergence of the welfare state with its social agendas saw all marginalised individuals as victims of crime [1]. Currently, the victim is only at the ‘periphery’ of the criminal justice system, whereas in nineteenth-century England, as the prosecutor of the perpetrator, the victim drove the prosecution process [2] (p. 3). Historical research about victims in this early period is scant. George Rudé in his pioneering study, *Criminal and Victim. Crime and Society in early nineteenth-century England*, noted that even when the victim was the prosecutor, details about the victim were few, with court cases usually documenting the offender and stolen property more thoroughly than the victim [3]. Recent large projects to digitize and link historical crime information, such as the Old Bailey on Line and digital files from the UK Home Office and other agencies in *The Digital Panopticon: The Global Impact of London Punishments 1780-1925*, a project led by Professor Barry Godfrey, University of Liverpool will gradually change this situation.

Our paper seeks to provide some redress to the absence of historical data about the victim in this early period. Our work returns to the private prosecutions of crimes such as theft and burglary to provide some empirical evidence of the role of the victim. In the early nineteenth century in England,

the victim was primarily the only person with power and opportunity to bring a perpetrator to the attention of the criminal justice system. In addressing the research question about the victim's access to justice in the past, the cases described in this paper show victims from various social situations, occupations and geographical locations taking action in the Assize and Sessions courts to punish those who had offended against them.

## 2. Crime and Punishment in England 1800–1835

The English criminal justice system had for centuries followed a somewhat ad hoc system in which rural landholders, mayors, clerics and people of importance were charged with the duty of magistrate, meting out justice to offenders brought before them by local citizens. Each quarter year (Quarter Sessions), they would see the crime brought to trial in a local arena, impose fines and punishments such as shaming and corporal punishment or limited imprisonment as a deterrent to further crime. Assize courts were held twice a year and the judges were usually legally trained men, although often not versed in criminal law, who travelled on a regional circuit [4]. Initially intended to hear serious crimes, by the early nineteenth century, they tended to hear whatever cases were awaiting trial in the towns where they held court. A judge addressing a jury in 1833 commented that as the Assize court had arrived early, it would hear those 'unfortunate' cases arising from 'poverty and distress' normally heard by the magistrates at Quarter Sessions [5].

The modern prison did not exist. The only gaols at this time were places holding prisoners prior to trial, bridewells or houses of correction for short-term incarceration [6]. For long-term punishment, a Transportation Act in 1718 allowed persons convicted of larceny or stealing from the person or the house to be transported to North America. After the American War of Independence, new destinations were needed. Male offenders were kept on hulks and, from 1788, offenders sentenced to transportation were sent to the English settlement at Botany Bay (Sydney, New South Wales). Death was the penalty for many crimes, though often commuted to transportation. Law reforms from 1819 slowly replaced the death penalty with less severe sentences like transportation which was believed to be cheaper than building gaols [7].

Public prosecutors, empowered by the state to pursue the prosecution of criminals in England, were not introduced until as late as 1879 with the Prosecution of Offences Act [8]. Prior to this, the victim had to find the perpetrator and detain them, often with the help of a local watchman, or constable, collect evidence and bring it before a magistrate, return to the jurisdiction for the trial, and provide witnesses if there were any, all of which was a time consuming and costly process. It has been described as a system based on vengeance by the victim. The prosecutor was seen by Lord Denham in 1824 as not only vengeful but "helpless, ignorant, interested, corrupt and irresponsible" and also someone who could be bought off by the offender: there was a suggestion that prosecutors only pursued their perpetrators to obtain money from them [9] (pp. 332–333, 338). Due to the difficulty of the victim acting as the prosecutor, it is highly likely that much crime went unreported [10]. Anecdotal evidence supports this contention and also that citizens took matters into their own hands by, for example, giving a child thief a good thrashing [11]. This under-reporting of crime and tolerance of it had two major effects: it reduced the perceived prevalence of crime, so citizens falsely felt a degree of safety that was not warranted, and it also enabled criminals to carry out their activities relatively unimpeded by thoughts of consequences such as being gaoled, executed or transported.

There was little imperative for a victim to pursue justice that was of a variable quality and certainty. Perhaps for this reason, the early criminologists of the Classical School considered that fixed terms and mandatory sentencing were an attempt to regularise the criminal justice system [12]. It was not easy for the victim to act as their own prosecutor, being forced to use their own resources to catch the criminal, bring them before a magistrate, defray costs of witnesses and return to the jurisdiction when the case was finally tried, sometimes six months after the crime. Nevertheless, as the cases below indicate, victims both rich and poor did persevere to bring prosecutions to court. Once in the court room, the outcome was determined by a judge and jury, and the sentence was usually fixed by the

mandatory penalties of England's Bloody Code, a series of statutes that prescribed capital punishment for many forms of theft and transportation for others.

