Notes

Notes to Chapter 1

1. MJ/SR1798 R27, 23 Apr. 1692.
3. Ibid., 6–7.
5. Although serious attacks like nose slitting or taking out an eye were defined as felonies under the law, they were often, in practice, treated as misdemeanors and prosecuted only by recognizance.
6. See, for example, Michael Dalton, The Countrey Justice (London, 1655), 203.
7. In addition to assault, the various “trespasses against the peace,” are “Battery, . . . where any person hath violently struck another”; “Bloodshed, . . . where upon any such Battery Blood hath been shed”; and “Maihem,” which involved mutilations of various kinds. W. T., The Office of the Clerk of Assize . . . Together with the Office of the Clerk of the Peace . . . 2nd ed. (London: Printed for Henry Twyford, 1682), 127. For a more comprehensive description, see Sir William Blackstone, Commentaries on the Laws of England in Four Books, Book Three (reprint, Philadelphia: Geo. T. Bisel Co., 1922), 120–22. As mentioned earlier, terms such as battery, mayhem, and bloodshed were not present in many of the assault recognizances that bore descriptions appropriate to such offenses.
9. For a discussion of the variety of acts described in assault recognizances, see chapter 5. Appendix A and chapter 2 elaborate on JPs’ freedom in writing recognizances.
10. Note that the 105 recognizances to appear to prosecute an assault (type b in appendix A, figure A.1) have also been used as accounts of petty violence, except where stated in the quantitative analyses.
11. Of the 7,129 recognizances to appear to answer a charge of assault, 9 percent (636) also bound the defendant to keep the peace (combining types a and c); 21 percent (1,527) were to be of good behavior (combining types a and d); and 32 percent
(2,301) simply added the condition that the defendant was not allowed “to depart the court without licence” (type e). Of the remaining recognizances, 14 percent (1,002) bound the defendant for a combination of keeping the peace, good behavior, or not departing the court without permission, leaving 24 percent where there was no extra condition other than to appear to answer the assault charge (type a). None of these conditions bear any significant relationship to the severity of the offense or its description. While, in theory, recognizances for maintaining good behavior were more serious than those for the peace, in practice there was little distinction between the two; and they seem to have been used rather arbitrarily, at the discretion of each individual JP. See Robert Shoemaker, “Using Quarter Sessions Records as Evidence in the Study of Crime and Criminal Justice” Archives XX, no. 90 (1993), 151, and Landau, “Appearance at the Quarter Sessions,” 34.


29. See, for example, Gowing, Domestic Dangers, and most recently, T. Meldrum, Domestic Service and Gender, 1660–1750 (New York: Pearson Education, 2000).


34. D. Hay, “Property, Authority and the Criminal Law,” in Albion’s Fatal Tree, 35.


36. Unless otherwise stated, “London” has been used to refer to the metropolis rather than only to the City.


39. Wrigley, 46–49.


42. N. Landau, “Appearance at the Quarter Sessions,” 33.

43. The assizes for Cumberland, Northumberland, and Westmorland are the exception, being held only once a year, until the nineteenth century. J. S. Cockburn, A History of English Assizes, 1558–1714 (Cambridge: Cambridge University Press, 1972), 19, 45.


47. The relationship between King’s Bench and the Westminster Quarter Sessions is discussed in more detail in appendix A.


49. Ibid., 16. However, pages 20–21 show how, unlike the assizes, the sessions of
the peace for the City and Middlesex County were integrally connected to the Old Bailey sessions of oyer and terminer and jail delivery.


51. According to John Beattie, the Westminster and Middlesex JPs may have been excluded because of their lower social status. Beattie suggested that, because the meetings of the Old Bailey (like the assizes in the counties) were prominent social occasions, the City magistrates and their families may have been motivated by their distaste for associating with the families of the Westminster and Middlesex Justices whom they felt to be their inferiors. Beattie, Policing and Punishment, 13–14.


54. For example, Westminster was governed by twelve life-appointed burgesses, because “neither [the City of] London, nor the Court nor Parliament had ever wished to have to deal with a Lord Mayor of Westminster.” G. M. Trevelyan, Illustrated English Social History, Volume Three: The Eighteenth Century (London: Longmans, Green and Co., 1942), 42.


56. Porter, 96, 140.


59. The social status of only 415 (6 percent) of the 7,129 prosecutors could be determined, and six of these 415 prosecutors were laborers (for women, their husband’s occupation was used, except for the rare occasions where the woman’s own occupation was recorded). This is only 1 percent of the 415 total. It seems likely that the real proportion of laborer prosecutors is somewhat higher, however, because most of the 415 complainants’ occupations were determined when they bore an aristocratic title, distorting the data in favor of wealthier prosecutors. Untitled prosecutors’ status was determined only when they either had entered into a bond to prosecute (which occurred in only 1 percent of all 7,234 assault recognizances) or had been prosecuted themselves and had to enter into recognizance.


62. Norma Landau cites 6,432 recognizances at Middlesex Quarter Sessions from 1701 to 1705 (less than 1,300 per year), increasing to 2,071 in 1734 but rising still more dramatically to approximately 5,650 a year in the late 1780s (22,593 from 1788 to 1791). “Appearance at the Quarter Sessions,” 45, table 1.
Notes to Chapter 2


2. See appendix A for detailed evidence.

3. MJ/SR2290 R205, 8 May 1717, is a window into the process, as it described Dorothy Hall bringing a warrant to a constable in his bakery and asking him to serve it. In this particular case, the constable refused to serve the warrant and was prosecuted, creating a record of the event for posterity.

4. Beattie, *Policing and Punishment in the City of London, 1660–1750: Urban Crime and the Limits of Terror* (New York: Oxford University Press, 2001), 131, states that “there was no expectation that a constable would investigate crime, discover the perpetrator, formulate and bring the charges . . . [this] was still thought to be the victim’s work.”


8. MSP 1711 Jy/71, Informacon of James Mortimer of Kingsland Comon in the Parish of St. Mary Islington, dated 2 June 1711.

9. Ibid. They found a halter, a “set of Picklock Keys,” and various weapons on the man, resulting in his arrest for horse theft.


13. MSP 1697 Dec/27–29, ff 27, The Informacon of Elizabeth Webster daughter of Mathew Webster, dated 1 Nov. 1697.


15. DL/C/244 f 264, Hall c. Ruggsby, 15 Jan. 1694/5.


17. MJ/SR2270 R112, 12 May 1716.

18. For recognizances involving prosecutions and counterprosecutions between
different families (presumably representing neighborhood feuds), see MJ/SR1741 R197 (30 Apr.), R220 (3 May), and R222 (4 May) 1689; MJ/SR1841 R31, R32, R33, and R34, 17 July 1694; MJ/SR1855 R42 (21 May) and R37 (18 June) 1695; MJ/SR1969 R150 (27 May), R154 (28 May), and R132 (27 June) 1701; MJ/SR2013 R47 and R49, 8 May 1703; MJ/SR2250 R43 and R44, 14 May 1715; and MJ/SR2353 R24 (24 Aug.) and R23 (29 Aug.) 1720.

20. MJ/SR1897 R92 and R93, 14 and 10 July 1697 respectively.
21. Robert Shoemaker, 284–85, has noted the greater likelihood of urban disputants to launch a formal prosecution than to come to an informal agreement mediated by a JP.
23. Ibid.
25. This varied according to the parish. The Webbs recounted “the ‘Justices of Covent Garden’ . . . sometimes meeting ‘by surprise’ in one of the taverns of the Strand,” while the JPs of St. Margaret’s seem to have consistently held their petty sessions “at the Vestry room” once or twice a month.” S. and B. Webb, English Local Government, Volume 1: The Parish and the County (London: Frank Cass and Co., 1906, reprinted, 1963), 403, 405.
26. John Beattie describes the City aldermen hearing complaints “in their own residences.” However, by the end of our period, JPs’ work had become much more formalized. Beattie, Policing and Punishment, 92. According to Beattie (110), “[T]he most active, crime-fighting magistrates in the area around Covent Garden to the west of the City thought it necessary to create structures for this work that were in effect courtrooms.”
27. In the interrogatory, which was based upon the ministrant’s (defendant’s) defense, prosecution witnesses were asked, “[D]o you not know . . . that [Clift] was upon the Accoun[t] of her keeping a disorderly house . . . denied a Lycense . . . to sell drink and that her thinking [Lutrell] had a hand in the denying the said Lycense was the Cause of her bringing this suit she having sworn . . . she would be revenged?” DL/C/259, interrogatory 2, f 385, Clift c. Lutrell, 21 June 1720.
28. The alternative forms of prosecution for assault are laid out in appendix A.
29. Tables 2.1 and 2.2 show an overall decrease in the total numbers of assault complainants and defendants before Westminster Quarter Sessions from 1701 to 1705, suggesting that the War of Spanish Succession (1702–13) had a dampening effect on Quarter Sessions’ activity.
30. The number of complainants mentioned in more than one recognizance for the same assault is largely balanced out by the number of defendants bound in separate recognizances for assaulting multiple complainants at the same time. One
might have thought that multiple defendants would be more likely to appear in separate recognizances, though they had attacked the same complainant (thus inflating the number of repeat complainants), because they each had to find sureties. Many seem to have used the same sureties and to have been bound on the same recognizance, however. In fact, the total number of recognizances listing more than one defendant is roughly equal to the total number listing multiple complainants (333 and 340 respectively).

32. MJ/SR2343, R11, R12, and R13, 2 Jan. 1720.
35. According to Landau (508), indictments for assault filed at Middlesex Quarter Sessions “aimed not at punishing the defendant, but instead at obtaining compensation.” Through various formal and informal means, defendants were able to escape many of the punishments the court might exert, by paying the plaintiff directly in return for what was basically a withdrawal of prosecution. N. Landau, “Indictment for Fun and Profit: A Prosecutor’s Reward at Eighteenth-Century Quarter Sessions,” *Law and History Review* 17, no. 3 (1999), 507–36. Shoemaker (131) has also noted that “it is possible that the number of [Quarter Sessions] indictments which addressed disputes typically heard in civil courts increased during this period” and “the practice of prosecuting civil cases at quarter sessions continued through at least the mid-eighteenth century.”
37. It is interesting to note that only one of this type of assault recognizance—that brought by shopkeeper Hannah Lee—indicates that the prosecution went on to generate an indictment. MJ/SR2315 R300, 4 Oct. 1718.
39. WSP 1705 Ap/1, Peticon of Elizabeth White, undated (1705). Petitions were accepted at Quarter Sessions, and, according to a clerk’s handbook, the party against whom the petition was presented was given a chance to answer it; if the party did not show up or the evidence against him was convincing, the court could make an Order upon the petition. W. T., *The Office of the Clerk of Assize... Together with the Office of the Clerk of the Peace...* 2nd Ed. (London: Printed for Henry Twyford, 1682), 178.
40. For further speculation upon the impact of maternal images upon the courts, see chapter 4.
42. For detailed evidence on this point, see appendix A. In his investigation of early modern murder cases, Malcolm Gaskill has also emphasized popular agency in legal records. M. Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge: Cambridge University Press, 2000), 203–41.

