

*The Relationship Between Magistrates and their Communities  
in the Age of Crisis: social protest c. 1790-1834*

By

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## *Abstract*

This thesis examines the responses of the county magistracy to social unrest in a period marked by a redefinition of social and governmental relationships. Drawing together approaches to governmental and protest histories, it answers calls for more detailed analyses of the actions and attitudes of authority through a more thorough account of judicial responses to popular protest. The approach adopted here, also offers new perspectives on the nature of social relations and governance at this point.

This study privileges the structuring of county government in an analysis of social protest. Through two regional case studies, it recognises the autonomy and concomitant variation in the infrastructure of local government, and the ways in which these distinct governmental arrangements shaped the nature of popular resistance. Not only does this approach provide a more nuanced understanding of the actions of the authorities, but it posits social conflict as a lens through which to view the operation of government. Disorder laid bare many of the inadequacies of a system predicated on paternalist authority, but it also exposed the constellation of social relationships that underpinned it.

Chapter one reviews the historiographical discussion regarding the form and function of the magistracy and differing perspectives on the decline of paternalist governance. The two original case studies of Norfolk and Somerset, pursued throughout this thesis, are introduced in chapter two, which details their respective structures of government. This provides the foundation for a reappraisal of the 'crisis of paternalism' during the subsistence crises of 1795 and 1800-01, in chapter three, and the challenges posed to the magistracy during the Swing disturbances of 1830, considered in chapters four and five. By viewing protest through the structures of government that mediated social relationships, the full complexity of these interactions is revealed and a more nuanced picture of social conflict is made visible.

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### ***Abbreviations***

Al. Cant.	<i>Alumni Cantabrigienses</i>
Al. Oxon.	<i>Alumni Oxonienses</i>
BCL	Bath Central Library
CCED	Clergy of the Church of England Database
NHER	Norfolk Historic Environment Record
NRO	Norfolk Record Office
ODNB	Oxford Dictionary of National Biography
PP	Parliamentary Papers
SRO	Somerset Record Office
TNA	The National Archives
WSHC	Wiltshire and Swindon History Centre

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## *Introduction: protest, social relationships and structures of government*

The period 1790-1834 marked a profound change in English society. The experience of war, economic crises, and political agitation strained, altered and redefined social relationships. According to Edward Thompson, one of the most influential contributors to this field, the interests of both ruler and ruled were consolidated, in opposition, in this context.<sup>1</sup> The ‘particular equilibrium between paternalist authority and the crowd’ - a social relationship that secured the rule of the landed class via an accommodation of popular culture and expectations, and a shared understanding of mutual obligations - collapsed.<sup>2</sup> The processes of societal change in this period, and the significance of popular collective action in particular, continue to be the subject of much research and debate. Following an agenda for the study of social protest set by Thompson, Roger Wells and Andrew Charlesworth, much has been accomplished in terms of history from below. However, we still lack detailed studies of the responses of authority to popular protest.<sup>3</sup> This thesis seeks to address this deficit through a study of the magistracy and the ways in which they dealt with social protest. Focused on two regional case studies of the magistracy in Somerset and Norfolk, it considers how the structures of county government shaped the complex, and often contradictory, responses to popular unrest. In privileging the institutions and mechanisms of government in the context of protest, this approach affords insights into the changing nature of governance and social relationships over the turn of the nineteenth century; offering a ‘history from above’ that compliments what has been learned from ‘history from below’.<sup>4</sup>

The paternalist model of eighteenth-century social relationships delineated by Thompson in a series of articles from 1971-1978 has underpinned much of the subsequent work on social change in this period and the analysis of social protest more broadly. Part of its

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<sup>1</sup> E. P. Thompson, *The Making of the English Working Class* (London: 1963; this ed. Pelican 1968), 12, 111, 195.

<sup>2</sup> E. P. Thompson, ‘The Moral Economy of the English Crowd in the Eighteenth-Century’, *Past & Present* 50 (1971): 78-9, 129; E. P. Thompson, ‘Patrician Society, Plebeian Culture’, *Journal of Social History*, 7:4 (1974): esp. 403 & 405.

<sup>3</sup> K. Navickas, ‘What happened to class? New histories of labour and collective action in Britain’, *Social History*, 36:2 (2011): 193.

<sup>4</sup> To borrow from K. Navickas, op. cit. 203.

enduring utility stems from the scope it afforded for popular action and agency.<sup>5</sup> As Thompson conceived it, paternalism in the eighteenth century was no longer predicated on the daily interventions of the gentry in the lives of the poor. Rather, it was a ‘studied technique of rule’ made visible in particular acts: ‘in the formalities of the bench; or on calculated occasions of popular patronage.’<sup>6</sup> The distance between ruler and ruled had widened with an increasingly free labour market, the declining influence of the church, the absence of the gentry from their estates, and the concomitant growth of a ‘robust plebeian culture’.<sup>7</sup> Deference was not secured through the minute control of the labourers’ living and working conditions or through an extension of policing, but through the performance of authority and negotiation. The relationship was reciprocal: the ‘cultural hegemony’ of the elite was only maintained if they met certain popular expectations and fulfilled particular duties. The poor reminded their rulers of their obligations through equally calculated acts of plebeian ‘counter-theatre’, most frequently (according to Thompson) in direct collective action. The balance of power therefore was maintained by this ‘field of force’, each party setting limits on the actions of the other.<sup>8</sup>

Thompson sited the collapse of paternalism in the turbulent context of the 1790s. The popular disturbances precipitated by inflated prices and failed harvests were met with increasing hostility and repression. The example of Revolutionary France and political agitation at home recast popular action as potentially insurrectionary, militating against paternalist negotiation with the crowd.<sup>9</sup> Thus the ability of the poor to assert their interests was curtailed, signalling a redefinition of their relationship with authority, and, as Thompson argued, their self-identification as a class.

Roger Wells seized on this context to consider its role in the formation of a ‘‘new’ protest culture’ of the rural proletariat. The debate that ensued has continued to shape the

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<sup>5</sup> E. P. Thompson, ‘The Moral Economy of the English Crowd in the Eighteenth-Century’, *Past & Present* 50 (1971): 76-136; idem. ‘Patrician Society, Plebeian Culture’ *Journal of Social History*, 7:4 (1974): 382-405; idem. ‘Eighteenth-century English society: class struggle without class?’ *Social History*, 3:2 (1978): 133-165; P. King, ‘Edward Thompson’s Contribution to Eighteenth-Century Studies. The Patrician: Plebeian Model Re-examined’, *Social History*, 21:2 (1996): 216 & 218; A. Randall and A. Charlesworth, ‘The Moral Economy: Riot, Markets and Social Conflict’ in idem. (eds.) *Moral Economy and Popular Protest: Crowds, Conflict and Authority* (Basingstoke: Macmillan, 2000), 1-3.

<sup>6</sup> Thompson, ‘Patrician Society, Plebeian Culture’, 387-9.

<sup>7</sup> *Ibid*, 391 & 395.

<sup>8</sup> *Ibid*, 399-401; Thompson, ‘Eighteenth-century English society’, 150-1.

<sup>9</sup> Thompson, ‘The Moral Economy’, 129; idem, ‘Eighteenth-century English society’, 165.



study of social protest.<sup>10</sup> Wells considered the subsistence crisis of 1795 as a watershed in social relations. The extension of the poor relief system to subsidise wages increased dependence on the parish. Attempts to compel the authorities to make paternalist interventions in market and wage regulation by collective action were brutally suppressed. Significantly, new volunteer forces, established as a means to resist invasion, were deployed as a police force. The strength of the repressive agencies, and subjugation by the demands of the relief system, limited the opportunities for rural communities to openly protest their condition. Instead, hatred of their oppressors - the farmers, clerics and gentlemen who controlled the rates and policed them under the guise of 'armed patriotism' - was expressed through covert means: 'ultimately arson and the threatening letter.'<sup>11</sup> The methods evolved in the 1790s, Wells argued, became the 'countryman's main weapons in the first half of the nineteenth century'.<sup>12</sup> Subsequent outbreaks of riot, notably in East Anglia in 1816, and the Swing disturbances of 1830, were overt expressions of 'class war', but 'covert social protest', Wells contended, 'was certainly more enduring'.<sup>13</sup>

Andrew Charlesworth took issue with Wells' thesis, significantly with his oversimplification of a ruling class alliance, and the dominance of covert protest.<sup>14</sup> According to Charlesworth, the relationship between farmers and parish authorities, and the gentry and the clergy (significantly in their capacity as magistrates), was not one of unquestioned unity. Given the regulation of relief administration by the latter, the poor had recourse to them against the decisions of the former. It was in this constellation that the paternalist model still held sway. This was evident in popular mass appeals to the magistracy in the disturbances of 1816 and 1830. Charlesworth sites the collapse of paternalist order in the aftermath of Swing. The extent of unrest was perceived as an act of disloyalty on the part of the labourers, and as a justification for the passing of the Poor

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<sup>10</sup> R. Wells, 'The Development of the English Rural Proletariat and Social Protest, 1700-1850', *The Journal of Peasant Studies*, 6 (1979): 115-139; C. J. Griffin, *Protest, Politics and Work in Rural England, 1700-1850* (Basingstoke: Palgrave Macmillan 2014) 9-10.

<sup>11</sup> R. Wells, 'The Development of the English Rural Proletariat and Social Protest', esp. 125-7.

<sup>12</sup> *Ibid*, 116.

<sup>13</sup> *Ibid*, 131.

<sup>14</sup> A. Charlesworth, 'The Development of the English Rural Proletariat and social protest, 1700-1850: a comment', *The Journal of Peasant Studies*, 8 (1980): 101-111, esp. 104.

Law Amendment Act in 1834, facilitating more stringent control of the poor.<sup>15</sup>

Countering this assessment, Wells argued that these outbreaks of disturbance were exceptional, calling for more local and regional studies to uncover the everyday means of popular resistance.<sup>16</sup> His own micro-study of Burwash (Sussex), and subsequently south-eastern England, evidenced the utility of this approach. Rural conflict was revealed as ‘multidimensional’, underscored by a complex of social relationships, and manifest in a range of protest forms.<sup>17</sup>

The Wells-Charlesworth debate, and Thompson’s modelling of social relationships, continues to influence studies of protest in this period, both in support and in contention. The emphasis on local studies has dominated much subsequent work. The complexity of social relationships, community formations, and the means of resistance already drawn out, has raised questions regarding the utility of organising concepts such as urban and rural, and overt and covert protest. Evident in Wells’ study of Swing in the Weald, the mixed demographic of the crowd showed grievances shared across different occupational communities.<sup>18</sup> More recently, Carl Griffin’s work on Swing, and the suppression of trade unionism at Tolpuddle in 1834, has emphasised not only the fluidity of occupational communities but the formative impact of resistance and its suppression over the longer-term and across regions.<sup>19</sup>

Likewise, the distinction between types of protest, or the targets of protest has been questioned.<sup>20</sup> Drawing such artificial distinctions limits our perspective as to the variety of means, often used in conjunction, and the different local social contexts that framed the form and focus of protest. Again, Griffin, amongst others, has moved the discussion on to consider the perception of protest. The power of words, for example, gestures,

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<sup>15</sup> Ibid, 104-6.

<sup>16</sup> R. Wells, ‘Social Conflict and Protest in the English Countryside in the Nineteenth-Century: A Rejoinder’, *The Journal of Peasant Studies*, 8 (1981): 514-530.

<sup>17</sup> Ibid, 524; R. Wells, ‘Social Protest, Class, Conflict and Consciousness in the English Countryside 1700-1880’ in R. Wells and M. Reed (eds) *Class, Conflict and Protest in the English Countryside, 1700-1880* (London: Frank Cass, 1990), 190-214.

<sup>18</sup> R. Wells, ‘Social Protest, Class, Conflict and Consciousness in the English Countryside’, 162-4.

<sup>19</sup> C. J. Griffin, *The Rural War: Captain Swing and the Politics of Protest* (Manchester: Manchester University Press 2012); idem, ‘The Culture of Combination: solidarities and collective action before Tolpuddle’, *The Historical Journal*, 58:2 (2015): 443-480, esp. 449-52.

<sup>20</sup> A. Charlesworth, ‘An agenda for historical studies of Rural Protest in England, 1750-1850’, *Rural History*, 2:2 (1991): 232-3.

symbols and threats could be as potent as more explicit forms of protest in exerting pressure and winning concessions.<sup>21</sup>

In consequence of the models provided by Thompson, Wells and Charlesworth, and the work that has followed, we have a more nuanced understanding of popular protest. One area, however, where the studies of social protest in this period have stalled is in a detailed assessment of the role of the authorities. Mooted by Charlesworth in 1991, and again by Katrina Navickas in a more recent review, the ‘reactions, attitudes and values’ of the central and local authorities require more concerted attention.<sup>22</sup>

The authorities have certainly not been absent from studies of social protest in this period. The pivotal role of the magistracy in Thompson’s paternalist model has continued to influence discussion of the relationship between authority and the people. They were the most visible manifestation of ‘cultural hegemony’, setting the ‘limits of tolerance’ in their administration of the law and the maintenance of order.<sup>23</sup> The willingness or otherwise of the judiciary to concede to popular demands, particularly in the context of riot, has been a consistent feature of the debate regarding the decline of paternalism and the concomitant redefinition of social relationships.<sup>24</sup>

In his re-examination of Thompson’s paternalist model, Peter King has drawn attention to points regarding the nature of authority that need to be developed. Firstly, King has questioned the centrality of the law as a means of control. How far, he asks, was the state able to control ‘its own public judicial rituals’? Could other sectors of society subvert or influence the performance of authority manifest in the courts?<sup>25</sup> King also criticises the limitations imposed by the bi-polarity of this conception of social relationships. Thompson dismissed the ability of the burgeoning middle classes to provide any check on the authority of the gentry.<sup>26</sup> King, however, has argued that the

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<sup>21</sup> C. J. Griffin, ‘The violent Captain Swing?’ *Past & Present*, 209 (2010): 149-80, esp. 179-80; idem, *Protest, Politics and Work in Rural England, 1700-1850*, 14.

<sup>22</sup> A. Charlesworth, ‘An agenda for historical studies of Rural Protest’, 235; K. Navickas, ‘What happened to class?’ 203.

<sup>23</sup> E. P. Thompson, ‘Patrician Society, Plebeian Culture’, 390.

<sup>24</sup> For example: R. Wells, *Wretched Faces* (Alan Sutton Publishing 1988, this ed. Breviary Stuff Publications, 2011); D. Hay, ‘The state and the market in 1800: Lord Kenyon and Mr Waddington’, *Past & Present*, 162 (1999): 101-162; see also above, Wells-Charlesworth debate and chapter 1.4 *histories of the magistracy*.

<sup>25</sup> P. King, ‘Edward Thompson’s Contribution to Eighteenth-Century Studies,’ 222.

<sup>26</sup> E. P. Thompson, ‘Eighteenth-century English society,’ 142.

interests of the propertied were divided, reflected in ‘separate policy priorities’.<sup>27</sup> His work on the summary courts has highlighted the ability of both the poor, and the middling sort, to mobilize the judiciary against one another. These alliances King characterises as triangular in form. Judicial hearings he contends, provided ‘a vital arena in which social tensions were expressed and social relations reconfigured.’<sup>28</sup>

King’s analysis has emphasised the need for a more complex model of social relationships, and a reassessment of the role of law within it. Indeed, the questions he has posed are all the more pertinent in the context of ‘crisis’ in the 1790s and the first decades of the nineteenth century. The triangulation of competing interests between the poor, the middling sort and the gentry (frequently acting in their judicial capacity) are evident in the administration of relief, in market disturbances, tithe, wage, and rent disputes. The question regarding the ability of the state to control its public judicial rituals is reflected in contemporary debate over the efficacy and appropriateness of judicial responses. Throughout the period, the most marked contest revolved around negotiation under duress and the granting of paternalist concessions, either to pre-empt or stop popular protests. Both Thompson and Wells have reflected on the difficulty the variety of responses poses for analysis.<sup>29</sup> Wells, however, set aside this ‘complex of contradictions’ as a product of the extraordinary extension of military policing in the 1790s, choosing to concentrate on the operation of the relief system as the primary means of social control.<sup>30</sup>

This thesis aims to unravel some of this complexity in judicial responses and the nature of social relationships at this point. This can be achieved by adopting some of the approaches and arguments of histories of local government. In particular, the work of Norma Landau and David Eastwood provide a complimentary framework to support an analysis of the magistracy in the context of social protest.<sup>31</sup> The changes in local

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<sup>27</sup> P. King, op. cit. 226..

<sup>28</sup> P. King, *ibid.*, 226; *idem.*, ‘The summary courts and social relations in Eighteenth century England’, *Past & Present*, 183 (2004): 125-172, esp. 127.

<sup>29</sup> E. P. Thompson, ‘The Moral Economy Reviewed’ in *idem.* *Customs in Common* (London: Merlin, 1991, this ed. Penguin 1993) 292; Wells, *Wretched Faces*, 288-9.

<sup>30</sup> Wells, *Wretched Faces*, 289; see also Chapter three.

<sup>31</sup> N. Landau, *The Justices of the Peace 1679-1760* Berkeley: University of California Press, 1984; D. Eastwood, *Governing Rural England* (Oxford: Clarendon Press, 1994); *idem.*, *Government and Community in the English Provinces, 1700-1870* (London: Macmillan Press, 1997).

government over the turn of the nineteenth century mirrors the reordering of social relationships considered in histories of social protest. ‘If’, Eastwood states, ‘the century and a half after 1700 witnessed the apotheosis of English local government...it also heralded their slow demise.’<sup>32</sup> From the middle of the eighteenth century, the county judiciary were given increasing scope to regulate their own institutions and mediate the law through the statutory expansion of their powers in both summary and county courts.<sup>33</sup> Their autonomy however was challenged by political, economic, and demographic changes taking place at the end of the century. Changes in the composition of the judiciary, questions regarding their ‘un-democratic’ character – notably regarding the extent of their powers – and their ability to regulate a rapidly increasing population, precipitated a remodelling of their relationship with central government and their communities. Although Eastwood characterises it as a gradual, ‘sometimes imperceptible’ process, nonetheless, by the middle of the nineteenth century, ‘an old provincial order passed...reliance on status and symbols yielded to surveillance.’<sup>34</sup>

This study, therefore, focuses on the governmental structures administered by the county magistracy as a means to analyse the mechanisms of control. If the autonomy of the magistracy allowed for the creation of distinct institutions, we must then consider the precise arrangement of local government rooted in particular local contexts. Two regional studies of two county commissions of the peace form the basis of this analysis. Taking the county as the corollary, and in comparison, allows for continuities as well as differences to be ‘appreciated and apprehended’; it captures variation within and between regions, the rural, urban and suburban, ameliorating the problems of ‘exceptionalism’ that micro-studies can generate.<sup>35</sup>

The regional courts have been privileged in this analysis, as a locus for social relations and policy. The county courts of quarter sessions offered another forum for ‘triangulation’. The courtroom encompassed and facilitated the interaction (albeit skewed in favour of the authorities) between the gentry on the bench, the middling sort in the

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<sup>32</sup> D. Eastwood, *Government and Community*, 19.

<sup>33</sup> N. Landau, *The Justices of the Peace*, 238-9; D. Eastwood, *Governing Rural England* 82, 88-9.

<sup>34</sup> D. Eastwood, *Government and Community*, 118-9.

<sup>35</sup> C. J. Griffin, *Protest, Politics and Work in Rural England*, 11, 15-16.

grand and petty juries, and the labouring poor.<sup>36</sup> The quarter sessions also presented the opportunity to shape and promote policy to the county at large. Again, the different social constituencies that populated the court were integral to this. Just as the county magistrates received direction from the king's justices at the Assizes, the charges made to the grand jury at quarter sessions frequently included statements of policy.<sup>37</sup> These vertical relationships did not, however, merely signal the imposition of authority from above. As Hay has reminded us in his analysis of the pursuit of prosecutions by the judges of the King's Bench: the constitutional autonomy of the judiciary from parliament allowed the formation of a 'judicial politics independent of, or indeed opposed to government policy, legislative intent or economic interest'.<sup>38</sup> This can be extended to the regional courts. As the evidence presented here will show, the discussions in the Grand Jury chamber at Assize and quarter sessions presented an opportunity for discussion and debate, and the development of policies that opposed and modified central and local directives.

Other structures of government outside of the county courts also need to be considered: the location and availability of justices at petty and summary hearings, borough and corporate benches, the nature and extent of policing, all factored in the shaping of protest. Crucially, these arrangements were all regionally contingent, and largely dependent on voluntary participation. They afforded scope as different points for popular access to government, and in their constitution, reflected the possibility for a variety of responses. Emulating the excellent work of Norma Landau and Peter King, the social composition of government personnel has been pursued here, to address the different attitudes and values manifest in the authorities: how they perceived themselves, each other, and the communities over which they presided, and more particularly the validity of paternalist governance.<sup>39</sup> The interactions of these structures must be understood to make sense of the complex of judicial reactions to protest, and the nature of social relationships in this period.

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<sup>36</sup> P. King, 'Decision Makers and Decision Making in English Criminal Law, 1750-1800', *Historical Journal*, 27:1 (1984): 25-58; idem, *Crime, Justice and Discretion in England, 1740-1820* (Oxford: Oxford University Press, 2000), 258.

<sup>37</sup> Eastwood, *Government and Community*, 12, 100.

<sup>38</sup> D. Hay, 'The state and the market in 1800', 103.

<sup>39</sup> Landau, *The Justices of the Peace*; King, *Crime, Justice and Discretion*, 110-22.

Chapter one outlines the form and function of the magistracy from the middle of the eighteenth century. It also addresses histories of the magistracy and the apparent decline of paternalist governance, drawing out the intersections between approaches to histories of crime and protest, and government and governance. This provides the historiographical and methodological context for the case studies pursued throughout the remainder of this thesis.

Chapter two introduces the two regional cases studies. Although broadly comparable as agricultural and maritime counties, the different physical, demographic and economic arrangements in Somerset and Norfolk influenced the development of different governmental structures in each county. This chapter considers how the county commissions of the peace shaped their institutions to meet the needs of their respective regions: how the limited membership of the commission marshalled an increasing population, how the courts and sessions were reconfigured in this context, and how different seats of local power interacted. It also addresses the social composition of the magistracy in each county, addressing changes in the membership of the judiciary, and the ways in which social status informed the ethos of the county commissions.

Chapter three concludes part one, exploring how the structures of government in each county functioned to counter social protest during the subsistence crises of 1795 and 1800-01. It also provides the forum to discuss Thompson's siting of the crisis of paternalism at this point and to analyse the exercise of judicial discretion as a central tenet of local government more broadly.

Part two concentrates on the Swing disturbances of 1830 redressing the noted deficiency in our understanding of the actions of the authorities during this period of unrest. Chapter four outlines the nature of disturbances in each county and how they were suppressed. The Norfolk magistracy had to consider the outbreak of unrest in 1830 as part of a protracted 'rural war'. Somerset's justices, while not faced with disturbance on the same scale by any means, were spurred to action by the spectre of Swing. Despite the divergent experience of Swing in each county, continuities in the judicial management of unrest are evident. The particular context of Somerset emphasises the impact even the apprehension of protest had on judicial interactions with their communities. Chapter five makes a detailed study of the prosecution of Swing offenders in both counties,

emphasising the use of the courts as structures of government: as a means of restoring particular social relationships and hierarchies in the aftermath of unrest.

Finally, reintegrating the two regional studies into a nationally framed study, chapter 6 reflects on the utility of the approach employed here. Concentrating on what detailed analyses of authority and an understanding of governmental structures contributes to our understanding of social protest, and social relationships, by addressing the ‘balance of coercion and consent in the governing system, the potential for conformity and opposition, and the bases of cohesion’ evident in the ‘age of crisis’.<sup>40</sup>

### *A Note on Sources*

All studies of social protest must contend with the limitations of the archive. As Roger Wells and others have made clear, no single body of evidence gives a comprehensive account of popular unrest.<sup>41</sup> The local authorities were not always willing, or felt it necessary, to report disturbances to the Home Office. Likewise, in the 1790s at least, disturbances infrequently resulted in prosecutions, and even then, the charges did not always relate clearly to crowd actions.<sup>42</sup> Although the press revelled in sensational stories of crime and tumult, in particular instances – notably in 1800-01 – some publications chose to suppress reports of riot for fear of encouraging further unrest.<sup>43</sup> More recently, Griffin has drawn attention to the limitations of press reporting and the impact that has on our understanding of the geography of protest. Not all counties had a developed provincial press before the nineteenth century. Where there were regional newspapers, the circulation of the press also impacted on the sorts of news that was published. Griffin’s process of mapping the south eastern press has shown that news travelled to the presses via the same routes through which the papers were distributed, tending to skew

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<sup>40</sup> King, ‘Edward Thompson’s Contribution to Eighteenth-Century Studies’, 219.

<sup>41</sup> R. Wells, *Wretched Faces*, 93-7; C. J. Griffin, ‘Knowable geographies? The reporting of incendiarism in the eighteenth- and nineteenth- century English provincial press’, *Journal of Historical Geography* 32 (2006): 39.

<sup>42</sup> See Chapter 3.3 and 3.4; Wells, *ibid.* 277.

<sup>43</sup> Wells, *ibid.* 97; S. Poole, ‘Scarcity and the Civic Tradition: Market Management in Bristol, 1709-1815.’ In Randall, A. and Charlesworth, A. (eds.) *Markets, Market Culture and Popular Protest in Eighteenth-Century Britain and Ireland* (Liverpool: Liverpool University Press, 1996) 109-12; Griffin, ‘Knowable geographies?’ 39, 48-9.



news, and the audience for news, towards the urban and consequently leaving the rural underrepresented.<sup>44</sup> This study is by no means immune to these problems; however certain advantages are gained by concentrating on the two particular regional contexts, and the actions and attitudes of the authorities.

Quantitative studies of protest are fraught with difficulty. Although not the focus of this thesis, a provisional enumeration of events has been undertaken in order to outline the nature of unrest in each county in order to contextualise the actions of the local authorities.<sup>45</sup> Much of the archival material consulted in this study has been used before; but to the Home and War Office correspondence, the records of the centrally administered courts, and regional press, a thorough interrogation of the regional court archives, as well as evidence from local estate and private papers, has been added. Considering Griffin's caution regarding the geography of protest, the nature of press coverage in Somerset and Norfolk should also be addressed. Both counties were home to the first provincial newspapers.<sup>46</sup> Regional publications were sustained into the nineteenth century, so by 1800, there were two Norfolk papers: the *Norwich Mercury* (established 1725) and the *Norfolk Chronicle* (1761); and three in Somerset: the *Bath Journal* (1742), the *Bath Chronicle* (1757), and the *Bath Herald* (1792). Owing to their coverage of the period, and their geographical distribution, these publications in particular, have been consulted extensively in this study. Despite their apparently urban focus, their circulation extended across considerable parts of their respective counties and might be considered countywide publications by the 1840s at least.<sup>47</sup> Both *Chronicles* purported to represent agricultural interests, so coupled with their circulation, perhaps tend to more comprehensive coverage than might be found in other counties.<sup>48</sup> Some incidents, nevertheless, did not make the local news: here, correspondence from private family archives and correspondence between magistrates provides a necessary

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<sup>44</sup> Griffin, *ibid.* 40, 45

<sup>45</sup> See chapters 3.1 and 4.1.

<sup>46</sup> A. Walker, 'The Development of the Provincial Press in England, c. 1780-1914,' *Journalism Studies*, 7:3 (2006): 375; Griffin, *op. cit.* 40.

<sup>47</sup> C. Mitchell, *The Newspaper Press Directory* (London: C. Mitchell, 1847) Norfolk, 220-1, Somerset, 149-50, other Somerset based publications were in print before 1834: *Taunton Courier* (1808) and the *Bath Gazette* (1812) as well as four Bristol based publications before 1800, see 149 and 244; R. Crutwell [editor of the *Bath Chronicle*], *The New Bath Guide* (Bath: 1799) 80.

<sup>48</sup> Mitchell, *op. cit.* 220 and 149; Crutwell, *op. cit.* 80.

supplement, including reports of popular unrest that were un- or under- reported in the press and Home Office correspondence.<sup>49</sup>

In conjunction with the records of the county courts, the press provide an important commentary on the actions of the authorities. Both in Norfolk and Somerset, the press showed little inclination to openly criticise the actions of the county judiciary. Certainly the *Norfolk Chronicle* and *Bath Chronicle* were conservative publications aimed at the nobility, gentry, and clergy, from whose ranks the magistracy were drawn. The *Bath Journal* and *Norwich Mercury* were liberal papers, but neither attached themselves to a particular interest group.<sup>50</sup> Indeed, both Norfolk papers shared a commitment to church and state, particularly after the French Revolution.<sup>51</sup> Richard Mackenzie Bacon, the *Mercury's* proprietor from 1794, was openly allied with the county elite as a close acquaintance of Edward Lord Suffield (Chairman of the Sessions 1821-32) and as a major in the Norwich rifle volunteers.<sup>52</sup> The press thus appear as a mouthpiece for the local authorities. As Griffin warns us, they form part of an archival record that tends to 'replicate the structures of power'.<sup>53</sup> This is, however, a particular concern of this thesis, and the press therefore offers detailed coverage of public displays of authority.

As a counterpoint to the limited, albeit useful, perspective of the press, the inner-workings of the county magistracy have been addressed in detail through the archives of the county commissions of the peace and a prosopographical study of their membership. Justice's notebooks and the records of the court of petty sessions provide the most detailed accounts of magistrates' day-to-day dealings with their communities, but unfortunately for the historian, their survival is fragmentary; this is regrettably replicated in the archives for Norfolk and Somerset. The records of the commission membership

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<sup>49</sup> For example: Mells Manor Muniments: Thomas Horner, papers and correspondence, disturbance at Frome, Jan. 1795; SRO: DD/AH 59/12 Stogursey corn disturbance papers 1794-1801; these events and their lack of coverage in the press has also been discussed in S. Poole, "Popular Politics in Bristol, Somerset and Wiltshire, 1791-1805" (PhD thesis, University of Bristol 1992); SRO: Q/JCP/7 Papers and Correspondence relating to Justices and the Commission of the Peace, 1830; B. Cozens-Hardy (ed) *Mary Hardy's Diary* (Norfolk Record Society, 1968).

<sup>50</sup> Mitchell, op. cit. 149-50, 220-1.

<sup>51</sup> D. Chandler, 'The Athens of England': Norwich as a Literary Center in the Late Eighteenth Century,' *Eighteenth-Century Studies*, 43:2 (2010): 184.

<sup>52</sup> ODNB: John Warrack, 'Bacon, Richard Mackenzie 1776-1844' (2004); R. M. Bacon, *A Memoir of the Life of Edward Third Baron Suffield* (Norwich: 1838), esp. 149, 410; J. R. Harvey (ed.) *Records of the Norfolk Yeomanry Cavalry* (Norwich: Jarrold and Sons, 1908) 158.

<sup>53</sup> Griffin, *Protest, Politics and Work*, 11.

and quarter sessions, however, are considerably fuller. These have provided the basis for a prosopographical and spatial analysis of the form and function of the magistracy in each county.<sup>54</sup> In mapping the institutional structures of government, and the connections between those who administered it, the regionally specific frameworks through which the more public displays of authority were mediated can be discerned, facilitating a more critical reading of press and Home Office reports.<sup>55</sup> The administrative records of the Somerset commission in particular, also contain valuable correspondence detailing discussions between groups of magistrates.<sup>56</sup> Taken together, the records of the magistracy reveal the difficulties experienced in policing protest, the differences of opinion and tensions that subsisted in this context, and new perspectives on the nature of popular resistance. Although there were few recorded instances of crowd action in Somerset in 1830, for example, the correspondence sent between justices and the county clerk of the peace, affords a rare insight into the perception of popular protest, its causes, and scale. The discussions also reveal some of the ‘near misses’, points where the justices were in immediate apprehension of disturbance but where none occurred. These exchanges bring to the fore some of the ‘omnipresent tensions’ that generated resistance in a variety of forms, and which had a direct bearing on the way the magistracy responded to protest.<sup>57</sup> Indeed, while the account of unrest may remain imperfect,<sup>58</sup> the approach and evidence adopted here offers a new perspective.

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<sup>54</sup> See chapters 1.4 and 2.