This paper examines a selection of cases involving victims of crimes committed in the first third of the nineteenth century in England. These victims prosecuted their perpetrators, many of whom were transported to New South Wales, Australia as punishment for their crimes. A number of variables could impede the progress of a trial, e.g., the victim could decide not to proceed due to cost, inconvenience, or even the desire not to see the perpetrator suffer in the criminal justice system (gaol inmate, hard labour, flogging, transportation, hanging). At other times, the witness for the prosecution may have disappeared or chosen not to appear. Transportation was a sentence, often remitted from the death penalty and was seen by some judges as a way of ridding England of its recalcitrant criminal underclass. At times, the presiding judge would caution the criminals on conviction, suggesting that England was better off without them, and hoped they would reform where they were being sent to. Edward Patchett, aged 8, was capitally convicted but the judge was lenient and sent him to Australia where his parents had gone (mother transported: father followed), remarking that even though he had been capitally convicted this had not changed his behaviour and so the judge determined "it may perhaps, be a benefit to the community, and an advantage to you, to send you beyond the seas" [13].

### 3. Our Data Sources and Methodology

In the first half of the nineteenth century, 160,000 convicted offenders were transported from British ports (including Ireland) to the Australian colonies predominantly to New South Wales or Van Diemen's Land, many having death penalties commuted to transportation for life. Approximately 25,000 of these convicts were women. The common assumption about their crimes, if considered at all, is that the women, like the men, stole from the need to survive extreme poverty. It is they who are often considered the innocent victims of economic or political forces beyond their control, or at worst pilfering workers redressing unfavourable employment conditions [14,15]. While the date and place of trial and sentence were forwarded with the convicts, in New South Wales additional information about their crime is cursory, reduced to short phrases such as stealing clothes, robbing masters. Australian historians rarely considered the crime for which the convict was transported, or the victim.

Our larger project is an investigation of the females convicted in England, Scotland and Wales and transported to New South Wales from English ports from 1800 to 1836 ( $n = 5131$ ). From these data, a small number of cases has been investigated to learn more of the victims and circumstances of the crime. It is likely that many offenders thought they could carry out their crimes with impunity and such was the chaos of the criminal justice system, with its lack of police and prosecutors, and the variability of victims' ability to successfully bring their perpetrators before the courts, that many criminals probably did not think they would be convicted. That so many had their sentence commuted to transportation from death suggests that the judiciary and populace were tiring of hanging as a method of dealing with crime [4]. About one-third of the women in our larger study were tried at the Old Bailey with the majority tried at regional Quarter Sessions and Assize courts. This smaller preliminary historical investigation looks at the victims of crime in the trials held in the regional Assizes. It is the first attempt by Australian historians to contextualize criminals, their victims and to understand the nature of the crimes of the nation's founding European population.

Despite the absence of effective police forces, these women were identified, apprehended, prosecuted and convicted. They were caught by local constables or members of the community and generally prosecuted by private citizens who were sufficiently motivated and/or wealthy enough to do so. Sentences of transportation for 7, 14 years, life, or death commuted were the penalties for felonies or for being found guilty for two or more lesser crimes. The penalties were interpreted by the judges based on statute laws that defined the punishment, particularly for capital crimes.

Lists of transported prisoners in Australian records (convict indents and musters) provide names, details of the date and place of their trial and the sentence. A selection of the names of the women who were transported have been researched in the records of the English regional Assize courts, held

at The National Archives (TNA) at Kew, England. Digitized British newspapers reported the court cases and sometimes provided information about the offender and victim and the circumstances of the crime. The crimes of these women were overwhelmingly theft. Though often excused in Australian histories as minor thefts, the court records suggest many of the thefts were of high value, making it worth the effort for the victim to prosecute, although sometimes the proceeds of the crime disappeared. The occupations of the female offenders included domestic service with families who were just above them socially—tradespeople, shopkeepers, farmers [16]. These situations provided opportunities for theft. Other women were berated by their judges at trial for dressing in silk, suggesting that for some, their crimes paid well enough to enable them to dress well above their social position [17].

There is some evidence that the crimes of the females in our sample were perpetrated against their own social community. These women could move freely among the groups they robbed at market places, shops and pubs, or the homes of their masters and were not perceived to be out of place when they came into the shops, examined the goods, and slyly stole something by putting it into their basket or under their cloaks: the shop keeper was always happy to display wares to people he judged as potential customers and not as potential thieves.