43. E. Bohun, *The Justice of Peace his Calling and Qualifications* (London: printed for T. Salusbury, 1693), 150. Note also that “[i]n every Warrant . . . where sureties are to be found or required, the Warrant ought to contain the special cause or matter,” unless “it be fore some great Crime.” W. Shepard, *The Justice of Peace, His Clerks Cabinet* (London: John Steater et al., 1672), 5.

44. We cannot test this theory because none of the manuals explicitly depict JPs using the text of the warrant in drawing up the resulting recognizance, and no warrants have been preserved to be viewed directly.

45. Ibid., 354. See also Nelson, 484. There would not have been any point in reciting a Latin indictment to the defendant, but recognizances had only the names, addresses, and occupations of the principal and sureties in Latin, and the condition—the part that described the offense for which the principal was bound—in English.

46. Words and phrases have been added, above the line of text, in a few recognizances to suggest afterthoughts on the part of the recorder—perhaps prompted by the prosecuting victim. For examples of this type of clerical activity, see J. Hurl-Eamon, “‘She being bigg with child is likely to miscarry’: Pregnant Victims Prosecuting Assault in Westminster, 1685–1720,” *London Journal* 24, no. 2 (1999), 25.

47. MJ/SR2275 R150, 14 July 1716.


49. MJ/SR2133 R72, 21 June 1709. Emphasis in original.

50. MJ/SR2275 R59, 7 Sept. 1716.

51. MJ/SR1883 R73, 30 Dec. 1696. For other examples, see MJ/SR1754 R37, 21 Feb. 1689/90; MJ/SR2230 R16, 30 Apr. 1714; and MJ/SR2310 R4, 6 May 1718.

52. MJ/SR2286 unnumbered recognizance to prosecute, 26 Jan. 1716/7.

53. MJ/SR2290 R196, 14 June 1717 and MJ/SR2037 R22, 1 Sept. 1704 respectively.

54. MJ/SR2348 R107, 7 May 1720.

55. The *Compleat Justice* (London, 1656), 19. It should be noted that justicing handbooks encouraged JPs to record fears or threats in recognizances for the peace or good behavior, and this legal consideration may be behind some of the recognizances where they are mentioned. See, for example, J. Bond, *A Compleat Guide for Justices of the Peace* (London, 1707), 181, which states, “A justice granting the peace . . . must take an Oath of the Party so demanding, that he is in bodily fear &c.” However, complainants’ fears and defendants’ threats are mentioned even in assault recognizances that bind only to appear and do not go on to demand the peace or good behavior. Thus, in some cases at least, fears and threats were recorded simply because the complainants must have impressed the JP with these aspects of the assault.


57. MJ/SR2290 R37, 29 June 1717 and MJ/SR1860 R19, 21 Aug. 1695 respectively.


61. Defendants’ narratives tended to emphasize their own passivity. After a dispute of honor arose between Thomas Heath and Samuel Cook, a swordfight resulted in Cook's death. A witness for Heath testified that though Cook grew “Warm, and Angry, and clapt his Hand to his Sword . . . several times,” Heath never tried “to draw, or meddle with his sword,” adding that there was “no just Provocation given by Mr. Heath at the time of this unhappy incident.” *OBP*, 15–17 June 1718 (London). In *OBP*, 27–30 Apr. 1715 (London, printed for Samuel Crouch), 6, a landlord was accused of killing his lodger. The lodger's wife testified that her husband was peaceably packing to leave when the landlord burst in and “threaten’d to fight the deceas’d,” but the prisoner’s version made the killing an inadvertent result of the lodger's aggression. According to the landlord, “[T]he deceased drew his Sword on him without Provocation.” However, fights clearly had occurred in these cases, eliminating the possibility of an acquittal for self-defense. The courts held that any "quarrel" inevitably “arose from some . . . provocation, either in word or deed: and . . . in quarrels both parties may be, and usually are, in some fault” (Blackstone, 187). Thus, both Heath and the landlord were charged with manslaughter and sentenced to be burned in the hand.


64. MJ/SR2192 R27, 5 May 1712.


67. Ibid. and note 59.

68. Shoemaker, 26.


70. Ibid. While Dalton is speaking specifically about recognizances to keep the peace, it seems likely that his position could be extended to all assaults.

71. For more on trading justices, see appendix A.

72. According to Norma Landau, *The Justices of the Peace, 1679–1760* (Berkeley: University of California Press, 1984), 185, trading justices operated by binding “disputants in recognizances to keep the peace and appear at Quarter Sessions, and then at the disputants’ plea releas[ing] those bound from their obligations,” and collecting fees for both the implementation and the release of the bond.

73. None of the recognizances were returned *concordantur* (agreed), which would
indicate the defendant’s release by the prosecutor from the obligation to appear at Quarter Sessions and which suggest the manipulations of a trading justice. In addition, Robert Shoemaker’s analysis of those justices most likely to fit the profile of “trading justices” (because their defendants were least likely to be indicted) identified only two Westminster JPs, John Chamberlayne and James Dewy, who are not overly prominent among the recognizances discussed below. Shoemaker, *Prosecution and Punishment*, table 8.5, 226–27.

74. Douglas Hay, “Dread of the Crown Office: The English Magistracy and the King’s Bench 1740–1800,” in N. Landau, ed., *Law, Crime and English Society 1660–1840* (Cambridge: Cambridge University Press, 2002), suggests that busier justices with less social cachet—such as those operating in the metropolis—were more vulnerable to the infamy of disciplinary action before King’s Bench and may have curbed their activities accordingly, avoiding the more controversial practices. I am grateful to Dr. Hay for allowing me to read this article prior to its publication.

75. For example, in the years 1695, 1705, and 1715, this type of recognizance occurred as follows as a proportion of the total of assault recognizances (to answer) taken in the same year:

1695: 6 of 141 = 4%
1705: 4 of 113 = 4%
1715: 36 of 367 = 10%

The dramatic rise by the end of the period may be due to an increase in trading justices during this period, or it may be because more JPs felt that everyone who came before them had a right to the court’s justice, and they thus allowed more formal prosecutions. Shoemaker, *Prosecution and Punishment* (225–27) dealt with the character of the Westminster and Middlesex benches but did not note any dramatic changes in this period.

76. Note that Joseph Keble, *An Assistance to Justices of the Peace for the Easier Performance of their Duty* (London: printed for W. Rawlins et al., 1683), 428, encouraged any JP who had “granted the peace to one that in the Justices judgement . . . require[d] it only out of malice, or for vexation, the Justice may presently in good discretion bind him to the good behaviour that so required the peace.” In other words, if JPs were worried that person X was bound to keep the peace toward person Y, when Y really had no genuine cause to fear person X, the JP could then bind person Y to be of good behavior toward X to even the score. Keble makes no mention of assault, but the same principle probably applied for JPs here as well.


Notes to Chapter 3


4. See, for example, A. E. Simpson, “The ‘Blackmail Myth’ and the Prosecution

6. The alleged rape had occurred May 31, while the trial did not occur until the second week of July.
8. MJ/SR2211 R53, 19 May 1713.
12. Ibid.
16. Crittall, 46, entry 300, 26 Dec. 1745 and 43, entry 262, 4 Sept. 1745 respectively.
17. Ibid., 32, entry 145, 18 Sept. 1744.
19. MJ/SR2162 R8, 29 Nov. 1710.
22. Ibid., R140.
25. MJ/SR2032 R72, 11 May 1704.
27. Antony Simpson (“The ‘Blackmail Myth,” 123) noted that, unlike those acquitted after claiming to have been falsely charged with heterosexual rape, men
who succeeded in proving that the buggery charge against them was fictitious quite often brought a suit against their former prosecutor for malicious prosecution.


29. OBP, 1–4 May 1717 (London, printed for J. Phillips by M. Jenour), 8; my emphasis.

30. Ibid.

31. Sir William Blackstone, Commentaries on the Laws of England in Four Books, Book Four (reprint, Philadelphia: Geo. T. Bisel Co., 1922), 210. The most obvious example of nonprosecution as an indicator of a law’s lack of wider social foundation is the fact that almost no husbands prosecuted their wives for assault, though the law afforded them this protection.

32. OBP, 10–13 Oct. 1683 (London, s.n.), 2.

33. OBP, 28 Feb. 1680/1 (London, printed for T. Davies), 3.

34. Ibid.


37. OBP, 21–23 Apr. 1680 (London, s.n.), 2.

38. Ibid.

39. The Newgate Calendar (Ware, Hertfordshire: Wordsworth Editions Ltd., 1997), 70.

40. Of a total of fifteen rape cases recounted in the OBP between December 1714 and October 1719 (excluding one where the victim’s approximate age is impossible to discern), eight cases (53 percent) had victims younger than fourteen years of age. An additional case described the victim as “an infant of 17 years.” OBP, 12–14 Sept. 1717 (London, printed for J. Phillips by M. Jenour), 6; my emphasis. A typesetter probably inserted the wrong number, and the victim was probably less than fourteen years old, raising the proportion to 60 percent of the fifteen cases.

41. For more on the legal issues surrounding the age of consent, see Antony Simpson, “Vulnerability and the Age of Female Consent,” 181–205. Simpson argues that, technically, the age of consent for women could actually have been interpreted as twelve—if rape was prosecuted as a misdemeanor rather than a felony—although this never occurred in practice.

42. Antony Simpson has also noticed the high proportion of young rape prosecutors: “Child molestation must be taken as an important characteristic of rape cases in this century.” However, Simpson suggests that this may reflect a true majority of this type of rape, due to a prevalent belief in “defloration” as a cure for venereal disease. Ibid., 192.


44. Ibid.
45. Edelstein, 361.


48. Statt, 197, n86.

49. A proclamation for the Suppressing of Riots, and the Discovery of such as have been guilty of late Barbarities within the Cities of London and Westminster and Parts adjacent, 17 Mar. 1711/2, in Houghton fMS Eng 1039.

50. A True List of Names of the Mohocks or Hawkubites who were Apprehended and Taken on Monday Night, Tuesday and this morning (1711), in Houghton fMS Eng 1039. Guthrie, 38, points out that the list must be fabricated, as none of the names correspond with the men arrested in the legal records.

51. See, for example, Paul Griffiths, Youth and Authority: Formative Experiences in England, 1560–1640 (New York, Oxford University Press, 1996).

52. Original Draft Report by a Commission to Enquire into the assaults and injuries on Citizens by the Mohocks since 1 Feb. 1711 (1712), in Houghton fMS Eng 1039.

53. MSP 1712 AP/2, Draft of Warrant for Petty Constables within Westminster Holbourne & Finsbury Divisions to make a return of persons Assaulted by Mohawks, 28 Feb. 1711/2.

54. MSP 1712 AP/9, 3 Apr. 1712.

55. MSP 1712 AP/18, AP/5, and AP/16, 1 Apr. 1712 respectively.

56. Who Plot Best; The Whigs or the Tories, Being a Brief account of all the Plots that have happen'd within these Thirty years . . . (London: A. Baldwin, 1712), 14; my emphasis.