<sup>55</sup> See for example chapter 3.2

<sup>56</sup> SRO: Q/JCP/1-7 Papers and Correspondence relating to Justices and the Commission of the Peace, 1801-1830; Q/C/3/7 Correspondence from Justices Clerks listing local magistrates and frequency of their meetings, 1819; Q/C/5 Petty Sessional Divisions 1829-30.

<sup>57</sup> SRO: Q/JCP/7, see chapter 4; Wells, *Wretched Faces*, 97.

<sup>58</sup> Wells, *ibid.* 97.

## *Part I, Chapter One*

### *'Rulers of the county': the form and function of the English Magistracy, c. 1790-1835.*

The justices of the peace held a pivotal position in eighteenth-century English society. These men represented the first and only point of contact with the law in many communities. They were also residents within these communities, usually local landed gentry or clergymen entered into the county commission of the peace. The responsibilities of the county commission of the peace were considerable, and increased further over the second half of the eighteenth century, and into the first decades of the nineteenth century. They were responsible for the enforcement of the law and the maintenance of order, the prosecutions of those in breach of the laws, as well as the administration of local government. Much of their power resided in their summary jurisdiction: the capacity to try cases, and hear complaints or appeals, and pass judgment on them without recourse to a jury or higher authority.

The men nominated to the commission of the peace were entrusted with such authority on the basis of their social status, underpinned by a particular notion of traditional governance. The ideal of the gentlemen justice was a paternal figure 'guiding the conduct' and ensuring the wellbeing of the deferential poor. His wealth and social status placed him beyond reproach. In both their judicial and administrative capacities, the county judiciary was largely unsupervised by central government or the royal courts, allowing them greater autonomy in discharging their duties. As the Webbs entitled them, they were the 'rulers of the county'.<sup>59</sup> The period 1790-1835 was the 'high water mark of magisterial authority and discretion', however, the tumultuous years following the cessation of hostilities with France, saw this highly personalized, independent form of government fall from favour. By 1835, the discretionary powers of the magistracy had been significantly eroded.<sup>60</sup>

This introductory chapter will outline the form and function of the magistracy in the second half of the eighteenth century, and how they changed over the turn of the

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<sup>59</sup> S. & B. Webb, *English Local Government: Volume 1, The Parish and the County*. (London: Longmans and Co, 1906, this ed. London: Frank Cass and Co. 1963) 319.

<sup>60</sup> P. King, *Crime and Law in England, 1740-1840, Remaking justice from the margins*, (Cambridge: Cambridge University Press 2006) 65.

nineteenth century. The remainder of this chapter will consider the ways in which the role of the magistracy has been discussed ‘from below’, and ‘above’, in histories of crime and protest, as well as histories of government and governance, in this period. Collectively this body of work has pointed to the importance of the justices of the peace as local government: the exceptional expansion of their discretionary powers, the development of their administrative function, the relationship the magistracy had to central government and their role as regulators of the communities over which they presided.

The themes outlined here, and the methodologies employed to construct these histories contribute to the foundation of this thesis. Exploring these themes from the existing literature in greater detail provides the historiographical and methodological context for the new case studies of the Norfolk and Somerset magistracy, and their actions in the context of social unrest, presented in subsequent chapters. It also affords the opportunity to question some of the conclusions already posited, and consider some of the gaps in our understanding regarding the nature and function of the county magistracy at the end of the eighteenth century.

### ***1. The Magistrate and the Commission of the Peace***

The magistracy were charged under the commission of the monarch to keep the peace. Anxious to secure his ascension to the throne, Edward III appointed loyal noblemen across the country to ‘prevent any risings or other disturbances of the peace’ against him. In 1360, Edward extended their powers to try felonies, from which point they became ‘justices’ of the peace.<sup>61</sup>

While the ‘commission of the peace’ could be held to encompass all the men appointed to serve as magistrates, each justice was entered into the commission of the peace for the particular county in which he resided or held property. The jurisdiction of the commission was only limited to the territory of the county, and had no definite number of justices assigned to it. Separate commissions were also issued for the Ridings,

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<sup>61</sup> W. Blackstone, *Commentaries on the laws of England, in four books. By Sir William Blackstone, Knt. one of the justices of His Majesty's court of common pleas. And with notes and additions by Edward Christian, Esq. Barrister at law, and Professor of the Laws of England in the University of Cambridge*, vol. 1, 12th edition (London: A. Strahan and W. Woodfall, 1793-1795).

Liberties and some cities and borough towns where provision for a corporate magistracy was made according to royal charter<sup>62</sup>

The county commission was headed by the Lord Lieutenant. Who, by the eighteenth century, also assumed the role of *custos rotulorum* or keeper of the county rolls. The lieutenancy was a prestigious office, usually held by a member of the aristocracy. Whilst they were largely inactive in the day-to-day administration of the county, they were responsible for commanding the military forces within their jurisdiction, and for the selection of entrants in to the commission of the peace, and the appointment of clerk to the commission. The Lord Chancellor had the final word regarding membership of the commissions. During the first half of the eighteenth century, partisan disputes had been played out within the county judiciary, with members of the commission being removed or added according to the needs of government and party. However, from mid-century, political stability saw central government less interested in stuffing the commissions, and the Lord Lieutenants of the counties were left to organize membership of the magistracy as they saw fit.<sup>63</sup>

Entry in to the commission was limited by property qualification. England's justices were drawn from the nation's landowners: gentlemen who resided within the counties over which they would preside, who assumed the burdens of office voluntarily without pecuniary reward. The status of the members of the commission was considered as both a peculiarity of English government and as essential to notions of English governance. Unlike continental 'salaried functionaries', the power of the English gentleman justice was derived from both his office and his responsibilities as a community leader. Land was the basis of the social and economic order, its possessor, therefore, had power over its inhabitants. As David Eastwood has described it, the 'social authority' of gentlemen 'easily translated into political or magisterial authority.' His fortune also gave him the independence to act without the need to seek financial recompense for his services. The magistrate exemplified 'the practice of self-government'; he was both 'the guardian and representative of English liberties.'<sup>64</sup>

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<sup>62</sup> S. & B. Webb, *The Parish and the County*, 319-20.

<sup>63</sup> Ibid, 285 & 322; D. Eastwood, *Governing Rural England* (Oxford: Clarendon Press 1994) 51; N. Landau, *The Justices of the Peace 1679-1760*, (Berkeley: University of California Press, 1984) 236.

<sup>64</sup> Landau, *The Justices of the Peace*, 1, 152, & 318; Eastwood, *Governing Rural England*, 13.

According to Blackstone, this ideal type was established at the inception of the magistracy. It did, however, impose limitations on membership, which raised practical problems regarding the availability of the ‘right sort’ of gentlemen. It was acknowledged from at least the end of the seventeenth century, that the office of the justice of the peace was a burdensome one, causing many gentlemen to enter the commission for the honour, but subsequently not to act in a judicial capacity. However, the hostility towards men of ‘mean degree’ entering the commission, ‘whose poverty made them both covetous and contemptible’ was just as persistent. The required property qualifications were manipulated periodically from the reign of Richard II through to the end of the eighteenth century: either lowered to augment the numbers within the commission, or raised to ensure the independent wealth and status of its members.<sup>65</sup>

In 1731 the qualification for entry into the county commissions of the peace was established as £100 per annum from landed property. This raised the price of qualification from the previous Tudor statute that had set it at £20. The new figure of £100 ensured that only gentlemen were nominated for membership, but was still low enough to encompass considerable numbers of less substantial members of the gentry. The changes in the social composition of the commissions of the peace will be considered in more detail below; however, the ideal type of the gentlemen magistrate remained as the ‘eighteenth-century’s icon of civic virtue and responsibility.’<sup>66</sup>

Before considering the duties of the justices of the peace, it is useful to note the differences between Borough commissions of the peace and the county commissions – the focus of this thesis. Depending on the basis of its charter, a borough might be empowered to have its own commission of the peace and its own separate bench of magistrates presiding at the borough sessions.<sup>67</sup> The justices were appointed by the Lord Chancellor on the recommendation of the corporate body. They were not subject to the same property qualification but they had to be resident or own a house, or trade, within the borough. On the whole, the membership of the borough commission was drawn from

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<sup>65</sup> Blackstone, *Commentaries on the Laws*, 352; Webbs, *The Parish and the County*, 320-325.

<sup>66</sup> Blackstone, *Commentaries of the Laws*, 352; N. Landau, introduction to idem. (ed.) *Law Crime and English Society, 1660-1830*, (Cambridge: Cambridge University Press 2002), 11.

<sup>67</sup> See also chapter 2.3

the officers of the corporation, typically the mayor, previous holders of that office, and the recorder.<sup>68</sup>

## ***2. The justices and local government***

William Blackstone translated the ‘social authority’ of the gentlemen magistrate into his primary function, casting him as a paternal figure, maintaining ‘good order in his neighbourhood by punishing the dissolute and idle, by protecting the peaceable and industrious, and above all, by healing petty differences and preventing vexatious prosecutions.’ However, this parochially focused understanding of their role does not encompass the ‘infinite variety of business’ the justices were responsible for.<sup>69</sup>

The English magistracy were unique within Europe for having both the powers of ‘judiciary and intendency in their hands’. The county commissions of the peace were responsible for criminal authority, policing and the administration of local government in their locales. At the beginning of the eighteenth century, these functions overlapped: administrative and judicial decisions were made through the machinery of the courts, or in the informal sessions presided over by one or two justices, based ‘upon the evidence and in strict accordance with pre-existing obligations imposed by the law of the land.’<sup>70</sup> By the 1790s and into the first decades of the nineteenth century, judicial and administrative business began to be separated out. However, the justices retained control of both sectors of local government.

Returning to Blackstone’s description of the paternalist gentleman justice, it was most apposite in the context of the magistrates’ hearings outside of the formal court of quarter sessions. Eighteenth-century justices had increasing powers of summary jurisdiction: the capacity to try certain criminal offences, and make certain administrative decisions without recourse to a jury in open court. Sitting alone, or in pairs, or increasingly at petty sessions, (depending on the demands of the statutes pertaining to the complaints before

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<sup>68</sup> D. Bentley, *English Criminal Justice in the Nineteenth Century* (London: Hambledon Press, 1998), 21; see also chapter 2.3

<sup>69</sup> Blackstone, *Commentaries on the Laws*, 7 & 354.

<sup>70</sup> N. Landau, introduction to *idem. Law, Crime and English Society*, 10; Webbs, *The Parish and the County*, 281.



them) justices would either rule on the cases themselves, or refer them to the county court of quarter sessions. These hearings could take place in the home of the magistrate in his parlour, or in a room at a local inn or public venue.

The magistrates had considerable discretion in dealing with many criminal complaints. Cases considered to be of a private nature, disputes between neighbours or kin, or minor assaults for example, were frequently reconciled through the mediation of the magistrate, either with promises of good behaviour, an apology, or small financial settlement. In cases pertaining more to the public interest such as petty theft or breaches of vagrancy laws, the justices could administer firmer sanctions: imprisonment in the House of Correction at hard labour, or public whipping at the hands of the constable. In a survey of justices' notebooks recording summary hearings from across England during the eighteenth century, the vast majority of criminal cases heard were settled by the individual justice, and frequently with no statutory punishment.<sup>71</sup>

The magistrates were not necessarily well versed in the law in order to make these decisions. To assist them they might have the opportunity to consult a clerk, who was often more educated in legal matters. The scope of magistrates' discretionary powers and their apparent lack of legal experience was a troubling dichotomy to some (as we shall see), however, their summary jurisdiction served specific purposes: it prevented petty cases clogging up the courts, and allowed local men to regulate their communities. Many of the offenses falling within the justices' purview related to social regulation: breaching the Sabbath, tippling, swearing, and vagrancy. Indeed, a magistrate could convict an individual for being 'an incorrigible rogue'.<sup>72</sup>

Some administrative matters could also be dealt with by a lone justice or pair of magistrates. A significant proportion of these tasks concerned the regulation of the poor

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<sup>71</sup> J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: Oxford University Press 1986), 268-9; E. Crittall (ed), *The Notebook of William Hunt 1744-49* (Devizes: Wiltshire Record Society 1982); R. Paley (ed), *Justice in eighteenth-century Hackney: The justicing notebook of Henry Norris and the Hackney Petty Sessions Book* (1991) 3 August 2005 <<http://www.british-history.ac.uk/report.asp?compid=38816>>; M. Mearns (ed), *The King's Peace. The notebook of Thomas Horner of Mells, 1770-1777* (Frome Society for Local Studies 1997); A. Circuit (ed), *Samuel Whitbread's Notebooks 1810-11, 1813-14* (Amphill: Bedfordshire Historical Record Society 1971); E. Silverthorne (ed), *Deposition Book of Richard Wyatt JP, 1767-1776* (Guilford: Surrey Record Society 1978); G. Morgan and P. Rushton (eds), *The Justicing Notebook of Edmund Tew, Rector of Bolden* (Woodbridge: Boydell and Brewer 2000).

<sup>72</sup> Crittall, Paley, Mearns, op. cit., Webbs, *The Parish and the County*, 300.

law, settlement and bastardy. Justices ruled in complaints made by overseers regarding delinquent ratepayers and disorderly claimants. They also heard the appeals of the poor seeking to overturn decisions of the parish officers. The regulation of settlement claims likewise secured or denied paupers' claims to relief.<sup>73</sup>

Although an extraordinary circumstance to be faced with, the magistracy were also charged with suppressing disorder. They were the 'front-line' of law enforcement, in a period with no professional police force. Phases of protracted social unrest occurred throughout the second half of the eighteenth century, and after the end of the French Wars in the early nineteenth century. Faced with a crowd, unaided, and with military assistance days away, justices were armed with little other than the repressive measures encompassed in the Riot Act, and their 'social authority' as local magnates, with which to pacify the crowd. In responding to the situation a magistrate had to take into account not only the immediate consequences of his actions but their long-term repercussions within the community; 'hence the anxiety of the authorities, either to anticipate the event, or to cut it short in its early stages, by personal presence, by exhortation and concession.'<sup>74</sup>

When facing more serious cases of assault or theft, the justices had less discretion. Such cases would be referred to the court of quarter sessions once the justices had established the validity and strength of the case against the accused. Similarly, administrative matters concerning the county at large were reserved for the county court.<sup>75</sup>

The county court of quarter sessions was presided over by the justices of the county's commission of the peace. It met four times a year, in January, at Easter, Midsummer and in October. The place of meeting was organized by the commission itself, and contingent on the needs of each county. In theory, each sitting was for the county as a whole, however in many counties the location of the meeting was moved

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<sup>73</sup> See for example, M. Mearns (ed), *The King's Peace. The notebook of Thomas Horner of Mells, 1770-1777*. Poor law and settlement claims constituted the majority of Horner's workload (14% and 12% respectively, exceeding the number of alleged thefts and equalling complaints regarding assault. King's study of the Essex summary courts indicate that almost a quarter of all hearings concerned poor relief. P. King, 'The summary courts and social relations in eighteenth-century England,' *Past & Present*, 183 (2004): 138 & 150-1.

<sup>74</sup> E. P. Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century', *Past & Present*, 50 (1971): 122.

<sup>75</sup> Beattie, *Crime and the Courts*, 273.

from one town to another to make the court more accessible to different parts of the populace. For example, while in Gloucestershire the quarter sessions were consistently held in the county capital, in neighbouring Wiltshire the four meetings of the court were each opened in a different town: Devizes, Salisbury, Warminster or Marlborough. Choosing to adjourn a sessions could allow even greater mobility: the same meeting could be adjourned from one town to be reconvened in another at the same time of year. This process was left entirely to the commission, and what it perceived the county's needs to be.<sup>76</sup>

The number of justices presiding over the quarter sessions also varied greatly. According to the Webb's survey, typically, only three or four justices would make up the bench. However, numbers varied between counties, and sessions, and according to the nature and level of business, or socio-political context - for example, an increase in personnel on the bench during periods of social unrest.<sup>77</sup> The quarter sessions regulated all 'county services': the maintenance of roads and bridges, and breaches thereof; apprenticeships; the poor law and the county rates; licensing of public houses; as well as trying criminal cases.<sup>78</sup>

Felonies were usually tried at the twice-yearly courts of Assize. The county judiciary would often make up the Grand Jury at the Assizes, but they were presided over by centrally appointed judges from the crown courts. Over the course of the eighteenth century, greater numbers of non-capital felonies were left to be tried at quarter sessions. This delegation of responsibilities happened gradually, without consistent direction from central government, but was, as John Beattie suggested, an attempt to relieve 'what would have been a growing burden on the Assizes', especially in areas where the population was increasing in the second half of the eighteenth century. The justices at quarter sessions did not wield the ultimate sanction of the law – death – but in trying some felonies, alongside misdemeanours, they could sentence felons to protracted terms of imprisonment and, after 1718, transportation.<sup>79</sup>

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<sup>76</sup> Webbs, *The Parish and the County*, 425-430; see also chapter 2.3

<sup>77</sup> Ibid, 422; the number of justices in relation to the socio-political context will be discussed below, and in greater detail in chapter 2.2

<sup>78</sup> Webbs, *The Parish and the County*, 282.

<sup>79</sup> Beattie, *Crime and the Courts*, 283-88.

In both their judicial and administrative capacity, the eighteenth-century English magistracy wielded significant power, either through the formal court of quarter sessions or in the exercise of discretion at summary hearings. In their administrative role, there was little within the county that the judiciary did not manage: they regulated and levied the country rates, and controlled their expenditure. They also had considerable scope to organize themselves and the institutions through which they operated. As the century progressed, their powers and responsibilities increased. Until the overhaul of local government in the second quarter of the nineteenth century, the magistracy were largely unregulated in both their judicial and governmental proceedings by central government.<sup>80</sup>

The centrally administered Court of King's Bench provided the only check on magisterial discretion; holding the power to review justices' decisions and to punish magistrates for their actions. Douglas Hay has made a compelling case to show that due to a reliance on the county magistracy as the 'front line' of law enforcement, the King's Bench tolerated a considerable amount of ignorance and misconduct amongst the county Commissions of the Peace.<sup>81</sup> Justices could have their summary convictions questioned by the removal of the case to Kings Bench by a writ of *certiorari*, or they could be prosecuted under *criminal information*. In Hay's study of the Staffordshire magistracy between 1740 and 1800, thirteen applications for criminal information against fifteen magistrates were made, and eleven proceedings on writs of *certiorari* were directed against eight different justices. In 60 years therefore, 24 cases against Staffordshire justices were made. As Hay points out, this is a very small figure considering 'that there were perhaps 10,000 summary convictions and committal proceedings by several hundred lay magistrates in the county commissions of the peace' in this period.<sup>82</sup> Addressing the early nineteenth century, Peter King has established that 'only just over two criminal informations a year were brought against the entire magistracy of England and Wales in the 1820s and 1830s.'<sup>83</sup>

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<sup>80</sup> Webbs, *The Parish and the County*, 535-8.

<sup>81</sup> D. 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 1660-1830* (Cambridge: Cambridge University Press. 2000) 19-21.

<sup>82</sup> *Ibid*, 23-24.

<sup>83</sup> King, *Crime and Law in England*, 33.

The attitude of the King's Bench towards their lay brethren and the lack of prosecutions therein gave the county justices the space to operate unhindered, and testified to their significance as autonomous local government. The unwillingness of the superior courts to check the operation of the magistracy confirms the importance placed on the exercise of judicial discretion in county justices' criminal and administrative proceedings. Their scope to act was critical in making this system of government work. This system underwent significant changes at the end of the eighteenth century, and in the first half of the nineteenth century. The independence of the county magistrate arguably reached its zenith in this period. However, from the end of the Napoleonic wars, the context in which this system of government worked was changed, and the form and function of the magistracy was eroded, divested of much of its authority and autonomy.

### ***3. The development and decline of the magistracy, c. 1790-1835.***

From the middle of the eighteenth century, the duties and responsibilities of the magistracy increased significantly. Both at quarter sessions and summary hearings, the justices were dealing with growing numbers of criminal complaints, appeals regarding poor relief, bastardy, apprenticeships and settlement, as well as being preoccupied by the maintenance of county services – the roads, bridges, and county gaols, and in the early nineteenth century the county asylums. Legislative changes directed by Robert Peel saw more offenses previously tried at the Assizes, transferred to the jurisdiction of the county courts.<sup>84</sup> Although there was no constitutional precedent for the superiority of the court of quarter sessions over other administrative institutions such as the overseers of the poor, or the parish vestry, the extension of their supervisory and judicial powers allowed the court to assume the superintendence of the county.<sup>85</sup> The quarter sessions became the court of appeal in most local administrative matters. As De Tocqueville observed 'almost all administrative acts end in judicial forms.'<sup>86</sup>

The multiplication of business dealt with by the magistracy led to structural changes in local government: the development of regular petty sessions and subordinate

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<sup>84</sup> Webbs, *The Parish and the County*, 480-1; Eastwood, *Governing Rural England*, 70-3.

<sup>85</sup> Eastwood, *Governing Rural England*, 44.

<sup>86</sup> Quoted in *ibid*, 84.

magisterial groups, and the gradual, but increasing, separation of judicial and administrative functions. The bench at quarter sessions began to delegate responsibilities for non-criminal orders to committees of magistrates. When the maintenance and management of the county prisons was passed formally to the magistracy in 1823, permanent committees were established to remove this burden from the court agenda.<sup>87</sup>

Administrative matters that had to remain in sessions were more frequently removed from open court and left for discussion at the justices' dinner. Discussions also took place in the Grand Jury chamber: the magistrates would adjourn while the Grand Jury deliberated the bills to be tried. In this interval before the cases were heard, the justices could convene in private to discuss the government of the county.<sup>88</sup> Criminal business remained in public in open court, whereas the administration of the county was moving into increasingly private meetings of the judiciary.

The expansion of magistrates' duties also led to the regularization of summary hearings as petty sessions. Petty sessions were monthly or fortnightly meetings of small groups of magistrates, usually within the area of the county in which they resided. They would meet to hear minor complaints and appeals, and also to execute orders from quarter sessions, and to deal with local administrative matters.<sup>89</sup> The development of petty sessions was uneven. Some counties such as Kent had an established structure by the 1780s, whereas Gloucestershire had what the Webbs described as a 'rudimentary' system of summary hearings. The impetus for their development came from groups of justices within the county or with the encouragement of the bench at sessions. After the Royal Proclamation against Immorality and Vice in 1787 a concerted effort was made by many county commissions to improve the administration of justice 'through a more extensive and better monitored system of petty sessions.'<sup>90</sup>

On the whole, the structuring of county government was made by the justices 'from within', unassisted by central government, and with no obligation to seek its approval. Critically, the process of restructuring entailed the separation of the criminal and administrative functions of the magistracy, and increasingly, it seemed, county

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<sup>87</sup> Eastwood, *Governing Rural England*, 59, 70-3; idem, *Government and Community in the English Provinces, 1700-1870* (London: Macmillan Press, 1997) 138.

<sup>88</sup> Webbs, *The Parish and the County*, 282, 408, 438.

<sup>89</sup> Ibid, 482.

<sup>90</sup> Ibid, 393-407; Eastwood, *Governing Rural England*, 90.

government was conducted in private – over dinner or in the Grand Jury chamber, and at petty sessions, without the mediation of a jury.

The pre-eminence of the magistracy and more particularly, the expansion of their discretionary powers, did not escape contemporary criticism. In his commentaries on the law, Blackstone expressed concern that the summary jurisdiction of the magistracy ‘has of late been so far extended, as if a check be not timely given, to threaten the disuse of our admirable and truly English trial by jury’.<sup>91</sup> C. D. Brereton writing several decades later was more scathing in his critique of the subordinate magistracy and petty sessions:

‘Business is here disposed of by summary convictions, without course of law, with hearing only one side, without precedent, without oath or witnesses or the intervention of a jury, without a record or even a reporter...this modern court has no precise boundaries and limitations on its power.’<sup>92</sup>

Such concerns for arbitrary rule were compounded by the activities of those justices who abused their office. While few cases were put to the King’s Bench, the ‘trading justices’ of the Metropolis were notorious.

The Middlesex justices allegedly encouraged criminal acts in order to increase their business and consequently the ‘fees’ they charged for their services. Much of their poorer clientele could not afford to pursue prosecutions in court, but the swift justice of the trading magistrates proved a more economical alternative. The corruption of London justices was attributed in no small way to the nature of urban life: ‘[i]n places inhabited by the scum and dregs of people’ one could not induce a gentleman ‘to take such drudgery upon them.’<sup>93</sup> Certainly, the lesser status of urban justices led many to suppose they were predisposed to corruption. Edmund Burke described the Middlesex justices as ‘the scum of the earth – carpenters, brickmakers and shoemakers...so ignorant that they could scarcely write their names.’<sup>94</sup>

These criticisms of the Middlesex justices highlight the perennial issue of the lack of active justices of the right social status. The reduction of the property qualification did allow gentlemen of lesser status into the commission of the peace in order to bolster their

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<sup>91</sup> Blackstone, *Commentaries on the Law*, 280-1.

<sup>92</sup> C.D. Brereton, ‘The Subordinate Magistracy and the Parish System Considered’ Norwich c. 1827, quoted Eastwood, *Governing Rural England*, 93.

<sup>93</sup> From the *Gentleman’s Magazine*, 1732 in Webbs, *The Parish and the County*, 324.

<sup>94</sup> *Ibid*, 325.

numbers; and by the 1790s, substantial numbers of clergymen were also serving as active members of the county commissions.<sup>95</sup> The clergy were deemed suitable as men of education, more frequently resident in their communities than their lay colleagues, and arguably, more ‘conscientious attenders to magisterial duty’. However, the clerical justice became the target of popular resentment: in the aggrandisement of his living (financed from the tithes) and by allying himself with the interests of government in assuming the office of a justice, he was perceived to have distanced himself from the interests of his ‘flock’.<sup>96</sup> Their entry, and poor reputation contributed to the sense that the gentry were shying away from their governmental and paternal responsibilities. Whether the changing social composition of the magistracy significantly altered the nature of governance in this period will be considered in greater detail in the historiographical discussion below.

In 1792, the Stipendiary Magistrates Act was passed creating salaried justices in the Metropolitan area in a bid to stem the tide of corruption. The extension of this innovation was limited until the 1830s.<sup>97</sup> Until then, central government was largely content to leave the magistrates’ discretionary powers in tact.

From the end of the Napoleonic Wars, and most acutely in the 1830s, the discretionary powers of the magistracy were gradually eroded. The old system was widely perceived to be failing in a tumultuous political and economic context. An increase in recorded crime, coupled with rapid expansion of the population, particularly in urban areas, stimulated agitation for more effective social regulation and policing. In the context of economic depression and political agitation, the efficacy of the magistracy was questioned.

County expenditure was a key concern amongst ratepayers. The magistracy was roundly criticized for its administration of the poor laws, particularly their tendency to overrule the decisions of parish vestries and overseers. They also faced censure for their failure to maintain county services such as the prisons. The private nature in which they conducted local government apparently compounded their maladministration of county funds. The attempts of the county justices to regulate the sale of alcohol and licensed

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<sup>95</sup> Landau, *Justices of the Peace*, 140-1.

<sup>96</sup> E. Evans, ‘Some Reasons for the Growth of Anti-Clericalism c. 1750-c.1830’, *Past & Present*, 66, (1975): 101-103; Landau, *op. cit.* 141-3; Eastwood, *Government and Community*, 31.

<sup>97</sup> N. Landau, ‘The Trading Justice’s Trade’, *idem* (ed.) *Law Crime and English Society, 1660-1830*, (Cambridge: Cambridge University Press, 2002), 64; Bentley, *English Criminal Justice*, 21-2.



premises and their enforcement of the Game Laws contributed to their unpopularity amongst poorer sectors of society.<sup>98</sup>

From the 1820s, pressure on the county bench to be more openly accountable led to the admission of the public, and even the press into meetings in the Grand Jury chamber.<sup>99</sup> Other relatively minor legislation ate away at the discretionary powers of the magistracy: the Gaols Act 1823 placed greater strictures on how the justices should manage them, and the Licensing Act 1828 restricted magistrates powers regarding public houses and the sale of alcohol.<sup>100</sup> Of greater significance was the passing of the Poor Law Amendment Act in 1834, and the extension of professional police forces outside of London by the end of the same decade.

From the subsistence crises of the mid 1790s, many benches used the poor relief system to supplement the income of poor labourers to give them a living wage. Understood as the ‘Speenhamland’ system (after the meeting of Berkshire justices), similar schemes had been implemented in Oxfordshire and Buckinghamshire (and at least considered in some Somerset parishes) five months before, in January 1795. The strain this placed on the parish rates exacerbated concerns about increasing county expenditure to maintain services.<sup>101</sup> The extension of the poor law system, throughout the first decades of the nineteenth century, generated conflict within the parish. Citing increasing expenditure on relief, overseers and vestrymen manipulated payments to control the poor, denying claims to the disorderly, and the apparently deviant. The burden of the rates was likewise used to bargain ‘upwards’, using it as a means to limit the payment of tithes and increases in rents. The ‘incessant battles’ in the vestries, Roger Wells has argued, ‘turned parochial politics into an unremitting frenzy which threatened the very fabric of rural communities.’<sup>102</sup>

The Poor Law Commissioners attributed the outbreak of unrest in 1830 in no small degree to the misguided administration of the system of poor relief. Particular emphasis

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<sup>98</sup> Webbs, *The Parish and the County*, 585-9 & 597-9.

<sup>99</sup> Ibid, 444-5; Eastwood, *Governing Rural England*, 70.

<sup>100</sup> Webbs, *The Parish and the County*, 603.

<sup>101</sup> Ibid, 589-97; Eastwood, *Government and Community*, 130; Mells Manor Muniments: Correspondence of Thomas Horner including Relief scales form Berkshire and Gloucestershire 1795; see also chapter 3.2

<sup>102</sup> R. Wells, ‘Social Protest, Class, Conflict and Consciousness in the English Countryside 1700-1880.’ In R. Wells and M. Reed (eds.) *Class, Conflict and Protest in the English Countryside, 1700-1880*, (London: Frank Cass, 1990) 131-9, 145-6.

was placed on the magistracy in their report. Paternalist measures were cast as inflammatory, as a ‘perversion of the traditions of reciprocity’: when the authorities failed to meet the needs of the labourers ‘they had resorted to discriminating violence in order to enforce their supposed rights and the duties of their superiors’. The magistracy, along with members of the clergy and farmers, appeared to be cowed into submission but also to share in part, the ‘anarchical doctrines’ of the labourers.<sup>103</sup> Dunkley has argued that Swing showed the ‘resources of the old order ... were no longer sufficient to ensure the content and obedience that were essential for the maintenance of stability’. It certainly called the autonomy of the judiciary into question. As David Eastwood has pointed out, from 1817, central government established more professional, and less personal, elements within the poor law system.<sup>104</sup> The New Poor Law passed in 1834, reached further, instigating a centrally controlled system of relief, which denied the pivotal role of the magistrate in its administration.

The Swing disturbances, and other outbreaks of unrest such as the Otmoor Rising in Oxfordshire in 1829-35, and anti-poor law protests from 1835, ‘exposed the vulnerability of rural property’. Coupled with the increase in recorded crime in the post-war era, opposition to professional policing waned. Nonetheless, policing reforms in the 1830s were piecemeal, the costs of establishing such forces proving prohibitive. Indeed, the primacy of economic concerns was one factor in the magistracy retaining much of their power, including summary jurisdiction until Jervis’ Act of 1848. Reform of the magistracy was also hindered by the persistence of the idea of self-government: they continued to symbolize the counties’ ability to regulate themselves.<sup>105</sup>

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<sup>103</sup> P. Dunkley, *The Crisis of the Old Poor Law in England 1795-1834* (London: Garland 1982), 96.

<sup>104</sup> *Ibid.*, 98-100; significantly the Sturges Bourne reforms 1818-19, Eastwood, *Government and Community*, 131.

<sup>105</sup> Jervis’ Act placed procedural limitations on summary hearings, including hearings in open court, evidence and counsel. Bentley, *English Criminal Justice*, 28, 178, 219, 298; Eastwood, *Governing Rural England*, 242, 234-5; Webbs, ‘The Parish and the County’, 606; C. J. Griffin, *Protest, Politics and Work in Rural England, 1700-1850*, (Basingstoke: Palgrave Macmillan, 2014) 34-41.