Some victims did not prosecute because of the cost and inconvenience [8]. From 1818, the victim could be awarded expenses [3]. Yet this payment depended on the judge's assessment of the character of the victim. Men who were out in the evening drunk and in the company of women of bad character may be successful in their prosecutions for pick pocketing or man robbery but were also likely to face a harsh lecture from the judge and have their payments reduced or refused. John Gillett, 'a simple country lad' had his watch stolen, having missed it after meeting Ann Webb, a woman of the town. She was caught that evening, with the watch still on her. As this was her second felony, she was sentenced to transportation for 14 years. The judge then told John Gillett, the prosecutor, that he needed to learn a lesson and not mix with such company, so would not be allowed expenses [18]. Defendants also alleged that the victim had been too inebriated to identify the offender. Elizabeth Sharman, aged 31, tried this defence when charged with stealing 61 pounds notes from a farmer at 1 am. The victim produced a witness to his sobriety [19,20]. Judges also rewarded citizens for apprehending offenders. In a prosecution for housebreaking in Staffordshire in mid 1818, the judge gave rewards to the prosecutor's daughter and an elderly female neighbour who apprehended the two young male offenders [21].

Whilst George Rudé considered that the lack of compensation for costs deterred poor victims from bringing prosecutions [3] this was not necessarily the case for the victims in this sample. The dire financial situation of George Veith, a poor sailor who had been brutally beaten and robbed of £2 by Eleanor Mead, prompted the jury to give him 6d each, and a compassionate judge directed £3 in court expenses, as well as donating some of his own money to the victim [22,23]. Some victims did not pursue prosecution because of the severity of the law. Even when the victim successfully prosecuted and the offender convicted, they would sometimes support the criminal in their plea for a lesser sentence. They may have wanted to see them punished, but death or transportation may have seemed too severe [3].

Discussions of crime and its detection in the early nineteenth century often point to poor policing before the creation of the modern police force as it was sometimes difficult for a victim to identify the perpetrator, or to grab them and take them to a mayor or justice of the peace. In the cases of these victims, both parish constables and citizens were responsive to calls for help and willing to inform and identify the offenders believed responsible. Neighbourhoods, whether towns or villages, were more intimate in the early nineteenth century. Most people lived and worked close by, drank at the same pub and saw the same people in the streets. Offenders could be easily recognised. Most local newspapers published reports of all court hearings so local people would be informed of those in their midst who were frequently before the courts. The Sedgwick girls were well known in their neighbourhood with a father in prison, mother in another town, and the family regularly before the courts and characterized as 'the terror of the neighbourhood' [24].

The advantage of the new metropolitan police, such as those based in Bow Street London, was the apprehension of an offender who travelled quickly across multiple jurisdictions. Samuel Fletcher, a wealthy resident of Cheltenham, found that his house had been ransacked by his servant Emma Pullen, alias Dawes or Roberts. Fletcher travelled immediately to London, to Sir F. Roe, to ask for assistance from Bow Street. Their experienced officer traced the young woman at the coach stop, having arrived in London from Cheltenham, and then quickly transferred to a coach to Bath, where she transferred again to a coach to Bristol, where she had booked herself on the next coach to Liverpool, intending to board a ship for foreign ports. The Bow Street officer caught her in Bristol, dressed in her mistress's shawl and cornelian necklace, with a velvet reticule containing Mrs Fletcher's visiting cards. Her property was searched and the officer retrieved £200 worth of jewellery, silk dresses, shawls and £25 in coins and notes. She had already passed off antique Roman gold coins as sovereigns, but they were eventually recovered. He arrested her and escorted her back to Cheltenham to stand trial. The Quarter Sessions magistrates deemed the offence of an 'aggravated' nature and referred it to the assize judge for determination. The victims, Mr and Mrs Fletcher had hired Emma after only a week's trial, and had then left home the following morning to visit a friend, telling her they would not return until late in the evening [25–28].

#### 4. Stealing Money

Business affairs required cash, bank notes or promissory notes, but the savings bank system was in its infancy, so it was not uncommon for people to carry large amounts of money or keep it hidden in their homes. Many working people accumulated coins and notes which they kept locked in boxes in their rooms. This meant that money was likely to be found in many premises.