57. J. Gay, An Argument proving from History, Reason and Scripture, that the Present Mohocks and Hawkubites are the Gog and Magog mention'd in the Revelations, and therefore that this vain and transitory world will shortly be brought to its final Dissolution (1712).

58. Who Plot Best, 16.


61. Neil Guthrie, 33: “the tendency of modern scholars . . . has been to assume that the Mohocks were a figment of the eighteenth-century imagination, with no basis whatsoever in fact.”

62. Swift, 511–12. See also 515–16.

Defoe's alleged connection with the Mohocks, see Guthrie, note 14, referring to a publication “which identifies Defoe as the instigator of a Whig-Presbyterian-Mohock plot, in spite of the Review’s pro-Government bias.”


65. Both Statt, 182–83, and Guthrie, 36–37, discuss the close political connection of much of the literature on the Mohocks.


67. Swift (509) noted that “the B[isho]p of Salsbry’s son is s[ai]d to be of the Gang” and later (516) that “one of those that are taken is a Baronet.” Defoe celebrated using the Protestant flail against the Mohocks because it would punish indiscriminately, “though he were my Lord——’s eldest son, or Sir Tho——’s younger brother, or J——ge——’s nephew.” The Review, Vol. VIII, no. 153, 15 Mar. 1712, 217. Lady Stafford wrote that “the town says Lord Hinchingbrock [sic] is among” the Mohocks. Letter of 14 Mar. 1712, in J. J. Carwright, ed., The Wentworth Papers, 1705–1709, (London: Wyman, 1882), 277. The JP’s report entitled Original Draft Report by a Commission to Enquire into the . . . Mohocks (1712) in Houghton fMS Eng 1039 confirmed Hinchingbrooke’s arrest, along with arrests of several other members of the elite male society.

68. See, for example, R. Trumbach, Sex and the Gender Revolution, chapter 3, 69–111.


70. The Mohocks Revel (1712), verse 8. Who Plot Best (14–15) said that the Mohocks actually constituted “a Parcel of Wild young fellows frequenting a Tavern in Fleet Street.” John Gay, The Mohocks: A Triagi-Comical Farce As it was acted near the Watch-house in Covent Garden (London, 1712), 8, said that “’Tis Wine and a Whore, / That we Mohocks adore, / We’ll drink ’til our senses we quench; / When the Liquor is in / We’re heighten’d for Sin.” The Spectator, no. 324, 12 Mar. 1712, 187, reported that Mohocks “take care to drink themselves to a Pitch, that is, beyond the Possibility of attending to any Motions of Reason or Humanity.”

71. Among the manuscript papers of Houghton fMS Eng 1039 are records of fines for Richard Buckland, Richard Gifford (both 13 Mar. 1712), and John Williams (14 Mar. 1712) “for being drunk.”

72. Order from the Justices of Middlesex and Westminster to the High Constables, undated, Houghton fMS Eng 1039; Defoe’s Review (Vol. VIII, no. 153, 15 Mar. 1712, 217) noted that the “bullies range our streets in arms by night” and only “in print by day.” The London Gazette, 17–19 Apr. 1712, listed the times in twelve of the thirteen attacks it recounted, and all had occurred after dark. The Mohocks Revel, verse 1, said that the Mohocks “Rule the World by Night, / Tho’ others Rule by Day.” Swift (509) made sure he “came home early to avoid the Mohaks [sic].” In An Argument from History, Gay’s Mohocks “wander through the streets by night, committing Cruelty,” and in his Trivia, or the art of Walking the streets of London (1716), 74, the night belonged to the Mohocks. For a broader discussion of night in the context of assault and gender, see chapter 5.
Notes to Chapter 3

73. The Town-Rakes: or, The Frolicks of the Mohocks or Hawkubits (London, 1712) and A true list of the Names of the Mohocks respectively.


75. Gay, An Argument from History.

76. Original Draft Report by a Commission to Enquire into the . . . Mohocks (1712) in Houghton fMS Eng 1039.

77. MSP 1712 AP/12, 1 Apr. 1712.

78. MSP 1712 AP/27, The Informacon of Mary Ann Kilby Spinster servant to Arthur Painter liveing at the sign of the Castle in the Butcher Row in the Paris of St. Clement Danes, dated 5 Apr. 1712.


82. The Mohocks Revel, verses 1, 2, and 7.

83. The Mohocks: A Poem in Miltonic Verse.

84. Original Minutes of committal of Diverse Persons concerned in the Mohock disorders (March 1712) included ten prosecutions for the assault on John Bouch and two for “assaulting John Hamway Esquire, officer of her majesties Justices of the Peace” out of a total of sixteen reported incidents—none of the rest of which were for assaults on constables or watchmen. The Original Draft Report by a Commission to Enquire into the . . . Mohocks (1712) had only six of a total of twenty-seven prosecutions, but all six were for the single riot and assault on John Bouch. Records of the Middlesex Quarter Sessions, MJ/SR2188, include Recognizances no. 1–10, dated 14 Mar. 1711, nine of which were also for the riot and assault on John Bouch. One man in the calendar of prisoners, MJ/SR2189, was also charged with the same; the only other possible Mohock was charged with assaulting and wounding a man “& on suspicion of being Mohocks & refusing to find sureties” (entry 25, 4 Apr. 1712).

85. Who Plot Best, 14.

86. See chapter 2 for a brief discussion on the legal role of provocation in assault.

87. The Town-Rakes.


95. This is a proportional increase of 4 percent because prosecutions were increasing in general. A look at all of the recognizances taken from the sessions of 7 April, 1708, up to and including the sessions of 7 January, 1712, shows 62 cases with gentlemen or aristocratic defendants and 278 cases where occupations were listed other than gentleman or aristocrat (upper-class men were 18 percent of the total where status or occupation was known). From the sessions of 23 April, 1712 until 5 October, 1715, there were 94 cases involving upper-class men and 325 with defendants of known, nongenteel status or occupation (upper-class men comprising 22 percent of the total).

96. Though MJ/SR 2187 (the April sessions where most of the suspected Mohocks would have been prosecuted) had 18 percent gentlemen of the total defendants in recognizances where a status was listed, the subsequent sessions with higher proportions of genteel defendants are: MJ/SR2207 8 Apr. 1713, 32 percent; MJ/SR2211 2 Jul. 1713, 36 percent; MJ/SR2216 Oct. 1713, 20 percent; MJ/SR2230 24 Jun. 1714, 26 percent; MJ/SR2235 6 Oct. 1714, 24 percent; MJ/SR2240 10 Jan. 1714/5, 32 percent; MJ/SR2245 20 Apr. 1715, 24 percent; MJ/SR2250 8 Jul. 1715, 31 percent.


98. Guthrie, 33.


100. Ibid.


102. Ibid.


104. MJ/SR2235 R95, 4 Sept. 1714.


107. MJ/SR2250 R178, 7 June 1715.

**Notes to Chapter 4**

1. In the eighteenth century “virtuous” motherhood was narrowly defined, and many poorer women fell outside the definition and were denied pride and authority

2. Possibly those women did not think of telling the justice that they were pregnant, but it is equally likely that the JPs were often busy and chose to keep the recognizance brief, recording only that a woman was “assaulted and wounded.” Unfortunately, there is no discernible pattern to determine why women would or would not have mentioned their pregnancy, and the occurrence of recognizances where pregnancy has been recorded does not vary significantly with the total number per session. Thus the hypothesis that busy justices kept records brief is less plausible. Also no single justice emerged as having a stronger tendency to note pregnancy. Perhaps pregnancy was mentioned in this small number of cases because it was the focus of the assault; the assailant may have felt that the woman was carrying an illegitimate child. Again, aside from several cases where the pregnant victim was clearly married (which still does not refute the possibility that her child was considered illegitimate), recognizances do not provide the kind of information necessary to investigate such a possibility.


5. Along with the examples that follow, see also W. Stubbs and G. Talmash, *The Crown Circuit Companion . . . ,* 5th ed. (London, 1783), 110, which includes a sample of an indictment “for assaulting a woman with quick child, so that the child be brought forth dead.” Both W. Hawkins, *A Treatise of the Pleas of the Crown . . . ,* Vol. I (London, E. Richardson & C. Lintot, 1766), 80, and E. Coke, *Third Part of the Institutes of the Laws of England* (London, 1747), 70, argue that striking a pregnant woman was not murder, but was “a great misprison.” Misprisons, according to Blackstone, “are . . . generally understood to be all such high offences as are under the degree of capital, but nearly bordering thereon.” W. Blackstone, *Commentaries on the Laws of England*, Book Four (1769, reprinted Philadelphia: Geo. T. Bisel Co., 1922), 119.

6. Giles Jacob, *The Modern Justice . . .* (London, 1720), 302. Note that the Westminster assault recognizances did not refer to any babies born with bruises, so their
mention of the victim's pregnancy was probably not motivated by this particular point of law. Jacob went on to say that the charge of murder was “contra, if the Child be born dead,” so the many recognizances recounting miscarriages and the like also did not apply here.


18. Ibid.


21. Mauriceau recounted how his “cousin’s mother, Mrs Dionis . . . whose father being suddenly kill’d with a sword by one of his servants . . . they brought immediately this ill news to his Wife, then eight months gone . . . at which . . . she was . . . surprised with a great trembling, so that she was presently delivered of the said Dionis, who is to this day . . . troubled with a shaking in both hands.” Mauriceau, *Diseases of Women*, 64–65. Garthine Walker’s research on assault in seventeenth-century Cheshire (60) also uncovered cases in which pregnant women “stressed connections between emotional and physical damage.”

Notes to Chapter 4

23. Ibid., 35.
25. MJ/SR2286 R27, 7 Mar. 1717; emphasis mine.
29. Ibid. See also Hunt (19 and n37) where she describes the JPs’ “benign role” in such prosecutions. Hunt and Amussen contend that recognizances were an ineffective tool for wives and that they thus could reveal little about real instances of abuse, and certainly nothing positive about women’s positions before the courts.
30. Landau (34) argues that “the proceedings to secure . . . forfeiture” of a recognizance to keep the peace or maintain good behavior “were just too cumbersome.”
31. Margaret Hunt looked at “ten cases of spousal abuse that reached the Consistory Court of London in the years 1711 to 1713” (11). Susan Amussen used assize court records of spousal murder, conduct literature offering images of ideal husbands, court records, and depositions from church court separation cases in her investigation of domestic violence. Elizabeth Foyster examined forty-four Court of Arches divorce cases, 1660–1700, to explore the dangers for male honor inherent in wife beating. E. Foyster, “Male Honour, Social Control and Wife Beating in Late Stuart England,” *Transactions of the Royal Historical Society, 6th Series* 6 (1996), 215–24.
33. MJ/SR1921 R98, 30 Nov. 1698. This order has also been recorded in an entry of the same date in Justice Dewy’s notebook, labeled “Book of Examinacons 1685.” Hampshire Record Office, Coventry MSS IM53/1374.
34. From 1685 to 1720 in Westminster there were 1,603 recognizances binding men for assaults on women. Of these, only 20.5 percent described excessive violence (46 “barbarous,” 12 “inhuman,” 5 “cruel,” and 266 “violent”). In contrast, seventy-eight recognizances (50 percent) of all of the assaults upon wives by husbands used such language.
35. MJ/SR2275 R145, 18 July 1716.
38. *The Compleat Justice* said that husbands were allowed “crave the peace against their wives.” However, we should note that violence was much more rarely the topic of these recognizances in practice. In the Westminster Quarter Sessions for this period, there were only three recognizances for violence by wives against husbands. See MJ/SR1873 R102, 14 May 1696 for “assaulting” her husband with the help of another man, MJ/SR2275 R52, 12 Sept. 1716 for “cruelly Beating [her husband] to the endangering of his life,” and MJ/SR2330 R50, 25 May 1719 for “assaulting and beating [her husband] in a violent manner.”
39. Keble, 412. Keble also said “that a Justice of peace may . . . Command” a hus-
band to be bound over “upon [the JP’s] own discretion,” if “such a Case [were to] happen . . . in his presence.” Thus, wives did not even need to initiate the prosecution; the justices could do it for them in some cases, indicating the heinousness of the offense.