#### 4. *Histories of the magistracy*

From the 1960s discussions of criminal justice have moved away from ‘Whiggish perspectives’ which placed the magistracy into a progressivist narrative, seeing the decline of their discretionary powers and the centralization of government as part of a process of rationalization: the decline of an archaic, irrational and arbitrary system in the wake of our modern systems of criminal justice, policing and local administration.<sup>106</sup>

Pioneered by historians such as Douglas Hay, Edward Thompson, and John Beattie, their work has done much to unpack the rationale within the eighteenth-century criminal justice system.<sup>107</sup> Their approaches have certainly not been nostalgic, and continue to criticize the inequities inherent in the law at this time, but they have deconstructed the operation of judicial authority, to show how a nation maintained order without a professional police force or advanced civil bureaucracy. In particular, Edward Thompson’s delineation of the paternalist model of authority and Douglas Hay’s examination of the ‘bloody code’ have emphasised the significance of the law as a hegemonic tool.

Complicity in the rule of law by the landed elite, they argued, was secured by calculated acts of judicial terror, but equally, in public displays of mercy. In Thompson’s model, the law set the limits of behaviour for both ruler and ruled. This ‘field of force’ was framed by customary expectations, statute, and common law; and both the patrician rulers and the ‘plebs’ could call on this shared understanding to remind one another of their duties and obligations. The law and the judiciary, therefore, played a fundamental role not just as agents of repression, but as a locus for social interactions.<sup>108</sup>

Histories of local government have also been invaluable in understanding the pivotal role of the magistracy in eighteenth-century county administration. Sidney and

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<sup>106</sup> For example Leon Radzinowicz, *A History of the English Criminal Law and its administration from 1750* (London: Steven and Sons, 1968) and to an extent the Webbs, *English Local Government from the Reformation to the Municipal Corporations Act* (Longmans and Co, 1906-1929).

<sup>107</sup> Landau, introduction to idem. (ed) *Law, Crime and Society*, 4-5; D. Hay, ‘Property, Authority and the Criminal Law’, in D. Hay, P. Linebaugh, J. Rule, E. P. Thompson, *Albion’s Fatal Tree* (Pantheon Books, 1975, this ed. London: Verso 2011), 17-63; Beattie, *Crime and the Courts in England* (1986).

<sup>108</sup> E. P. Thompson, ‘The Moral Economy of the English Crowd in the Eighteenth-Century’, 76-136; idem. ‘Patrician Society, Plebeian Culture’ *Journal of Social History*, 7:4 (1974): 382-405; idem. ‘Eighteenth-century English society: class struggle without class?’ *Social History*, 3:2 (1978): 133-165; D. Hay, ‘Property, Authority and the Criminal Law’, 17-63. See also *Introduction: protest, social relationships and structures of government*.

Beatrice Webb's study of English local government remains unparalleled in its detailed discussion of county administration prior to 1835. Their work follows much of the Whig trajectory of progress and reform; however, implicit within their work are many of the ideas regarding the significance of local government in state formation that are more explicitly stated and explored in more recent studies.<sup>109</sup> David Eastwood's history of English rural government at the end of the eighteenth century draws much from the perspective of social historians working on the criminal justice system: he treats 'traditional institutions of local government not as fundamentally deficient but rather as the products of a particular process of institutional and cultural formation.'<sup>110</sup> Eastwood also highlights the presumption that the centre had primacy over the periphery. His work, amongst others, has emphasized that, prior to 1830, 'power and authority within the English state were... the product of negotiation between the centre and the localities'.<sup>111</sup>

Core themes have emerged from these discussions of the magistracy. The use of judicial discretion by the magistracy has been contextualised as an integral part of the criminal justice system and local government. Addressing it within the rationale of the eighteenth-century system, discretion was an important tool for justices as unsalaried, voluntary officers of the law. These men had to mediate their administration of the law according to local as well as national contexts. In reviewing the role of the magistracy as a governmental agency, much has been done to move away from the representation of the magistracy as a purely repressive agency, acting at the behest of government. The justices, and the commissions of the peace to which they belonged, have been positioned as the locus in relations between central government and the people, endowed with autonomous agency. The merits and potential problems raised by the discussions of these themes will be explored further below.

Published in 1984, Norma Landau's *Justices of the Peace 1679-1760* remains as the only monograph dedicated to an analysis of the county magistracy in relation to the

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<sup>109</sup> Webbs, *The Parish and the County*, x, 309, 370 & 382 for example.

<sup>110</sup> Eastwood, *Governing Rural England*, 3; idem, *Government and Community* (1997).

<sup>111</sup> Eastwood, *Governing Rural England*, 2; see also King, *Crime and Law in England 1740-1840: Remaking justice from the margins* (2006), and C. J. Griffin, "'Policy on the Hoof": Sir Robert Peel, Sir Edward Knatchbull and the Trial of the Elham Machine Breakers, 1830', *Rural History*, 15:2 (2004): esp. 142.

commission of the peace – the institution they comprised.<sup>112</sup> As Munsche aptly stated, her work has done much to move away from the image of the justice of the peace as the ‘booby squire’, abandoning such stereotypes for ‘the more complex realm of reality.’<sup>113</sup> The study is founded on a wealth of sources regarding the Kent bench over almost a century. The greatest strength of Landau’s work is the emphasis placed on the magistracy as a whole, embodied in the commission of the peace.

Landau convincingly argues that as partisan interest in the county commissions declined from the middle of the eighteenth century, and government expanded the discretionary powers of the justices of the peace, the commissions gained greater autonomy. By the end of the century, the Lord Chancellor left decisions regarding the membership of the commissions largely to the Lord Lieutenants of the counties. The Lords Lieutenants in turn sought the opinions of the existing members of the county commission to review recommendations for new entrants.<sup>114</sup> Thus, the commissions were becoming self-regulating, certainly in terms of their composition. The expansion of justices’ summary powers also contributed to the establishment of petty sessions, the formation of which was unregulated by central government. By bringing these developments to the fore, Landau highlights the significance of the commission as a body: the magistracy’s role in building their own institutional frameworks and their autonomy from the centre as self-regulating local government.<sup>115</sup>

Peter King’s work both compliments and moves on from Landau’s discussion of the governmental function of the magistracy, drawing attention to how justice ‘was shaped and remade as much from below, within and from the margins as it was from the centre.’<sup>116</sup> In some of his more recent work he has discussed how the magistracy could be selective in their application of initiatives handed down by central government. The nature of statutes frequently allowed considerable room for interpretation. Coupled with their ability to exercise summary jurisdiction, this allowed the judiciary to shape the implementation of the law according to local as well as national concerns. Careful

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<sup>112</sup> Landau, *Justices of the Peace* (1984).

<sup>113</sup> P. B. Munsche, Review of N. Landau, ‘Justices of the Peace 1679-1760’, *Journal of Eighteenth-Century Studies*, 20:3 (1987): 385.

<sup>114</sup> Landau, *Justices of the Peace*, 236.

<sup>115</sup> *Ibid*, 238-9.

<sup>116</sup> King, *Crime and Law in England*, 2.

interpretation of the Game Laws, Licensing Acts and Vagrancy legislation for example, allowed the local judiciary to regulate their communities, keeping both the respectable as well as the ‘idle and disorderly’ inhabitants in check.<sup>117</sup>

As well as establishing a ‘system of social remedies’ through their administration of the criminal law, the justices at quarter sessions had substantial policy making ability, mediating directives from the centre, and disseminating them via the grand juries at quarter sessions and the meetings petty sessional courts.<sup>118</sup> The administrative functions of the court covered poor relief, policing, penal policy and social policy; as King states, responsibility ‘lay with magistrates as an agency and quarter sessions as an institution.’<sup>119</sup> He, along with Eastwood, cites the ‘pivotal role’ the county commissions played ‘in the realignment of the poor law policies in the 1790s’ as an example of a local judicial initiative that shaped national policy.<sup>120</sup>

The autonomy of the county magistracy as local government was compounded by the exercise of judicial discretion, and the fact that their decisions went almost entirely unchallenged by a higher authority. The potential for arbitrary rule was not obscured from contemporary observers, as we have seen, in particular in relation to summary hearings – the court that had ‘no precise boundaries and limitations on its power.’<sup>121</sup> Douglas Hay’s analysis of the Kings Bench exposed the leniency of the courts towards their lay brethren, and the lack of prosecutions therein gave the county justices the space to operate unhindered. Whilst testifying to their significance as autonomous local government, it also provides tacit acknowledgment of the important role of judicial discretion in criminal and administrative proceedings, critically, in making this system of government work. Implicit within his discussion of the Kings Bench and the county magistracy, are echoes of Hay’s discussion of judicial discretion and ruling class hegemony in his insightful essay, ‘Property, Authority and the Criminal Law.’<sup>122</sup> Through the careful exercise of their discretionary powers, Hay argued, the judiciary used

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<sup>117</sup> Ibid, 2-9, 21-7, 31, & 37.

<sup>118</sup> Eastwood, *Government and Community*, 100.

<sup>119</sup> King, *Crime and Law in England*, 29 & 39.

<sup>120</sup> Ibid, 65; Eastwood, *Government and Community*, 131.

<sup>121</sup> C.D. Brereton, ‘The Subordinate Magistracy and the Parish System Considered’ Norwich c. 1827, quoted in Eastwood, *Governing Rural England*, 93.

<sup>122</sup> Hay, ‘Dread of the Crown Office,’ 101-62; idem, ‘Property, Authority and the Criminal Law’, 17-63.

the law to uphold the interests and dominance of the ‘ruling elites’. Acquiescence to their rule was secured through a balance in the administration of the law, between terror and mercy meted out by the courts.<sup>123</sup> The action, or inaction of the Kings Bench, could be seen as part of the system that bolstered this form of control and the ideals underpinning it.

While Hay’s thesis is still compelling and useful, it has been criticized and qualified, particularly with regard to popular access to the law. As Eastwood has argued, despite the obvious congruence and connection between elite values and the law, this does not mean ‘there was no broader consensus in support of the law as an instrumental strategy for preserving order, personal security and property.’<sup>124</sup>

Work surrounding the actions of the magistracy at petty sessions has imposed particular qualifications on Hay’s thesis. Peter King’s research has shown the breadth of social groups that accessed the law through the local magistrates. The great variety of options available to the justices, enshrined in their summary powers, allowed them to offer a range of responses to complainants, be they formal sanctions or informal arbitration and settlement. This enabled people from every section of society access to the law to settle their disputes and address grievances.<sup>125</sup>

Gwenda Morgan and Peter Rushton have also addressed the use of judicial discretion in an analysis of the justicing notebook of Edmund Tew of Bolden, a clerical justice operating in the north-east of England in the middle of the eighteenth century. Their discussion of Tew’s myriad activities emphasised popular access to the law and the regulatory function of the magistracy.<sup>126</sup> Justices’ notebooks contained a record of their summary hearings: cases that were settled out of court through the use of their discretionary powers, either individually or in pairs. These notebooks offer an important insight into the nature of complaints and offences, and the magistrate’s responses to cases

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<sup>123</sup> Ibid; J. Innes and J Styles, ‘The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century England’, *The Journal of British Studies*, 25:4 (1986): 403.

<sup>124</sup> Eastwood, *Governing Rural England*, 204.

<sup>125</sup> King, ‘Decision Makers and Decision Making in English Criminal Law, 1750-1800’, *Historical Journal*, 27:1 (1984): 25-28; idem, ‘The summary courts and social relations in Eighteenth century England’, 125-172.

<sup>126</sup> G. Morgan and P. Rushton (eds.), *The Justicing Notebook (1750-64) of Edmund Tew, Rector of Boldon*; idem, ‘The magistrate, the community and the maintenance of an orderly society in eighteenth-century England’, *Historical Research*, 76:191 (2003): 54-77.

that leave no other record in the formal courts. Thus they provide a glimpse of the exercise of judicial discretion, and how their communities experienced the law. Unfortunately for the historian, acting magistrates were not obliged to keep such a record of their activities and very few have survived. Several of those that remain have been edited and published, but Morgan and Rushton's edition of Tew's notebook is accompanied by detailed analysis of his actions, grounded in, and adding to, the existing literature on the magistracy.<sup>127</sup>

Morgan and Rushton have used their study of Tew to offer a clearer picture of a justice's function 'from below', revealing how and why people accessed the law. Aside from dealing with administrative issues such as bastardy, poor law and settlement, the majority of the cases brought before Tew concerned personal complaints against employers, neighbours and kin.<sup>128</sup> Virtually all of the cases he heard were concluded out of court, despite the fact that the 'substance of the accusations' in many of them were 'indistinguishable' from those tried at the county quarter sessions.<sup>129</sup> So Tew's exercise of his discretion was behind the resolution of the majority of cases, be it the imposition of fines, promises of good behaviour, reconciliation or a stint in the House of Correction.

Morgan and Rushton present this data as evidence of the preference in early modern communities to solve their problems through 'semi-private dealings' before the magistrate rather than formal prosecutions in the courts, seeking the restoration of 'broken social relations' as opposed to securing a conviction.<sup>130</sup> They have interpreted popular access to the law as empowering, to an extent; having access to a 'source of state authority' the populace were both complicit in the justice system but also had the possibility of using the law via the magistrate to their own advantage. As Morgan and Rushton conclude, in this limited way, the justice of the peace 'allowed people to create their own social order.'<sup>131</sup>

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<sup>127</sup> See for example: Crittall (ed), *The Notebook of William Hunt 1744-49* (1982); Paley (ed), *Justice in eighteenth-century Hackney: The justicing notebook of Henry Norris and the Hackney Petty Sessions Book* (1991); Mcgarvey (ed), *The King's Peace. The notebook of Thomas Horner of Mells, 1770-1777* (1997); Cirkit (ed), *Samuel Whitbread's Notebooks 1810-11, 1813-14* (1971); Silverthorne (ed), *Deposition Book of Richard Wyatt JP, 1767-1776* (1978).

<sup>128</sup> Morgan and Rushton, *The Justicing Notebook of Edmund Tew*, 15; idem, 'The magistrate, the community and the maintenance of an orderly society', 61.

<sup>129</sup> Morgan and Rushton, *The Justicing Notebook of Edmund Tew*, 15-16.

<sup>130</sup> Ibid, 25.

<sup>131</sup> Morgan and Rushton, 'The magistrate, the community', 77.



Morgan and Rushton's conclusions resonate with Eastwood's and King's, and coupled with Landau's earlier work on the commissions of the peace, the magistracy as local government can be more accurately defined: judicial discretion allowed the magistrate to *mediate* the integration of central policies on the ground. As Morgan and Rushton maintain, 'state formation' operated as much from below as from above, [it was] a matter of key people in the communities identifying with the laws and their application, and was achieved through the authorities' responding sensitively to local culture's peculiar characteristics.'<sup>132</sup>

Taken collectively, these works on the governmental function of the magistracy – be it as individual justices mediating social relations, or the united power of the commission – have done much to move away from the stereotypical representations of the incompetent country justice or the perception of the county bench merely as repressive agents of authority. The importance of the county judiciary as local government, as a critical point between centrally administered authority and the people, has been brought to the fore. In exploring the use and nature of discretion, it is no longer merely the hallmark of an arbitrary system of rule perpetrated by the elite, but an integral part of English governance at this time. The discretionary powers of the magistracy allowed them to interpret the law to suit both national and local concerns. Whilst this was not without its problems or abuses, it complimented social structures reliant on hierarchy and deference, structures that relied on a sense of personal connection to maintain order.

Both King and Eastwood have drawn on Thompson's discussion of the 'field of force of social relations', all three converging on the concept that the law 'constituted a framework within which social relations and social norms...were negotiated, tested and remade.'<sup>133</sup> Of more significance to the period of study considered here, is Thompson's thesis regarding the decline of judicial paternalism and the death of the moral economy at the end of the eighteenth century. While Thompson focused on this breakdown in the context of food riots, the decline of judicial paternalism resonates with debates regarding

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<sup>132</sup> Ibid, 76.

<sup>133</sup> Thompson, 'Patrician Society, Plebeian Culture', idem. 'Eighteenth-century English society'; P. King, 'Edward Thompson's Contribution to Eighteenth-Century Studies. The Patrician: Plebeian Model Re-examined,' *Social History*, 21:2 (1996): 222; idem, 'The summary courts and social relations in Eighteenth century England' (2004); Eastwood, *Governing Rural England*, 205.

changes in governmental structures and notions of governance, specifically the erosion of judicial discretion and changes in the social composition of the magistracy.

Thompson's 'paternalist model' defined a specific state of relations between authority and the people. The paternalist relationship rested on popular understanding of what Thompson described as the 'moral economy of the poor': the shared perception of 'supposed definite and passionately held, notions of the common-weal.' The people had a particular conception of 'social norms and obligations' and 'proper economic functions' within their community. This concept had to be shared in part by the local ruling elite.<sup>134</sup> Douglas Hay refers to paternalism as an ideologically constructed 'shared coinage', one that neither magistrate, nor labourer 'was foolish enough to believe... was not conditional'. Rather, both authority and the common people had recourse to the rhetoric and performance of paternalism in ensuring their respective interests.<sup>135</sup> Consequently, the paternalist model provided the framework, and the language, for the interaction of authority and the labouring poor.

By invoking the 'moral economy', the labouring poor were empowered and in a position to remind the authorities of the 'proper economic functions' in times of acute subsistence crises, seeking redress, often in intimidating numbers, from legitimate sources of authority. Ideally, magistrates would frame their response in paternalist terms: acknowledging their obligations as community leaders and the legitimacy of the crowds' grievances, diffusing tumultuous situations and restoring social peace.

Thompson argued that the moral economy, and the effective use of the paternalist model could only function within a 'particular equilibrium' of social relations. By the 1790s, this balance was frustrated by growing faith in the free-market and the rise of political economy; no longer were the interventions of magistrates in the operation of the market desirable from the perspective of government. The equilibrium was further dislodged by war with France, anti-Jacobinism and political radicalism at home. By 1801, the Home Secretary, the Duke of Portland, advocated a 'new firmness' in the use of militia or volunteers to suppress disturbances, rather than magistrates entering into

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<sup>134</sup> Thompson, 'The moral economy of the English Crowd', 79.

<sup>135</sup> D. Hay, 'Patronage, Paternalism, and Welfare: Masters, Workers and Magistrates in Eighteenth Century England', *International Labor and Working-class History*, 53, (1998): 27.

paternalist negotiations.<sup>136</sup> From this perspective, by the end of the century, the authorities no longer shared the same value system as those who rose up to reassert it.

There is, however, evidence to suggest that the magistrates at county level were still using judicial paternalism as a means of securing social cohesion into the nineteenth century.<sup>137</sup> It is worth noting that governmental histories cite the decline of judicial paternalism considerably later than Thompson; the decline of judicial discretion and more traditional, personal forms of government occurred with the ascendancy of central government control in the 1830s. Thompson was cautious in the extension of the concept of moral economy beyond the very specific context in which it was founded. If ‘the term was to be extended’, Thompson argued, ‘it needed to be redefined’. To retain the analytical validity of the model, the communities to which it is applied needed to have a particular conception of economic relations, based on custom and statute, which when threatened by ‘monetary rationalisation’ or the impositions of free market capitalism, ‘are made self-conscious *as a moral economy*.’<sup>138</sup>

Peter Jones has met these criteria in his extension of the moral economy outside of the market place, and into a broader popular concern for the ‘right to subsistence.’ During the Swing disturbances of 1830, the agricultural labourers were not attempting to restore ‘proper economic functions’ limited to the marketplace, but they were protecting ‘customarily expected safeguards against unemployment and severe household distress’ in their demands for increased wages and secure employment.<sup>139</sup> Carl Griffin, following Wells’ lead in his study of the Weald, has progressed the relationship between the social and political crises at the end of the eighteenth century and those in the wake of the Napoleonic Wars, addressing the cumulative effect of policies implemented to deal with distress in the subsistence crises of the 1790s, their evolution into the first decades of the nineteenth century, and concomitant acts of protest.<sup>140</sup> As Griffin has indicated, if there is

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<sup>136</sup> Thompson, *op. cit.* 129; A. Randall, *Riotous Assemblies: popular protest in Hanoverian England* (Oxford: Oxford University Press 2006), 218.

<sup>137</sup> Randall, *Riotous Assemblies*, 229.

<sup>138</sup> E. P. Thompson, ‘The Moral Economy Reviewed’, in *idem. Customs in Common* (London: Merlin, 1991, this ed. London: Penguin, 1993), 338-40.

<sup>139</sup> P. Jones, ‘Swing, Speenhamland and rural social relations: the moral economy of the English crowd in the nineteenth century’, *Social History*, 32:3 (2007): 273-4.

<sup>140</sup> C. J. Griffin, *The Rural War: Captain Swing and the Politics of Protest* (Manchester: Manchester University Press 2012), 9 and *sig.* chapter 2, 29-65; R. Wells, ‘Social Protest, Class, Conflict and Consciousness in the English Countryside 1700-1880’ 131-8.

scope to consider the continuity in the experience and reaction to distress amongst the rural poor, it must likewise be necessary to consider continuities in the exercise of local authority.<sup>141</sup>

Despite the magnitude of the Swing disturbances of 1830, they tend to be included in histories of police reform and local government as part of the context which contributed to the extension of professional policing and the implementation of the New Poor Law. This period of acute unrest is explained away as an example - and as symptomatic - of the failure of the 'old system' of local government. Similarly, in studies of social protest, Swing was a relatively under-researched period of rural unrest, largely because the form of the agricultural labourers' protest appeared to be reactionary and socially conservative, and does not, therefore, fit into the wider narratives on the development of the working class.<sup>142</sup> Roger Wells' discussion of the position of Swing in the experience of the rural proletariat has offered a more contextualised reading of its significance in redefining social relationships. The experience of Swing, and its 'brutal' suppression 'brought the question of rural workers to the front of both democratic and labour movements' contributing to the politicisation of rural workers and the establishment of working-class political organisations in the countryside.<sup>143</sup>

Until the recent resurgence in studies of Swing, the historiography has offered a rather reductive account of the actions and attitudes of the authorities in this period. Eric Hobsbawm and George Rudé's seminal work on the disturbances, *Captain Swing*, devoted one chapter to the authorities' responses, indicatively entitled 'Repression'. Hobsbawm and Rudé raised questions regarding the differing responses of the county magistrates and the nature of the prosecutions of Swing offenders but the breadth of their study prevented proper consideration of these points.<sup>144</sup> Again little systematic study of the local authorities during this period has been addressed since.<sup>145</sup>

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<sup>141</sup> Ibid, 229-30.

<sup>142</sup> R. Wells, 'Rural Rebels in Southern England in the 1830s' in C. Emsley and J. Walvin (eds.) *Artisans, Peasants and Proletarians 1760-1860* (London: Croom Helm Ltd 1985), 124-5.

<sup>143</sup> R. Wells, 'Social Protest, Class, Conflict and Consciousness in the English Countryside 1700-1880' 187-9.

<sup>144</sup> E. J. Hobsbawm and G. Rudé, *Captain Swing*, (Lawrence and Wishart, 1969, this ed, London: Phoenix Press, 2001), 253-264.

<sup>145</sup> See Part II: *The Magistracy and Swing*.

This neglect of the interaction of the authorities might be considered characteristic of many of the studies of social protest produced since the 1960s. Andrew Charlesworth has considered them in brief in his analysis of the spatial diffusion of the Swing riots, but Griffin has shown how productive this approach can be. His analysis of the trial of the first machine breakers at Elham in Kent has shown how the actions of the magistracy impacted on the movement of the Swing disturbances and on the attitudes of central government. It also highlights how the county authorities tempered their responses according to their immediate social contexts.<sup>146</sup>

Harvey Kaye called for ‘class structuration studies focusing on the ruling classes’.<sup>147</sup> While few would associate Marxists with the study of the ruling classes and State apparatus, as Kaye argues, ‘they are what makes the perspective of history from the bottom up necessary’. Similar calls for more concerted studies of the authorities in the context of social protest have been made more recently by Charlesworth in 1991, and Katrina Navickas in 2011.<sup>148</sup> In studying magistrates in relation to their communities, exploring their local context and networks fully, we can contribute to our understanding ‘of the ways that the agency of the lower orders have actually structured power’.<sup>149</sup>

Studies of social protest at a local level afford the historian an almost unique opportunity. In his retrospective of the historiography on Swing, Adrian Randall stressed that ‘close attention to the local is clearly essential if we are to really understand the social politics, normally hidden from the historian’s sight, which was worked out in high relief only when riot or protest erupted.’<sup>150</sup> Studying the interactions of the local judiciary with those engaged in such phases of unrest is integral to reaching this understanding of social politics. Too frequently the repressive function of the magistracy and local justice systems are emphasised, but the administration of the law was a negotiated process. The

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<sup>146</sup> C. J. Griffin, “‘Policy on the Hoof’”, 127–28, 137.

<sup>147</sup> H. J. Kaye, ‘E. P. Thompson, the British Marxist Historical Tradition and the Contemporary Crisis’ in H. J. Kaye and K. McClelland, *E. P. Thompson: Critical Perspectives* (Cambridge: Polity Press 1990) 259–260.

<sup>148</sup> A. Charlesworth, ‘An agenda for historical studies of Rural Protest in England, 1750–1850’, *Rural History*, 2:2 (1991): 235; K. Navickas, ‘What happened to class? New histories of labour and collective action in Britain’, *Social History*, 36:2 (2011): 203.

<sup>149</sup> H. J. Kaye, ‘E. P. Thompson, the British Marxist Historical Tradition and the Contemporary Crisis’, 260.

<sup>150</sup> A. Randall, ‘*Captain Swing: A Retrospect*’, *International Review of Social History*, 54, (2009): 427.

suppression of disorder was framed by local social and political contexts, and local history, as much as by statute law and the demands of central government.

Broadening this discussion back out into the field of government and governance, dialogues on the decline of judicial paternalism run parallel to those on changes in the nature of local authority and specifically, the institution of the justices of the peace. What is required is a continuation of this kind of detailed, local study, as exhibited by Landau, King, Morgan and Rushton, and Griffin, into the critical years of the nineteenth century. Although Eastwood has considered the decline of judicial discretion in his discussion of local government, we lack focused studies addressing the exercise of discretion (and judicial paternalism) as experienced by the communities over which magistrates presided, in a period where ostensibly, it was harder to make this form of governance function.<sup>151</sup>

Changes in the nature of governance in the second half of the eighteenth century and into the nineteenth century have already been mooted regarding perceived changes in the social status of England's rulers. The social composition of the magistracy has come under scrutiny by all of the historians considered here. Of particular relevance to this thesis, are the discussions regarding the apparent abdication of responsibility for local government by the landed gentry towards the end of the eighteenth century, and the related issue of the availability of active magistrates.<sup>152</sup> Arguably it is Norma Landau who has set the bar for the complexity of such studies of the social character of the county commissions of the peace. She argues that the 'change in the composition of the bench symbolized a new definition of the relation between the rulers and the ruled.'<sup>153</sup> Landau's extensive statistical analysis provides both methodological precedents for further studies of county commissions and evidence for comparisons to be made.

Building on Thompson's conception of a 'patrician' elite distanced from the poor, Landau concludes that, over the eighteenth century, the county magistrate shifted from a local, patriarchal leader to what she describes as the 'patrician justice' – a figure more closely representative of the interests of government, an administrator as well as a

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<sup>151</sup> Eastwood, *Governing Rural England*, 225-260.

<sup>152</sup> P. King, *Crime, Justice and Discretion in England, 1740-1820* (Oxford: Oxford University Press, 2000) 121; L. Stone, *An Open Elite? England 1540-1880* (Oxford: Clarendon, 1984) 275.

<sup>153</sup> Landau, *Justices of the Peace*, 294.

disinterested agent of the law.<sup>154</sup> This is attributed, to a considerable extent, to the developing administrative function of the magistracy, and the need to include increasing numbers of lesser gentry and clerics into the commissions to fulfil the ever-increasing workload.

With the inclusion of less substantial gentlemen and clergy into the commissions, the nature of governance changed. These men were ‘not obviously tied to their communities by family background, a tradition of local leadership, or landed estate’ and thus lacked the ‘‘natural’ authority’ of a ‘patriarchal justice’. The lesser gentleman JP thus derived his power more from the disinterested ‘rule of law’ than ‘personal’ leadership. To an extent this reconciled some of the problems with the discretionary and highly personal nature of the power wielded by the magistracy. Landau suggests that the ‘patrician’ justice, the lesser gentleman more frequently acting in a group at either petty or quarter sessions, could present himself as the representative of government rather than the voice of his community.<sup>155</sup> This change in the nature of local governance was furthered by the demands of central government who, by mid-century, placed greater emphasis on the local judiciary as the ‘bulwark of social order’, and were consequently keen to present the magistracy as a homogenous group rather than emphasising their authority as individuals.<sup>156</sup>

Peter King’s study of the Essex magistracy in the 1780s has shown a similar trend to Landau with the inclusion of lesser gentlemen and clerics in the commission of the peace. Hay’s study of the Staffordshire magistracy and Morgan and Rushton’s analysis of the Durham bench also follow this pattern.<sup>157</sup>

King’s analysis of the Essex bench is the most detailed study produced after Landau’s work on Kent. His research is revealing in its close ties to the geography of the county. In Essex, the poor availability of resident gentry in the populous county and their uneven distribution contributed to the need to incorporate lesser gentlemen and clergy

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<sup>154</sup> Ibid, 1-16 and esp. 356; E. P. Thompson, ‘Patrician Society, Plebeian Culture’, 382-405

<sup>155</sup> Landau, *Justices of the Peace*, 359.

<sup>156</sup> Ibid, 136-7 & 318.

<sup>157</sup> D. Hay, ‘Patronage, Paternalism and Welfare,’ 32; Morgan and Rushton, ‘The magistrate, the community’, 60, and *ibid*, *Rogues, Thieves and the Rule of Law: The problem of law enforcement in north-east England, 1718-1800* (London: UCL 1998), 199-203.

into the commission.<sup>158</sup> It appears that the proximity of Essex to London had the most significant impact on the social character of the county and thus the men who could be called upon to act as magistrates in the commission of the peace. King describes the Essex gentry as ‘not so much an open elite as a revolving door’.<sup>159</sup> New moneyed interests, especially London based businessmen, favoured the counties such as Essex and Hertfordshire where a small country estate could be purchased. According to King these estates were frequently kept small in order for their owners to retain capital for more ‘profitable ventures’. The advantages of having a country estate in these areas were numerous: they provided a place to retire to, the prestige of a rural residence near their centre of business, an opportunity to hold office or a ‘conveniently placed’ investment. King suggests that these men, focused more on their entrepreneurial activities, and were unlikely to ‘settle permanently into local gentry society’.<sup>160</sup> Whilst this led to a deficiency in the established county gentry, it did provide a continuous source of men willing to take public office if only for a limited time. From this evidence King finds that Essex did indeed ‘experience a move towards...a patrician style of justice’, those men most active in his sample having ‘virtually no involvement with their communities.’<sup>161</sup>

Thus far our knowledge of the social composition English magistracy has been drawn from concentrated pockets of evidence. The conclusions of Landau and King have been widely cited and yet they are focused on the Home Counties. P. B. Munsche raised the issue of whether single-county studies can be more generally representative in his review of Landau’s work in 1987. From King’s evidence a fruitful comparison was made, but whilst sharing Landau’s conclusions on the changing social composition of the magistracy, he also highlighted the effect that the proximity to London had on these areas. Douglas Hay’s study of Staffordshire and Morgan and Rushton’s studies of north-east of England offer alternative regional comparisons focused on areas characterized by their industrial production.<sup>162</sup>

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<sup>158</sup> King, *Crime, Justice and Discretion*, 112-7.

<sup>159</sup> *Ibid*, 119.

<sup>160</sup> *Ibid*, 118-9.

<sup>161</sup> *Ibid*, 122.

<sup>162</sup> D. Hay, ‘Patronage, Paternalism and Welfare’, 32; Morgan and Rushton, ‘The magistrate, the community’, 60, and *ibid*, *Rogues, Thieves and the Rule of Law* (1998).