A surprising number of men with fat purses found themselves in strange towns where they were also attracted to places providing alcohol and the company of women. Not surprisingly, they often regretted these indiscretions when they found themselves the victim of robbery. John Booth was a commercial traveller from Denton, near Manchester travelling to London on business. He dined with a friend, drank more than he should, and then walked toward his lodgings, carrying £1600 in bank notes, bills of exchange and sovereigns in his purse. Approached by two women, he went to their lodgings, drank more, and went to bed. When he awoke, his money was gone! Residue of a narcotic was found in the glass from which he had been drinking, suggesting that he had been drugged as part of the robbery. There, matters may have ended—a victim but no offender. However, a week later, Elizabeth West alias Palmer, alias Chimney-sweep Bet, acting as victim and prosecutor, charged a man with robbing her of 91 sovereigns and at his trial, evidence was produced that established that the sovereigns stolen from Elizabeth West were part of the proceeds of the robbery of John Booth. She was sentenced to death, subsequently transported for life [29,30].

Elizabeth Warner was the head chambermaid at the Kings Arms, Dorchester. She was able to accumulate £200 in gold coins which she kept locked in a box in her bedroom. When all of the money disappeared one evening, she suspected the housemaid who had just left to get married. A search of her lodgings revealed a trunk with 141 sovereigns, and other coins. A distinctive coin was recognised by the prosecutor, and Alice Conroy, the housemaid was sentenced to death, commuted to transportation for life [31,32].

#### 5. Highway Robbery

Many people had to walk between towns and villages, often at night. This could be dangerous, exposing them to criminals waiting to attack a stranger. Even travellers on horseback were at risk of attack. James Heritage rode out of Warwick at 1 am one autumn night in 1824. He stopped to speak to two women and was knocked to the ground by men behind him. Beaten unconscious, his coat, waistcoat, boots and £16 in notes and silver were stolen, but not his horse. He recovered consciousness a few hours later and returned to the nearest inn to report the attack. The offenders—two women aged 16 and 18, and two men—had already drawn attention to themselves that evening by acting 'riotously',

throwing stones, knocking on doors and attempting to beat up two watchmen. In the morning, the watchmen went out along the road, found the blood, and then came across the offenders who still had the stolen property on them. At their trial, all were sentenced to death, with the judge indicating that one man would be executed, and the others recommended for mercy (i.e., transportation). On hearing the verdict, Martha King threw orange pieces at the judge and threatened the prosecutor and witnesses. This show of defiance did not lead to further punishment as her death sentence was commuted to transportation [33,34].

Many of the victims were old and feeble and the proceeds of the crime were paltry. James Green, a lame elderly labourer, was walking home from work one summer evening in Herefordshire, when Susan Barnett accosted him, put her hands in his pocket taking two half crowns and half an ounce of tobacco and ran off, leaving her shawl in his hands. He sent people in pursuit of her, and when she was caught, she swore it was she who had been robbed by him, arguing that he was sober at the time and she was too strong to prevent the robbery. When apprehended, she had a sovereign and two half-crowns concealed on her person [35,36]. A similar case took place in Berkshire where 85-year-old John Surman was knocked down by Mary Ann Taylor who stole two half-crowns and two shillings from him. He gave the alarm at the public house and she was taken within ten minutes by one of the locals [37,38].

## 6. Burglary, Housebreaking and Stealing from a Dwelling House

None of the offenders in our study of transported women stole from gentry or the aristocracy, but they did steal from rich merchants as well as poor cottagers [3]. Whilst it is easy to presume that the poor would not prosecute for the loss of their few possessions [3] this is not the case in a number of the convictions in our study. Indeed, the Assize judges were often eloquent in their support for poor victims who brought offenders to trial.

James Buckingham, Jane Buckingham or Straw and Margaret Wilson were members of a gang who 'prowled' the Staffordshire countryside in 1820, breaking into the cottages of poor labourers who had gone out to work and stealing their few belongings. Quoting a statute from the time of Queen Elizabeth I that made it a capital offence to break into houses in the day and steal goods, the judge in this case had no compulsion in enacting this punishment, observing the circumstances of the victims:

A poor but industrious cottager leaves his house for the purpose of going to work for a farmer at his daily labour, his wife scarcely recovered from the effect of child-birth goes out with the hope of gleaning a few scattered ears that might have fallen from the hands of the reapers, and to enable her to do so is forced, at an expense she could ill afford to hire a little girl, who had appeared in court, to watch the infant, and when it awoke to carry it to its mother, that it might have that natural nourishment which it wanted; and while that is done, these poor people were plundered of nearly the whole of their little all [39,40].

The home of Samuel and Jeremiah Howard at Drayton, Norfolk, was broken into on a mid-summer afternoon in 1821. Sarah Bush was prosecuted for the theft, stealing two pairs of breeches, a quill, handkerchiefs, a hat and gloves. Sarah had been released from Milbank Penitentiary only two months earlier, where she had served a five-year sentence in place of the original sentence of transportation she had been given for a series of similar thefts in 1816. This time her sentence was death, but respited to transportation [41–45].