40. For more on JPs adding detail in assault description, see appendix A.

41. Michael Dalton, *The Country Justice* (London, 1655), 203, asserted that “to strike at, or offer to strike at a man, although he never hurt, or hit him, this is an assault.”

42. Keble, 150; emphasis mine. This right of correction is granted to parents over children, masters over servants, schoolmasters over scholars, jailers over prisoners, and husbands over wives. Note that a number of justicing handbooks (for example, Dalton, 204; W. Nelson, *The Office and Authority of a Justice of the Peace . . .*, 5th ed. (London, 1750), 59; and Jacob, 38, mention this right for every category except husbands and wives, making the potential for JPs to frown on husbands’ violence of any kind more probable, and many handbooks do not address any right of correction at all.

43. MJ/SR2027 R18, 1 Mar. 1704, and MJ/SR2216 R95, 28 Sept. 1713 respectively.


49. Misson, quoted in Radzinowicz, *History of English Criminal Law*, 12n. See also Henry Fielding’s *Joseph Andrews* (1742, reprinted with *Shamela* by Oxford University Press, 1980), Book II, Chapter XI, 130, when a man whispered in Fanny Goodwill’s ear, after she had been accused of robbery, that “if she had not provided herself a great Belly, he was at her service.”


51. Thirty-three recognizances (38 percent) indicated danger to the child’s life (i.e., the possibility of miscarriage or spontaneous abortion), and eighteen recognizances (21 percent) explicitly stressed the danger to the mother’s life.


54. Almost all of the thirty-one recognizances brought by servants and apprentices for relatively minor assaults also described the employers’ contractual violations. Only two were for assault alone. For the two recognizances that did not simultane-
ously mention contractual violations, see MJ/SR2207 R41, 20 Jan 1712/3 and MJ/SR1960 R129, 14 Oct. 1700 respectively.

55. Though JPs did not officially have the power to order payment of wages, they nevertheless involved themselves in such disputes. Shoemaker, *Prosecution and Punishment*, 90–91.


57. Adrian Wilson has represented early modern childbirth as empowering for women in its female unity, but Linda Pollock discovered that often the presence of other women in the lying-in chamber could be a source of conflict rather than consensus, with each participant having her own “experience and knowledge of childbirth and . . . superimposing . . . their point of view on the process.” A. Wilson, *The Making of Man Midwifery: Childbirth in England, 1660–1770* (Cambridge: Harvard University Press, 1995); idem, “The Ceremony of Childbirth and Its Interpretation,” in V. Fildes, ed., *Women as Mothers in Pre-Industrial England, Essays in Memory of Dorothy McLaren* (New York: Routledge, 1990), 68–107; and L. Pollock, “Childbearing and Female Bonding in Early Modern England,” *Social History* 22, no. 3 (1997), 299, respectively. Certainly when the mother was unmarried, the women around her during her pregnancy and lying-in could be far from friends—keeping her under surveillance, authorized to squeeze her breasts if a disguised pregnancy was suspected, and use her labor pains to pry the identity of the baby’s father from her. Pollock, “Childbearing and Female Bonding,” 286–306, and Gowing, “Secret Births,” 87–115. See chapter 5 on the higher number of women accused of assaulting other women.


60. I am grateful to Robert Shoemaker for this observation.

61. Recognizances MJ/SR1708 R52, 4 June, 1687; MJ/SR1930 R12, 29 June 1699; MJ/SR1940 R89, 7 Oct. 1699; MJ/SR2167 R38, 16 Jan. 1710/1; MJ/SR2108 R34, 26 Feb. 1707/8; and MJ/SR2270 R110, 8 May 1716 state that their husbands’ lovers have threatened serious violence against these prosecuting wives.

62. MJ/SR2123 R80, 13 Nov. 1708.

63. MJ/SR2192 R112, 29 May 1712 and MJ/SR2138 R71 5 Aug. 1709 respectively.

64. MJ/SR2250 R203, 16 June 1715.

**NOTES TO CHAPTER 5**

2. Chapter 4 explores the areas where domestic violence was seen by its victims as violation and was prosecuted.


6. The next section returns to this argument.


8. There is no specific legal definition for “violent assault” in the legal literature, and “maiming”—arguably the most serious type of assault (a felony without benefit of clergy)—was mentioned in only six recognizances—not even as often as would seem appropriate, given the description in some other recognizances. It is impossible, therefore, to know for certain why certain assaults were recorded as violent, but it seems safe to assume that a particularly wounded and shaken victim caused the JP to have the assault specified as “violent.”

9. Throughout the period twenty-five women and eighty men were bound for “barbarously” assaulting, and five women and nineteen men were bound for “inhumanly” assaulting. Female defendants were thus described these ways in slightly less than one-quarter of the total 129 cases—a lesser proportion than that for assaults as a whole.


11. James Harvey, *A Collection of Precedents Relating to the Office of a Justice of Peace* (London, 1730), 189–90. See chapter 2 for a similar discussion of assaults where the victims swore that they were “in fear.”

12. The raw numbers are as follows: of a total of 859, there were 203 recognizances binding only females for striking, and 656 binding only males.

13. The raw numbers are as follows: of a total of seventy-six, there were ten recognizances binding only females for kicking, and sixty-six binding only males.


16. Costume historian Alison Settle described “caricatures of Georgian days [where] ‘peepers’ in Bond Street were shown gazing through quizzing glasses at the female ankle, displayed as a lady stepped into her carriage,” in *English Fashion* (London: Collins, 1948), 46.
Notes to Chapter 5

17. MJ/SR2073 R64, 9 June 1706.
26. MJ/SR2334 R81, 7 July 1719.
29. MJ/SR2275 R16, 7 July 1716; my emphasis.
30. “No servant in husbandry, artificer, victualler, or labourer, shall wear sword or dagger,” *The Compleat Justice* (London: 1656), 17. Garthine Walker (27) notes that in legal records the use of the word *sword* may actually “have been a ‘legal fiction’ in many cases that actually referred to a knife.”
32. MJ/SR2315 R204, 15 July 1718 and MJ/SR2300 R203, 26 Oct. 1717 respectively.
34. MJ/SR2260 R237, 10 Oct. 1715.
35. This does not mean that there was little sexual division of labor. Amanda Vickery argues very effectively that “separate sphere” as an informal ideology is an historical continuity, traceable at least from the Middle Ages and before. A. Vickery, “Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women’s History,” *The Historical Journal* 36, no. 2 (1993), 383–414.
36. MJ/SR2152 R15, 2 May 1710. Note that this recognizance did not contain the word *assault*, so it was not included in the quantitative analysis.
41. Statute 6 Geo. I c. 23 made felonious any assault that occurred “with an intent to tear, spoil, cut, burn, or deface . . . the garments or cloaths” of any individual “in the public streets or highways,” but it was prompted by very specific types of attacks to serve
the economic interests of a specific group of weavers and thus has probably affected few, if any, of the recognizances here.

42. MJ/SR2280 R179, 15 Oct. 1716.
43. MJ/SR2295 R298, 1 Aug. 1717.
44. MJ/SR2286 unnumbered, 31 Mar. 1717.
45. There are, however, recognizances for torn waistcoats, shirts, and cravats.
46. Farr, 183. Garthine Walker (42 and 90) also acknowledged hair pulling and hat removal as a significant form of insult in seventeenth-century Cheshire.
47. On a more detailed study of the symbolism of wigs (and their absence), including a more detailed explanation of the painting, see Marcia Pointon, Hanging the Head: Portraiture and Social Formation in Eighteenth-Century England (London: Yale University Press, 1993), chapter 4.
50. MJ/SR1868 R129, 1 Apr. 1696.
51. Alexandra Shepard (146) noted that beard pulling was a significant part of sixteenth- and seventeenth-century violence.
52. MJ/SR2138 R66, 20 July 1709.
55. MJ/SR2348 R74, 4 May 1720 and G. T. Crook, ed., The Complete Newgate Calendar Vol. 2 (London: Navarre Soc. Ltd., 1926), 78, respectively. Taylor was later convicted of housebreaking and was executed in 1691.
56. MJ/SR2300 R87, 7 Nov. 1717 and MJ/SR2250 R115, 7 May 1715 respectively.
57. MJ/SR1860 R117, 12 Sept. 1695.
60. MJ/SR2348 R106, 5 Jun. 1720 and MJ/SR1665 R18, 23 Mar. 1685 respectively.


65. MJ/SR1897 R99, 12 July 1697.

66. Slitting noses was also a trademark tactic of the Mohocks in popular literature, discussed in chapter 4.

67. According to a treatise on the Star Chamber by Hudon in the 1630s, “branding in the face and slitting the nose is inflicted upon forgers of false deeds, conspirators to take away the life of innocents, false scandals upon the great judges, and justices of the realm.” L. A. Parry, *The History of Torture in England* (London: Sampson Low, Marston & Co., 1933), 9.


70. MJ/SR1955 R38, 19 Sept. 1700. A “patten” is an iron device with a wooden sole that attached to the owner’s shoe to raise him or her out of the mud.

71. *OBP*, 15–16 Jan. 1679/80 (London, s.n.), 1, and MJ/SR 2300 R34, 3 Jan. 1717/18, respectively.

72. MJ/SR2270 R137, 14 June 1716.

73. Though it later appeared that Francis may have simply hidden his wig and trumped up the charge to increase the gravity of his prosecution, this case nevertheless underscores the linkage between slit noses and dishonor. *OBP*, 8–11 Apr. 1719 (London, printed for J. Phillips by M. Jenour), 6–7.


75. Walkowitz, 51–52.

76. For example, Blackstone emphasized in the definition of burglary that “the time” and “the place” must be considered: “The time must be by night” because night
provided thieves with anonymity and made their crime more reprehensible, and the place “must be . . . in a mansion-house.” Thus, homicide was justifiable against “any person [who] attempts a robber or murder of another . . . in the nighttime.” Similarly, place was a factor in larceny above the value of twelvepence. If the larceny occurred “in a church or chapel . . . booth or tent . . . market or fair . . . [or] dwelling-house,” it was considered a felony without benefit of clergy. Sir William Blackstone, *Commentaries on the Laws of England in Four Books*, Book Four (reprint, Philadelphia: Geo. T. Bisel Co., 1922), 224, 180–81, 240, respectively. Emphasis in original.