Older studies of the composition of the magistracy tend to site the change in social composition toward the middle of the nineteenth century with the inclusion of ‘middle-class’ men in the county commissions. Zangrel’s study of the English county judiciary from 1831 to 1887 follows this pattern, maintaining that the landed gentry remained dominant until legislative changes in 1835 started to see the addition of more ‘middle-class’ men onto the bench in boroughs.<sup>163</sup> He does not ignore the inclusion of lesser gentleman and clergy into the commissions of the peace in the second half of the eighteenth century but interprets this as an attempt to maintain the ‘landed character’ of the magistracy. These men were seen to share the same values and aspirations of the established gentry.<sup>164</sup> Similar conclusions were offered by the Webbs, and more recently, by David Eastwood in his study of the Oxfordshire magistracy.<sup>165</sup>

Eastwood argues that opposition to tradesmen or manufacturers on the bench persisted into the 1830s: the ‘gentry proved stubbornly resistant to any notion that they should share power and office with ‘new wealth’.’<sup>166</sup> It is important to note however, that the Oxfordshire bench was largely composed of gentlemen – not the aristocracy. Any shift in the paternal ideal of the justice as identified by Eastwood, is one from an aristocratic to a gentle archetype: he was not a man to be diverted by the lure of the season, or the Grand Tour, but found ‘in the bosom of his family – performing with unwavering fidelity, the valuable functions of an able magistrate; enlightening the poor, comforting the sick, diffusing widely around him blessings of charity...and contributing to the promotion of virtue...by the silent but eloquent lesson of his own practical example.’<sup>167</sup> These men dominated the Oxfordshire bench.

In Landau and King’s discussions the inclusion of clerical justices in the commission of the peace has been used to bolster the case for the rise of the patrician justice. Clergymen did not have the same claim to social authority as the landed gentry as their property was bestowed upon them as part of their professional living. However, Eastwood allies them more closely with the gentry at the beginning of the nineteenth

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<sup>163</sup> C. H. E. Zangrel, ‘The Social Composition of the county magistracy in England and Wales, 1831-1887’, *The Journal of British Studies*, 11:1 (1971): 115-6.

<sup>164</sup> Zangrel cited in J. V. Beckett, *The Aristocracy in England, 1660-1914* (Oxford: Blackwell, 1986), 122-7.

<sup>165</sup> Webbs, *The Parish and the County*, 378-83.

<sup>166</sup> Eastwood, *Governing Rural England*, 13-14.

<sup>167</sup> Anon, ‘Late Elections’ London 1818, quoted in *ibid*, 79; *ibid*, 76.

century: ‘Their augmented glebes and imposing new rectories proclaimed them unambiguously as members of a ruling landed elite. They effortlessly mirrored its values and accepted its privileges.’<sup>168</sup> Indeed, in Oxford the clergy excelled in policing elite interests, being most efficient in enforcing the game laws.<sup>169</sup>

Perhaps Eastwood’s most pertinent point is that the character of judicial administration was dependent on the magistracy active in an area. Not only did local contexts and local governors shape the ‘character’ of local government, but this in turn shaped the development of different governmental structures in different areas. Eastwood calls for more studies comparing regional disparities and continuities in the composition and actions of the magistracy.<sup>170</sup>

It is clear that the divergent views regarding social composition and governance need to be looked at anew. More regional studies of the composition of the magistracy and their actions within the commission need to be made in order to explore regional diversity. Certainly, it appears that studies of the Home Counties have coloured much of our understanding. We need to consider ‘static and remote’ counties (as the Webbs described Somerset), outlying counties whose distance from the centre, offers more scope for comparison.<sup>171</sup>

Another caveat in the debates over social status is the way in which it is discussed as a series of inert categories. There is perhaps a tendency to classify individuals according to one criterion that may not accurately account for their social standing, as it was perceived at the time and in their locale.<sup>172</sup> Magistrates occupied a variety of roles outside their judicial office – as clerics, landowners, military officers and members of parliament. Under which category do we classify them? How did they perceive themselves? And did this change? There is certainly evidence to suggest that the magistracy would represent themselves according to the needs of a given situation or particular context. For example, after the French Revolution of 1789, literature espousing the virtues of traditional, patriarchal government was widely disseminated, ‘the language of radical egalitarianism... was thus countered by the rhetoric of deference, and an

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<sup>168</sup> Ibid, 81.

<sup>169</sup> Ibid, 81-2.

<sup>170</sup> Ibid, 82, 88-9.

<sup>171</sup> Webbs, *The Parish and the County*, 482.

<sup>172</sup> See chapter 2.4.

alternative discourse which sought to buttress existing authority'.<sup>173</sup> The new regional studies presented as part of this thesis aim to include an awareness of the fluidity of identity, and to emphasize how the magistracy represented and perceived themselves, thus adding to our understanding of the county judiciary and governance in this period.

## **5. Conclusions**

The aim of this chapter has been to introduce the form and function of the English magistracy in the eighteenth century, and the significant changes it underwent in the period c. 1790-1835. The magistracy retained a crucial position in county government, encompassing the judiciary, the police and the administrative executive. Inherent to their function was a particular ideal of government, that of the paternal regulator of his community. Basing authority on essentially personal attributes – his connection to the land, to the local economy, and to his community – made an acknowledgement of local contexts necessary in the forms of government. Consequently, the magistrates were endowed with considerable discretionary powers in order to govern. This level of unregulated power was fraught with inequities and the potential for arbitrary rule. Nonetheless, it also allowed a flexibility in government, assisting the magistracy in establishing structures and procedures suited to their locales. The erosion of the magistracy's status as rulers of the county was due to significant social, political and economic shifts in the aftermath of the French wars.

This overview of the justices of the peace assists in unpacking the histories that have been written about them. The works considered in this chapter have brought to the fore important interpretations of these governmental developments: the importance of the county judiciary as local government, in its scope, its ability to innovate and its self-regulation. It is also clear that they provided a critical connection between centrally administered authority and the people. In exploring the use and nature of discretion, it is no longer merely the hallmark of an arbitrary system of rule perpetrated by the elite, but an integral part of English governance at this time. This conception of governance based on a deferential hierarchy was understood by more than the authorities: it provided a discursive framework through which popular claims to the redress of the law could be

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<sup>173</sup> Eastwood, *Governing Rural England*, 19-20.

made. As Thompson argued, the space created by this paradigm allowed the negotiation of social relationships. This paradigm, and the particular mode of governance that underpinned it was challenged, and ultimately reconfigured over the turn of the nineteenth century. In pursuing an analysis of how this challenge was manifest in the context of social protest, we must retain an awareness of the regional particularities in the structures of local government to fully understand the exercise of authority.

## *Chapter Two*

### *Mapping the Magistracy c. 1790-1830*

This chapter introduces the two case studies of the magistracy of Norfolk and Somerset. It considers how local government was shaped according to the physical constitution of the counties, and in response to social and economic changes over the period c. 1790-1830. It concentrates on the ways in which the magistracy managed the structures of government - the county commission of the peace and its membership, the county courts and petty sessions – in order to fulfil their function as ‘rulers of the county’. The following discussion also serves as an introduction to the context which informed the phases of protest considered in subsequent chapters, and the structures of authority that were mobilised to deal with it. It provides the opportunity to contribute to the historiography on the character of local government at this point, in particular the decline of paternalist governance.

The apparent decline of paternalism over the turn of the eighteenth century was both structural and ideological. Demographic growth and attendant economic and social change strained the ability of a highly personalised form of government to function. Rapidly growing populations contributed to the expansion of the magistracy’s administrative duties, and placed new importance on their function as local law enforcement.<sup>174</sup> As a result, relatively few men bore sole responsibility for the prevention of disorder in the face of increasing pauperism and crime. Introduced here, but considered in greater depth in chapter three and Part II, the strain placed on social relationships at this point, challenged the efficacy of authority based on local connection and paternal reciprocity.

The proliferation of judicial business over the eighteenth century necessitated an expansion of the commissions of the peace to augment the number of ‘men on the ground’. But the onerous, unrewarded obligations of judicial office proved less palatable to the gentry - hitherto, the mainstay of commission personnel.<sup>175</sup> In consequence, ‘lesser’ gentlemen – with new-moneyed interests and those from trade backgrounds – as

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<sup>174</sup> N. Landau, *The Justices of the Peace 1679-1760*, (Berkeley: University of California Press, 1984) 331.

<sup>175</sup> P. King, *Crime, Justice and Discretion in England 1740-1820*, (Oxford: Oxford University Press 2000) 117.

well as clerics, entered the ranks of the county magistracy. Norma Landau has argued that this change in the social composition of the commissions resulted in a change in the nature of governance: such men lacked social standing and historical connections to their communities, and could not, therefore, wield the ‘natural authority’ associated with the paternal gentleman justice.<sup>176</sup> However, David Eastwood, and in an earlier study, C.H.E Zangrel, have suggested that the induction of ‘lesser’ gentlemen allowed the magistracy to retain its gentle character while meeting the need to expand.<sup>177</sup>

The discussion of the commissions of the peace in Norfolk and Somerset presented here, while not as detailed as Landau’s monograph on the justices of Kent, offers a counterpoint to existing studies. Much of our evidence regarding the character of the magistracy has been derived from studies of the Home Counties or industrialising areas north of London. King’s study of Essex for example, has highlighted how its proximity to the Capital encouraged new moneyed interests to settle in the county, providing new members for the commission, but ones who rarely involved themselves in their communities.<sup>178</sup> Norfolk and Somerset by contrast, were set apart from the centre; and as Steven Pole has suggested, may, as predominantly rural counties, have retained more traditional attitudes to local government.<sup>179</sup>

Although broadly comparable at this point, as agricultural producers and maritime centres, the physical, demographic and economic make-up of Norfolk and Somerset produced quite distinct governmental arrangements. Neither county was immune to the pressures of the time, which tested and reconfigured the structures of government in this period. The nature of these structures and the ways in which they changed informs our understanding of the character of county government. While changes in the social composition of the magistracy are discernable in Somerset and Norfolk, they reflect the respective requirements of each region. There is, however, evidence in both counties for

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<sup>176</sup> Landau, op. cit. 359; see also chapter 1.4.

<sup>177</sup> D. Eastwood, *Governing Rural England* (Oxford: Clarendon Press, 1994) 13-14; C. H. E. Zangrel, ‘The Social Composition of the county magistracy in England and Wales, 1831-1887’, *The Journal of British Studies*, 11:1 (1971): 115-6.

<sup>178</sup> King op. cit. 122.

<sup>179</sup> S. Pole, “Crime, society and law enforcement in Hanoverian Somerset” (PhD thesis, University of Cambridge, 1983), 50. To an extent, this is also implicit in Susanna Wade Martins’ work on the Norfolk gentry, see for example: S. Wade Martins, *Norfolk: A Changing Countryside 1780-1914* (Sussex: Phillimore, 1988).

the persistence of paternalist ideals, most notably the continued importance placed on local connection.

The following discussion is founded on a statistical analysis, primarily of the records of the county commissions of the peace and courts of quarter sessions. Evidence has been organised in a relational database allowing changes in the membership of the commission and organisation of its institutions to be charted. Section two of this chapter considers the growth of the county commissions of the peace in this period, and the availability of acting magistrates in each region, particularly in response to the demographic and economic changes outlined in the two surveys of Norfolk and Somerset in section one.

This statistical data regarding judicial availability and activity has also been mapped, establishing spatial as well as longitudinal patterns, that reveal a more detailed picture of the scale and scope of judicial jurisdictions: the nature and extent of the areas, and populations, over which a magistrate presided, and the groups in which they worked. Section three addresses how the geographical distribution of the magistracy intersected with the structures of government: the county and borough courts and petty sessions. The location and timing of these judicial meetings are not simple matters of fact, but considered arrangements that were organised in each county - by the commissions of the peace - to facilitate the more effective administration of justice.

Section four considers the social composition of the magistracy of Norfolk and Somerset. Following other studies of the magistracy, particularly Landau's, it incorporates elements of prosopographical technique. Starting with individual records of commission membership organised in the database, additional biographical data has been sought concerning the social status and background of those magistrates most active at county sessions. Taken together, the individual biographical information and data on judicial activity, highlights patterns and groupings in the county commissions of the peace, and significantly, changes and continuities in the social character of its personnel.<sup>180</sup> Particular attention has been paid to networks of kinship, patronage and

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<sup>180</sup> This approach has been informed by discussions regarding prosopography as an approach by Stone and Rohan in particular: L. Stone, 'Prosopography' in F. Gilbert and S. R. Graubard (eds), *Historical Studies Today* (New York: Norton 1972), 107-8; K. S. B. Keats-Rohan, 'Prosopography and Computing: a marriage made in heaven?' *History and Computing*, 12, 1 (2000), 2-3.

local connection as a means of gauging the criteria for membership of the commissions of the peace. As self-regulating institutions, in choosing with whom they would act, the magistracy had an active hand in shaping the nature of county government.<sup>181</sup> This aspect of the study has benefited from an unusually rich vein of archival material: the correspondence to the clerk of the peace for Somerset, which details the attitudes, opinions and debates surrounding nominations to the county commission. It also provides valuable insights into the problems experienced by the magistracy in managing a growing population and the concomitant increase in judicial business.<sup>182</sup>

## ***1. Somerset and Norfolk***

### *1.1 Somerset*

Somerset's diverse topography and geology resulted in equally varied production. The most fertile arable lands lay in the south of the county in the Vales of Taunton and Ilchester. The Levels and Moors, extending east from the Severn estuary, bounded by the Mendip Hills to the North and the Quantocks to the West, provided rich pasture for dairy and sheep herds.<sup>183</sup> Lead and copper were extracted from these hills; and the north and north-eastern quarter of the county, yielded important stocks of coal and stone.<sup>184</sup>

In 1801, Somerset had a population of 273,750. The most densely populated hundreds were concentrated in the north and east of the county. Taunton and its environs, and the expansive hundred of Willerton and Freemanners (comprised of more than 30 parishes) were the only hundreds in the western division with a population exceeding 10,000.<sup>185</sup> In the eastern division, the population was concentrated around urban and manufacturing centres: primarily Bath, Frome, and Shepton Mallet, and in regions

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<sup>181</sup> Landau, *Justices of the Peace*, 238-9; see also chapter 1.

<sup>182</sup> SRO: Q/JCP 1-7, Papers and Correspondence relating to Justices and the Commission of the Peace, 1801-1830

<sup>183</sup> J. Collinson, *The History and Antiquities of the County of Somerset*, 3 vols. (Bath: R. Crutwell, 1791) xiv-xv [Hereafter: *History of Somerset*]; J. Billingsley, *General View of The Agriculture of the County of Somerset*, 2<sup>nd</sup> edition. (London: 1798) 14; G. East, 'Land Utilization in England at the end of the eighteenth century', *The Geographical Journal* 89:2 (1937): 167-171.

<sup>184</sup> Collinson, *History of Somerset*, xiv-xv; Geological Survey Map 1", Bristol District, new series, special sheet (1962 edn).

<sup>185</sup> PP Census Returns for County of Somersetshire 1801 [hereafter *Census 1801*]; Collinson, *History of Somerset*, li; see Appendix 1, Map 1 *Somerset Population Distribution 1801*.



characterised by diverse production. The Mendip hills offered excellent herbage for pasturing livestock, and opportunities in the extraction of lead and stone. The parishes of Midsomer Norton, Paulton, Radstock and Timsbury, and High-Littleton, extending north of the Mendips, formed what Billingsley described as the northern collieries, whose chief market was the expanding city of Bath.<sup>186</sup>

Frome and Shepton Mallet, the two most populous parishes after Bath, were the main centres of the county's principal manufacture: woollen cloth and worsted stockings. Taunton, and smaller boroughs such as Milborne Port and Axbridge were also engaged in textile production. All of these towns provided employment for residents of neighbouring parishes.<sup>187</sup>

Bridgwater, Bath and Wells were significant urban centres not characterised by any sort of manufactory. Bridgwater, situated on the banks of the Parret was distinguished as a market town and port, which traded chiefly in timber and coal. Although small in comparison to Bath, Taunton or Wells, with a population of c. 3,500 at the end of the eighteenth century, Bridgwater had more than doubled in size by 1831. The business of the port no doubt underpinned this growth, seeing an almost concurrent increase of inward vessels between 1822 and 1832.<sup>188</sup> Bath, according to Collinson, could not be noted for its commerce or manufacture, being sustained by 'the expenditures of fashionable company resorting to the city', who in turn supported the proliferation of tradesman and shopkeepers within its bounds.<sup>189</sup> Wells, dominated by its cathedral, was a market centre, and the 'nucleus of diocesan administration'.<sup>190</sup>

Historically, Ilchester had been the county capital and site of the county courts. By the 1790s it was diminished in both productivity and size, having a population just exceeding 800 in 1801. It had been surpassed by Taunton as the county's administrative centre. Taunton, a town with almost 6,000 inhabitants, was noted for its large markets, and 'in point of size, buildings and respectability of inhabitants' it was argued, 'may vie with most cities'. Its location and accommodation made it a more salubrious choice as the

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<sup>186</sup> *Census* 1801; Collinson, *History of Somerset*, v. 1, xv and v. 3, 560; Billingsley, *General View*, 26-7.

<sup>187</sup> Collinson, *History of Somerset*, vol. 2, 352, and vol. 3, 226, 560; Billingsley, *General View*, 160.

<sup>188</sup> *Census*, 1801 and 1831; Collinson, *op. cit.* vol 3: 75; PP: Appendix to the First Report of the Royal Commission on Municipal Corporations (1835), 463-7.

<sup>189</sup> Collinson, *op. cit.* vol 1, 28; BCL: Bath Guide Directories, 1773-1799

<sup>190</sup> S. Pole, "Crime, society and law enforcement in Hanoverian Somerset", 4.

seat of county government. Along with Bridgwater and Wells - as commercial and religious centres, Taunton hosted the county assizes and quarter sessions.<sup>191</sup>

Competition in industry from other regions, and the experience of war and scarcity, particularly in the 1790s and first decades of the nineteenth century, strained both the agricultural and manufacturing sectors of Somerset. While the county's urban centres grew significantly in the period, demographic change created its own problems to contend with.

According to Billingsley, agricultural wages in 1798 were low: men could expect a shilling a day in winter, and 1s 4d in summer; women were paid considerably less, earning 6-8d a day according to the season. The predominance of pastoral farming meant Somerset could not rely on its own crop production. Billingsley claimed that 'the county would be drained of money' through the vast quantities of grain it needed to import, were it not for the exports of livestock, coal and dairy produce, sent to external markets. But the poor harvests of the 1790s, the reliance on imported grain, high prices and low wages, resulted in outbreaks of social protest in 1795-6, and most notably, in 1800-01.<sup>192</sup>

The pressures of mechanisation, competition from factories in the north of England, and the impact of war with France, saw a decline in the textile industry by the end of the eighteenth century. At Taunton and Ilchester, and latterly Shepton Mallet, silk manufacture was introduced to replace the decayed woollen trade. The introduction of mechanised production at Frome and Axbridge was acknowledged as a factor in the contraction of the textile trade in these towns. But the neighbourhood of Frome, unlike Axbridge, did not offer the possibility of agricultural labour as supplementary employment; and while 'a number of hands' had gone to war, their families were left reliant on the parish in the absence of available work.<sup>193</sup> County expenditure on the poor had almost doubled between 1783-5 and 1803; and continued to increase from c. £126,000 to more than £185,000 per annum by 1813. Despite declining to around

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<sup>191</sup> Ibid, 4; Collinson, *History of Somerset*, vol. 3, 226-7, 297-300; *Census* 1801.

<sup>192</sup> Billingsley, *General View of The Agriculture of the County of Somerset*, 12-14, 153, 259; see also chapter 3.1

<sup>193</sup> Billingsley, *op. cit.*, 161-2; Collinson, *op. cit.* vol. 3, 226; F. M. Eden, *The State of the Poor* vol. II. (London: J. Davis, 1797) 644; PP: Appendix to the First Report of the Royal Commission on Municipal Corporations (1835), 1098.

£150,000 in the first decade after the Napoleonic wars, the districts that witnessed a continued increase in claims for relief were those associated with manufacture.<sup>194</sup>

By 1831, the population of Somerset exceeded 400,000. The most significant growth occurred in the hundreds surrounding its urban centres, including Bridgwater, Taunton, Wells and Bath.<sup>195</sup> The parishes of Bath Forum, encircling the city, had a population of 5,726 in 1801. By 1831 it exceeded 21,000. The expansion of Bristol was likewise reflected in the growth of its suburban parishes lying within the county of Somerset. The hundred of Keynsham had increased from almost 7,000 inhabitants to more than 9,000; and the population of Hartcliffe and Bedminster had almost tripled since 1801, increasing from 5,797 to 17,047 by 1831.<sup>196</sup> The concomitant increase in criminal convictions over the period was closely associated with this growth, contributing to concerns - particularly amongst county government - regarding the connections between poverty, crime and urban expansion.<sup>197</sup>

## *1.2 Norfolk*

Many of the problems experienced in Somerset at the turn of the eighteenth century were shared – to a degree – in Norfolk; but this county’s very different topographical and demographic organisation, created rather different social and economic structures which altered the context in which local government operated.

In terms of agricultural production, Norfolk was overwhelmingly an arable county. In 1796, Nathaniel Kent estimated that more than 700,000 acres, ‘computed at two thirds of the whole county’, were used for the cultivation of crops. The ‘prime parts’ lay to the north and north east of Norwich, comprised of sandy soils with a temperate climate, watered by the Rivers Brue and Yare. The productivity of this region was

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<sup>194</sup> Sig. Frome and Whitestone (Shepton Mallet); PP: 1803-04 (175) Abstract of the answers and returns made pursuant to an act, passed in the 43d year of His Majesty King George III. Intituled, "an act for procuring returns relative to the expense and maintenance of the poor in England."; 1818 (82) Abridgement of the abstract of the answers and returns made pursuant to an act, passed in the fifty-fifth year of His Majesty King George the Third, intituled an act for procuring returns relative to the expense and maintenance of the poor in England; 1825 (299) Abstract of returns into the practice of paying the wages of labour out of the poor rates. see also Chapter 4.1.2

<sup>195</sup> Appendix 1, Map 2, *Somerset Population Distribution 1831*.

<sup>196</sup> Appendix 1, Maps 1 and 2, and figures 1 and 2 *Somerset Population by hundred 1801 and 1811-1831*.

<sup>197</sup> PP: 1828 (545) Report from the Select Committee on Criminal Commitments and Convictions, 46; also below.

reflected in its population distribution: the hundreds in the east and central swathes of Norfolk had populations exceeding 5,000 in 1801, and South Erpingham, one of the most highly cultivated areas in the environs of the market town of Aylsham, had more than 10,000 inhabitants. The lands of the south and west of the county were harder to cultivate and less evenly populated, but boasted some of the most innovative farming centres in the country. The estates of Holkham and Rainham, in the north west of the county were famed for their exemplary use of new techniques propounded by their proprietors, Thomas Coke and Charles Townshend. The lack of available hands in the west provided further opportunities for labourers in the more populous parishes in the east.<sup>198</sup>

The most densely populated areas were concentrated on the urban centres of Norwich, Kings Lynn and Great Yarmouth.<sup>199</sup> Yarmouth and Lynn were significant ports, acting as a hub for both internal and external trade, via their connection to the sea and the network of navigable waterways in Norfolk and adjacent counties. With the towns of Wells and Clay on the north-western coast, Lynn and Yarmouth allowed regional farmers to export their produce to the Midlands and northern counties of England, and reach more distant markets in western Europe. In 1796, it was claimed, that ‘the four Norfolk ports export as much corn as all the rest of England.’<sup>200</sup>

Great Yarmouth was considered Norfolk’s ‘principal sea port and second town’. The chief business of the town was in fisheries: employing fishermen, ferrymen, and curers, and sustaining associated trades in rope, basket and net making. The port saw extensive traffic in coal and timber, importing significant quantities of the former for consumption in East Anglia, and exporting grains and legumes to English and Continental markets. The infertile land surrounding the port offered little scope for cultivation, consequently, local employment was concentrated on ‘the sea-faring life’.<sup>201</sup>

King’s Lynn, situated on Norfolk’s western periphery was considered the region’s commercial ‘emporium’. It too served as an important trade centre, importing coal from the north and wine from Iberia, and exporting corn, wool and manufactured goods. Local

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<sup>198</sup> N. Kent, *General View of the Agriculture of the County of Norfolk* (Norwich: Crouse, Stevenson and Matchett, 1796), 10-14; Census Returns for the County of Norfolk 1801 [hereafter *Census 1801*]; W. White, *History, Gazetteer and Directory of Norfolk* (Sheffield: Robert Leader, 1836) 513-4 [Hereafter: *History of Norfolk*].

<sup>199</sup> Appendix 1, Map 3 *Norfolk Population Distribution 1801*

<sup>200</sup> *Census 1801*; N. Kent, *General View*, 17-18, 144-9.

<sup>201</sup> W. White, *History of Norfolk*, 237, 257; F. M. Eden, *The State of the Poor*, 525-6.

industries were varied, supporting the trade in and out of the port: there were maltings and breweries, a tobacco mill, corn mills, and by 1836, three iron foundries and an agricultural machinery manufactory.

Norwich was the county capital, surpassing the port towns in size, with a population of more than 36,000 in 1801. The city was a market centre and by 1750, the county's textile production was concentrated in Norwich. Crepe, bombazine, silk and, perhaps most famously, worsted stuffs were produced and finished in the city. At the industry's peak in the mid century, 12,000 weavers, and more than 70,000 spinners, were estimated to work in and around Norwich.<sup>202</sup> Situated at the heart of the rich arable region, with strong communication links to the county's ports and market towns, Norwich provided an important hub in Norfolk society, not only for manufacture and agricultural marketing but also as a professional and financial service centre, and as the leisure, administrative and ecclesiastical capital of the county.<sup>203</sup>

County, as well as the city quarter sessions, and the summer Assizes were convened in the city. The Lent (Easter) Assizes were held at Thetford until they were removed to Norwich in 1833. Thetford was an ancient borough and market town in the south west corner of the county. Despite being small – certainly in terms of population, and of diminishing importance, Thetford's significance derived from its heritage as the former regional capital of East Anglia.<sup>204</sup> It was the requirements of county government in Norfolk, which saw the assizes moved from Thetford to Norwich in 1833. Of primary concern were the security and financial complexities of transporting felons for trial from the prison at Norwich Castle, almost 30 miles away from Thetford, together with the expense that prosecutors and witnesses would have to bear in order to pursue their case to the Assizes.<sup>205</sup> King's Lynn, Swaffham, Holt and Little Walsingham also served as county quarter session towns.

The last three venues were not boroughs but were significant legal centres in the county from at least the seventeenth century. Despite its diminutive nomenclature, Little

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<sup>202</sup> *Census*, 1801; White, *History of Norfolk*, 46; R. Wilson, 'The Textile Industry', in C. Rawcliffe and R. Wilson, *Norwich Since 1550* (London: Hambledon and London 2004), 221, 228-9.

<sup>203</sup> P. Corfield, 'From Second City to Regional Capital', in C. Rawcliffe and R. Wilson, *Norwich Since 1550*, 146.

<sup>204</sup> White, *History Norfolk*, 718.

<sup>205</sup> *Norwich Mercury*, 12 March 1831; White, *History Norfolk*, 15, 90.

Walsingham was an ancient parish distinguished as a site of Christian pilgrimage from the twelfth century. It was well positioned as a sessions town, having its own house of correction. Swaffham was similarly well provisioned with a bridewell. All three towns underwent considerable physical development in the eighteenth century. Both the bridewell at Swaffham, and the house of correction at Walsingham were rebuilt in 1787 in line with the proposals of the prison reformer John Howard. Each of the three town's shire halls, used as court houses, were also redeveloped by c. 1820.<sup>206</sup>

Population growth by 1831 was strongly correlated with the growth of Norfolk's urban centres and the boom in agricultural production during the Napoleonic wars. The population of the hundreds surrounding Lynn and Norwich increased significantly, as did the hundreds in the prime, central and eastern arable regions. In 1831, seventeen hundreds had a population of more than 10,000, compared to only five in 1801. The population of Norwich had almost doubled to more than 61,000.<sup>207</sup>

The most densely populated areas felt the fluctuations in the county's economy more acutely. The textile trade in Norwich had entered a decline in the later decades of the eighteenth century attributed to the increasing fashion in cottons, and after 1793, to the frustration of accessing markets in France and the Netherlands. Wages had stagnated from c. 1775, and the number of weavers without full employment placed an increasing strain on the poor rates. Frederick Eden cited an increase in expenditure from £2,318 in 1784 to £7,327 in 1794. Despite a partial recovery in the textile trade with the cessation of hostilities in 1815, national recession from 1825 perpetuated the decline of manufacture in the city.<sup>208</sup>

The problems of unemployment and increasing expenditure on the poor were not confined to Norwich and its environs. Eden noted that the poor state of the small tradesmen and labouring people at Downham Market (one of the western division's most populous towns) was owed to the high price of provisions and the increase in the poor

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<sup>206</sup> NRO: C/S 1/14-24 Sessions Books, MF 657-660; Norfolk Historic Environment Record: NHER 25455, NHER 15129, NHER 20972; J. M. Rosenheim, 'County Governance and Elite Withdrawal in Norfolk, 1660-1720', in A. L. Beier et al (eds.) *The First Modern Society: Essays in English History in Honour of Lawrence Stone* (Cambridge University Press 1989), 102 nt 31; *Prisons and Prisoners in Norfolk*, leaflet 41 (NRO 2011)

<sup>207</sup> *Census 1801-1831*.

<sup>208</sup> Eden, *The State of the Poor*, vol. II, 477-9, 488; R. Wilson, 'The Textile Industry', 236.

rates in 1795. As was the case in Somerset, protest erupted in the summer of that year, in market centres and at export points, where the labouring poor reacted to high prices and the removal of stocks from their region.<sup>209</sup>

Under and unemployment, and increasing expenditure on the poor rates to supplement insufficient wages, continued to plague the county as agriculture was depressed after the artificial inflation of domestic markets during the wars. Distress was felt most acutely in the central grain producing regions and market towns, eliciting further outbreaks of protest in 1816, 1822 and 1830.<sup>210</sup> Depression, pauperism and population growth were also closely associated with the more general increase in criminal convictions recorded in the county.<sup>211</sup>

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As agricultural and maritime counties, of roughly equal size in terms of land and population, Somerset and Norfolk are broadly comparable. But they were quite different in their economic and demographic structures. Somerset's topographical diversity meant production within the county was equally varied. The arrangement of pastoral farming, extractive industries and manufacture was reflected in uneven population distribution. Demographic growth was concentrated in these productive areas and in the county's multiple urban centres. Norfolk's flatlands and waterways saw arable farming predominate; its urban centres were generally limited to its ports, and the county capital, Norwich, where manufacture, commerce and administration were focussed.

The remaining sections of this chapter will address how the physical, economic and social make-up of each county impacted on the organisation of local government. It is already evident that regional context informed governmental structures: both counties shifted their quarter sessions from historic, but declining capitals to growing urban centres. In Somerset, the sessions were convened in three of its most prominent market towns, which were distinguished from one another by their functions as commercial,

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<sup>209</sup> Eden, *The State of the Poor*, 471; Kent, *General View*, 156-7; see also chapter 3.

<sup>210</sup> See chapter 4.1.1

<sup>211</sup> PP: 1822 (236) Agricultural Distress. Petitions presented to parliament 1820-1822; 1825 (299) Labourers Wages. Abstract of returns into the practice of paying the wages of labour out of the poor rates; White, *History of Norfolk*, 15; see also chapters 4 & 5.

religious, and administrative centres. In addition, Somerset had a total of nine boroughs, including the city of Bath, which had their own juridical and jurisdictional arrangements. The interaction of county and municipal government needs to be considered; as this chapter, and the next, will show, the relationship between county and borough benches was not always an easy one.

Commercial, ecclesiastical and regional government in Norfolk was concentrated on Norwich, while Lynn as a burgeoning commercial centre was likewise a seat of local government as a quarter sessions town. The in-depth study of Norfolk's magistracy below, supports the notion that the adjournment of the county sessions to smaller towns, like Little Walsingham and Swaffham, served the county's predominantly rural population, which was relatively evenly distributed in comparison with Somerset, and not concentrated in urban areas.