## 7. Masters and Servants

Whether in the home or in the workplace, female servants were ubiquitous. Often young women lived in as domestic servants. Many found the temptation to take their employers' possessions and money irresistible. The victim of the theft rarely had to look far for the offender, as in many instances their servant was the only other person in the house and the stolen property was found among the girl's possessions. These victims were largely assured of a successful prosecution.

William Whitbread had employed Ann Isherwood, aged 35, for a number of years. She was a trusted servant, a respectable woman with an excellent character. He prosecuted her for the loss of a significant quantity of household goods, including 21 linen pillow cases, 19 sheets, 11 tablecloths, 43 napkins, 11 yards of printed linen, 28 yards of cotton, 45 lb of wax candles, 14 scrubbing brushes, 70 lbs of soap and 46 dusters, with a total value of £27. The judge considered she had been carrying on her theft over a long time. She pleaded guilty. The judge accepted a character reference from a former employer in mitigating her sentence to transportation for 7 years [46,47].

Joseph Cheetham, a victualler in Louth, Lincolnshire, kept money in a box under his bed. His wife had the key and when she checked it in the morning it contained coins and notes for £70/1/6. Their servants were Mary and Robert Burton. During the day Mary went into the room on several occasions before leaving the house in the early afternoon. Mary took the money to her family at Tetford, where she gave her sister and brother-in-law cash and helped them purchase clothes. Robert gave his sister-in-law a purse with the rest of the cash and notes—£30/1/6—which she buried in the garden. When Mary and Robert Burton were charged with the theft, their brother-in-law retrieved the purse and gave it to the gaoler at Louth. Mrs Cheetham identified the notes in the purse. Robert was acquitted of the theft, but Mary was found guilty and a sentence of death was recorded, that was commuted to transportation for life [48,49].

Cash was easily taken, but clothing was just as valuable, as John Hicks and his wife found when their servant Elizabeth Edyvean the younger decided to leave their employment during the night, taking with her most of her mistress's clothing, valued at £3/4/-. Whilst she was found guilty, the judge directed the jury that there was no proof she had taken the goods during the night, and did not use force to leave the house. If the jury found her guilty of taking property valued at 40/- (£2), it was a capital offence. The jury found her guilty of stealing under 40/-, showing that judges and juries did their best, at times, not to execute but to reduce the charge and possible sentence by reducing the value of goods stolen below the statutory level for execution [50,51].

## 8. Shopkeepers

Criminal offenders were often known in their community and easily recognised. Truro linen draper, John Rowe, missed a shawl valued at 30/- from his shop. Presumably remembering a recent customer, he took the constable with him when he went to the Kenwyn Poor House and asked 14-year-old Jane Pascoe if she had stolen the shawl. She admitted the theft but had already sold it for 7/-, and given the money to another woman. Jane pleaded guilty at her trial and was sentenced to death, respited to transportation for life [52,53].

Lengths of fabric were among the common items stolen from shops. Elizabeth Thorpe was a Dorset shopkeeper who prosecuted Elizabeth Prior and her husband for stealing 10 yards of printed calico and 8 yards of plain calico, value 23/-. The husband was acquitted but the woman was found guilty, sentenced to be hanged, but respited to transportation for seven years [54]. The shopkeepers of Gloucester were vigilant in prosecuting theft and 16-year-old Elizabeth Jones found herself prosecuted by William Mumford for stealing 28 yards of printed cotton from his shop and by Elizabeth Ludgrove who missed 40 yards of ribbon, 5 silk handkerchiefs and 3 yards of silk from her shop. Other victims of her thieving joined in the prosecution—Robert Groves who lost 6 handkerchiefs and William Straford who had two shawls stolen—and she was transported for life [55,56].

Similarly, the employees of Thomas Bunting, linen draper at Bedford, closely observed their customers, even when they were regulars, such as James Macdonald and Mary Ann Conrave. The salesman challenged Mary Ann that she had hidden fabric in her dress pocket, concealed in part by the baby she was holding. Macdonald was not her husband, pleaded ignorance and was acquitted. Mary Ann was found guilty, despite her plea that she had paid for one of the pieces and had six children to support [57,58].

## 9. Stealing Clothing

Clothing and bed linen were frequently stolen and usually pawned but these items were also distinctive and easily recognised by the victims who may have darned patches, remembered embellishments and sometimes marked their linen with initials, a necessary fact of life for linen that was routinely laundered outside the home.