80. Only a total of twenty-four of the recognizances for assaults that occurred in the streets actually named a particular street, and the remaining 45 percent that mention streets outside of Drury Lane and the theatre district did not fall into any discernible pattern.

81. Gay, *Trivia*, 70; emphasis his. Gay also described the “Harlots” standing “Where Katherine-Street descends into the Strand.”

82. MJ/SR1917 R13, 23 Aug. 1698.

83. MJ/SR2128 R18 and R17, 8 Apr. 1709, respectively.

84. *Compleat Justice*, 339.

85. MSP1707 Jy/81.

86. It is important to note that the many women stopped for nightwalking and similar offenses may have been too poor to find their way into the Westminster recognizances. For a more detailed discussion of the policing of masculinity, see chapter 3 and J. Hurl-Eamon, “Policing Male Heterosexuality: The Reformation of Manners Societies’ Campaigns against the Brothels in Westminster, 1600–1720,” *The Journal of Social History* 37 (June 2004), 1017–35.

87. MJ/SR2315 R114, 23 Aug. 1718. This is exactly the same wording as the recognizances binding women for nightwalking.


89. MSP 1694 Aug/29.

90. MSP 1694, Aug/30.

91. Shoemaker noted that “eighteenth-century houses were frequently public spaces, in which a number of people unrelated, and perhaps even unknown, to each other could be found as lodgers, servants, coworkers and visitors.” He went on to say that private space was not limited to the confines of a dwelling house and could encompass an entire court, alley, or yard where passers-by were all known to each other. Shoemaker, “Public Spaces, Private Disputes?” 2.

92. MJ/SR2270 R112, 12 May 1716.

93. MJ/SR2138 R86, 1 Sept. 1709 and MJ/SR1888 R67, R68 and R69, 7 Feb. 1696/7 respectively.

94. MJ/SR1897 R99, 12 July 1697.
Notes to Chapter 5

96. MJ/SR2330 R26, 5 June 1719.
98. See, for example, DL/C/153 f 358, Bartlett c. Culpepper, 13 May 1710.
100. Walker, 34 and 52.
101. MJ/SR2290 R69, 2 June 1717 and MJ/SR2235 R209, 5 Aug. 1714 respectively.
103. MJ/SR2255 R13, 13 Sept. 1715.
104. MJ/SR2118 R131, 3 Sept. 1708.
109. MJ/SR2032 R87, 30 May 1704.
110. MJ/SR2128 R94, 23 Apr. 1709 and MJ/SR2057 R34, 6 Aug. 1705 respectively.
111. MJ/SR2226 R129, 30 July 1713.
112. See, for example, MJ/SR2108 R75, 31 Jan. 1707/8 and MJ/SR2211 R77, 15 June 1713.
113. Fielding, Book V, Chapter IX, 165.
117. S. Amussen, “Punishment, Discipline & Power: The Social Meaning of Violence in Early Modern England,” *Journal of British Studies* 34 (Jan 1995), 23–27. Amussen looks mainly at homicide cases. Though women were largely absent in these felony trials, they were much more prevalent in the misdemeanor records.
118. MJ/SR2270 R177, 22 Jun. 1716.
120. Alehouse historian Peter Clark notes women’s presence in alehouses “regulated by social convention,” meaning that women could go with their husbands or in a group of married women (especially to celebrate christenings and churchings). Any other circumstances were “likely to provoke loud comment from neighbours.” P. Clarke, *The English Alehouse: A Social History 1200–1830* (London: Longman, 1983), 131. However, Jessica Warner and Frank Ivis argue that women were “accepted as legitimate customers in [London] drinking establishments, whether on their own or as


123. There were 257 recognizances where sureties were listed for both the plaintiffs and the defendants. This was either because the prosecutor was also bound to appear or because a plaintiff was later bound by the same defendant for an assault (see chapter 2). Of these recognizances, 154 (59.9 percent) listed at least one surety that was from the same parish as the plaintiff’s sureties, 62 (24 percent) listed all three sureties from parishes other than those for the plaintiff, and 41 (15.9 percent) did not name parishes for the sureties or were illegible.

124. DL/C/251 f 438, Clarke c. Barnes, 16 June 1710 and f 442 and DL/C/241 f 253, Jackson c. Villiers, 23 Nov. 1685 respectively.

125. MJ/SR2113 R96, 16 June 1708. The day before, a recognizance had been drawn up binding her neighbors to answer Riggs for “assailing her by Calling her Bawde Whore & such Like approbrious Names & for stricking her Upon the side of her head with a Roaling Pin.” MJ/SR2113 R97, 15 June 1708.


127. MJ/SR2138 R112, 15 Aug. 1709 and R113, 17 Aug. 1709 respectively. For other interfamilial disputes, see MJ/SR2133 R54, 16 June 1709 and R55, 17 June 1709 respectively; and MJ/SR2334 R38, 7 Sept. 1719.


129. *OBP*, 14 Oct. 1680, (London, printed for T. Davies), 2. It should be noted that the gentleman’s anger was fueled by the workmen joking that the clothes would have been ready if he had left them money for drink. On other workplace disputes, see MJ/SR2295 R45, 14 Sept. 1717 and R64, 29 July 1717.


131. MJ/SR2162 R73, 30 Dec. 1710.

132. MJ/SR2108 R75, 31 Jan. 11707/8. For other assault recognizances involving challenges to fight, see MJ/SR2211 R77, 15 Jun. 1713 and MJ/SR2343 R70, 29 Feb. 1719/20. It is interesting to note that in each of these cases the male complainant was not ashamed to answer these challenges to fight with a prosecution rather than a drawn sword.

133. *OBP*, 1–4 May 1717 (London, printed for J. Phillips by M. Jenour), 8; emphasis theirs.


136. DL/C/244 f 283, Phillips c. Sanderson, 3 Apr. 1695.
Notes to Chapter 6


6. Note that almost immediately after our period, the Excise Bill (1733) and the Gin Act (1736) caused an outbreak of violent confrontations in the capital, and Walpole was assaulted in the heat of opposition to the Excise Bill.


9. 9 Anne c. 16.

10. For a sense of why contemporaries may have despised certain statesmen, see the anonymously authored pamphlet *A Description of Devils. Containing I. The Devil of a Statesman . . .* (London, printed for J. Millet, [1687?]), 6–7.


14. Note that A Description of Devils, page 30, depicted the “Devil of an Overseer” as an officeholder who “makes so many Assessments, [he is] . . . very justly Nick-named Mr. Over-rate.”


18. Reasons most humbly submitted, 8.


22. MJ/SR2315, unnumbered recognizance to prosecute, 19 July 1718. R 15, 15 July 1718 binds the fishmonger to appear and answer the charges.

23. Ibid., recognizance to prosecute.


25. Childs (95) gives the example of “an unwritten policy of quartering troops upon known or suspected Jacobites” in order to punish them.


27. See, for example, James II, By the King, a declaration . . . 2 Sept. 1688 (London, Printed by Charles Bill, Henry Hills, and Thomas Newcomb, 1688), and William III, By the Prince of Orange, a declaration . . . 8 Jan. 1688/9 (London, Printed by Edward Jones, 1688/9). The change is discussed by Childs (93) and Major R. E. Scouller, The Armies of Queen Anne (Oxford: Clarendon Press, 1966), 164.


31. Childs, 93.

32. See Rogers, Crowds, Culture and Politics, 85–121, for popular attitudes toward impressment for England as a whole over the eighteenth century.

33. MJ/SR1868 R58, 26 Feb. 1696.

34. MJ/SR2286 R102, 16 Mar. 1717.

35. Ibid.

36. Ibid.

37. MJ/SR2128 R90, 25 Mar. 1709. Many local government officials could
refuse to cooperate with press gangs. Nicholas Rogers, *Crowds, Culture and Politics*, 93–94, gives examples of JPs and even a mayor who vocally opposed impressment.

38. MJ/SR1831 R 125, 2 Feb. 1694/5 and MJ/SR2047 R34, 10 Feb. 1704/5 respectively.
40. MJ/SR2073 R23, 28 May 1706.
43. MJ/SR2295 R269, 6 Aug. 1717.
45. After 2 & 3 Edw. VI c. 2, s. 3, there was little or no legislation on desertion until after the Glorious Revolution of 1688. See 1 W & M c. 5 s. 2; 2 W & M, St. 2 c. 8; 4 W & M, c. 13; 13 & 14 Wm III c. 2; 1 Ann St. 2 c. 20; and 10 Ann c. 13.
47. Forty-two women were bound for assaulting on their own or with other women, and an additional seventeen women were bound in recognizances that also mentioned men. Conversely, 313 men were bound for assaulting on their own or with other men, and sixteen were bound for assaulting in mixed groups.
48. MJ/SR2353 R79, 7 Nov. 1720.
49. MJ/SR1917 R21, 2 Sept. 1698 and MJ/SR2353 R84, 19 July 1720 respectively.
50. MJ/SR2325 R3, 22 Jan. 1718/9. Note that Constable Charles Slaughter and his assistants did not swear the peace against Francis Tuckwell, the legal formula that would require them to claim that they were in danger of their lives. For more on the legal consequences of the words “in danger of life” on an assault recognizance, see chapters 2 and 5.
51. MJ/SR2330 R51, 21 Apr. 1719. As above, Addison swore himself “in danger of his life” without swearing Mackmanus to keep the peace.
54. Of the total recognizances for assaults on constables or watchmen, 8.4 percent bear clerical annotations to indicate that the prosecution also generated an indictment, in contrast to 9.5 percent for recognizances as a whole (679 of 7,129 recognizances to answer for an assault), examined in appendix A. Peter King found that assailants who had targeted officials began to be treated more harshly than those who assaulted private individuals only at the end of the eighteenth century. P. King, “Punishing Assault: The Transformation of Attitudes in the English Courts,” *Journal of Interdisciplinary History* XXVII, no. 1 (Summer 1996), 43–74.


57. Given this assumption, it may be that the number of genuine prosecutions that went to indictment was actually proportionately higher than the totals for assaults as a whole. The 8.4 percent calculated above would then be doubled to 16.8 percent, more than 7 percent higher than the total for assaults as a whole.


59. Ibid.

60. DL/C/255 f 451, Fletcher c. Kitson, 30 Dec. 1715.

61. Ibid.


63. Ibid., R169.

64. MJ/SR2177 R63, 3 Jul. 1711.


66. MJ/SR1779 R198, 23 Apr. 1691.


68. E. W., 22, and Paul, 75. See also Meriton, 33.


70. George, 81–85.


72. The “Rules” referred to the areas of several square miles surrounding prisons such as King’s Bench and the Fleet, usually inhabited by debtors who had found “friends to stand surety for their debts” and who were thus offered the privilege of living in the Rules. Such residents were virtually exempt from the law, as they were already technically imprisoned, and if they were taken and jailed elsewhere for some other offense, they could obtain a writ of habeas corpus and be removed to King’s Bench or the Fleet prison again. See Joanna Innes, “The King’s Bench Prison in the Later Eighteenth Century: Law, Authority and Order in a London Debtor’s Prison,” in J. Brewer and S. Styles, eds., *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries* (London: Hutchinson, 1980), 250–98, quotation from page 256.