The organisation and activity of the justices of both counties was shaped and tested by demographic expansion, and attendant economic and social crises. Both county commissions had to marshal an increasing population, and manage the effects of economic depression, increasing pauperism, crime and social protest, straining their number as the 'front-line' of law enforcement. As subsequent chapters consider in detail, the different social and economic structures in each county framed different problems within them. Somerset experienced more unrest in the subsistence crises of the 1790s, whereas Norfolk had to contend with protracted unrest in the context of acute agricultural depression post-war. Although Somerset did not experience rural distress in the same manner or on the same scale after 1815, the decline of its manufacturing centres in particular, created palpable social tensions by the 1830s. The different structures and experiences in each county informed the different organisation and actions of their justices, but by considering them in the shared context of rapid population growth, and social and economic crisis, it is possible to draw more general conclusions regarding the form and function of the magistracy and the pressures it faced as an institution.

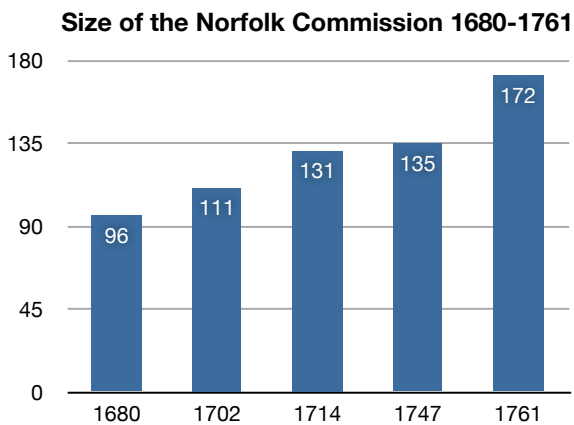


## 2. The County Commissions of the Peace

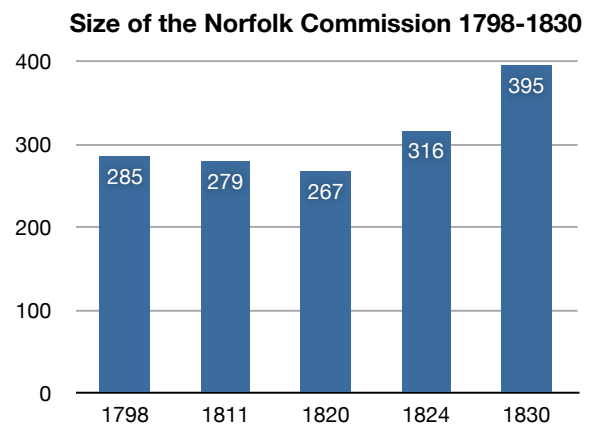
As a collective body, each commission of the peace was responsible for the structuring of county government, including the regulation of its own membership. It was a responsive organisation, growing to meet the demands of an expanding populace, and reconfiguring its sessions and courts to facilitate the more effective administration of government and the law. Despite swelling their ranks, the number of available and active magistrates in Norfolk and Somerset remained small, and consequently authority was stretched.

Figure 1: Size and Growth of the County Commissions 1680-1830<sup>212</sup>

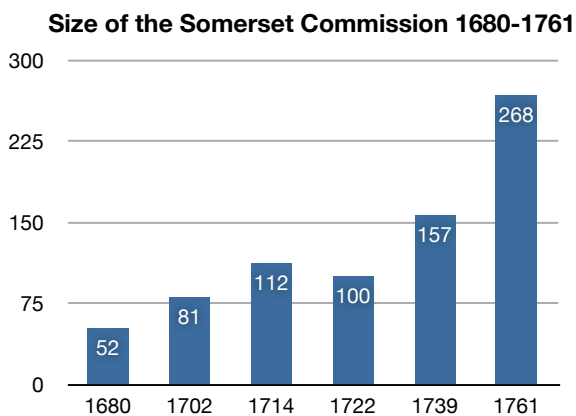
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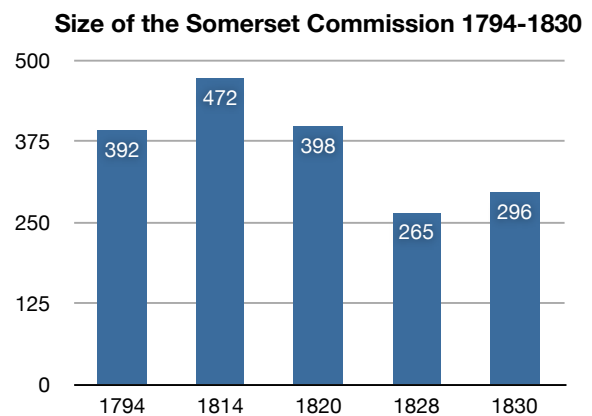
1.b)



1.c)



1.d)



<sup>212</sup> NRO: C/Sda 1/14-18 Commission of the Peace 1798-1830; SRO: Q/JC/119-124, Commission of the Peace 1794-1830; N. Landau, *The Justices of the Peace*, Appendix A.

Norma Landau has charted the expansion of the county commissions for much of the eighteenth century. This increase she attributed to party interest, particularly in the first quarter of the century, but also to the growing administrative demands placed on county government. Both counties considered here, shared in this pattern of expansion: Somerset's commission of the peace was five times larger in 1761 than in 1680. Norfolk exhibited more modest growth: starting from a healthier base of 96 justices, the commission had almost doubled in the same period (see. figs. 1.a & c).<sup>213</sup> New data presented in figures 1.b and 1.d chart the continued development of the commissions from the turn of the eighteenth century. Membership has been counted from the commission lists drawn up at their renewal: new commissions were issued either on the accession of the monarch or in response to requests from within the county, accounting for the variance in the years considered here.<sup>214</sup>

Although the membership of Norfolk's commission of the peace remained relatively stable between 1798 and 1820, there was a marked increase from 1824, coinciding with growing concerns regarding crime and social unrest in the county.<sup>215</sup> By 1830, the total membership had more than doubled from 1761. Somerset's commission followed a rather different trajectory. Membership peaked in 1814: the commission issued that year was intended to answer complaints made regarding the lack of magistrates at Taunton.<sup>216</sup> However, the total membership had declined by 1820; this contraction no doubt magnified concerns expressed regarding the distribution and activity of the magistrates across the county, evident from at least 1819. The upturn manifest by 1830 was in part a response to the need for more effective law enforcement.

Whilst increases in the total membership of the commission were made to support the efficacy of the magistracy, entry was no guarantee that an individual would qualify to act. According to Landau, at the accession of George III, about 40 per cent of the commission members were acting magistrates, whereas at least two-thirds of the commissions had been actively maintaining the peace at the start of his grand-father's

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<sup>213</sup> Landau, *The Justices of the Peace*, 84-6, 134-8, 315-6, and Appendix A.

<sup>214</sup> NRO: C/Sda 1/14-18 Commission of the Peace 1798-1830; SRO: Q/JC/119-124, Commission of the Peace 1794-1830; Landau, *Justices of the Peace*, 128.

<sup>215</sup> Below and Chapter 4.1.1

<sup>216</sup> Below, chapter 2.3.3

reign.<sup>217</sup> The proportion of acting justices in Somerset and Norfolk from 1790 was considerably lower (below, fig. 2).

Prior to 1831, no consistent records were kept of which commission members were acting as justices in each county.<sup>218</sup> The writs of *dedimus potestatem* issued by the Crown Office to members of the commissions seeking to take their oaths of office at Quarter Sessions, give an indication of the number who intended to serve as magistrates. The writs themselves do not survive in any significant number, however the books of the Petty Bag Office kept by the Clerks of the Crown, record money received from prospective justices for their writ of *dedimus potestatem*.<sup>219</sup> While the acquisition of the writ did not guarantee that a justice would act, it signalled his ‘intention that he not appear inactive’.<sup>220</sup>

Figure 2: Number Qualified as a percentage of the commission<sup>221</sup>

<b>Somerset</b>		<b>Norfolk</b>	
<b>Year</b>	<b>No. Qualified to Act %</b>	<b>Year</b>	<b>No. Qualified to Act %</b>
<b>1794</b>	18	<b>1798</b>	20
<b>1814</b>	28	<b>1811</b>	31
<b>1820</b>	31	<b>1820</b>	36
<b>1828</b>	36	<b>1824</b>	33
<b>1830</b>	36	<b>1830</b>	31

The proportion of qualified justices in both counties falls well short of the figures identified by Landau for the earlier eighteenth century, and slightly less than the c. 40 per cent identified by King in Essex in the early nineteenth century.<sup>222</sup> In 1794 only 18 per cent of the Somerset commission was qualified to act, and only 20 per cent of the Norfolk

<sup>217</sup> Landau, *Justices of the Peace*, p. 322.

<sup>218</sup> Ibid, p. 319; PP: 1831-32 (39) Justices of the peace. A return of the number of all the justices of the peace in each county, city and town in England and Wales.

<sup>219</sup> TNA: C220/9 8 and 9, books of the Petty Bag Office.

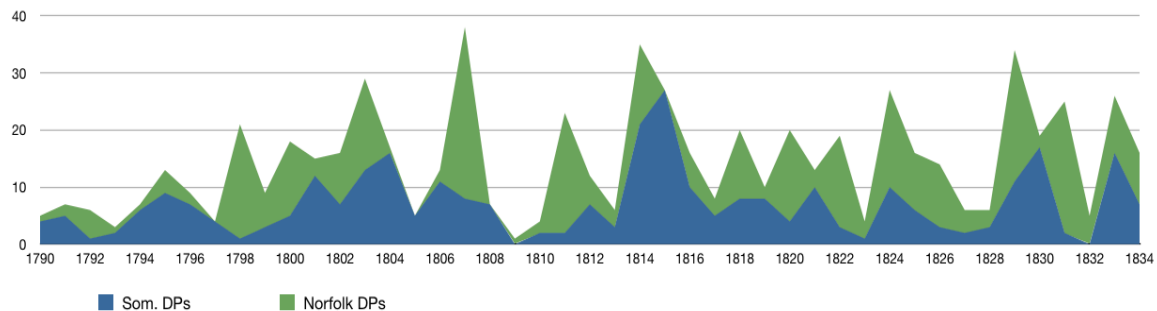
<sup>220</sup> Landau, *The Justices of the Peace*, p. 320.

<sup>221</sup> SRO: Q/JC/119-124, Commission of the Peace 1794-1830; NRO: C/Sda 1/14-18 Commission of the Peace 1798-1830; TNA: C 220/9 8 and 9

<sup>222</sup> Two fifths, or 40 per cent of the commission, King, *Crime, Justice and Discretion*, 110.

commission was in 1798 (figure 2). The number of qualified magistrates in both counties increased between 1790 and 1830, matching the overall expansion of the commissions; but by the end of the period, only about one third of those listed had taken out their writ of *dedimus potestatem*.

*Figure 3: The Timing of Qualification: writs of dedimus potestatem taken out in Somerset and Norfolk between 1790 and 1830*



Patterns can be discerned in the timing of qualification. An upturn in the number of newly qualified magistrates came with the renewal of the commissions, accounting – for example - for peaks in the number of writs of *dedimus potestatem* taken out by members of Norfolk’s commission in 1798, and the substantial increase in Somerset after the renewal of the county’s commission in 1814 (figure 3).<sup>223</sup> The evidence also points to the timing of qualification in response to other social and political stimuli. Fears arising from the revolution in France, and the advent of war have been identified as catalysts for qualification,<sup>224</sup> the increases in 1803 coinciding with preparations against invasion in both counties.<sup>225</sup> Peaks are also discernable during the subsistence crises of the mid 1790s and in 1800-1801. In Norfolk, the heightened activity from 1816 reflects the tumultuous post war years experienced in the county, when phases of unrest broke out in 1816, 1822 and 1823, whereas Somerset remained comparatively peaceful. Both counties saw an increase in the number of those seeking to qualify after 1828 confirming contemporary concerns about poverty and a perceived increase in crime, which were then compounded by the outbreak of Swing across the country.

<sup>223</sup> TNA: C 220/9 8 and 9

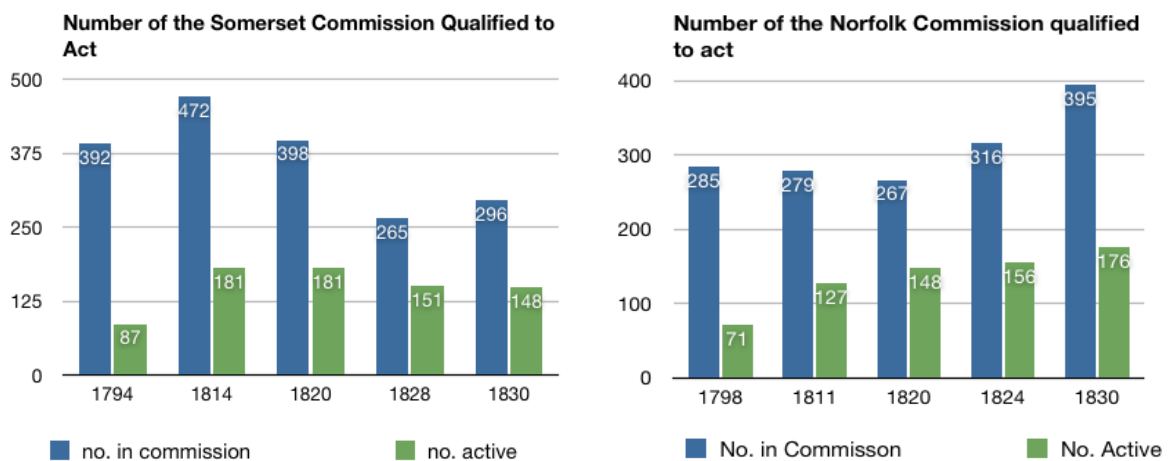
<sup>224</sup> Landau, *Justices of the Peace*, 294.

<sup>225</sup> SRO: Q/JCP/12; White, *History of Norfolk*, 86.

During the disturbances of 1830, which coincided with the renewal of the Somerset commission, many voiced the necessity of recruiting those willing to be active justices. One correspondent, Jonathan Elford, had been a member of the Somerset commission for nearly 18 years, but had never acted as a magistrate. However, he wrote:

‘I have never acted; for it did appear to me that when a man retired from a valuable business for the sole purpose of enjoying ease and retirement, he had a right to enjoy the remainder of his life in Idleness. But as I conceive every man, in a time like the present, is bound to put his shoulder to the wheel. I have taken out my Dedimus, and am now acting as a magistrate.’<sup>226</sup>

Figure 4: The Number of Qualified Magistrates in Somerset and Norfolk



In terms of actual individuals, the number of qualified magistrates in Norfolk increased steadily, but modestly, throughout the period. Although the total membership of the Somerset commission contracted in 1820, the number of qualified justices remained the same from 1814 to 1820. However, a definite decline was manifest by 1828 (figure 4).<sup>227</sup>

When comparing these figures to adjacent counties in 1831, Norfolk and Somerset’s active magistracy seemed healthy in comparison to its neighbours (figure 5, below).

<sup>226</sup> Q/JCP/7 Jonathan Elford to Edward Coles, 13 Dec. 1830

<sup>227</sup> SRO: Q/JC/119-124, Commission of the Peace 1794-1830; NRO: C/Sda 1/14-18 Commission of the Peace 1798-1830; TNA: C 220/9 8 and 9.

Figure 5: Numbers of active magistrates in six counties 1830 and 1831<sup>228</sup>

	Nos. active in 1831		Nos. active in 1831
<b>Somerset (1830)</b>	148	<b>Norfolk (1830)</b>	176
<b>Gloucestershire</b>	176	<b>Suffolk</b>	156
<b>Wiltshire</b>	89	<b>Cambridgeshire</b>	51

It should be noted that both Wiltshire and Cambridgeshire were smaller in area, and in population, than Somerset and Norfolk, perhaps accounting for the considerable difference in numbers.

But despite their *relative* strength, both counties had only a small number of men to marshal a sizeable population. Correspondence received by the clerk of the peace in Somerset between 1819 and 1830 indicates that ill health, infirmity, and the obligations of other offices prevented gentlemen from acting as magistrates. Likewise the growing population and concomitant increase in business before the courts was frequently cited as a significant burden on the county's justices.<sup>229</sup>

Considering Somerset had a population of over 300,000 in 1811, a crude ratio would suggest that one qualified magistrate was responsible for a population of 1,657. In Norfolk, the ratio was considerably higher at 1: 2,376. Both figures indicate that the county magistrates were spread few and far between. Moreover, the geographical distribution of qualified magistrates was uneven and thus impacted on the ratios even further.<sup>230</sup>

In Somerset in 1811, the population over which *one* justice presided ranged from 450 (Hampton and Claverton), to 4,460 (Chew and Chewton). In 1831, Hampton and Claverton still had the lowest ratio of 1: 587. The highest however, was 1: 8,974 in Wellow hundred. Throughout the period, between five and nine of the Somerset hundreds had no resident magistrate (figure 6 below.) including some of the most populous hundreds: Whitstone with a population of 11,000 in 1811, and Hartcliffe with Bedminster (located near Bristol) with a population of more than 17,000 in 1831. The hundreds with

<sup>228</sup> PP: 1831-32 (39).Justices of the Peace. A return of the number of all justices of the peace in each county; *Census*, 1831.

<sup>229</sup> Below 2.3.2 *Structures of Government: Somerset*

<sup>230</sup> Appendix 2 *Distribution of Justices by Hundred*, The location is generally derived from the commission lists and (or) records concerning a justice's qualification, which frequently included their place of residence. In Norfolk however, this information does not become consistent until 1811.

the fewest resident magistrates - or none at all - were all manufacturing or expanding suburban districts.<sup>231</sup>

*Figure 6: Number of hundreds without a resident magistrate*

Year	Somerset	Norfolk
1811	9	1
1821	5	1
1831	7	1

*Figure 7: Most common number of justices per hundred*

Year	Somerset	Norfolk
1811	1	3
1821	1	3
1831	1	6

In Norfolk, the range of population size was smaller: in 1811, the population within a justice's jurisdiction ranged from 2,291 (East Flegg) to 3,870 (South Erpingham). In 1831, it ranged from 1: 999 (East Flegg) to 1: 2,767 (Forehoe).<sup>232</sup> The contraction in the ratios in 1831 reflects the increase in qualified magistrates recorded from the 1830 commission (figure 4 above.), and their more even distribution across the county: between 1821 and 1831 the most common number of justices in one Norfolk hundred increased from three to six. In Somerset, by contrast, the modal number was one (figure 7 above). Only a single hundred in Norfolk was consistently without a resident magistrate between 1811 and 1831 (figure 6).

\* \* \*

The expansion of the county commissions of Norfolk and Somerset follow much of the same pattern established in studies of the Home Counties: population growth necessitated an increase in membership, and points of social and political crisis stimulated peaks in qualification. However, over the period, the number of commission members seeking to qualify and therefore act, remained in the minority.

<sup>231</sup> Appendix 2, Maps 2-4: *Somerset 1811-1831; Census 1811-1831.*

<sup>232</sup> Appendix 2, Maps 5-7: *Norfolk 1811-1831; Census 1811-1831.*

Despite these broad similarities, when mapped, the geographical distribution of the magistracy in each county produces two rather different pictures: in Norfolk, a single magistrate served a comparatively smaller population, and the distribution of justices was more even, pointing to a more structured but locally focused system of government. Considerable disparities in both population ratios and distribution are evident across Somerset, highlighting areas with limited access to the law, particularly where population growth outstripped the provision of local justice. These contrasting circumstances are borne out in a more detailed examination of the arrangement of governmental structures in each county, and attempts made by the commissions to alter them. In Norfolk, the ordering of judicial divisions and county sessions supported a system of localised administration. The apparent deficiencies in the distribution of Somerset's justices were defrayed, in part, by the organisation of courts and jurisdictions to serve a wider area; but persistent problems in establishing adequate manpower were well documented throughout the period.

### ***3. Structures of Government***

The location of the county quarter sessions sittings, the number of judicial divisions, and the frequency and location of petty sessions hearings were organised by the county commissions and were dependent on the perceived requirements of regional administration. By mapping these structures in relation to the distribution of magistrates in both counties, the character and function of local governmental structures is made more visible: a clearer delineation of a magistrate's jurisdiction is established, as are the means by which shortcomings in the availability of justices were managed.

#### ***3.1 Norfolk***

From at least 1811, there were 33 petty session divisions in Norfolk, corresponding almost exactly with the county hundreds.<sup>233</sup> In the absence of consistent sessions records, an analysis of available gaol calendars has been used to consider the activity of acting

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<sup>233</sup> *Census 1811 and 1821*



magistrates outside of the county quarter sessions.<sup>234</sup> The residence of acting magistrates has been cross-referenced with the location or residence of offenders they committed to the county gaols to establish the approximate area, or jurisdiction, over which they presided.

*Figure 8.a Committals made by a magistrate within his hundred of residence*

<b>Norfolk</b>	<b>1796-9</b>	<b>1809-11</b>	<b>1819-1820</b>
<b>Same Hundred or Adjacent</b>	36%	65%	71%
<b>Neither</b>	27%	17%	18%
<b>Unknown</b>	37%	19%	11%

*Figure 8.b Committals made in the hundred of residence or adjacent hundred*

<b>Norfolk</b>	<b>1809-11</b>	<b>1819-1820</b>
<b>Same Hundred</b>	46%	48%
<b>Adjacent Hundred</b>	19%	23%

From 1809, at least two-thirds of committals were made by magistrates in their hundred of residence, or an adjacent hundred (figure 8.a). The lower figure in the sample from 1796-9 can be attributed to the greater proportion of cases where the magistrate's location could not be confirmed due to the inconsistency in recording residences in the earlier commission lists. Disaggregating the home and adjacent hundreds for the nineteenth century confirms that the Norfolk justices were most active in the hundred in which they lived (figure 8.b). The only hundred consistently without a resident magistrate was Guiltcross, on the south western boundary of the county. It was, however, served by magistrates in the neighbouring hundred of Diss, and by 1836, had been joined with Shropham to form a larger petty sessional division.<sup>235</sup>

This pattern of resident magistrates administering justice in their locales was replicated in the benches sitting at the county quarter sessions. From the seventeenth century, the county courts had been organised in three divisions.<sup>236</sup> As the county capital, sessions

<sup>234</sup> NRO: MF/RO 36/1 Marsham Papers, Assize Calendars; all cases referred to the Assizes from the county quarter sessions have been excluded from the sample

<sup>235</sup> NRO: MF/RO 36/1; White *History of Norfolk*, (1836); Appendix 2, Maps 5-7 and figure 6 above.

<sup>236</sup> J. M. Rosenheim, 'County Governance and Elite Withdrawal in Norfolk, 1660-1720', 102 nt 31.

were convened in Norwich, four times a year. Kings Lynn with Swaffham, and Holt with Little Walsingham, comprised two further court divisions serving the west and north of the county respectively.

*Figure 9 Pattern of County Quarter Sessions sittings in Norfolk c. 1800-1830*

	January	April	July	October
<b>Norwich</b>				
<b>Lynn</b>				
<b>Swaffham</b>				
<b>Little Walsingham</b>				
<b>Holt</b>				

Colour = court in session

The quarter sessions sat by adjournment at Kings Lynn in January, April and October, and at Swaffham in July. Likewise, an adjourned session at Holt was held in January until c. 1800, after which the months of sitting were changed to April and October. Sessions were also held at Little Walsingham in January, April and July. This pattern of adjournment meant that each regional division had a county session every quarter, in addition to the four courts convened at Norwich (figure 9).<sup>237</sup>

Norfolk's regional divisions were served by defined groups of justices. The number of magistrates regularly serving the regional benches was relatively small compared to the number attending in Somerset (c. 26-35, see figure 12 below). Considering the frequency of meetings at all the sessions locations in Norfolk, the regularity of their attendance is magnified further (figure 10 below).

*Figure 10 Justices at Norfolk Sessions 1790-1832*

Sessions Venue	No. JPs sitting regularly	No. Local JPs
<b>Holt</b>	9	7
<b>Kings Lynn</b>	14	14
<b>Little Walsingham</b>	5	3
<b>Norwich</b>	13	8
<b>Swaffham</b>	7	6

<sup>237</sup> NRO: C/S 1/14-24 MF 657-660; White, *History Norfolk* 588-9, 610 and 669.

Fig. 10: regularity = attending more than a third of the sessions in the sample.  
Local = resident in the same or adjacent hundred

The greater proportion of the justices at each sessions were local men, presiding at sessions in their hundred of residence or adjacent hundred (figure 10). Moreover, these magistrates largely attended one bench *only*, on a regular basis, confining themselves to the business of their closest court, if not their regional division. None of the justices regularly sitting at King's Lynn sat at Holt, and very few sat at Little Walsingham or Norwich. There was however, a degree of overlap in the western division between the benches of Lynn and Swaffham. The same pattern is evident amongst the Swaffham bench: here, none of the magistrates sat at Holt or Little Walsingham, only three of the seven justices sat at Norwich, and only on one occasion each. Across the different benches, only five of the 48 magistrates in this sample sat at other sessions locations on a more frequent basis.<sup>238</sup> More than half of the justices were also active in making committals outside of sessions,<sup>239</sup> and the majority, in their home or adjacent hundred.<sup>240</sup>

The evidence indicates that each sessions in Norfolk was within the specific jurisdiction of a particular group of magistrates; and even within the quarter sessions divisions, justices tended to concentrate their activity on one sessions location. The membership of these regional benches, was dominated by men residing in the areas over which they presided.

### 3.2 Somerset

The arrangement of governmental structures was markedly different in Somerset. The forty hundreds were organised as sixteen petty sessions divisions before 1829.<sup>241</sup> Larger divisions comprised of two or three hundreds ameliorated, in part, the deficiency in hundreds without a resident magistrate.

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<sup>238</sup> NRO: C/S 1/14-24 MF 657-660; see Appendix 3.

<sup>239</sup> As the committals only reflect felonies for trial at Assize, the figure of 51% may well under-represent the number of justices active out of sessions.

<sup>240</sup> Committal sample cross-referenced with JPs sitting regularly at quarter sessions. NRO: C/S 1/14-24 MF 657-660; MF/RO 36/1.

<sup>241</sup> *Census* 1811, 1821; SRO: Q/JCP/3 inc. list of acting magistrates and their divisions, 1822..

*Figure 11.a Committals made by a magistrate within his hundred of residence*

<b>Somerset</b>	<b>1795-1799</b>	<b>1811</b>	<b>1820</b>
<b>Same or Adjacent</b>	83.4%	62.2%	80.4%
<b>Neither</b>	10.4%	21.7%	11.7%
<b>Unknown</b>	6.9%	15.6%	7%

*Figure 11.b Committals made in the hundred of residence or adjacent hundred*

<b>Somerset</b>	<b>1795-1799</b>	<b>1811</b>	<b>1820</b>
<b>Same Hundred</b>	32.8%	24.9%	53%
<b>Adjacent Hundred</b>	49.6%	37.3%	27.4%

From an analysis of petty session returns and prison registers,<sup>242</sup> it is clear that the majority of magistrates worked in their home or a neighbouring hundred (figure 11.a). However, the high proportion of committals made in adjacent hundreds between 1795 and 1811, confirms that the uneven distribution of magistrates in the county required individual justices, or petty sessional benches, to work over a wider area (figure 11.b). The concentration of judicial activity in a magistrate's hundred of residence in 1820 reflects the increase in acting magistrates between 1814 and 1820 (figure 4 above); and it is at this point that the number of hundreds without a resident magistrate decreased from nine to five (figure 6).

The difficulty in sustaining adequate numbers of magistrates across the county was well documented in correspondence to Somerset's clerk of the peace. Other factors besides the availability of gentlemen - including the age, occupation or temperament of members of the commission - were cited as frustrating the administration of justice in the county. In 1819, the clerks for the petty sessions at Wrington and Yeovil reported that some of their justices were too infirm to act consistently; and at Wells, the number of magistrates fluctuated according to canonical residencies. Another clerk, also writing from Yeovil, sought to excuse the reluctance of local magistrates to attend petty sessions, by claiming that the assizes and county courts drew them away.<sup>243</sup> Rev. James Phillott declined an invitation to act as a magistrate for the Brislington division in 1824. Despite

<sup>242</sup> SRO: Q/RCC/bundle 1790-99; Registers of prisoners: Q/AGI/14, Ilchester Gaol; Q/AGS/14 Shepton Mallet Gaol; Q/AGW/14 Williton gaol.

<sup>243</sup> SRO: Q/C/3/7 Correspondence from Justices Clerks listing local magistrates and frequency of their meetings, 1819.

having taken out his *dedimus*, he objected to the distance he would have to travel to the petty sessions, some seven miles from his home, and the inconvenience of the clerk residing four miles away. He also explained that having a large family and a small home, he had ‘not the least room to receive common people on business.’<sup>244</sup>

The expansion of Bath and Bristol had a considerable impact on the administration of the law in Somerset. Their growth saw a concomitant increase in the populations between the two cities.<sup>245</sup> The justices operating in Bath Forum, and the City of Bath, appeared stretched to their limit in 1819: Mr Page, Clerk to the county magistrates of Bath Forum explained that,

‘[f]rom the vast population of the Division and more especially in the immediate vicinity of Bath, the Duties of a Magistrate are become so laborious and almost everyday something happens to require the attendance of one or two of them in my office.’

In addition, the Clerk to the City magistrates reported that the justices sat daily at the Guildhall and that the Mayor was always present.<sup>246</sup>

The apparent increase in crime in the county towards the end of the 1820s was highlighted in the report of the select committee on criminal commitments and convictions. Giving evidence to the committee, John Phelps – a county magistrate and Chairman of Quarter Sessions – attributed the increase in committals almost entirely to criminal convictions in Bath, stating that ‘an increase of vigilance has not taken place with the increase of the population.’<sup>247</sup>

Bath and its environs, was however, the most well provisioned district in the county in terms of numbers of resident magistrates (Appendix 2, Maps 1-4). Perhaps more problematic, was the area lying between Bath and Bristol. As Phelps stated in his evidence:

‘The Bath City magistracy is limited to their own hall, or strictly called the city of Bath; and there is also a divided jurisdiction with Bristol, and a vast scope is afforded for the commission of crime.’<sup>248</sup>

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<sup>244</sup> Q/JCP/3 James Phillott to Edward Coles, 1 July 1824

<sup>245</sup> See above: 1. *Somerset and Norfolk*; S. Pole, “Crime, society and law enforcement in Hanoverian Somerset” 5.

<sup>246</sup> SRO: Q/C/3/7 Mr Page, Justices’ Clerk at Bath to Edward Coles, 21 Sept 1819, Mr George, Town Clerk at Bath to Edward Coles, 28 Sept 1819.

<sup>247</sup> PP: 1828 (545) Report from the Select Committee on Criminal Commitments and Convictions, 47.

<sup>248</sup> *Ibid*, 47.