Elizabeth Downs was the wife of Fairley Downs, who kept a public house at Monkwearmouth in Durham. Two Leghorn bonnets, two cotton gowns (one being blue with diamond spots) and a black coat went missing in September 1825. In December, she identified these items in front of a magistrate, the local constable having retrieved them from a house in Sunderland and a pawnbroker. The crime was a capital offence, stealing in a dwelling house of goods over 40/-, but the judge stated that as the bonnets had been called hats in the indictment, he threw out that charge, leaving the offence at under 40/-. Sarah Mushens was found guilty and transported for 7 years.

The constable had been diligent in his search of the home of the Mushens family, finding clothing belonging to nine or ten people and many pawnbroker pledges. Sarah's mother and younger sister were also charged with stealing. The child was acquitted, but Ann Mushens, aged 43, mother of Sarah, was found guilty of stealing, among other items, a wet sheet from the clothes line of Ann Davidson of Sutherland, an item easily recognised by the embroidered initials AD. Their victims were their neighbours. The offenders had not expected a sentence of transportation. Both fainted and were carried from the courtroom. The judge's condemnation was reserved for Ann Mushens for having brought up her children to 'efface all impressions of honesty from their minds and make them forget their duty to their neighbour as well as their duty to God' [59–61].

## 10. Stealing Food

It is easy to assume that the theft of food was an indication that the offenders were hungry and destitute. In some cases, this was true, but a closer investigation of the prosecutions often reveal that large quantities of food were stolen, well in excess of what could be devoured by an individual. Richard Morgan, a farmer, had his house in Durham broken into at 11 pm. The thieves drilled through the pantry door to release the bolt and took, among other items, 2 fitches of bacon, 2 hams, half a pig's head, 4 pieces of bacon, 4 pieces of pork, 1 piece of beef and 10 lbs of lard. At 3 am, a woman took some of the ham and bacon to a carrier to deliver to an inn at Gateshead where she retrieved them the next day. She and her husband sold the meats to various butcher and grocer shops in Gateshead. James Wingate had been in Morgan's house the day before the robbery. His house was searched, evidence was found of the theft and Wingate and his wife, Jane, were taken before the magistrates and charged with the crime. Jane was also charged with breaking into William Pattison's house and stealing clothing. Wingate was found guilty of the theft of the meats and Jane was found guilty of the theft of clothing. Both were transported for life [62–64].

John Taylor, William Jackson and George Proudlove were farmers in the County of Chester whose ducks were stolen. Sarah Brereton was indicted for receiving stolen poultry when a large number of ducks, hens and fowls were found in her possession, having been stolen from several farmers in the district during the same night [65,66]. Sheep stealing was a capital offence and the meat was often passed to a woman. Elizabeth Moore was successfully prosecuted for receiving 110 lbs of meat from two sheep known to be stolen from Giles Ibell and Joseph Lovedren in Oxfordshire. Her partner was executed for stealing the sheep [67,68].

## 11. Receiving Stolen Goods and Pawnbrokers

Stealing might provide an instant reward for the perpetrator but more often than not, goods were stolen that then had to be converted to a useful commodity such as money or food or clothing. For this purpose, a conduit or 'fence' was required to take the goods and then distribute them, effectively buying them from the thief. Pawnbrokers were a common source of funds, either on a temporary



basis or longer term and were open long hours. Pawnbrokers could be called to provide evidence of receiving stolen goods. The house of George Wilson, a jeweller of Kennington Lane, was broken into and jewellery, plate, cash and a cashmere shawl were stolen. Wilson and his family lived above the shop. During the night thieves broke into the lower part of the house and stole goods valued at about £500. A local police constable was on duty that evening and received information that the burglary was taking place, and presumably also the identity of the thieves, as he went to their lodgings, found the men there, and some of the stolen property, except a cashmere shawl, formerly belonging to the Empress Maria Louisa. It had already been pawned. Witnesses called for the prosecution included 18 pawnbrokers, who produced the stolen jewellery and the shawl. Charlotte Dean, aged 21, was found guilty of receiving part of the money and goods, though only to the value of 19/3 and a half penny and transported [69–71].

Miss Faulkner rented a room in a house in Lambeth. One evening in the summer of 1832 while she was out walking, her locked room was broken into and a watch stolen. A woman of action, she immediately went to the nearest pawnbroker, alerted him to the theft and described the stolen watch. Shortly after, Elizabeth Wheatley arrived to pawn the watch and was immediately taken into custody. Aged 19, she was the wife of George Wheatley, a young man who had been in the kitchen of the lodging house just before the theft. He, too, was arrested. The victim pursued the charges against them through the courts. George was found guilty of feloniously breaking and entering a dwelling house and stealing goods valued at £4/5/- and because he had been convicted on a previous charge, was sentenced to death. Elizabeth was found guilty of receiving but the judge directed inquiry to be made as to whether she was his legal wife, as if so, she would be discharged as the indictment could not be supported against a married woman. The victim was not a vindictive woman, and at the trial she 'strongly recommended' mercy for both prisoners. George's sentence was commuted to transportation for life, and Elizabeth was transported under the names of Wheatley or Price, suggesting theirs was an illicit relationship [72,73].