Limits of Terror (New York: Oxford University Press, 2001), 115, gave the example of Cripplegate Without, “in which four constables served a ward of “close to 2,000 houses.”

74. E. W., 13–14.
75. See Beattie, 140–49.
76. MJ/SR2290 R205, 8 May 1717.
77. James Harvey, A Collection of Precedents Relating to the Office of a Justice of Peace (London, 1730), 162, gave an example of a warrant “to apprehend the Petty Constable for Breach of Peace” and listed him as a “Taylor.” Watchmen could also hold other trades, seen in several recognizances binding watchmen for various derelictions of duty. See, for example, MJ/SR1734 R5, R4 & R2, 5 Oct. 1688 and MJ/SR2138 R101 & R100, 23 July 1709 respectively.
78. Paul, 89.
79. A gentleman was recorded as observing that “the Watch” would “dance all Day long after a Gentleman to get a Pint of Drink of him.” OBP, 11–14 Jan. 1716/17 (London, printed for J. Phillips by M. Jenour), 3. Similarly, a constable described as a victualer was bound for being drunk in the performance of his office, and another constable was bound for arresting a woman, bringing her into a tavern, and trying “to put his hands up her coats.” MJ/SR2103 R7, 21 Nov. 1707 and MJ/SR2062 R100, 30 Oct. 1705 respectively. Beattie (143) said that victualers serving as constables were held with special suspicion, “no doubt because one of the constable’s tasks was to ensure that [drinking establishments] were licensed and that they obeyed the laws governing drinking hours.” See also M. D. George, London Life in the Eighteenth Century (New York: Capricorn Books, 1965), 33–34.
80. W. Nelson, The Office and Authority of a Justice of the Peace, 5th Ed. (London, 1750), 176. Beattie (139) in his study of the City of London found that the wards “with a larger and more diverse population [had] more . . . constables . . . among the poorer householders.” Though he took care to stress that it was “only a part of the picture,” Clive Emsley stated that “the courts show that there were corrupt, ignorant and poor constables during the Tudor and Stuart periods.” C. Emsley, The English Police: A Political and Social History (London: Longman, 1991), 11. The low-bred nature of London constables was satirized in a seventeenth-century play, which included a song describing the constable as resorting to the tavern, “Drinking many a lusty health,” and later arresting “a comely girle” for prostitution, and—“Though it may impaire his health, He sleeps with her for th’ good oth’ Common-wealth.” Henry Glapthorne, Wit in a Constable: A Comedy written in 1639 (London: Printed by Jo. Okes, for F.C., 1640), Act 5, Scene 1. Though he quoted nonliterary sources that support this image, Emsley (9–10) warned against making too much of the literary ridicule of constables: “Both Dogberry, the headborough in Much Ado about Nothing, and Elbow, the simple Constable from Measure for Measure, talk in malapropisms, but this is a comic fault allegedly found also in twentieth-century English policemen, and none of the critics of Shakespeare’s constables think of condemning twentieth-century policemen as comic and degraded characters for this reason.”
82. Beattie, 123. The constable in a play enacted in Drury Lane, 1639, vowed to make wrongdoers “stoope Under my staffe of office.” Glapthorne, Act 4, Scene 1.
83. MJ/SR2334 R82, 22 Sept. 1719.
85. The “marshal’s men” referred to here must not be confused with the assistants to the county marshal, who were also known by the same name. The principal function of the latter was to arrest prostitutes and vagrants and to control crowds during public events such as hangings and riots. Beattie, 158–63. The officers of the marshalsea courts, rather than the assistants to the county marshal, are examined in the following pages, because the context in which the term “marshal’s men” appears in the assault recognizances suggests that they were the same “marshals men” referred to in The Ancient Legal Course and Fundamental Constitution of the Pallace Court or Marshalsea (London: Printed for Robert Crofts, 1663), 52, or the pamphlet by Robert Robins, entitled A Whip for the Marshalls Court, and their Officers (London, 1648).
88. Along with the sheriff and constables, the bailiffs had to “be in attendance” at Quarter Sessions, “with the obligation of reporting such offences or derelictions of duty as had occurred within their respective jurisdictions,” and—because the courts of the verge dealt mostly with debt (discussed below)—marshal’s men also resorted to Quarter Sessions to prosecute violence against them. Webb, 296.
91. MJ/SR2330 R76, 11 Apr. 1719. The public whipping of women was banned by 57 Geo 3 c. 75 in 1817, but there is no evidence that it evoked significant popular resentment in this period.
96. MJ/SR2037 R12, 26 Aug. 1704. See also MJ/SR2260 R214, 7 Oct. 1715, for a description of a marshal’s man assaulting a woman.
98. According to James Sharpe (32), “[C]omplaints of bribery, corruption and extortion against bailiffs were all too widespread and too plausible.”
99. Even a defender of the Palace Court was forced to admit to “the petty mean conceit and estimation people generally have had” for the Palace Court, “though its Decrees are as valid and binding as any of the Benches of Law at Westminster.” *The Ancient Legal Course*, 48–49. Similarly, Robins—inprisoned on its authority in the mid–seventeenth century—asserted that “that court . . . is of no validity, nor hath any power or Jurisdiction to execute [its] authority . . . upon the ignorant people every day.”
100. Douglas Green (275) concluded that “the superior courts at Westminster wanted to limit the Marshalsea’s jurisdiction.” Robins recounted his indicting two marshal’s men for assault because the court they served had no real authority in the seventeenth century. In MJ/SR2295 R128, 28 Aug. 1717, John Felton prosecuted a marshal’s man for assault. (Note that Felton’s assailant is listed only as a “messenger to the board of green cloth”—one of the four criminal courts of the verge, also known as the Court of the King’s Counting House, which allows me to identify him as a marshal’s man. I am grateful to conversations with Matthew Szromba for this information. See M. P. Szromba, “The Wicked Man Shall Not Abide in My House: The Courts of the Verge and the English Monarchy, 1660–1760”, Ph.D. dissertation, Loyola University, 2004). The officer was also bound “for a contempt in disputing the Constables authority in executing a warrant against him” for that assault.
101. Robins.
102. *Twelve Ingenious Characters*, 10, and *A Description of Devils*, 14, respectively.
103. *An Epistle Narrative*, 4.
104. *News from Tybourn*.
105. MJ/SR2280, R183, 3 Dec. 1716. Succliffe was also charged with barratry which resonates with a case before the Bishop of London’s Consistory Court in which a bailiff admitted to calling “Anne Anderson Nasty Comon Bawdy house whore,” claiming drunkenness as his defense. DL/C/255 f 186, Anderson c. Blew, 23 Mar. 1714/5.
106. It seems safe to assume that bailiffs were the most obvious, if not the only, officers empowered to arrest those accused of debt in the early eighteenth century, because the studies of imprisonment for debt mention only bailiffs, though they do not explicitly deny constables a role in such arrests. Innes, 255–56; P. Haagen, “Eighteenth-Century English Society and the Debt Law,” in S. Cohen and A. Scull, eds., *Social Control and the State: Historical and Comparative Essays* (Oxford: Martin Robertson, 1983), 235–36; and O. R. McGregor, *Social History and Law Reform* (London: Stevens and Sons, 1981), 40.
Notes to Chapter 7


2. See, for example, Nicholas Rogers, *Crowds, Culture and Politics in Georgian Britain* (Oxford: Clarendon Press, 1998), 223.


6. Dalton, 282. A similar statement appears in W. Nelson, *The Office and Authority of a Justice of the Peace*, 5th Ed. (London, 1750). However, 1 Hawkins c. 65 s 14, 159, says that “women are punishable as rioters” and does not specify that they have to be led by a male; and Joseph Keble, *An Assistance to Justices of the Peace for the Easier Performance of their Duty* (London: printed for W. Rawlins, etc. 1683), 647, refers to “sundry women” being convicted of rioting by the Court of Star Chamber, but they were wearing male clothing.


8. MJ/SR2098 R97, 3 Sept. 1707.


10. Shoemaker, “The London Mob,” 274 (table 1) and 278.

11. MJ/SR2118 R130, 29 Sept. 1708 and MJ/SR2270 R160, 21 May, 1716 respectively. For more examples of assaults and riots “about” the victim’s house, see chapter 5.


15. MJSR2290 R110, 22 May 1717.


17. MJ/SR2052 R19, 17 Apr. 1705.


19. MJ/SR2093 R4, 28 Apr. 1707. See also Recognizances 2, 3, and 5, which bound the male rioter-assailants. Sir Richard Buckley is absent in the *Dictionary of National Biography*. The only surviving record of a man by this name is a pamphlet that he authored in 1690, entitled *The Proposal for Sending Back the Nobility and Gentry of Ireland* (London: Printed for Sir Samuel Holford and Sold by R. Baldwin, 1690). According to Buckley, his proposal provoked “a parcel of Rabble” to “rail and roar at” him, and he referred to “continual calumnies and threats” from them “ever since, to do him some mischief.” Unfortunately, there is no concrete evidence to indicate the cause of the 1707 riot against him almost two decades later.

20. Ibid., R2.

21. Of the 150 assault recognizances for “raising a mob,” 84, or 56 percent, named female defendants. (Recognizances binding both male and female defendants were not included.) There was no special legal category for “raising a mob,” and the closest mention of this type of offense is in Keble, s. XLII no. 2, 663: “if any person . . . raised or caused to be raised twelve persons or above,” that person is guilty of riot.

22. Jessica Warner and Frank Ivis, “Damn you, you informing Bitch”: *Vox Populi* and the Unmaking of the Gin Act of 1736,” *Journal of Social History* 33, no. 2 (1999), 311, state that the “typical scenario” of women’s riot activities “was for women to incite
violence without actually participating in it.” They cite E. P. Thompson, Malcolm Thomis, and Jennifer Grimmett to substantiate their claim that, by raising the mob rather than being mere participants in a riot, women were able to remain nonviolent. However, while Thompson, Thomis, and Grimmett offer corroborating evidence of women’s significant role as mob raisers, they say nothing to substantiate Ivis and Warner’s contention that mob raising was nonviolent. Indeed, in discussing mob raising, Thompson, Thomis, and Grimmett give many examples of women who explicitly used violence to incite their fellow rioters. Malcolm I. Thomis and Jennifer Grimmett, *Women in Protest, 1800–1850* (London: Croom Helm, 1982), 37–39; E. P. Thompson, “The Moral Economy of the English Crowd in the Eighteenth Century,” *Past and Present* 50 (1971), 115–16; and idem, *Customs in Common,* (New York: New Press, 1993), 312, 334.