In Keynsham, the death of one of the justices in 1824 resulted in what was described as a ‘distressing want of magistrates’, leaving the division almost entirely un-provided for. Similarly, in Batheaston, the death of the local justice had seen a deterioration in the ‘behaviour’ of the inhabitants, who could only – it was alleged - ‘be reclaimed by the experience of regular and local authority.’<sup>249</sup>

Writing to Edward Coles, the county clerk of the peace based at Taunton, in 1819, Mr. Chadwick, Clerk to the magistrates for the division of Bedminster, Hartcliffe and Portbury, lamented ‘it is very difficult to get a Bench at Bedminster, as the justices live a considerable distance therefrom.’ Chadwick continued to complain, ‘it is now very uncertain and sometimes difficult to get Justices of this Division to attend the heavy business necessarily arising amongst such a heavy population.’ In 1821, the division had a population of almost 19,000. Of the eleven justices who fell within its jurisdiction, nine did not attend on a regular basis: two had left the county on government business; three were incapacitated through poor health; and four of them, it appeared, had little inclination to attend. Chadwick did distinguish Mr James Vaughan, ‘a new justice and has hitherto attended tolerably punctual’.<sup>250</sup> Between 1801 and 1821, the hundred of Hartcliffe with Bedminster had only one resident magistrate, but there is little evidence of their activity from the petty sessions returns or gaol calendars. Committals to the county gaols from the hundred confirm that the Portbury justices acted in the hundred, but also justices from the neighbouring divisions of Chew and Chewton, Winterstoke, and Wrington.<sup>251</sup>

There was no formal intervention with the arrangement of judicial divisions in the counties by central government, however, an act passed in 1828 signalled parliamentary concern for the administration of justice in the provinces. The act for ‘the better regulation of divisions’ facilitated the reorganisation and creation of new divisions by the county quarter sessions.<sup>252</sup> The Somerset commission reorganised their judicial divisions

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<sup>249</sup> Q/JCP/3 1824

<sup>250</sup> Q/C/3/7 Chadwick to Edward Coles, 22 Sept. 1819; *Census* 1821

<sup>251</sup> SRO: Q/AG1/14 Ilchester and Q/AGS/14 Shepton Gaol 1811-21

<sup>252</sup> 9 George IV, c.43 cited in W. D. Evans, *A Collection of Statutes with the General Administration of the Law* (London: 1836) 117; and D. Bentley, *English Criminal Justice in the Nineteenth Century* (London: Hambledon Press, 1998) 21.

under this act in 1829, increasing the number of petty sessional benches to twenty and consequently reducing the area contained within a single division.<sup>253</sup>

It is hard to establish how far this reorganisation of the divisions impacted on the administration of the law. Criminal convictions in the period had risen by 72 per cent between 1820 and 1831; there was a marked increase in committals from 495 to 675 per annum between 1828 and 1829, and rates thereafter remained comparatively stable until at least 1833.<sup>254</sup> There was little suggestion that the increase in committals was due to advances in the detection and apprehension of criminals; certainly commentators like Phelps did not see the increase in committals as proof of improved law enforcement, and correspondence to the county clerk pointed to continued problems in the organisation of the magistracy. The number of Somerset hundreds without a resident magistrate had increased by 1830 (figure 6, above), including the consistently under-provisioned district of Bedminster. In July that year, some of the acting justices for the division wrote to the clerk of the peace requesting more ‘efficient’ justices be entered into the commission. The division encompassed an area with a population of 25,000 by this point, ostensibly served by only six justices, but, as the correspondents complained, of the six, four were particularly aged and infirm and the other two were frequently absent from their residences.<sup>255</sup>

*Figure 12. Justices at Somerset Sessions 1790-1832*

Sessions Venue	No. JPs sitting regularly	No. Local JPs
Bridgwater	27	9
Taunton	26	8
Wells	35	2

Regularity = attending more than a third of the sessions in the sample. Local = resident in the same or adjacent hundred

The arrangement of quarter sessions in Somerset did not tend towards a model of localised justice as in Norfolk. In comparison to the numbers sitting on each Norfolk bench, almost twice as many magistrates sat regularly at each Somerset sessions location

<sup>253</sup> SRO: Q/C/5/2-3 correspondence regarding reform of petty session divisions 1829; DD/SAS/C2402/37, map of petty session divisions, 1831.

<sup>254</sup> PP: 1828 (545) Report from the Select Committee on Criminal Commitments and Convictions.

<sup>255</sup> Q/JCP/7 Justices of the Bedminster Division to Edward Coles, 9 July.1830

(figures 12 and 10 above). The majority of these men were also active in making committals away from the county bench.<sup>256</sup> There is, however, no pattern to indicate that certain meetings were exclusive to particular groupings of magistrates, or indeed that local justices dominated individual sessions. Only 12 of the 59 magistrates included in the sample sat in one sessions location and no other; of those, only six could be considered local men. The vast majority of justices sat at two, if not all three sessions locations. Six magistrates in particular distinguished themselves by sitting at more than half of all sessions at each location.<sup>257</sup> The arrangement of the Somerset sessions, confined to three regular and seasonal locations in significant borough towns, therefore enabled the sessions to work as loci for county government, rather than centres of local administration.

### *3.3 Structures of Government: The Boroughs*

The testimony of John Phelips to the select committee on criminal commitments and convictions in 1828 indicated that the county commission could expect little support from the overburdened justices of the city of Bath.<sup>258</sup> Somerset had eight other boroughs, several of which had their own benches; Norfolk had five incorporated towns including the ports of Kings Lynn and Great Yarmouth. How far did the boroughs offer an alternative source of justice? Each of the incorporated towns had their own judicial arrangements and consequently, very different relationships to the county magistracy.

Until 1792, there were ten borough towns in Somerset; five had their own bench and courts of quarter sessions, served by justices derived from the officers of the corporation, usually the mayor, the recorder and other members of the borough government. Yeovil, Chard and Ilchester had no corporate magistrates or courts; and at Langport, although the Portreeve and Recorder were justices (with one other appointed),

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<sup>256</sup> Committal sample cross-referenced with JPs sitting regularly at quarter sessions. SRO: Q/RCC/bundle 1790-99; Registers of prisoners: Q/AGI/14, Ilchester Gaol; Q/AGS/14 Shepton Mallet Gaol; Q/AGW/14 Williton gaol; Q/SO 16-21.

<sup>257</sup> SRO: Q/SO 16-21; Appendix 3, below, chapter 2.4

<sup>258</sup> PP: 1828 (545) Report from the Select Committee on Criminal Commitments and Convictions, 47; see above.



they were not empowered to hold sessions.<sup>259</sup> Borough sessions could be convened at Axbridge, Bridgwater, Wells, Glastonbury and Bath. All the borough courts – apart from Bridgwater – were restricted to the trial of misdemeanours. Whilst the Bridgwater sessions could prosecute felons, it was limited in practice (in the same manner as the county quarter sessions) to passing a maximum sentence of seven years transportation.<sup>260</sup>

At Axbridge the borough court met infrequently, and no trials were held at Glastonbury, so all cases were referred to the county quarter sessions. Similarly, while the court was convened at Wells, and the jury called, no cases were heard. As a matter of convenience, all cases that could not be agreed out of court were sent to the county sessions, which were held in the city twice a year. Although all cases were left to the county courts, the corporate justices at Axbridge and Glastonbury had exclusive jurisdiction within the borough. The bench at Axbridge, it was reported, ‘resisted the execution of a warrant of a county magistrate unless backed by one of themselves’. Likewise, at Glastonbury no ‘interference’ from the county justices was tolerated in the committal of offenders within the town. A similar situation persisted at Bath, whereby a county justice had to have the support of a member of the corporate bench to arrest a felon within the city.<sup>261</sup>

Conversely, the county commission had concurrent jurisdiction with the borough JPs at Wells, and sole responsibility for the administration of judicial matters at Taunton from 1792. Taunton was a parliamentary borough, and until its charter was forfeit that year through the town’s failure to renew its corporate body, the mayor, recorder and aldermen were empowered to act as justices. However, a clause added to the town’s original charter (d. 1627) at the Restoration, provided for six ‘adjunct’ or ‘supplementary’ county magistrates to act within the borough under special commission, with equal jurisdiction to the corporate bench. According to the town’s historian, Toulmin, this amendment acted as a check on the Corporation, whose ‘zeal in the cause of the

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<sup>259</sup> PP: 1831-2 (39) Justices of the peace. A return of the number of all the justices in each county, city and town in England and Wales; House of Commons Accounts and Papers, Relating to Corporate Officers and Charitable Funds, Session Feb-Aug. (1834) vol. XLV; Appendix to the First Report of the Royal Commission on Municipal Corporations (1835); below, note 196.

<sup>260</sup> 1835 Appendix to the First Report of the Royal Commission on Municipal Corporations, report of the Southern circuit from p. 1077.

<sup>261</sup> *Ibid*, Axbridge, 1094, Bath, 1114, Glastonbury, 1286.

Commonwealth' incurred the 'disgust and suspicion' of Charles II.<sup>262</sup> In 1810, an attempt was made to revive the corporation by some of the town's inhabitants. Part of their petition to the Crown, cited the lack of available justices as cause for the town's charter to be reinstated:

'That this populous town is indebted for the administration of justice to the occasional, and as it may be, casual aid of county magistrates; and such a magistracy from its want of locality and super-intending eye, is not so adequate to the police and internal order of the town, as a bench of resident magistrates exclusively for the attainment of these desirable objects'.

The petition went on to rehearse the same problems of inadequate distribution and inactivity detailed in correspondence to the clerk of the county commission:

'That this town may, by the death, change of residence, or declining to act of the neighbouring county magistrates, or by a reluctance to public situation in any men who might be looked to as the successors of the now acting magistrates, be placed in the possible predicament of having no bench at all; or, of being so far from justice, as to be in a state of comparative prohibition to its benefits – an evil against which it is the duty of the town to endeavour to indemnify itself.'<sup>263</sup>

The petition was ultimately rejected, but the lack of local justices was recognised: a new commission of the peace for the county was issued in 1814, and several men from the neighbourhood were entered into to it, providing an alternative to the constitution of a new corporate body.<sup>264</sup>

In many respects, rather than the boroughs providing an alternative source of justice in Somerset, they added to the business of the county commission, either through their dependence on the county quarter sessions, or the justices themselves. Indeed, the frequency with which the county magistrates convened petty sessions in divisions surrounding towns highlights the level of business created in urban areas. For instance, in addition to the daily sittings in Bath Forum, the county justices met twice a week or weekly for Bridgwater, Taunton and the surrounding hundred of Taunton Dean, and Wells and Glastonbury, whereas the majority of divisions met fortnightly or monthly.<sup>265</sup>

However there are clear indications that the borough corporations were also frustrated by these jurisdictional arrangements. The inability of the city magistrates to try

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<sup>262</sup> Toulmin, *The History of the Town of Taunton in the County of Somerset*. first edition, (Taunton: T. Norris, 1791), 60-2, and second edition, (Taunton: John Poole, 1822), 283-7.

<sup>263</sup> Toulmin, *The History of the Town of Taunton* (1822), 289-90.

<sup>264</sup> *Ibid*, 293-5; SRO: Q/JC/120-1 commission of the peace, 1814.

<sup>265</sup> SRO: Q/C/3/7, Correspondence from Justices Clerks listing local magistrates and frequency of their meetings, 1819.

felonies at Bath was considered an ‘evil of serious importance’. Sending what were considered ‘the most trifling’ cases of larceny to the county courts for example, required between 18 and 50 miles travel from Bath (depending on where the court was sitting) and incurred significant costs for the prosecutor. It was suggested that the expense and inconvenience of prosecution had a ‘material effect in adding to the impunity of offenders.’<sup>266</sup> The Glastonbury justices also cited the problem of access to courts at a distance from some settlements, highlighting the important role they provided to the local populace in ‘ordinary matters’. Although the borough bench did not rule in criminal cases, for local administration they served individuals from the surrounding parishes, who would otherwise have the expense of travelling to the petty sessions at Wells.<sup>267</sup>

Where the boroughs were dependent on the county magistracy, they had to contend with the associated problems of consistent service. Echoing the petitioners at Taunton, the report on the condition of the borough of Chard in 1835 stated, that while the residence of two justices was more than adequate for the time-being, ‘the existence of county magistrates near any particular spot is not with any degree of certainty to be calculated upon.’<sup>268</sup>

A more straightforward relationship existed between the county and borough benches in Norfolk; little evidence of jurisdictional clashes was cited in reports to government at least. The arrangement of the different benches replicated, to a degree, the relative insularity of the five county benches. Norfolk had five incorporated towns: Castle Rising, Kings Lynn, Norwich, Thetford and Great Yarmouth; each had its own magistracy, generally comprised of the Mayor, Recorder, and any Alderman who had held the office of Mayor.<sup>269</sup> Thetford’s bench was organised slightly differently: including the mayor, recorder and ‘others nominated by the King’s commission’; this was usually only one

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<sup>266</sup> First Report of the Royal Commission on Municipal Corporations (1835), 3110.

<sup>267</sup> *Ibid.*, 1285.

<sup>268</sup> *Ibid.*, 1242.

<sup>269</sup> PP: 1831-2 (39)Justices of the peace. A return of the number of all the justices in each county, city and town in England and Wales; House of Commons Accounts and Papers, Relating to Corporate Officers and Charitable Funds, Session Feb-Aug. (1834) vol. XLV; Appendix to the First Report of the Royal Commission on Municipal Corporations (1835), Eastern Circuit, from p. 2081.

additional gentleman, often the coroner or one of the burgesses.<sup>270</sup> At Yarmouth, the High Steward also served as a justice alongside the Mayor and Recorder.<sup>271</sup>

The corporate benches at Norwich, Kings Lynn and Yarmouth had exclusive authority within their respective boroughs. There was little need for a shared jurisdiction with the county magistracy as each corporation convened its own court of quarter sessions, which were empowered to try all felonies - although capital convictions were rare. The corporation at Thetford was also commissioned to try felons at the borough sessions, but the low number of prisoners, it was reported, meant that the court met infrequently, sitting only two or three times a year.<sup>272</sup>

Castle Rising was the only borough where the county justices had concurrent jurisdiction. The town of c. 250-350 inhabitants generated little business, no courts for the trial of prisoners were called, and petty sessions met approximately once a quarter as required. All criminal matters were thus referred to the county courts.<sup>273</sup>

In both counties, the distance between the borough and county magistracy was compounded by their respective membership, with little overlap between the personnel of the borough benches and the county justices. In Somerset, only 20 per cent of borough magistrates were also members of the county commission of the peace, and only half of those were active at the county quarter sessions (figure 13, below). A similar percentage of borough magistrates, 19 per cent, were also members of the Norfolk commission of the peace. But, of those that were members of the county commission, only four per cent were active at the county sessions, comprising just two of thirty justices recorded for Yarmouth and only one for Norwich (figure 14, below).

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<sup>270</sup> 1835 Appendix to the First Report of the Royal Commission on Municipal Corporations, 2543.

<sup>271</sup> H. Barrett, *A report of the investigation before his majesty's Municipal Commissioners J. G. Hogg and J. Buckle Esqrs, Barristers at Law, appointed to examine into and report on the Corporate Affairs of this Borough* (Yarmouth: 1834), 100-2.

<sup>272</sup> 1835 Appendix to the First Report of the Royal Commission on Municipal Corporations, 2401, 2466, 2543; H. Swinden, *The History and Antiquities of the Ancient Burgh of Great Yarmouth in the county of Norfolk* (Norwich: 1772) 788-90.

<sup>273</sup> 1835 Appendix to the First Report of the Royal Commission on Municipal Corporations, 2211.

Figure 13. Borough Magistrates in Somerset, c.1812-1833<sup>274</sup>

Borough	Number of corporate JPs per Borough	Total in sample (c. 1812-1833)	Members of County Commission	Active at County Sessions
Axbridge	3	17	2	1
Bath	12	29	11	4
Bridgwater	4	19	3	3
Glastonbury	3	15	2	1
Wells	3	16	2	1
<b>Total</b>	<b>25</b>	<b>96</b>	<b>20</b>	<b>10</b>

Figure 14. Borough Magistrates in Norfolk c. 1812-1833<sup>275</sup>

Borough	Number of corporate JPs per Borough	Total in sample (c. 1812-1833)	Members of County Commission	Active at County Sessions
Lynn Regis	3+	14	4	0
Norwich	3+	26	6	1
Thetford	3	9	0	0
Yarmouth	3+	30	5	2
<b>Total</b>	<b>12+</b>	<b>79</b>	<b>15</b>	<b>3</b>

The different qualification requirements for the office of a borough justice meant that the corporate benches were drawn from a broader demographic than the county commissions. There was no property qualification based on land or personal wealth; a municipal justice only needed to be resident, or own a house or trade premises in the borough.<sup>276</sup> Unlike a county magistrate, there was no expectation that he would relinquish his business interests in order to serve.<sup>277</sup>

<sup>274</sup> PP: 1831-2 (39) Justices of the peace. A return of the number of all the justices in each county, city and town in England and Wales; House of Commons Accounts and Papers, Relating to Corporate Officers and Charitable Funds, Session Feb-Aug. (1834) vol. XLV; 1835 Appendix to the First Report of the Royal Commission on Municipal Corporations; SRO: Q/JC 119-124 commission of the peace.

<sup>275</sup> 1831-2 (39) Justices of the peace. A return of the number of all the justices in each county, city and town in England and Wales; House of Commons Accounts and Papers, Relating to Corporate Officers and Charitable Funds, Session Feb-Aug. (1834) vol. XLV; NRO: C/Sda 1/15-18 Commission of the Peace.

<sup>276</sup> Bentley, *English Criminal Justice in the Nineteenth Century*, 21; see also chapter 1.

<sup>277</sup> Below: 2.4.

Figure 15. Occupation of Borough Justices

	Gentlemen	Professional	Trade/other	Total
<b>Somerset</b>	35 (36%)	36 (38%)	25 (26%)	96
<b>Norfolk</b>	9 (11%)	26 (33%)	44 (56%)	79

Professional = legal, medical, military or clerical occupations

In Somerset, the borough benches included carriers, malsters, a bookseller, and a linen draper. In Norfolk, shopkeepers, a printer, a farmer and a schoolmaster were amongst the corporate justices.<sup>278</sup> The various occupations reflected the local economies of each borough: consequently Lynn's bench (Norfolk) was dominated by mercantile interests, while at Bath, almost half of the borough magistrates were doctors, surgeons or apothecaries. As a fashionable resort, the City bench was also populated by 14 of the total 35 gentlemen across the county who served as corporate justices. In the main however, members of the gentry, or those who represented themselves as of independent means did not dominate borough government (see figure 15).<sup>279</sup>

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Although distinct in terms of their membership, the organisation of the borough benches in both Somerset and Norfolk impacted on the operation of county government. Norfolk's boroughs bolstered the system of localised authority through their ability to rule without recourse to the county magistracy. In conjunction with the patterns established in the committal returns for Norfolk, the insularity of the county sessions benches points to the predominance of local judicial cliques. Local government in Norfolk, therefore, continued to be administered by men who had physical connections to the communities over which they presided.

The mapping of judicial residence and activity in Somerset outlined an uneven, and potentially over-stretched system of justice. Larger judicial divisions supported the need for the county magistrates to work over a greater area, to cover those regions

<sup>278</sup> PP: House of Commons Accounts and Papers, Relating to Corporate Officers and Charitable Funds, Session Feb-Aug. 1834, vol. XLV: at Bath, Wells, Axbridge, Bridgwater and Wells respectively; Thetford, and Norwich.

<sup>279</sup> Ibid.

without a resident JP. While the Somerset commission responded to the uneven distribution of magistrates by reducing the size of petty sessional divisions, and therefore increasing the number of summary court benches, the correspondence to the clerk of the peace confirms the persistent difficulties faced in managing the availability of active justices. The distance a magistrate would have to travel, infirmity, absenteeism, and a want of suitable candidates for the commission, exacerbated the problems attending the growth of Somerset's population, particularly in its urban centres. The complexity of juridical arrangements in Somerset boroughs, further frustrated the administration of justice.

#### ***4. The Social Composition of the Magistracy***

As the case studies of Norfolk and Somerset confirm, the pressures placed on the county commissions of the peace by population growth and increasing administrative duties, necessitated an expansion of their membership. The lowering of the property qualification in 1731 facilitated this expansion, but, it has been argued, it also encouraged the entry of men who lacked the economic and social connections to their communities that were traditionally associated with the magistracy, consequently altering the nature of county government. Landau, in particular, has highlighted this shift in the social composition of the magistracy as a significant factor in the decline of paternalist governance: 'mere gentlemen, individuals not obviously tied to their communities by family background, a tradition of local leadership, or landed estate, emphasized the distance between governors and the communities they governed.'<sup>280</sup>

The inclusion of increasing numbers of clergymen in the commissions of the peace constituted part of this change. The clergy were deemed suitable to serve as justices as men of education, more frequently resident in their communities than their lay colleagues, and arguably, more 'conscientious attenders to magisterial duty'. However, the clerical justice became the target of popular resentment: by allying himself with the interests of government and assuming the office of a justice, he was perceived to have

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<sup>280</sup> Landau, *The Justices of the Peace*, 318; see also chapter 1.

distanced himself from the interests of his ‘flock’.<sup>281</sup> Their entry and poor reputation has compounded the sense that the gentry were shying away from their governmental and paternal responsibilities. However, Laurence Stone argued, that the tumultuous final years of the eighteenth century saw an increase in magisterial activity and the resurgence of the gentry in local government in the first decades of the nineteenth century.<sup>282</sup>

Eastwood’s study of the Oxfordshire bench offers a more nuanced analysis of the changing composition of the magistracy. Emphasising the socio-political values shared by the clergy and the gentry, Eastwood sees the inclusion of clerical justices as a means of perpetuating the gentle character of the county judiciary. Any lasting change, he argued, was in the decline of the aristocracy among active justices, rather than a repudiation of local government by the gentry as a whole.<sup>283</sup>

The social composition of the Norfolk and Somerset magistracy, follow in part the trends identified by Landau, Stone and Eastwood. The gentry continued to dominate the county commissions of the peace, although the activity of aristocratic justices (those with titles from baronetcies and above) declined (see figures 17 and 20 below). However, the expansion of the commission membership in both counties saw the inclusion of men who had no prior connection to local government, and who, perhaps, lacked the social and political influence associated with the county elites. But the evidence is ambiguous when considering how far these changes challenged adherence to traditional forms of government. The perpetuation of values and ideals underpinning the conception of the paternalist gentleman justice persisted in both counties.

#### *4.1 Norfolk*

Throughout the period, the gentry continued in the majority in the Norfolk commission, forming between 60 and 70 per cent of its total membership (figure 16 below). Likewise, they constituted around 60 per cent of qualified justices. There was however, a marked change in the inclusion of clerical justices by 1830. In 1798, the clergy accounted for 17 per cent of the commission’s total membership, and less than a quarter of qualified

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<sup>281</sup> E. Evans, ‘Some Reasons for the Growth of Anti-Clericalism c. 1750-c.1830, *Past & Present*, 66, (1975);, 101-103; Landau, *Justices*, 141-3.

<sup>282</sup> L. Stone, *An Open Elite? England 1540-1880* (Oxford: Clarendon, 1984), 275.

<sup>283</sup> Eastwood, *Governing Rural England*, 79, see also 76; see also chapter 1.



justices. Despite the significant number of unclassified members from that list, the numbers of those most active at quarter sessions (figure 17 below) confirms that the clerical justices were a minority amongst the Norfolk magistracy at the end of the eighteenth century.

*Figure 16 Social Composition of the Commission of the Peace: Norfolk<sup>284</sup>*

Year	Gentry listed in Commission	Qualified gentry	Clergy listed in Commission	Qualified clergy	Unclassified in Commission (total membership)
1798	157 (55%)	44 (62%)	50 (17%)	15 (21%)	78 (27%)
1811	199 (71%)	84 (66%)	77 (28%)	42 (33%)	3 (1%)
1820	175 (66%)	92 (62%)	83 (31%)	51 (34%)	9 (3%)
1824	185 (59%)	88 (56%)	114 (36%)	59 (38%)	17 (5%)
1830	241 (61%)	99 (56%)	138 (35%)	71 (40%)	16 (4%)

Gentry = all gentleman including titled aristocracy unless indicated

Thereafter, the number of clerical members increased with each new commission. By 1830, the proportion of qualified clerical magistrates had almost doubled. Although the number of gentleman entered in the commission increased from 1820, and most notably in 1830, this increase did not stimulate a concomitant upturn in the proportion of qualified gentleman justices.

*Figure 17 Social Composition of those most active at Quarter Sessions: Norfolk<sup>285</sup>*

Period	Aristocracy	Gentry	Clergy
1790-1815	4 (17%)	17 (74%)	2 (9%)
1816-1830	1 (4%)	16 (70%)	6 (26%)

Aristocracy = baronet and above; gentry = gentlemen without title; clergy = all clerics including holders of ecclesiastical offices

At the county sessions however, the gentry remained firmly in the majority, constituting more than 70 per cent of the most active magistrates (figure 17). Only two of the clerical

<sup>284</sup> NRO: C/Sda 14-18; TNA: C220/9 8 and 9.

<sup>285</sup> Most active assessed as justices presiding at more than half of the sessions included in the sample; NRO: C/Sda 14-18; C/S 1 MF 657-660; TNA: C220/9 8 and 9.

justices in the commission presided at more than half the sessions in this sample between 1790 and 1815. But after this point, the change in commission membership was manifest on the bench: clerical justices subsequently accounted for just over a quarter of the most active magistrates. The increase in clerical magistrates confirms that a change in personnel was needed to supplement commission membership as it expanded, but gentlemen continued to dominate at the county sessions. A more detailed consideration of the nature of both the gentlemen and clerics on the bench offers a more nuanced picture of how far the social composition of the Norfolk magistracy was changing.

The assessment of the status of gentlemen has benefited from an unusual source: a map produced in 1787 for Thomas Coke of Holkham, by his friend Humphry Repton, most famous for his work as a landscape gardener. The map detailed the location of all the gentlemen in the county with an annual of income of more than £1,000, who could influence more than twenty voters in each Hundred.<sup>286</sup> Of those named on Repton's map, 23 individuals, or members of those families cited, were also those most active at the county quarter sessions between 1790 and 1830 (below, figure 18).

*Figure 18 Indications of Social Status: Norfolk*<sup>287</sup>

Status criteria	No. JPs 1790-1815	No. JPs 1816-1830	Total no. JPs 1790-1830
<b>Included on Repton's map</b>	<b>17 (80%)</b>	<b>6 (36%)</b>	<b>23 (66%)</b>
<b>In county history</b>	<b>19 (90%)</b>	<b>16 (100%)</b>	<b>33 (94%)</b>
<b>Seat in county history</b>	<b>12 (57%)</b>	<b>10 (63%)</b>	<b>22 (63%)</b>
<b>Family in commission</b>	<b>15 (71%)</b>	<b>12 (75%)</b>	<b>27 (77%)</b>
<b>County office holder</b>	<b>8 (38%)</b>	<b>4 (25%)</b>	<b>12 (34%)</b>
<b>National office holder</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Total not in any category</b>	<b>2 (10%)</b>	<b>0</b>	<b>2 (6%)</b>
<b>Total in 4 or more categories</b>	<b>5 (23%)</b>	<b>2 (13%)</b>	<b>7 (20%)</b>
<b>Total JPs in sample</b>	<b>21</b>	<b>16</b>	<b>35</b>

<sup>286</sup> Map reproduced in S. Daniels, *Humphry Repton: Landscape Gardening and the Geography of Georgian England* (New Haven: Yale University Press, 1999); Wade Martin, *Norfolk: A Changing Countryside*, 23.

<sup>287</sup> J. Burke, *A Genealogical and Heraldic Dictionary of the Peerage and Baronetage of the British Empire* (London: Henry Coleburn, 1838) [hereafter Burke's Peerage]; J. Matchett, *The Norfolk and Norwich remembrancer and vade-mecum* (Norwich: Matchett and Stevenson, 1822); White, *History of Norfolk* (1836); *Al. Cant.; Al. Oxon*; R. Thorne (ed) *The History of Parliament: the House of Commons 1790-1820* (1986) [www.historyofparliamentonline.org](http://www.historyofparliamentonline.org).

The vast majority (94 per cent) of the most active gentlemen justices in this period were likewise of significant enough social standing to be included in contemporary county histories, and more than 70 per cent had family members in the commission. Coupled with the localised organisation of judicial activity detailed above, these factors indicate that - in the main - the most active of the Norfolk justices were those who retained connections to their communities via residence, reputation and kinship.

There is however a contraction in the number of the influential families featured on Repton's map, active at sessions after 1816. But those who acted in their stead were not necessarily men lacking in status or local connection: the proportion of justices with family in the commission had increased, and all of the justices in the sample were noted by county historians. Only four gentlemen in the later period had no prior connection to the commission.

That Norfolk upheld traditional configurations of government, particularly at the beginning of the period, is evident in the delineation of the quorum in the commission lists until 1811, and, in the lack of clerical justices active at Sessions. Landau has argued that the adoption of alphabetized lists in the first half of the eighteenth century signalled a move to a more homogenous conception of county government, less concerned with status and rank; but in Norfolk, this distinction was preserved. Likewise, she has emphasised that magistrates took care in choosing with whom they acted, as this public manifestation of justice signalled particular social and political connections, and promoted a particular image of government.<sup>288</sup>

Between 1790 and 1815, the two clerical magistrates acting most frequently at sessions were men tied to the county gentry by inheritance, social attachment and patronage. The Reverends Dixon Hoste and Charles Collyer were the only clerical justices active at quarter sessions between 1790 and 1800, and the most active thereafter until 1816.<sup>289</sup> Both men were members of families named on Repton's map in 1787. Hoste was from an established county family and was closely associated with Thomas Coke in the 1780s. Unable to sustain himself as a gentleman of independent means, he

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<sup>288</sup> NRO: C/Sda 14-15; Landau, *Justices of the Peace*, 136, 275.

<sup>289</sup> NRO: C/S 1/14-24 MF 657-660.

took holy orders and was patronised by Coke, serving the benefice of Tittleshall with Godwick until his death in 1826.<sup>290</sup> Collyer was a man of independent property, owning his living at Gunthorpe. His income was augmented by his presentation to the rectories of Thornage, and latterly Cley, which he held in plurality with Gunthorpe. His respective patrons were Sir Jacob Henry Astley, and Mr. John Winn Thomlinson, both of whom he acted with regularly at the Holt quarter sessions.<sup>291</sup> The gentle background and associations of Hoste and Collyer may well explain their inclusion on the bench in the absence of other clerical justices: their presence did not indicate any dilution of gentry government, as they were both intimately connected to it.

‘New’ gentlemen and clerics acting from 1816 may have lacked connection to county government via patronage or kinship, but in the main they were men strongly associated with the county - most frequently via residence, but also by office and social connection.

Two of the four gentlemen without antecedents on the bench, who sat most regularly at sessions from 1816, were nonetheless from Norfolk families. Originally from Nottinghamshire, Robert Plumptre’s family was established at Norwich with his father’s appointment as a prebendary of the Cathedral in 1756. Plumptre was a barrister and continued to reside in the city; he also served as Lieutenant Colonel in the Norwich Volunteers. He was the second most active justice on the Norwich bench.<sup>292</sup> Dennis Gunton, also a newcomer to the commission, was from an old county family, who had been freeholders at Bodham and Matlaske in the north of the county from at least 1734. In 1836, Gunton was the chief landowner in Matlaske, owning the majority of the 500 acre parish. He presided at approximately two thirds of the sessions convened at Holt.<sup>293</sup>

The two remaining gentleman newcomers, Theophilus Buckworth and Thomas Hoseason, were not natives of the county, but had purchased estates in west Norfolk. Buckworth was the son of a Lincolnshire gentleman and settled in Cockley Cley by 1824; subsequently, he served as High Sheriff of the county in 1845.<sup>294</sup> Aside from his position

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<sup>290</sup> CCEd, ID: 113572; T. Pocock, *Remember Nelson: The Life of Sir William Hoste* (Glasgow: William Collins Sons Ltd, 1977, this edition, Barnsley: Pen and Sword Books, 2005), 21-7, 238, 243.

<sup>291</sup> CCEd, ID: 112306; see Appendix 3.

<sup>292</sup> *Alumni Cant.* Matchett, *Norfolk Remembrancer* (1822), 68; NRO: C/S 1 MF 658-660.

<sup>293</sup> *A Copy for the Poll for the Knights of the Shire*, (Norfolk: 1734), 108.

<sup>294</sup> TNA: C220/9/9; *Alumni Cant.*; NRO: MC 2667 for his estates at Cockley Cley

as an incomer, Hoseason is notable as the only Norfolk magistrate encountered in this study to be brought before the court of King's Bench for judicial misconduct. In 1811, he was charged with ruling in his own cause, having one of the labourers on his estate imprisoned at hard labour and whipped for refusing to work during his dinner hour. Aside from the rarity of such a case, it reveals much about Hoseason's entry into the commission of the peace, and the nature of relationships within it.<sup>295</sup>

According to his defence, Hoseason was unable to refer the case to another of the three justices in the district as they were all absent from their homes. Indeed, Hoseason's inclusion in the Norfolk commission was in response to the relative lack of justices in the far western division of the county. Until his qualification in 1810, the hundred of Freebridge Marshland had two 'resident' justices, Rev. John Cross Morphew of Walpole St Peter, and Admiral William Bentinck, lord of the manor of Terrington St Clement; but Bentinck only made short (albeit frequent) visits to his estates, and Morphew held his living in plurality with the rectory of Cley-next-the-Sea, some forty miles away. Hoseason's qualification as a justice, along with Sir Anthony Snape Hamond in 1811, doubled the provision of magistrates in the hundred.<sup>296</sup>

Rev. Morphew's testimony to the King's Bench confirmed both the insularity of the Norfolk judicial divisions but also the difficulties in maintaining order over a considerable distance. It was customary that he and Bentinck 'acted to transact the whole business of Marshland within Marshland', often receiving complainants in their own homes. But the two justices served a district extending over some 70,000 acres, and in consequence of the 'growing ill behaviour of servants' were frequently 'obliged to inflict exemplary punishment to deter others from following such bad examples.'<sup>297</sup>

Hoseason's connection to his fellow magistrates at Marshland proved vital in the light handling of his case by the court. Hamond, Bentinck and Morphew all testified to

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<sup>295</sup> TNA: KB 1/37/1 Michaelmas 1811, bundle 111; Law Report, *The Times*, 14 and 28 Nov. 1811, *Ipswich Journal* 30 Nov. 1811; D. Hay, 'Patronage, Paternalism and Welfare: Masters, Workers, and Magistrates in Eighteenth-Century England', *International Labor and Working Class History*, 53 (1998): 40-5; idem, 'Dread of the Crown Office: the English magistracy and King's Bench, 1740-1800', in N. Landau (ed.) *Law, Crime and English Society, 1660-1830* (Cambridge: Cambridge University Press 2002), 44.