Other people who acted as an intermediary between the thief and the sale of goods ran the risk of being charged with receiving stolen property, a charge that carried a 14-year sentence of transportation. Stolen property might pass through several hands before being located by the authorities or the victim. Receivers of stolen goods were often family members of the person who committed the theft. William Williams, a shop keeper, successfully prosecuted the two men who broke into his shop and stole 31 knives, 24 snuff boxes and a large quantity of jewellery (including 18 broaches, 2 strings of coral beads and 47 rings) and they were transported. Mary Brewer was found guilty of receiving one ring and one string of coral beads that she had purchased from a family member and was transported for 14 years [74]. A petition by her husband urging clemency indicated that one of the thieves was his nephew, and that his sister-in-law had urged Mary to purchase some of the stolen jewellery [75]. (Judges noted that some families acted as criminal gangs. Male and female members of the Bamford family and their associates were transported and the matriarch was executed [76].

## 12. Perjury

Victims sought justice, but once in the courtroom, sometimes found that the court took the prosecution further than had been intended. In what may be a rare case of malicious prosecution, [77] Sarah Twelltridge, aged 18, had accused Mr Raworth of attempted rape. Raworth urged the court to give her a lenient sentence, but the judge pointed out that not only had she violated her oath to tell the truth, but her accusation was an attack on a respectable individual's reputation and the happiness of his family. She pleaded guilty and was transported for 7 years [78,79]. Mr Hewlett was 76 years of age when Jane Harrison, a young woman, alleged that he had fathered her bastard child. He was carried to court on his death bed to defend this allegation. Jane was then charged with perjury and transported for 7 years [80–82].

Excise officers were vigilant in deterring smuggling. When a suspected smuggler was summoned by the magistrates, he produced two friends to provide an alibi. Ralph and Jane Ridley swore that he was with them at the time, but they were found guilty of perjury and both transported for 7 years [83,84].

### 13. Neighbours and Family

Some victims knew their offenders. Sarah Sutton was a blind, deaf and lame old woman who lived with her husband in the tiny village of Winkle, in the County of Chester. Her husband worked away from the village, her son was away at work and her daughter had gone to market, leaving the old lady alone with three infant grandchildren. Her neighbours were the Sedgwicks, a family who terrorised the village. Mary Sedgwick, 19, and Sarah Sedgwick, 17, had heard there was a large sum of money in the Sutton home. Dressing in their brothers' clothes, pretending to be men, blacking their faces with soot, and covering their heads with sleeves cut from a dress, they prepared a piece of tarred brown paper. They sent their young brother to the Sutton home to distract the little children away from the house. Mary and Sarah burst open the door into the house, threw the old woman onto the ground and demanded in gruff voices to be given the money. She refused, and the tarred paper was placed over her mouth. The girls ransacked the house but found no money and left. Their young brother returned to learn of the assault and where her money was hidden, told the old woman he would go for help, and then told his sisters where the old lady kept the money. The girls returned to Sutton's house and repeated their violence but found nothing. The attack was reported to the local constable, who apprehended the girls, found the clothes, tar pot and tools and brought them before the magistrate. Indicted at the Chester Assizes for demanding money with menaces and attempted 'burking' or suffocation, the girls pleaded guilty and a sentence of death was recorded, later commuted to transportation for 7 years [85–89]. The New South Wales records noted their crime as merely stealing money [90].

Perhaps the least expected of the cases where victims became prosecutor were members of the same family. Elizabeth Walkley's husband Samuel had been committed to a lunatic asylum. On returning from an overnight visit, she found her house locked up and her 18-year-old son missing. She discovered that several articles of her clothing were also missing. Inquiries at the public house revealed that her son had pawned some of the clothing and Charlotte Clifford, aged 19, was in his company with items of clothing knowing they were stolen. Elizabeth Walkley prosecuted her son and Charlotte. He was transported for 7 years for the theft, and Charlotte was transported for 14 years for receiving the clothing [91,92].