32. MJ/SR2255 R81, 23 July 1715 and MJ/SR1855 R41, 15 May 1695 respectively.
33. MJ/SR2221 R10, 2 Jan. 1714.
36. There are ten recognizances binding women to answer seditious words charges, and ten binding men. Nicholas Rogers (*Crowds,* 223) found a grand total of 238 prosecutions for seditious words in the metropolis between 1714 and 1716, and while only 15 percent of these charged women, he argues that this was much higher than the percentage of women charged with any more serious, Jacobite-related offense.
37. MJ/SR2108 R142, 30 Mar. 1708.
40. MJ/SR2310 R70, 17 June 1718.
41. MJ/SR2260 R151, 1 Nov. 1715.
42. MJ/SR2315 R199, and one unnumbered recognizance to prosecute, 11 Aug. 1718.
45. Monod, 234.
47. Paul Monod asks whether “drunken or angry or antagonistic expressions [can] be interpreted as evidence of political sentiments” and suggests that a toast to King James might sometimes be no more than “a playful jest without serious content” (239).
48. Three of the eleven women (27 percent) in contrast to two of the seventeen men (12 percent) accused of speaking seditious words used violent imagery as part of their sedition.
49. MJ/SR1551 R55, 26 Nov. 1689 and MJ/SR2330 R78, 8 Apr. 1719 respectively.
52. Roger B. Manning, “The origins of the Doctrine of Sedition,” *Albion* 12, no. 2 (1980), 104. Interestingly, only Ann Murkott was bound “for speaking treasonable words,” yet she does not appear to fall within the definition.
56. MJ/SR1873 R99, 14 May 1696.
57. MJ/SR2310 R40, 30 May 1718.
60. Mughouses were the meeting places for Loyal Societies, which toasted the King at every meeting with a “Mug of true English Ale.” George Waldron, *A Speech Made to the Loyal Society at the Mug-House in Long Acre 7 June 1716* (London, 1716), 12.
62. *OBP*, 10–11 Oct. 1716 (London, printed for J. Phillips by M. Jenour), 2. Note that “patens” are clogs or overshoes worn to keep the wearer out of the mud; they often contained hard wooden or iron soles.
65. *An Account of the riots, tumults, and other treasonable practices since his Majesty's accession to the throne . . .* (London, 1715), 8, 24.
67. Ibid.
68. Paul, 95. See also, Meriton, 31–34; Exact Constable, 29; and Sheppard, chapter 2, section 1, no. 18.
70. Keble, 223.
73. MJ/SR2083 R67, 28 Nov. 1706.
74. Ibid. and R101 respectively.
75. The upper marshal “was expected to exercise a general if vague supervision over night-time policing by riding around the City several times a week”—but the sheer volume of his task, coupled with the likelihood of his own corruption, meant that such supervision rarely occurred in practice. Beattie, 159.
77. MJ/SR2118 R76, 28 July 1708. R77 bound John Parish for the same offense.
79. MJ/SR2013 R18; ibid.
80. MJ/SR1912 R63, 1 May 1698 and MJ/SR2260 R192 (for Joseph) & R193 (for Anne), 21 Nov. 1715, respectively.
81. MJ/SR2221 R25, 23 Oct. 1713. See chapter 5 for the possible significance of removing a man’s hat and wig in an assault.
82. MJ/SR1969 R33, 27 May 1701 and MJ/SR2042 R1, 7 Oct. 1704 respectively.
85. MJ/SR1888 R42, 14 Jan 1697.
87. MJ/SR2013 R32, 28 June 1703. Note that the recognizance indicates that Hill was successful in rescuing only one of the “wenches.”
88. MJ/SR2310 R200, 15 May 1718. This example resonates with that of Jane Cox, who performed a similar rescue by smuggling in “an chisel a mallet & a long Rope” to enable a male prisoner to make his escape. MJ/SR2295 R263, 14 Aug. 1717. A group of “Confederates” of Newgate prisoners, whose gender is not specified, helped the prisoners escape by providing them with “two saw knives [and] two Plough-coulter,” which allowed the “dextrous” prisoners “to saw off all their Irons, and make a large breach in the Wall, and sliding down by a Rope, make their escape.” *OBP* 26 Feb.–1 Mar. 1679/80 (London, printed by D.M.), 4.
89. MJ/SR1826 R85, 4 Nov. 1693. According to the *OED*, a vizard-mask was
worn to conceal the face, and women who wore such masks were associated with prostitution—to the extent that prostitutes could be called “vizards.”


91. N. Z. Davis, “Women on Top,” in _Society and Culture in Early Modern France_ (Stanford: Stanford University Press, 1965), 132. The use of the clothing of the opposite sex for disguise was occasionally a tactic for female rescuers as well, and Richard Vincent was accompanied by Hannah Whiston and Sarah Brounchier, both spinsters, who were “drest up in mens cloths” to rescue Mr. St. Legar.

92. MJ/SR1826 R90 & R89, 1 Oct. 1693 respectively. These recognizances are also interesting because the women, as their own sureties, were bound for £150—perhaps because (as their recognizances state) the focus of their rescue, Mr. Gibson St. Legar, was in jail for “concealing and conveying away Esq Leviston after he had killed Mr Charles Howard.” In other words, they were caught rescuing the rescuer of a murderer.


94. This observation is based on a search of the pre-nineteenth-century publications listed in the English Short Title Catalogue under the keyword rescue.


**Notes to Chapter 8**


3. These points are outlined in more detail in Appendix A.

1. For example, mayhem, which was an assault of particular violence “with intent to maim or disfigure” the victim, was a “felony without benefit of clergy.” Sir William Blackstone, *Commentaries on the Laws of England in Four Books*, Book Four (reprint, Philadelphia: Geo. T. Bisel Co., 1922), 207. Assaults such as MJ/SR2270 R137, 14 June 1716, where the victim’s nose was slit and the alleged offender was bound only to appear at the next sessions and be of good behavior in the interim, legally constituted mayhem. The victim should have been forced to prosecute by indictment from the outset, yet the recognition suggests that she did not.


3. Only indictments found to be “true bills” by a grand jury would go on to a trial. Hay discovered that over half of the indictments for assault in late-eighteenth-century Staffordshire were not found to be true bills, suggesting that the reason was that the grand jury dismissed them as either vexatious or more civil than criminal prosecutions. “Prosecution and Power: Malicious Prosecution in the English Courts, 1750–1850,” in D. Hay and F. Snyder, eds., *Policing and Prosecution in Britain 1750–1850* (Oxford: Clarendon Press, 1989), 362n.

4. Note that there are no extant recognizances for Westminster between 1680 and 1685; after that date, however, there is a virtually complete set.

5. Without a justice’s signature, a recognition was invalid and was not returned to Quarter Sessions. Assault recognizances needed only one JP’s signature, unlike recognizances such as those binding alehouse keepers, which required two justices’ signatures, or those to bind over someone who “depraved the sacrament,” which required three. W. S[hepard], *A New Survey of the Justice of Peace his Office* (London: J.S., 1659), 16, and idem, *The Office of a Justice of Peace*, 219–20.

6. Sureties were generally bound for at least £20, and the offender for twice that amount, according to Norma Landau, “Appearance at the Quarter Sessions of Eighteenth-Century Middlesex,” *London Journal* 23, no. 2 (1998), 33. Some, though not all, female defendants who were bound on their own recognizances were bound *sup’ impr* (on pain of imprisonment) rather than listing a monetary sum. The totals for which sureties were bound were dependent on the laws and principles governing bail, examples of which can be seen in Matthew Bacon, *A New Abridgement of the Law*, Vol. 1, 7th Ed. (London: A. Strahan, 1831), 494–95, and Charles Viner, *A General Abridgement of Law and Equity*, Vol. 3 (Hampshire, 1741), 467. Duke of Schomberg v. Murray, 12 Mod. 420, Mich.12.W.3. However, JPs had considerable discretionary powers in deciding the amount and reliability of sureties.

7. Recognizances for prosecutors or witnesses to appear in assault cases are fairly rare, probably because they were used only for very serious cases, and thus exist in greater numbers for felonies, as Shoemaker notes. R. Shoemaker, “Using Quarter Sessions Records as Evidence for the Study of Crime and Criminal Justice,” *Archives XX*, no. 90 (October 1993), 147.

8. The Westminster recognizances for the peace clearly show that certain JPs would bind a person to keep the peace unto the king and his subjects, while others would specifically name the complainant. In other words, the mention of a specific complainant in recognizances for the peace depended more upon the proclivities of the JP than on any legal consideration.
9. A recognizance for the peace or good behavior was often referred to in the justicing handbooks as a “surety” for the peace or good behavior. In lay terms, an eighteenth-century Londoner might also be said to “swear the peace against” someone when binding him or her to keep the peace.

10. This is recognizances of type (f), those which bound a defendant to answer an assault, who was also prosecuted by indictment for the same offense. There are 679 recognizances that probably went to indictment, because they bear clerical annotations in their margins that mention an indictment. However, not all recognizances that went to indictment may have consistently recorded this fact, and only 88 percent (6,280) in total bear legible clerical annotations. Shoemaker’s study of the recognizances as a whole for the county found that “28 per cent of the defendants who were bound over to appear at quarter sessions were also indicted,” and Shoemaker added 5 percent to “account for the fact that the clerks did not always record the existence of indictments in the relevant recognizance.” Prosecution and Punishment, 31.

11. This is substantiated by Shoemaker’s findings for the metropolis as a whole, in Prosecution and Punishment, table 3.5.

12. John Beattie’s data from the London Justice Room Charge Book (Oct. 1729–30) shows 172 (plus additional 3 involving assaults on officers) of a total of 234 persons accused of assault having “settled” their cases. Though the table deals only with those assaults that went to indictment or were settled, or those in which the charges were dismissed (not giving numbers of assaults that were bound over to allow for a comparative reading), it is still clear that a substantial number of assault cases could be dealt with informally. J. M. Beattie, Policing and Punishment in the City of London, 1660–1750: Urban Crime and the Limits of Terror (New York: Oxford University Press, 2001), table 2.2.

13. Prisoners who were not released prior to the next Quarter Sessions might appear in the “Gaol Calendars”—records of those in prison at the time of each Quarter Sessions. However, these calendars served as wrappers for the sessions’ rolls and are in very poor condition—much too illegible to provide a reliable indication of the numbers and types of assaults prosecuted in this way. Beattie’s work on Lord Mayor Ashurst’s charge book found fourteen of thirty-three alleged assailants (42 percent) committed for want of sureties in January–June 1694. Beattie, Policing and Punishment, tables 2.1 and 2.2 respectively. Beattie noted (97) that Ashurst’s work was “clearly only a fraction” of the assaults in the city of London at this time. Douglas Hay’s study of the extant Staffordshire Assize and Quarter Sessions Gaol Calendars (1752–1802) found only 9 of 183 indicted assaults (4.9 percent) that were not bailed and were committed to jail before trial. The proportion rises to 10.5 percent in the period 1806–1817. I am grateful to Dr. Hay for sharing this evidence.

14. “It is probable that women used recognizances more frequently than any other type of legal procedure in the secular courts.” R. Shoemaker, Prosecution and Punishment, 207.