<sup>296</sup> TNA: KB 1/37/1; .C 220/9/9; J. Rosselli, 'An Indian Governor in the Norfolk Marshland: Lord William Bentinck as Improver, 1809-27,' *Agricultural History Review*, 19:1 (1971): 48; CCED: ID 110621

<sup>297</sup> TNA: KB 1/37/1 Affidavit of Rev. John Cross Morphew, 25 Nov. 1811, see also Bentinck, 26 Nov. and Hamond, 23 Nov. 1811.

his good character, his humanity, honesty and independence ‘both as a Man and as a Magistrate.’<sup>298</sup> Weight was lent to their evidence through the longevity of their acquaintance. Prior to settling in Norfolk, Hoseason was a purser to the Royal Navy, and the Naval agent in Madras in the early 1800s. His service coincided with Hamond’s tenure as head of the Navy Board and Bentinck’s governorship of Madras between 1803 and 1807. Bentinck, who actively sought new speculative investors to the west Norfolk marshlands from c. 1809, may well have encouraged Hoseason’s acquisition of land in the area before 1810.<sup>299</sup> Certainly Hamond emphasised that he had known Hoseason for more than twenty years and had acted with him on several occasions.<sup>300</sup>

Confirmation from the three justices that they would have meted out the same punishment as Hoseason was used by the Lord Chief Justice to conclude the proceedings against him, preventing the disgrace of a public trial, and only inconveniencing Hoseason with the costs of the case.<sup>301</sup> He continued to involve himself in county society as a driving force in the development of the Eau Brink Cut at Lynn - alongside Bentinck - and as a prominent figure at county meetings.<sup>302</sup> Both Hoseason, and latterly Buckworth, continued as two of the most active magistrates at sessions until at least 1830.<sup>303</sup>

From 1816, six clerical magistrates (including Charles Collyer) distinguished themselves as amongst the most active justices of the Norfolk bench (figure 17, above). Rev. Dr. Wenman H. Langton, rector of Warham and Rev. Robert Norris, rector of Tatterford, had connection with county society and the commission via their respective patrons: Thomas Coke, and Sir George Chad of Thursford. Langton had also served as Chaplain to the Prince of Wales from 1800.<sup>304</sup> The vicar of Swaffham, William Yonge, also boasted significant regional connections but with the county’s ecclesiastical establishment: he

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<sup>298</sup> Ibid.

<sup>299</sup> NRO: BL/AB 16/3/1-2; D. Hay, ‘Patronage’, 44; ODNB: D. M. Peers, ‘Bentinck, Lord William Henry Cavendish -1774-1839’ (2009), R. Knight, ‘Hamond, Sir Andrew Snape, first baronet 1738-1828 (2008); UCL: legacies of British Slave-ownership (LBS) Thomas Hoseason <http://www.ucl.ac.uk/lbs/person/view/1692359697>, accessed 14 Nov 2014; Rosselli, ‘An Indian Governor in the Norfolk Marshland, 47-8.

<sup>300</sup> TNA: KB 1/37/1 Affidavit of Sir Andrew Snape Hamond, 23 Nov. 1811.

<sup>301</sup> TNA: KB 1/37/1; Hay, *op. cit.* 43.

<sup>302</sup> *Bury and Norwich Post*, 8 Aug. 1821, 22 Oct. 1825, 21 Jan 1826.

<sup>303</sup> Appendix 3.

<sup>304</sup> CCEd, Langton ID 15012, Norris ID 114290; *The Gentleman’s Magazine*, vol. 70 part II (1800) 1282.

was the son of the Bishop of Norwich, and served as the Chancellor of the Diocese from 1782-1814.<sup>305</sup>

Only Rev. Benjamin Parke of Tilney All Saints and Rev. Dr. Peter Sandiford of Fulmodeston, had no discernable familial or social ties to the county.<sup>306</sup> Despite their apparent lack of connection, Sandiford and Parke served their local sessions with great regularity. Benjamin Parke sat at more than three-quarters of the Kings Lynn sessions between 1815 and 1825. Peter Sandiford, acted alongside Langton and Norris, and together they were the three most active justices sitting at Little Walsingham, dominating proceedings there between 1816 and 1830.<sup>307</sup>

The most active justice throughout the period was John Thurlow Dering, who was likewise not a Norfolk man. He sat at virtually every session included in this sample for Kings Lynn and Swaffham, the two courts closest to his residence at Crow Hall. But Dering was from an established gentry family in Kent and had inherited his residence in West Norfolk. He nonetheless embedded himself in county society, forging ties with other more established families in the commission through his service as Captain of the Clackclose troop of Yeomanry, and through the marriage of his daughter Mary Anne to one of the Lee Warners of Little Walsingham and Dereham in 1819.<sup>308</sup> Subsequently, Dering and his son in law acted together on more than one occasion.<sup>309</sup>

Any change in personnel amongst the Norfolk magistracy did little to detract from its traditional form. Newcomers were of significant social standing and local connection, either via their own families, or through networks of kinship and patronage. They were still men ‘tied to their communities’, and to one another. Indeed, the inclusion of clergymen, and ‘new’ gentlemen into the Norfolk commission bolstered the system of localised justice. Between 1790 and 1815, 65 per cent of the most active justices were local to the sessions bench over which they presided. From 1816, this figure had

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<sup>305</sup> CCEd ID: 1136; *Alumni Cant.*

<sup>306</sup> CCEd Parke ID: 18240, Sandiford ID: 89395

<sup>307</sup> Appendix 3.

<sup>308</sup> *Jackson's Oxford Journal*, 24 December 1819; Harvey, *Records of the Norfolk Yeomanry Cavalry* (1908).

<sup>309</sup> NRO: C/S 1/14-21 MF 657-660

increased to 88 per cent. Each sessions, bar the Norwich bench, was dominated by the presence of local men.<sup>310</sup>

#### 4.2 Somerset

Figure 19 Social Composition of the Commission of the Peace: Somerset<sup>311</sup>

Year	Gentry listed in Commission	Qualified gentry	Clergy listed in Commission	Qualified clergy	Unclassified in Commission (total membership)
1794	296 (76%)	55 (63%)	96 (24%)	32 (37%)	0
1814	334 (71%)	108 (60%)	138 (29%)	73 (40%)	0
1820	278 (70%)	113 (62%)	120 (30%)	68 (38%)	0
1828	170 (64%)	91 (60%)	95 (36%)	60 (40%)	0
1830	221 (75%)	103 (70%)	75 (25%)	45 (30%)	0

Gentry = all gentleman including titled aristocracy unless indicated

Unlike Norfolk, clerical justices were a more established group within the Somerset commission of the peace from 1794 (figure 19). As a proportion of qualified magistrates, they accounted for c. 40 per cent until 1828. In 1830 however, their number contracted significantly, as both a proportion of the total membership and qualified justices. At the same time, the number of gentlemen increased sharply.

In terms of those most active at the county sessions, the social composition of the bench followed that of the commission (figure 20, below): while the gentry formed the majority, clerical justices accounted for 24 per cent, increasing to almost 40 per cent, of men most regularly presiding at sessions. The increase in the activity of clerical magistrates after 1815 points to their utility at a time when available magistrates were few, and their distribution uneven.

<sup>310</sup> Sample of justices presiding at more than half of the sessions in the sample; *all* justices in the sample, for the four benches excluding Norwich, were local men, ie. resident in the Hundred where the sessions were held, or in the adjacent hundred; Appendix 3.

<sup>311</sup> SRO: Q/JC/119-124; TNA: C220/9 8 and 9.



Figure 20 Social Composition of those most active at Quarter Sessions: Somerset<sup>312</sup>

Period	Aristocracy	Gentry	Clergy
<b>1790-1815</b>	2 (8%)	17 (68%)	6 (24%)
<b>1816-1830</b>	2 (4%)	27 (57%)	18 (38%)
<b>1831: Jan-Oct</b>	4 (2%)	119 (73%)	41 (25%)
<b>1831: April-Oct</b>	0	73 (78%)	21 (22%)

Aristocracy = baronet and above; gentry = gentlemen without title; clergy = all clerics including senior office holders, e.g Archdeacons

The upturn in the number of gentlemen justices in 1830 (figure 19) follows the trend identified by Stone, signalling, as he argued, the re-engagement of the gentry with county government. The increase in the number of gentlemen entered in the commission in December 1830 appeared to have an immediate effect on the social make-up of the bench the following year (figure 20), when the gentry then accounted for more than 70 per cent of presiding justices. Even when the ‘unusually large’ bench sitting in the aftermath of the Swing disturbances in January 1831 is discounted,<sup>313</sup> the gentry were firmly in the majority.

Despite these fluctuations in the composition of the Somerset bench, a more thorough consideration of the status of county justices points to –as was the case in Norfolk – the persistence of particular values amongst the magistracy for much of the period. According to the same measures of status employed in the analysis of the Norfolk Commission, the most active gentleman JPs in Somerset before 1815, were of significant social standing: 95 per cent were included in Collinson’s history of the county in 1791, and 84 per cent had kinsmen in the commission (figure 21 below).

<sup>312</sup> Most active assessed as justices presiding at more than half of the sessions included in the sample; SRO: Q/SO 16-21; Q/JC/119-124; TNA: C220/9 8 and 9.

<sup>313</sup> *Bath Chronicle* 6 Jan. 1831; see also chapter 5

Figure 21 Indications of Social Status: Somerset<sup>314</sup>

Status criteria	No. JPs 1790-1815	No. JPs 1816-1830	No. JPs 1790-1830
In county history	18 (95%)	21 (72%)	35 (81%)
Seat in county history	14 (74%)	18 (62%)	29 (67%)
Family in commission	16 (84%)	17 (59%)	29 (67%)
County office holder	8 (42%)	14 (48%)	20 (47%)
National office holder	0	1	1
Total not in any category	0	7 (24%)	7 (16%)
Total in 4 or more categories	4 (21%)	11 (38%)	13 (30%)
Total JPs in sample	19	29	43

From 1816 however, considerably fewer men of note were active on the bench, and a similar decline was manifest in the proportion of men who had familial ties to county government. Seven of those included in the sample did not fall under any of the criteria. The majority of clerical justices most active in this period also lacked established connections with county government; only 44 per cent had family in the commission and even fewer were patronised by its members.<sup>315</sup>

Both the increase of clerical justices at sessions, and the apparently declining status of gentlemen magistrates, support the changes in personnel making up the sessions benches (figure 20), confirming that the Somerset commission had to meet the deficiency in the number of active justices in the county by allowing ‘lesser’ men into the commission. Dr Malachi Blake and Thomas Poole were two such new entrants into the commission, who, whilst not boasting established gentry status, or familial connection to county government, distinguished themselves as two of the most active justices at the quarter sessions. Both men were included in the commission in 1814 and qualified within a year of their entry. Blake sat at every session after 1816, at all three sessions locations. Poole presided at every session convened at Bridgwater and Wells, and all save one at

<sup>314</sup> Collinson, *History of Somerset* (1791); Phelps, *The History and Antiquities of Somersetshire*, 4 vols. (London: R. B. Nichols, 1836), Burke’s *Peerage* (1838), *Al. Cant.*, *Al. Oxon*, CCED, ODNB; R. Thorne (ed.), *History of Parliament: the House of Commons, 1790-1820* (1986) [www.historyofparliamentonline.org](http://www.historyofparliamentonline.org)

<sup>315</sup> 11/18 no patron in comm. SRO: QS/JC 119-124; CCED; *Al. Cant.*; *Al. Oxon.*

Taunton.<sup>316</sup> By their backgrounds, and occupations as a professional and a tradesman, they might be considered ‘lesser’ gentlemen. But both men adopted, and were remembered for, many of those attributes associated with the gentleman justice.

Blake hailed from a non-conformist background. He was the consulting physician and treasurer at Taunton hospital and the only doctor to be acting as a justice of the peace in the Somerset commission.<sup>317</sup> His entry into the commission in 1814 directly addressed the particular need for magistrates in the populous town of Taunton. Although Blake did not give up his medical practice on his qualification as a magistrate, he declined to continue to take fees for his services, preserving the notion of a justice as a man of independent means, free to act without requiring financial reward. On his death in 1843, he was remembered as an important local figure, ever tempering ‘justice with mercy... willing at all times to give the unfortunate the benefit of the doubt’. One of his fellow magistrates was reported to have praised his capacity to ‘keep people and parties together which no one else had the power of doing.’<sup>318</sup> While the accuracy of such posthumous statements might be challenged, what is clear is that Blake, and his friends sought to attribute him with many of the characteristics of the paternal justice.

Thomas Poole had similarly unconventional beginnings. He was a native of Nether Stowey where he had been apprenticed to his father’s tanning and farming business. Allegedly never keen on pursuing his inherited occupation, Poole turned over its management to an assistant in 1801, and retired to the life of a gentleman farmer. Like Blake, Poole was lauded for his local social initiatives: he established a Book Society in 1793, a Female Friendly Society in 1807, and an elementary school in 1812–13.<sup>319</sup> Thomas De Quincey, wrote that Poole

‘so entirely dedicated himself to the service of his humble fellow countrymen ... that for many miles around he was the general arbiter of their disputes, the guide and counsellor of their daily lives’.<sup>320</sup>

Prior to his entry into the commission of the peace, Poole was also noted for his associations with Samuel Coleridge, William Wordsworth, and the radical orator John

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<sup>316</sup> TNA: C 220/9/9; Appendix 3.

<sup>317</sup> J. Toulmin, *The History of the Town of Taunton* (1822), 207, 212-3.

<sup>318</sup> R.M.M. ‘Memoir of the late Malachi Blake M.D.’ *The Christian Reformer* 10:63 (May 1843): 270-2.

<sup>319</sup> ODNB: T. W. Mayberry, ‘Thomas Poole 1766-1837’ (2004).

<sup>320</sup> De Quincey quoted in *Ibid.*

Thelwall. This acquaintance, coupled with the popular affection felt towards him locally, advanced suspicions of *his* radical tendencies. In 1797, a government agent, John Walsh, inaccurately reported that Poole was ‘a most Violent Member of the Corresponding Society and a strenuous supporter of Its friends’, and that he had the ‘intire [sic.] command’ of 150 poor men belonging to the Nether Stowey Benefit Club.<sup>321</sup> Certainly Poole engaged in political debate with Coleridge, and was openly critical of the government of the day. During the disturbances that plagued his neighbourhood in 1801, Poole wrote to Coleridge describing the success of price fixing crowds ‘as a curious phenomenon’:

‘we see the people doing what Government dared not do, and Government permitting them to do it. Is Government timid, weak or ignorant? One of the three it must be...’

But Poole was no revolutionary. He had assisted the local magistrates in negotiating redress of grievances during the subsistence crises.<sup>322</sup> Subsequently, he continued to involve himself in the condition of the poor, taking responsibility for compiling the official abstracts of returns made to government regarding the maintenance of the poor in 1804.<sup>323</sup> Certainly Poole’s radical connections did not prevent him entering the commission in 1814; no doubt his philanthropic activity and local engagement recommended him to the role of a magistrate. Indeed, in many ways Poole was a true paternalist. John Thelwall described him as ‘Arcadian Pool’ -

‘...swain of a happier age,  
When Wisdom and Refinement lov’d to dwell  
With Rustic Plainness...’<sup>324</sup>

It is clear that Blake and Poole cannot be so easily categorised as either lesser gentlemen devoid of social authority, or as men adhering to the archetype of the gentleman justice in terms of social status and socio-political affiliations. What can be drawn out is their adherence to particular paternal ideals, which supported a more traditional understanding of local government.

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<sup>321</sup> Ibid ODNB; M. E. Sandford, *Thomas Poole and his friends* (London: Macmillan and Co. 1888).

<sup>322</sup> Letter to Coleridge, 9 April 1801 in Sandford, *Thomas Poole and His Friends*, 42-43.

<sup>323</sup> ODNB ‘Thomas Poole’

<sup>324</sup> J. Thelwall, ‘Lines, Written at Bridgwater’ *Poems Chiefly Written in Retirement* (Hereford: W.H. Parker, 1801) 131.

Considerations of local and social status permeated the discussions surrounding entry into the Somerset commission.<sup>325</sup> Despite the lack of magistrates in the county, the commission's existing membership were discerning in their recommendations, and once again, adherence to a more traditional conception of government is implicit. In 1822, Mr Hassell, resident in the distressingly under-provisioned parish of Bedminster, had been recommended for the commission, but his entry had been rejected. One of his neighbours, Richard Hart Davis, MP for Bristol, already entered into the Somerset commission and an acting magistrate, wrote to Edward Coles, the Clerk of the Peace, to support a reconsideration of Hassell's candidacy. Davis described Hassell as a man of considerable fortune and ability, who had previously served as the Sheriff of Bristol. From this exchange, it appears that the problem with Hassell was his connection 'with his Brothers in the business of a Tanner'. Davis, who had made his own fortune as a merchant, was happy to report that Hassell's trade connections, being the only objection to his entry, would soon be removed as he intended to retire from the business. But the Lord Lieutenant, the Marquis of Bath, would not reconsider.<sup>326</sup>

Captain Page had been similarly aggrieved when his name was not included in the 1830 commission. Page felt it was a personal affront as other men of apparently lesser status, such as Rev. Bernard of Pilton, had been admitted and he was 'only possessed of ecclesiastical property.' In defence of Captain Page, Justice John Thring explained that he was a gentleman of considerable property who had resided in the county for nearly twenty years. Other members of the commission seemed more sceptical about Page's commitment to his estates, suggesting they were merely investments that 'he will sell tomorrow if he can get his price.'<sup>327</sup>

Rev. Henry Bennett was successfully recommended to the Lord Lieutenant in 1826. William Dickinson (an active magistrate and member of parliament for the county) supported Bennett as a 'respectable and well conducted gentleman with a landed estate of

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<sup>325</sup> SRO: Q/JCP 3-7 Correspondence to the clerk of the peace, 1822-1830.

<sup>326</sup> Q/JCP/3 R. Hart Davis to E. Coles 16 Nov. 1822; Marquis of Bath, copy to E. Coles 22 Nov. 1822; R. Thorne (ed.), *History of Parliament: the House of Commons, 1790-1820* (1986), [www.historyofparliamentonline.org](http://www.historyofparliamentonline.org)

<sup>327</sup> Q/JCP/7 Thring to E. Coles, 10 Dec. 1830; H. Hobhouse to E. Coles, 8 Dec 1830.

some extent at Sparkford left him by his father'; he also highlighted Bennett's connection to county government via his brother James, a magistrate residing at North Cadbury.<sup>328</sup>

From these examples, it appears that entry into Somerset's commission was predicated on independent wealth, local residence, gentlemanly conduct and connection to county government. Although not rigid criteria for membership, these cases serve as exemplars of themes repeated in the correspondence to the clerk of the peace. As was the case in Norfolk, they testify to the persistence of a traditional conception of the magistracy, which betrayed their desire to be perceived in a particular light. Likewise, as locality was emphasised in Norfolk, in Somerset, practical as well as prejudicial factors played their part: a magistrate without the need for a trade, and one who was less likely to abandon his estate, was more likely to act. Blake and Poole, therefore, while lacking in elite status perhaps, had proved themselves in their local activities and concern for the poor.

## ***5. Conclusion***

The expansion of the commissions of the peace of Norfolk and Somerset over the end of the eighteenth century, confirm trends established in other histories of the magistracy. The strain placed on county government by a growing population and a concomitant increase in poverty and crime, necessitated the inclusion of new personnel. However, the process of longitudinal and spatial mapping in the case studies presented here, offer qualifications to this process of change and the effect it had on traditional forms of local government.

The different topographical, demographic and productive capacities in each county produced markedly different governmental arrangements. The diversity of Somerset's topography was reflected in the variety of its urban and manufacturing centres. It was in these areas, towns like Frome and Shepton, and Taunton, and the cities of Bath and Bristol, where population growth was most significant and the effects of economic depression felt most acutely. These settlements provided the greatest cause for concern for local government. Over the turn of the eighteenth century, the availability of acting

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<sup>328</sup> Q/JCP/4 W. Dickinson to E. Coles, 9 Nov. 1826

magistrates in Somerset was exacerbated by a decline in the number of qualified members of the commission and their uneven distribution across the county. It is clear that the judiciary struggled to keep pace with an expanding population.

The arrangement of petty sessional divisions and the patterns established from records of committals, show that magistrates had to work over larger areas, comprised of at least two hundreds if not more. Rapidly growing districts such as Bedminster were consistently without a resident magistrate. In consequence, justices from neighbouring divisions, at some distance from the parish, had to incorporate this populous region into their jurisdiction. Issues regarding the impracticality of working over large distances were cited in the correspondence to the clerk of the peace, alongside complaints of the difficulty in finding fit and willing men to serve the office of a magistrate.<sup>329</sup> Little relief was afforded by the borough courts in Somerset's multiple urban centres; both the restrictions placed on borough benches and the vagaries surrounding shared jurisdictions further complicated the administration of justice.

The problems faced by the Somerset commission of the peace had implications for the nature of government in the county. Increasing numbers of clerical magistrates and men hailing from non-traditional gentry backgrounds, were incorporated into the county judiciary in order to meet the deficiency in available magistrates. The location of the quarter sessions at three of Somerset's larger urban centres provided the loci for county government. This arrangement, therefore, perhaps bears more resemblance to the patrician model of justice identified by Landau, where the authority of the magistracy was derived from their status as a governmental group, rather than from their position as individuals within their community.<sup>330</sup>

Norfolk provides a stark contrast to Somerset. The county's economy was less varied, being dominated by arable production; consequently, the majority of its population lived in primarily agricultural communities. Its urban centres were concentrated in the county capital, Norwich, and the port towns of Kings Lynn and Great Yarmouth. The mapping of judicial activity in the county reveals the organisation of the

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<sup>329</sup> SRO: Q/JCP/ 3-7; Q/C/3/7.

<sup>330</sup> Landau, *Justices of the Peace*, 3-4, 342-4.

magistracy orientated towards a localised system of justice, operating away from these large urban centres.

Through the arrangement of its petty sessional divisions, and the distribution of acting justices, almost every hundred in Norfolk was consistently served by at least one resident magistrate. The regularised adjournment of the county sessions to the towns of Holt, Little Walsingham and Swaffham, ensured the administration of government in rural communities, in addition to the quarterly judicial meetings in the county's major urban centres. In both their activity outside of court, and at sessions, Norfolk justices focused their work in the areas in which they lived. Almost half of all committals were made by magistrates within their hundred of residence, and each regional bench was predominantly comprised of men from the community in which it was convened.

Although there is evidence of a shift in personnel within the Norfolk commission over the period, notably the increasing number of clerical magistrates active on the bench, this did not signal a significant change in the nature of local government. The majority of active magistrates retained connections to county government via kinship or patronage, and to their communities via residence. The patterns discerned in both the governmental structures in Norfolk, and the distribution and activity of the judiciary, adhere to a more traditional conception of the form and function of the magistracy as paternal rulers: maintaining a tradition of local leadership, and proximity to the communities over which they presided.

Despite the contrast in governmental arrangements, important similarities can be drawn from the case studies of both counties. More apparent in Somerset, but still evident in the changes identified in the Norfolk commission of the peace, and in the concerns expressed regarding poverty and crime detailed in subsequent chapters, is the precarious nature of personalised, voluntary government in this period. The correspondence to the clerk of the peace, and the reports on the borough benches in Somerset, highlight how infirmity, absence or a disinclination to act, could frustrate access to the law, or leave a community without the superintending eye of a magistrate. In the absence of such detailed correspondence in Norfolk, the case of Justice Hoseason signals that the county was not immune to the difficulties posed by periodic absenteeism. The attempt to prosecute him



points to the problems inherent in relying on local men and individual discretion in the administration of the law.

Such shortcomings were not lost on contemporaries, but there is evidence in both counties of continued adherence to traditional ideas about who should govern. The emphasis placed on local leadership in Norfolk is clear, but even in Somerset, where problems with a lack of available magistrates were so evident, the commission was still discerning in its membership. The strictures placed on entry to the commission were not impractical. In the absence of professional policing, rule by the local gentry was still prudent: it ensured the presence of an agent of the law via residence in their communities, and one who was wealthy enough to obviate corrupt dealings for personal gain.

Likewise, local influence was still significant but not necessarily derived from a gentleman's family connections or the extent of his estates. The philanthropic activities and social initiatives instigated by men like Malachi Blake and Thomas Poole testify to their influence, and might be cast as evidence of their position as local leaders. The continued emphasis placed on many of the characteristics associated with the archetypal gentleman justice, in both counties, follows Eastwood's assessment, that while the social composition of the magistracy had to change to meet the requirements of expansion, it included men who aspired to particular social ideals.

The remaining chapters consider how the magistracy mobilised the structures of government to suppress social protest. The experience of unrest was manifest differently in each county, shaped by the differences in their social and economic make-up, but it posed for both the magistracy of Norfolk and Somerset, the most acute challenge to local government. The availability of active magistrates, or the lack thereof, was a persistent problem. In Somerset, for example, the spread of protest via itinerant crowds during the crisis of 1801 was assisted by the uneven distribution of the magistracy. And while the more rationalised organisation of judicial divisions in Norfolk provided the basis for a more efficient network of suppression in the same period, across all phases of protest considered here, measures to augment the civil force had to be taken in order to quell disorder.

The effective suppression of protest was also frustrated by questions of judicial jurisdiction. The complexity of juridical arrangements led to clashes between county and borough magistrates, but more consistent problems were generated by the variance in decisions made by individual justices, local, and county benches. Of particular concern was the granting of concessions and the precedent that it set. The demands made upon the magistracy by protesters were often framed by popular expectations of traditional government: of what the paternal responsibilities of the judiciary were. Here, the proximity of ruler and ruled was no guarantee of social peace, indeed in many instances it created the space for grievances to be voiced. In this context the discretionary powers that enabled the magistracy to act independently, and their reliance on local influence and connection, were called into question.

### *Chapter Three*

#### *The Magistracy and the crisis of paternalism, 1795-1801*

A system of local government based on voluntary service and judicial discretion was seriously tested by riot. The effective maintenance of order was dependent on the availability and activity of magistrates; there was no effective and regularised police support, and magistrates felt a general reluctance to use military might against ‘their own’ people. Not only did the use of professional repressive agencies smack of continental absolutism, but the aftermath of such violence permeated the community in which both the protesters – and the magistrates – lived. Keeping the peace, therefore, was a carefully negotiated process. The expansion of justices’ summary jurisdiction was necessary to encompass their increasing responsibilities in local government, it likewise allowed for the flexibility required to address protest.

By the end of the eighteenth century, population increase pushed existing systems of relief, which were placed under further strain during persistent phases of dearth. Popular unrest stimulated by food shortages and high prices in 1795, and again in 1800-01, was exacerbated by continental revolution, war, and radical political agitation at home. In this context, the exercise of judicial discretion proved problematic, particularly the granting of paternalist concessions to the crowd, laying the justices of the peace open to personal criticism, generating disparities across regions, and pitting the county judiciary against the demands of central government and different sectors of society at once.

‘To understand’, Thompson argued, ‘the ‘political’ space in which the crowd might act and might negotiate with the authorities must attend upon a larger analysis of the relations between the two.’<sup>331</sup> Since the publication of *The Moral Economy of the English Crowd in the Eighteenth Century* in 1971,<sup>332</sup> historians have endeavoured to recover the ‘political spaces’ that enabled popular pressure to be exerted. Studies of the authorities have been included in this corpus, notably by Roger Wells and John Bohstedt, highlighting the often ‘bewildering’ complexity and variety in judicial responses, and the

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<sup>331</sup> E. P. Thompson, ‘The Moral Economy Reviewed’, idem, *Customs in Common* (London: Merlin 1991, this ed. Penguin 1993), 261.

<sup>332</sup> E. P. Thompson, ‘The Moral Economy of the English Crowd in the Eighteenth Century’, *Past & Present*, (1971): 76-136.

social tensions that underpinned popular interactions with authority.<sup>333</sup> This chapter aims to provide a more nuanced understanding of judicial attitudes and actions, and the political spaces available to both the magistracy, and their communities, by addressing unrest in Somerset and Norfolk through the lens of local governmental infrastructure.

The magistracy held a pivotal position in Thompson's thesis: as the employers and landlords of the crowd - as well as agents of authority, they had an obligation to ensure the supply and fair sale of foodstuffs to the poor. Popular understanding of the magistracy's responsibilities was based on more than social obligations. Precedents for their intervention had a legal basis, albeit one derived from 'an eroded body of statute law, as well as common law and custom.'<sup>334</sup> In apprehension of riot or in response to direct demands by the crowd, the magistracy resurrected repealed legislation at common law.<sup>335</sup> The revival of these legal traditions formed part of the repertoire on which the magistracy could draw to maintain or restore order. In upholding their end of the paternalist bargain, the magistracy perpetuated popular expectations, reinforcing the 'field of force' of social relations.

The successful operation of the moral economy relied on 'a particular equilibrium between paternalist authority and the crowd'. This, Thompson argued, was frustrated in the final decades of the eighteenth century by governmental support for a free market economy and 'acute anti-Jacobinism'. The wars with France and radical political agitation at home, augmented fears of popular action and justified not only the mobilisation of military and volunteer forces, but their deployment against price-setting crowds. Where the local judiciary did not tow the line, the Home Secretary, the Duke of Portland, left them in no uncertain terms of the 'new firmness' that was required.<sup>336</sup> Remonstrance, negotiation, intervention in the operations of markets and chains of supply, were cast as inflammatory. Order was to be maintained through the swift

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<sup>333</sup> R. Wells, *Wretched Faces* (Alan Sutton Publishing 1988, this ed. London: Breviary Stuff, 2011), esp. 288; J. Bohstedt, *The politics of provisions: food riots, moral economy and market in transition in England, c. 1550-1850* (Farnham: Ashgate 2010) esp. 5.

<sup>334</sup> E. P. Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century', 83.

<sup>335</sup> *Ibid*, 83, 88; D. Hay, 'Moral Economy, Political Economy and Law', in A. Randall and A. Charlesworth (eds.), *Moral Economy and Popular Protest: Crowds, Conflict and Authority* (Basingstoke: Macmillan, 2000) 97, 99 & 105.

<sup>336</sup> E. P. Thompson, 'The Moral economy of the English Crowd', 129-31.

suppression of riot – by force if necessary – and punishment according to the letter of the law.

The particular context at the end of the eighteenth century makes an analysis of the responses of authority more complex.<sup>337</sup> The validity of moral economic tactics was debated at the highest levels, as well as being contested on the ground. Roger Wells', perhaps unparalleled study of the crisis of 1795-6 and 1800-01, offered one of the most detailed discussions of the responses of authority. His analysis focused on the struggle between central and local government emphasising the increased intervention of the centre in the provinces, but also the frequent disregard for government recommendations by large sectors of the local magistracy.<sup>338</sup> Order was restored through a 'proverbially English mixture of 'hard' and 'soft' tactics' running in tandem. Despite robust direction, and attempts by government to counter the 'unreliability' of the magistracy by insisting military officers could act without judicial supervision in 1800, the county commissions of the peace retained their independence in directing operations on the ground.<sup>339</sup>

Wells suggests that the tensions between central and local government betray the relative impotence of the State at this point. The 'bonds of paternalism', he argues, and the independence of local authority remained intact into the nineteenth century when changes to governmental structures and attitudes stimulated a more pervasive redefinition of social relationships, and allowed for more 'effective' central intervention in the periphery after the Napoleonic Wars.<sup>340</sup> However, the particular decisions made at a local level, remain as 'a local affair'. In attempting to draw broader conclusions, the contradictions and inconsistencies in both popular and judicial behaviour, and the reasons behind them, are, perhaps necessarily in a project of that scale, left without interrogation.<sup>341</sup>

Bohstedt has highlighted the importance of regional and local contexts, and how particular 'local social frameworks' influenced the forms protest took and the ways in

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<sup>337</sup> E. P. Thompson, 'The Moral Economy Reviewed', 292.