### 14. The State and Corporations as Victim and Prosecutor

Not all victims were individuals. The most active prosecutor of the women transported was the Bank of England, at this time a private corporation. The Bank of England employed a veritable private security force to deal with forgery of its bank notes and was ruthless in its prosecution. Most of the women pleaded guilty to possession of forged bank notes and accepted transportation for 14 years rather than risk being found guilty of uttering with the certain sentence of death and little prospect of remission [76].

Occasionally state institutions prosecuted, but these would seem to be private prosecutions in the absence of a crown prosecutor. The Mint prosecuted offenders who counterfeited coins, though in the case of Alice Wilcock, initially charged at Lancaster Assizes for having 40 counterfeit silver coins in her possession, the coining charge was dropped in the face of her certain conviction for the possession of a forged Bank of England note for which she pleaded guilty and accepted the sentence of 14 years transportation [93]. Dorothy Lynch was not so fortunate, being found guilty with associates of counterfeiting and uttering three false shillings and nine false sixpences [94,95].

Identity fraud was a more subtle crime against the state. Elizabeth Hilton was found guilty of false uttering, having represented herself to the Treasurer and Paymaster of the Royal Navy that she

was the sister and nearest kin to William Reilly, a seaman who had died at sea in 1807, in order to claim administration of his estate. Her falsehood was discovered, and she was transported for 7 years [96].

Charitable institutions were not immune from theft—and prosecuted the offenders. Mary Robinson, aged 27, stole a blanket and a shirt from the Overseers of the Poor in the Parish of St Nicholas, Newcastle-on-Tyne and found herself in the assize court charged with three counts of break, enter and steal. She pleaded guilty and was transported for 7 years [97,98].

Not all cases in this period have the victim as prosecutor. Some crimes were referred to the courts by the coroner or by the local police constable. William and Mary Ann Mean were charged with the murder of their daughter, but Mary Ann was found guilty by a jury of manslaughter in a case where evidence was produced of beatings and starvation. He was acquitted. She was sentenced to transportation for life [99,100]. Martha Moores was indicted for involvement in an abortion. The doctor who performed the operation had absconded, the woman who had the abortion was a witness against the man who had arranged it and Martha Moores who had assisted the doctor. Both were transported for 14 years [101,102].

### 15. Vengeful Victims and Judges?

The criminal justice system saw punishments as deterrents. Execution or transportation were intended to deter others from crime. Yet these were not necessarily vengeful acts on the part of the victim [9]. Even though victims brought prosecutions to the courts, there is little evidence in the cases above that the victim was pursuing vengeance. They wanted their property returned; they wanted recognition that a wrong had been done to them; they may well have wanted public recognition of 'justice', but they were not baying for blood. In many instances, they spoke out to ameliorate the punishment faced by the offender. Our cases confirm the findings of Rudé [3] that many victims were reluctant to prosecute to the full penalty of the law.

Even the judges in these cases of theft seem careful that the offender not underestimate the likely penalty. Some women denied their guilt, but a surprising number pleaded guilty, seemingly unaware of the punishment awaiting them. Maria Reeves, aged 17, had stolen goods worth 22/6 and £15/10/- in cash and notes. This was a significant amount and worth her employer, Thomas Mercer of Mercer and Sons, taking action against her. Maria pleaded guilty, fainted and when sentenced to death fainted again before being taken from the dock in 'violent hysterics' [103,104]. Elizabeth Baldwin, on a charge of theft, was advised to change her plea from *Guilty* to *Not Guilty* but persisted and was transported [105,106]. Statutory death sentences existed for a large number of crimes and often a judge would advocate that a criminal change their plea as he would have no other course of action if they pleaded guilty and were found guilty than to apply the mandatory sentence which was death. Mary Smith pleaded *Not Guilty* to uttering forged notes even though the mandatory penalty if found *Guilty* was death and the judge repeatedly advised her against her plea: she was one of the very few whose sentence of death was commuted to transportation [107,108].

### 16. Conclusions

The cases above show that in early nineteenth-century England, victims across the countryside, regardless of wealth, turned to the law, rudimentary and flawed as it was, to apprehend and prosecute those who had offended against them. The local watchmen and constables responded effectively to cries for help, received information about crimes and acted upon that information but were unable, in most cases, to do any more than hold onto the criminal, if and when they found them, until the victim proceeded with a prosecution. In the case of stolen property, often the evidence was better documented than the details of either the victim or the offender, a result perhaps of the need to establish values for sentencing purposes. With no banks to deposit savings, most of the population held surprisingly large amounts of cash, making theft a worthwhile risk while goods of all descriptions were easily converted to cash.

In many cases, the victim remains a shadowy figure, as if despite their central role as prosecutor, the real star was the court process itself.

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