16. One hundred eighty-two of the 3,542 recognizances in which the defendant’s occupation could be determined were laborers.
18. The only clues to the disposition of recognizances are in marginal Latin inscriptions, which appear on only 87 percent of all of the assault recognizances. More than half (3,748) read only “ven & exon” (*venit et exoneratur*), simply that the defendant had appeared and met the conditions of his binding over. (“*Venit & exoneratur*” means “he/she came & was/is exonerated.” I am grateful to Bridget Howlett (of the L.M.A.), Ian Gentles, and Norma Landau for their help with translating my abbreviations.) Another 904 said that the recognizance had been “respited,” usually meaning that the recognizance was carried over into another Quarter Sessions because the complainant had a legitimate excuse for not proceeding at that point in time.
21. S. Hindle, “The Keeping of the Public Peace,” in Paul Griffiths, Adam Fox, and Steve Hindle, eds., *The Experience of Authority in Early Modern England* (New York: St. Martin’s Press, 1996), 235. Note that Hindle dealt only with recognizances to keep the peace, but even sureties guaranteeing only accused assailants’ appearance in court might wish to prevent him or her from harming the victim further because they wished to avoid having to act as the defendant’s sureties again in the future.
22. N. Landau, “Appearance at the Quarter Sessions,” detailed the meticulous enforcement of appearance at Quarter Sessions, where defendants who failed to appear could have their recognizance estreated, and they and their sureties would have to scramble to pay the resulting fines in order to avoid being liable for their very expensive bonds, and if the accused assailants were unable to comply at any stage in the process, they risked imprisonment. Even those who appeared had to pay 2s to the Quarter Sessions Clerk, plus an additional 4d for the town crier. Landau, 35, 47n.
23. Those who were prosecuted by indictments were almost always bound to appear and answer the charge or were imprisoned if they were unable to provide suitable sureties. In addition, prosecutors could go to a lawyer, instead of a clerk, for an
indictment, but this was a more expensive route, and as a result was probably rarely used. I am grateful to Douglas Hay for this information.

24. Though there were many areas where a JP was prohibited from informal mediation, JPs were encouraged to deal with assault cases in this way. Shoemaker, Prosecution and Punishment, 24.

25. Norma Landau, The Justices of the Peace, 1679–1760 (Berkeley: University of California Press, 1984), 184–85. Trading Justices were seen to be most prevalent in London, where they could drum up “a perpetual flow of business.” Webb, 324. Norma Landau found that the introduction of stipends for JPs in 1791 dramatically reduced the number of recognizances returned to the Middlesex Quarter Sessions, suggesting that the use of the recognizance as a prosecutorial tool was significantly influenced by the pecuniary needs of the Justices. N. Landau, “The Trading Justice’s Trade,” in idem, ed., Law, Crime and English Society 1660–1840 (Cambridge: Cambridge University Press, 2002). I am grateful to Dr. Landau for allowing me to see this article prior to its publication.


27. Ibid.

28. This group, therefore, is responsible for 4,717 recognizances, or 66 percent of the total.

29. Of the total number of recognizances for assault, 2,265 bore descriptions that could not be classed under one of the 275 categories created for the database without special clarification.

30. On the authority of statutes 5 & 6 Ed. 6 c. 4; 22 & 23 Car. 2 c. 1; and 5 H. 4 c. 5, respectively, a person caught drawing a weapon in a church or churchyard “shall forfeit one of his ears,” and an assailant who “malitiously cut out the tongue, put out the Eye, slit or cut off the Nose, or disabled any Member of another, with intent to disfigure him, that Fact is Felony without Clergy, and the Offender shall suffer the pain of death.” W.T., The Office of the Clerk of Assize, 121, 127–28, respectively. See also Bond, 73. For more on these types of assaults, see chapter 5.

31. W. Nelson, The Office and Authority of a Justice of the Peace, 5th Ed. (London, 1750), 59. The importance of including “Vi & Armis” had continued in practice, though, in fact, the phrase was actually not essential after a statute of 1545. J. H. Baker, “The Refinement of English Criminal Jurisprudence, 1500–1848,” in L. Knafla, ed., Crime and Criminal Justice in Europe and Canada (Waterloo: Wilfred Laurier University Press, 1979), 23, 40n29. In addition, evidence has been found to indicate that the rules regarding the wording of indictments were not as strictly followed and policed as the handbooks recommended. See Cockburn, “Trial by the Book,” 60–79; and Baker, “The Refinement,” 17–42.

32. This issue is also discussed in chapter 2.

33. Jacob, 406. See also Bond, 251. A historiographical debate exists as to whether the JPs actually performed such duties, though the argument focuses upon the late-sixteenth-century assizes. John Langbein asserted that the JP had to “prepare himself to assume where necessary the forensic role of prosecutor at trial” (Prosecuting Crime in the Renaissance: England, Germany, France [Cambridge: Harvard University Press, 1974], 35). J. S. Cockburn has since disagreed with him, arguing that the
attendance lists from the assizes revealed that a “majority” of justices regularly failed to appear (“Trial by the book,” 70).

34. Shoemaker, Prosecution and Punishment, 234.

35. For the low rate of recidivism suggested by the assault recognizances, see chapter 2.


37. A writ of certiorari removed the defendant’s indictment from Quarter Sessions to King’s Bench, but it did not affect any recognizances made at Quarter Sessions. Writs of mandamus removed JPs’ personal discretion and subjected them to the dictates of King’s Bench, but this writ was almost never used, according to Norma Landau, The Justices of the Peace, 1679–1760, 345n. Habeas corpus writs served only to check JPs’ errors in writing warrants, and only those resulting in imprisonment; and, of course, warrants that resulted in imprisonment were not connected with recognizances.

38. Defendants already bound before a justice for an identical offense could obtain a writ of supersedeas to prevent a second JP from forcing them to enter into another recognizance. The writ of supplicavit, on the other hand, had very specific instructions on how recognizances should be drawn up, but, according to Earl Jowitt, “[T]his writ was seldom used, for when application had been made to the superior courts, they had usually taken the recognizances there, under the statute of 1623, 21 Jac. I c. 8.” Earl Jowitt, ed., The Dictionary of English Law, Vol. II (London: Sweet & Maxwell Ltd., 1959), 1706.

39. See, for example, Nelson, 93, and Jacob, 354.

40. William Shepard’s handbook for clerks gives a series of examples of the Latin section on the sureties and explains that “by these [samples] all other recognizances may be made, for they are after one form.” The section that follows only vaguely describes the wording for the various offenses that may appear in a recognizance, significantly stating that a JP could draw up his recognizances “after the same manner [as the samples], by changing only that which is to be changed.” Shepard, The Justice of Peace, His Clerks Cabinet, 100, 104; emphasis added. William Lambard, Einrarcha . . . (London, 1614), 107, included only the Latin portion dealing with the sureties’ information and alluded vaguely to “a condition added or endorsed in English” in his examples of the proper forms for recognizances. James Harvey (191) had only an “&c.” where the specifics of the offense would appear. See also Nelson, 390; Robert Gardiner, En[ci]hiridion clericales (London, 1712), 18; Joseph Higgs, A Guide to Justices: being modern English precedents . . . (London, 1734), 128, 168; Edward Crocker, The Young Clerk’s Tutor Enlarged, 14th Ed. (London, 1700), 7–13.

41. For example, Giles Jacob (42) included forms for an indictment and a warrant for assault, but not for a recognizance. Michael Dalton offered forms for recognizances for the peace, for good behavior, to appear (again with “&c” for the offense), or even “for him that hath dangerously hurt one,” but none explicitly mentioned assault. M. Dalton, The Countrey Justice (London, 1655), 439–44. W. Stubbs and G. Talmash, The Crown Circuit Companion . . . , 5th Ed. (London, 1783), 106–16, laid out forms of indictment for a wide variety of assaults, ranging from “common assault” to “an assault
and beating out an eye," but did not include a similarly systematic treatment of assault recognizances.

NOTES TO APPENDIX B


3. Hale, 50.


5. Ecclesiastical law in the diocese of London was administered by the consistory, the lower commissary, and the Archdeacon’s courts, but the Consistory Court saw the overwhelming majority of defamation litigation. Gowing, *Domestic Dangers*, 50–51.


7. M. Harris, “Trials and Criminal Biographies: A Case Study in Distribution,” in R. Myers and M. Harris, eds., *Sale and Distribution of Books from 1700* (Oxford: Oxford Polytechnic Press, 1982), 5 and 28n4. Harris also noted (7) that the contents of the *OBP* were regulated when “the Court of Aldermen agreed that nothing should be published without the assent of the Lord Mayor and the other Justices present.” Legal historian John Langbein has since testified to their accuracy. J. Langbein, “The Criminal Trial before the Lawyers,” *The University of Chicago Law Review* 45, no. 2 (Winter 1978), 267–72.

8. John Beattie (*Policing and Punishment*, 21) described a situation where a “Devon country gentleman,” who also happened to be a JP, employed an agent in London “to buy books and keep him informed of the doings in the capital.” He was regularly sent information from the *OBP*, either in the text of a letter or in entire copies. Those outside the direct administration of justice were also interested in the contents of the *OBP*; however, and Langbein (“The Criminal Trial,” 269) cited the
example of a reader John Newton who, in 1684, referred to “the Monthly News from the Old Bailey” in his 1684 sermon, The Penitent Recognition of Joseph’s Brethren: A Sermon Occasioned by Elizabeth Ridgeway, iii; emphasis in original. Harris (13) offers the most convincing evidence of their popularity: the publishers annually paid £100 for the rights to publish them—they clearly must have anticipated high profits from the sale of about sixteen issues at around 6 d. per issue. Beattie, Policing and Punishment (22) considered the OBP to be sufficiently popular to have an impact on public perceptions of crime, referring also to the Ordinary of Newgate’s account and other pamphlets as “having shaped the public’s sense of crime as a growing social problem.”

9. In total, sixty-nine papers have been used for their accounts of violent crime, consisting of 204 cases. The actual number of cases is less than 204 because in some sessions, especially in the earlier years, there could be several publications of the same sessions.

10. Selection criteria consisted of a defamation case which (1) was recorded in the Allegation, Libel and Sentence books; (2) gave more description of the insult than simply “whore”; (3) was not from the parts of the diocese outside the metropolis; and (4) had progressed to the point where depositions had been generated. When the four conditions had been met for five cases in each of the years sampled (1680, 1685, 1690, and so on, including 1720), the sample was considered to be sufficient.

11. The producents would begin their suit with a libel, consisting of a list of points stating their position, and the ministrants would answer each of the points, “usually with a denial.” The depositions were the next stage in the process. Gowing, Domestic Dangers, 38.

12. Ibid., 38–39.

13. The socioeconomic status of the parties in the defamation cases at the Consistory Court is as difficult to ascertain as that of complainants in recognizances. Tim Meldrum (3 and 7) estimated that to prosecute in the eighteenth-century church courts, one might need as much as £10, and he assumed that the majority—both litigants and witnesses—came from the middling sort.

14. On the likelihood of few cases continuing to the point of sentencing in the sixteenth century, see Gowing, Domestic Dangers, 39 and 61.

15. Ibid., 45 and 38 respectively.

16. Laura Gowing (41–48) has written insightfully about the way in which the witnesses making their depositions can be seen as consciously constructing a legal narrative, complicated by recollection, moral judgment, and personal concerns.