<sup>338</sup> R. Wells, *Wretched Faces*, sig. chapters 15, 16 & 18; also idem, 'The Revolt of the South West, 1800-01: A Study in English Popular Protest' *Social History* 2:6 (1977): 713-44; reprinted in Rule, J. and Wells, R. *Crime, Protest, and Popular Politics in Southern England 1740-1850*, (London: Hambledon Press, 1997), 17-52.

<sup>339</sup> R. Wells, *Wretched Faces*, 258-9, 264 & 288.

<sup>340</sup> *Ibid*, 325, 340-1.

<sup>341</sup> *Ibid*, 288.

which it was responded to.<sup>342</sup> In *Riots and Community Politics* he established a spectrum of social relationships: at one extreme were the larger, industrial and urban centres, devoid of traditional networks of interaction, where ‘newer, more ‘artificial’ forms of popular mobilization’ occurred. At the other lay rural, agrarian communities too closely bound by vertical hierarchies ‘to permit effective collective action.’ From a wide-ranging statistical study, he considers ‘the smaller towns of Devon, whose dense and stable social networks furnished the optimum milieu for the ‘classic’ tradition of riots.’ It was these small market towns, he argues, that could mobilise the moral economy and the paternalist sensibilities of the authorities.<sup>343</sup>

Bohstedt’s more recent work has built on his conception of riot as ‘community politics’, a locus for testing and shaping policies and power relationships, emphasising the importance of more regular, ‘day- to –day’ governance in understanding the ways in which protest in times of dearth played out.<sup>344</sup> He has consistently challenged the intangibility of Thompson’s ‘paternalist model’ that, he argues, rests on ill-defined ideals derived from a mythical golden age and erroneous popular memory of Elizabethan paternalism as manifested in the *Book of Orders*. However, he maintains ‘[r]ioters clearly expected magistrates...to make the system work the way it worked routinely in matters of poor relief, apprenticeship, justice and patronage.’<sup>345</sup> Restructuring the *moral economy* as ‘the politics of provisions’: he looks beyond a shared socio-political ideology as a structure underpinning food riots, to consider how the experiences of local government, past disturbances and their suppression, as well as immediate pragmatic responses, shaped the ways in which riot was dealt with and when and why it occurred.<sup>346</sup>

The magistracy, and local government form an important part of his discussion; indeed, he suggests that ‘provision politics’ was integral to ‘the evolutions of English

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<sup>342</sup> J. Bohstedt, *Riots and Community Politics in England and Wales 1790-1810* (London: Harvard University Press 1983) 20-21.

<sup>343</sup> *Ibid*, 26.

<sup>344</sup> J. Bohstedt, *Riots and Community Politics*, 5; J. Bohstedt, ‘The Pragmatic Economy, the Politics of Provisions and the ‘Invention’ of the Food Riot Tradition in 1740’, in A. Randall and A. Charlesworth, *Moral Economy and Popular Protest: Crowds, Conflict and Authority*, 55-92; *idem*, *The Politics of Provision* (2010).

<sup>345</sup> J. Bohstedt, ‘The Pragmatic Economy, the Politics of Provisions and the ‘Invention’ of the Food Riot Tradition in 1740’, 57, 77 and 78; *idem*, *The Politics of Provision*, 7, 11-12.

<sup>346</sup> J. Bohstedt, *The Politics of Provision*, 6-9.

governance.’<sup>347</sup> Through his survey of three centuries, he charts the longevity of the repertoire of tactics employed by magistrates, in relation to changing economic, demographic and political contexts. He too cites the decline of paternalist authority, or more particularly, the decline of ‘provision politics’ in the nineteenth century. After 1800, demographic and economic growth expanded markets and ‘swamped the ‘traditional’ networks of ‘social patronage’ that had permitted accustomed negotiations’, undermining the basis of the social contract between ruler and ruled, and obviating riot as a means of restoring it.<sup>348</sup>

Despite his important contribution in focusing on local structures and networks of social interaction, Bohstedt’s enumeration of incidents, and typologies of riots and communities have been criticised.<sup>349</sup> The strictures on what constituted a riot, and the limitations his models of social relations imposed on rural communities for example, obscure the fluidity of both the development of crowd actions, and the often very mixed demography of the crowd.

Local studies, limited in both chronological and geographical scope, have offered more detailed and comprehensive analyses of market protests. Steve Poole and Simon Renton, for example, concentrating on Bristol and Norwich respectively, have drawn out the complex of community experiences and the ‘workings of power relationships’ that underpinned the forms and management of popular protest. Significantly, their work has shown the important role the middle classes played in exerting pressure on authority to intervene in the market. Here, there is evidence of a wider social support for the moral economy, and a clearer picture of the social relationships that framed the political spaces in these communities.<sup>350</sup>

The analysis presented in this chapter follows this focused approach, concentrating on the structures of government in each county to unpack the complexity of

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<sup>347</sup> Ibid, 3.

<sup>348</sup> Ibid, 269.

<sup>349</sup> R. Wells, *Wretched Faces*, 94-5; A. Charlesworth, ‘An agenda for historical studies of Rural Protest in England, 1750-1850’ *Rural History* 2:2 (1991): 235.

<sup>350</sup> A. Randall, A. Charlesworth, R. Sheldon, and D. Walsh, ‘Markets, Market Culture and Popular Protest in Eighteenth-Century Britain and Ireland’, in A. Randall and A. Charlesworth (eds) *Markets, Market Culture and Popular Protest in Eighteenth-Century Britain and Ireland* (Liverpool: Liverpool University Press, 1996) 20-21; S. Poole, ‘Scarcity and the Civic Tradition: Market Management in Bristol, 1709-1815’ in *ibid*, 91-114; S. Renton, ‘The Moral Economy of the English Middling Sort in the Eighteenth-Century: the case of Norwich in 1766 and 1767’ in *ibid*, 115-36. See also below.

regional judicial responses. As chapter two has shown, the arrangement and management of commission membership, judicial benches and divisions, influenced the character and operation of local government. While Adrian Randall and Bohstedt have acknowledged histories of the magistracy undertaken since Thompson and Wells' studies of these disturbances were written, notably Landau's, they are used in conjunction with broad evidentiary bases to characterise the magistracy as a whole, rather than to consider the regional nuances of individual county commissions, and how the personnel and structures of government in a particular area interacted, thereby affecting the suppression of unrest.<sup>351</sup> The evidence presented here shows the limits placed on justices of the peace by protocols, regarding jurisdiction for example, as well as ambiguities manifested in legal definitions and processes. These factors complicated the suppression of riot, and frustrated relationships between communities and benches, as well as between local and central government. This perspective brings the complex of social relationships the magistracy had to negotiate to the fore. Complimented by previously overlooked (or certainly underused) material from local archives and the court of Kings Bench, the challenges this period of unrest posed for authority, and in particular, the use of judicial paternalism as a reciprocal part of the 'moral economy', can be considered in greater depth.

### ***1. The nature and location of protest***

Before considering the responses of the magistracy, it is necessary to outline the timing, geography and nature of crowd action in each county. The different contexts and manifestations of unrest framed the ways in which the authorities mobilised the structures of government to suppress disorder.

In 1794 the harvest had failed and as stocks depleted, prices rose until they reached unprecedented levels in the summer of 1795.<sup>352</sup> The Home Secretary, the Duke of

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<sup>351</sup> A. Randall, *Riotous Assemblies: popular protest in Hanoverian England* (Oxford: Oxford University Press, 2006), 28-35; J. Bohstedt, *The Politics of Provision*, 4-6; N. Landau, *The Justices of the Peace* (Berkeley: University of California Press, 1984). See also Chapter 1.4 histories of the magistracy.

<sup>352</sup> A. Charlesworth, *An Atlas of Rural Protest 1548-1900* (Kent: Croom Helm 1983), 97; R. Wells, 'The Revolt of the South West, 1800-01: A Study in English Popular Protest' in J. Rule and R. Wells, *Crime*,



Portland, embarked on a scheme to import stocks and manage their supply in order to ameliorate shortages. National management of provisions was made all the more necessary when the country was at war, frustrating supply routes and adding to the pressure of provisioning troops.<sup>353</sup>

Figure 22: The nature and location of crowd actions in Somerset, 1795-6<sup>354</sup>

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct
1795	Frome			Wells	Bruton Frome	Frome	Somerton	Bath		Keynsham
1796				Timsbury Frome Cridlingcott						

Legend	
	price-fixing in markets
	blockades
	other crowd action

The disturbances of 1795 started in the spring in Wales and Cornwall, moving into the South West. Somerset was most affected from April through to August (see table. 1). The disturbances in the spring and summer followed the same patterns of protest across other effected areas of England: initially, increasing prices stimulated crowd interventions in the market place (fig. 22: April-May); from mid-June, shortages of provisions became more acute, and popular action moved out of the markets, to grain producing regions and transit points, where the crowds sought to prevent stocks leaving their locale (fig. 22: Somerton and Bath).<sup>355</sup> The first disturbance in Somerset was in January amongst the cloth workers of Frome, who were likewise the originators of the disturbance in June. Here, the increase in prices in the spring and summer compounded existing problems of

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*Protest, and Popular Politics in Southern England 1740-1850* (London: Hambledon Press 1997) 17; J. Bohstedt, *The Politics of Provision*, 191.

<sup>353</sup> J. Bohstedt, *The Politics of Provision*, 171-4.

<sup>354</sup> Mells Manor Muniments: Thomas Horner, papers and correspondence 1795; TNA: HO 42/34, HO 42/36; WO/1/1093; KB 29/462, KB 1/29/1-2; *Bath Chronicle 1795-6*; *The Times, 1795-6*; S. Poole, "Popular Politics in Bristol, Somerset and Wiltshire, 1791-1805" (PhD thesis, University of Bristol 1992), Appendix C.

<sup>355</sup> *Ibid*, 191-2.

unemployment and concerns regarding the introduction of new textile machinery. Further price-setting actions were reported at Frome in 1796, and amongst other coalmining communities in the north east of the county, signalling how market dependent communities continued to be sensitive to price fluctuations (see Map 3.1, p. 116).<sup>356</sup>

Figure 23: The nature and location of crowd actions in Norfolk, 1795<sup>357</sup>

	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
1795			Norwich		Forehoe St Faiths			Saxlingham Diss		Sharrington Wells

In East Anglia, disturbances started in the summer of 1795 as food produced locally was sent to consuming regions. Outbreaks of unrest in Norfolk were more sporadic than those in Somerset but followed a similar pattern, flaring in the summer and into the winter months (see figure 22). Norfolk’s position as one of the country’s largest producers of grain may have ameliorated the scarcity while they could supply their own markets. However, the first crowd actions in late spring and summer, in Norwich, the suburban parish of St Faiths, and at the Forehoe House of Industry, were – as in Somerset – amongst communities more sensitive to disruptions in supply and fluctuations in prices.<sup>358</sup>

The county was also, by 1794, the largest exporter of grain in England. The majority of incidents in the autumn and winter of 1795 concerned attempts to prevent grain leaving the area in which it was produced, or blockades at transit points in northern coastal districts (see fig. 23: Oct-Dec, and Map 3.2, p. 117).<sup>359</sup> These crowd actions were made all the more concerning by rumours of Radical foment in the county.

<sup>356</sup> Mells Manor Muniments: letters to JP Thomas Horner from Messrs. Sheppard of Frome, 17 Jan 1795; Horner’s papers concerning his investigation into unemployment, provisions and relief in Frome, 1795; TNA: WO 1/1093, Messrs Sheppard to Maj. Gen. Rooke, 7 June 1795. S. Poole, “Popular Politics in Bristol, Somerset and Wiltshire, 1791-1805” (PhD thesis, University of Bristol 1992), Appendix C.

<sup>357</sup> *Norfolk Chronicle* 1795-6, *Norwich Mercury* 1795-6; TNA: HO 42/36; NRO: C/S 1/15 QS Sessions books; B. Cozens-Hardy (ed) *Mary Hardy’s Diary* (Norfolk Record Society, 1968)

<sup>358</sup> S. Wade-Martin, *A History of Norfolk* (Sussex: Phillimore 1984), 53-6; *Norfolk Chronicle*, 09 May 1795; *Norwich Mercury* 25 July 1795; see also Map 3.2, 117.

<sup>359</sup> S. Wade-Martin, *ibid.* 53, 78-9; see also Map 3.2, 117.

In October 1795, Justice Robert Fellowes of Shotesham wrote to the Duke of Portland, having received information regarding seditious meetings in the area around Diss (see fig. 23: Oct. Saxlingham). Ostensibly the meetings had been convened ‘for redress of Grievances’, but Fellowes had ridden directly to Saxlingham<sup>360</sup> where it was reported that the speaker wore a ‘Ribband or Cockade in his Hat’. On his arrival, the crowd had already dispersed, but Fellowes retrieved a copy of the speech that had been circulated amongst them. Signed by ‘A Friend to Reform’ it pointed to the ‘Land-Monopolists’, ‘Contractors and Pensioners’ who ‘Wallow in Luxury, while thousands are starving’, and called for ‘firmness and unanimity’ among the disenfranchised to effect reform. It concluded:

‘You may as well look for CHASTITY and MERCY in the Empress of Russia, HONOR and CONSISTENCY from the King of Prussia, WISDOM and PLAIN DEALING from the Emperor of Germany, as a SINGLE SPEECH OF VIRTUE in the COLD-BLOODED HEART of our HELL-BORN MINISTER’<sup>361</sup>

Such a ferocious attack on the government (and the notion of monarchy) could not go unnoticed.

In June of the same year, the Lord Lieutenant, the Marquis Townshend, had been proud to publish a letter from the Home Secretary congratulating the county magistracy on the suppression of all ‘seditious assemblies’ by their continued ‘zeal and vigilance’; no doubt he was anxious to preserve their reputation.<sup>362</sup> Fellowes had been informed that the meeting at Saxlingham was one of several held ‘in this part of the Country’. He was rightly concerned about political dissidents capitalizing on genuine issues of poverty and dearth: the ‘very high price, not only of bread Corn but of every other necessary of Life’ he argued, gave ‘to every ill disposed person but too plausible a ground to harangue the Common people’. Before completing his letter to the Home Secretary, Fellowes received reports of a serious disturbance at Diss, only eight miles south of Saxlingham.<sup>363</sup>

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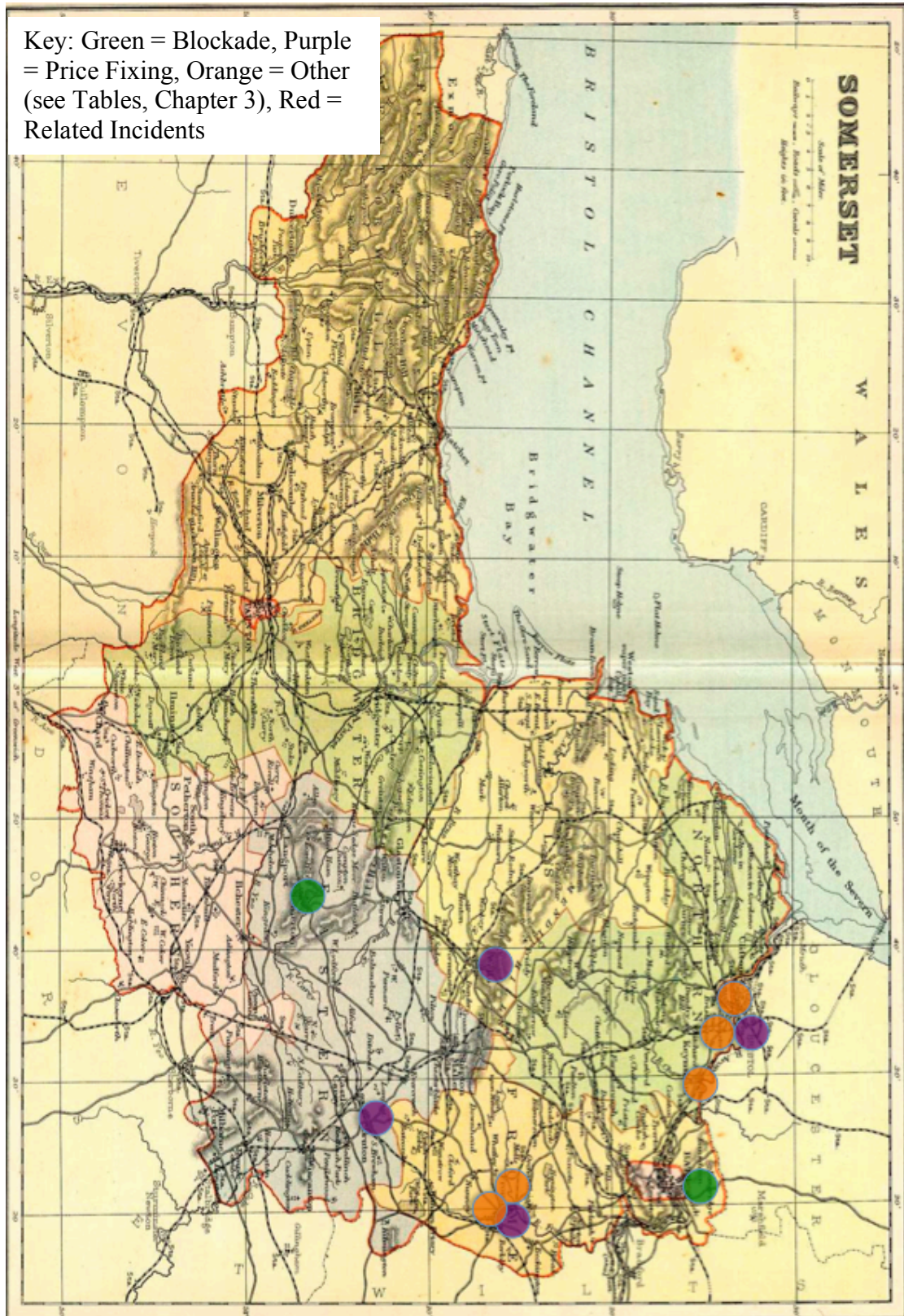
<sup>360</sup> Saxlingham Nethergate in south Norfolk, as opposed to Saxlingham in the north near Holt; Fellowes lived at Shotesham Park little more than a mile and a half north of the settlement. NRO: C/Sda 1/14-18.

<sup>361</sup> TNA: HO 42/ 36 Fellowes to Portland, 19 Oct. 1795.

<sup>362</sup> *Norwich Mercury*, 13 June 1795

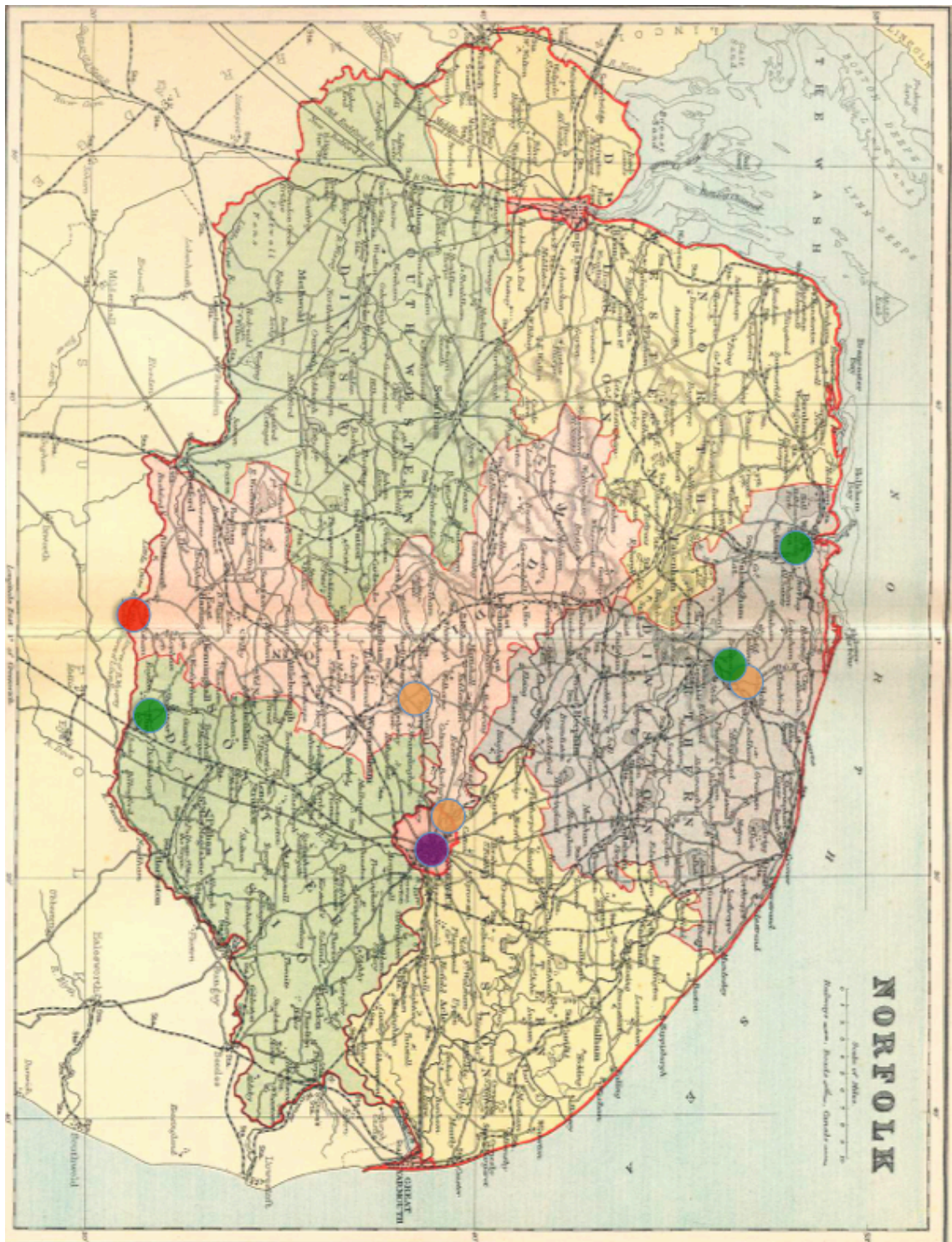
<sup>363</sup> HO 42/ 36 Fellowes to Portland, 19 Oct. 1795; *Norwich Mercury*, 24 Oct. 1795.

### 3.1. Crowd Actions and Related Incidents: Somerset, 1795



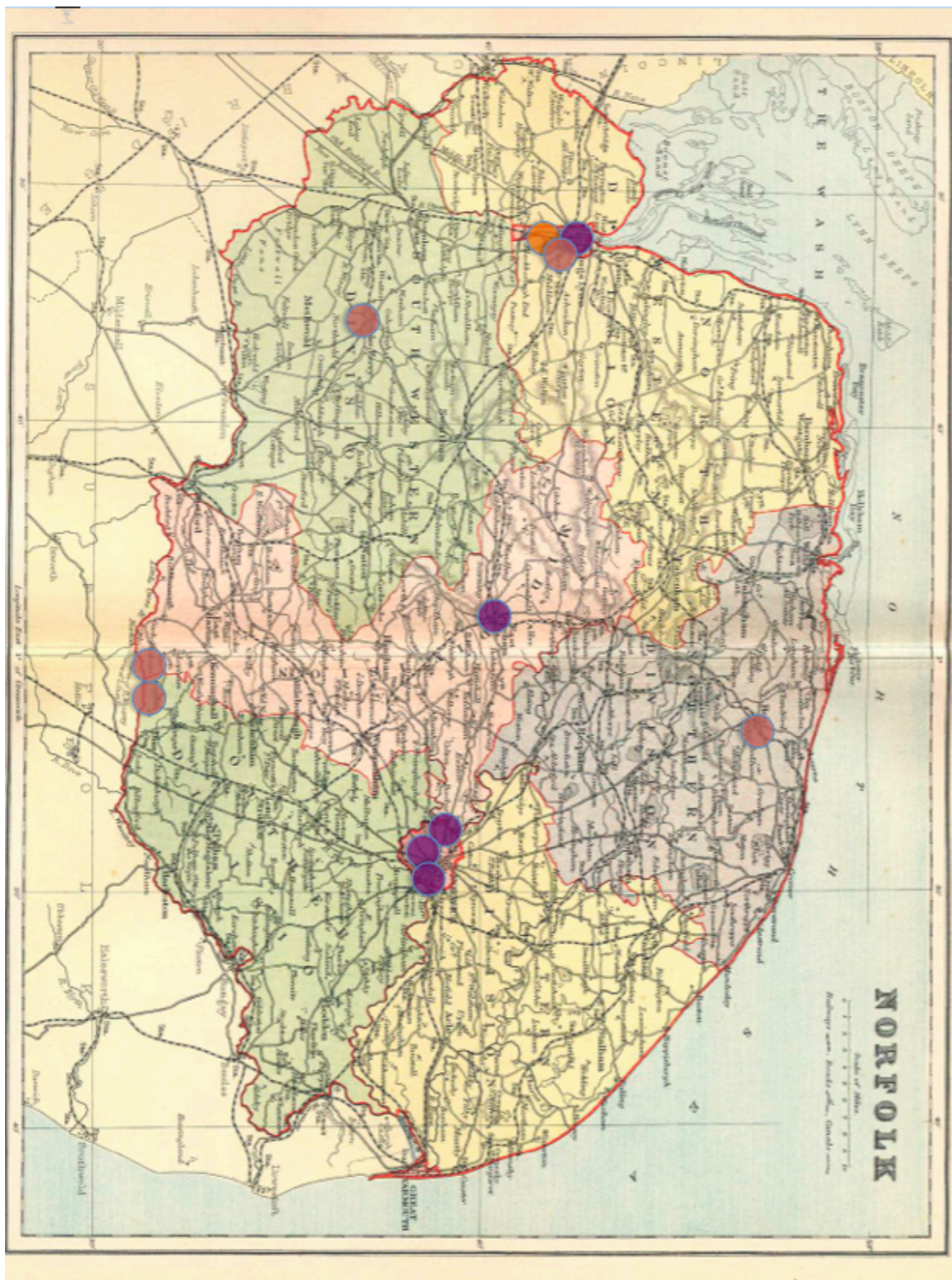
Map of Somerset by F. S. Weller, originally published in *The Comprehensive Gazetteer of England and Wales, 1894-5* (London and Edinburgh: William Mackenzie 1894-5) <http://ukga.org/images/maps/Somerset.jpg> Data added by author (see appendix 4)

### 3.2. Crowd Actions and Related Incidents: Norfolk, 1795



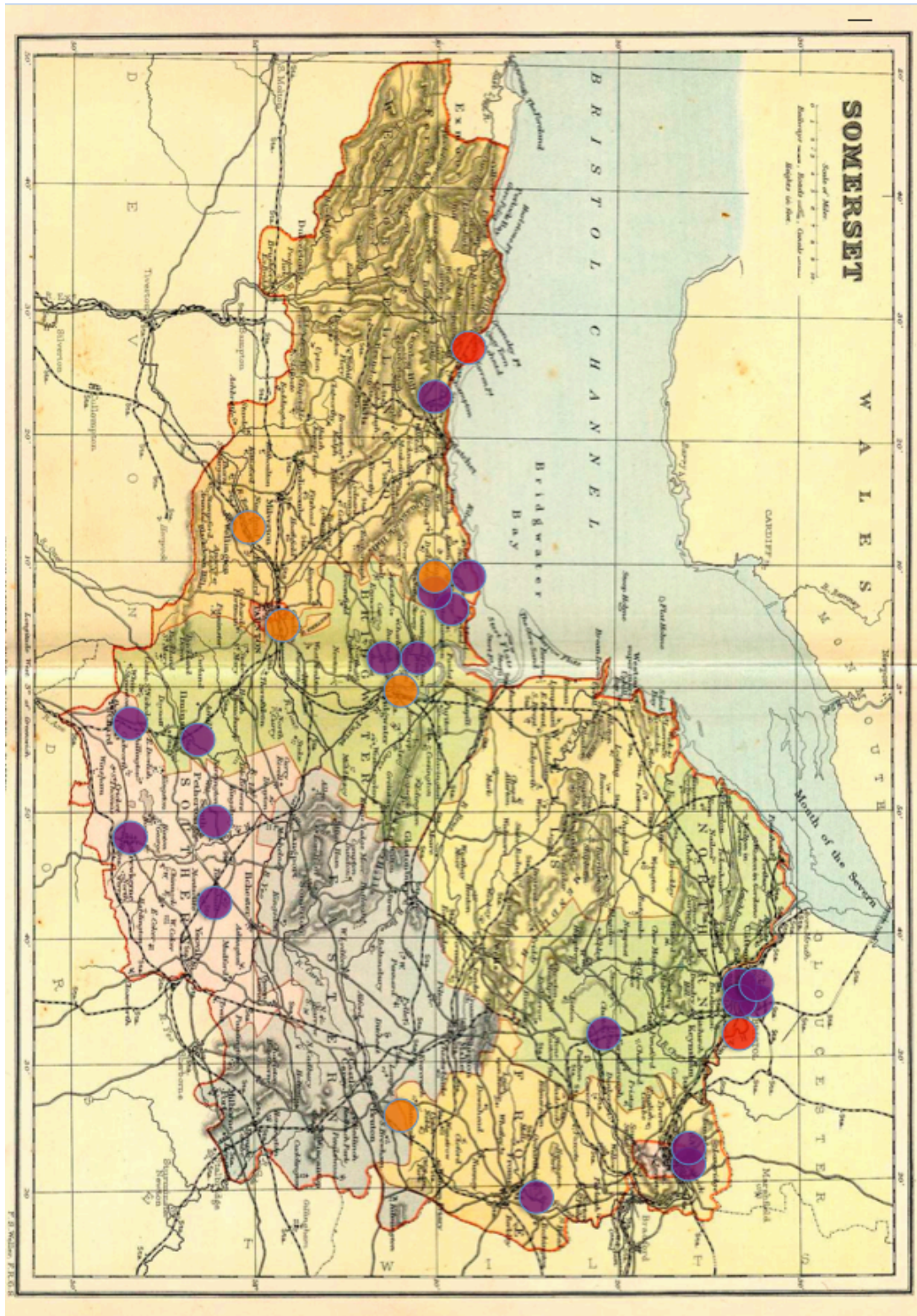
Map of Norfolk by F. S. Weller, originally published in *The Comprehensive Gazetteer of England and Wales, 1894-5* (London and Edinburgh: William Mackenzie 1894-5) <http://ukga.org/images/maps/Norfolk.jpg> Data added by author (see appendix 4)

### 3.3. Crowd Actions and Related Incidents: Norfolk, 1800-01



Map of Norfolk by F. S. Weller, originally published in *The Comprehensive Gazetteer of England and Wales, 1894-5* (London and Edinburgh: William Mackenzie 1894-5) <http://ukga.org/images/maps/Norfolk.jpg> Data added by author (see appendix 4)

### 3.4. Crowd Actions and Related Incidents: Somerset, 1800-01



Map of Somerset by F. S. Weller, originally published in *The Comprehensive Gazetteer of England and Wales, 1894-5* (London and Edinburgh: William Mackenzie 1894-5) <http://ukga.org/images/maps/Somerset.jpg> Data added by author (see appendix 4)

In 1800, it was the industrial areas of northern England that saw the first outbreaks of unrest in the New Year. Sharp increases in the price of flour at the end of August stimulated what Wells described as a ‘hyper-crisis’ in September: almost every region experienced some level of disturbance.<sup>364</sup> Norfolk was no exception. Here, disorder, as in most affected areas, was largely confined to market centres (see fig. 24 and Map 3.3, p. 118). Although the resurgence of popular discontent was largely confined to the southwest in the spring of 1801 (below fig. 25), isolated incidents of popular price-fixing occurred in Norfolk’s largest urban settlements in March and June.<sup>365</sup>

Figure 24: The nature and location of crowd actions in Norfolk, 1800-01<sup>366</sup>

	Sept	Oct	Nov	Dec	Jan	Feb	March	Apr	May	June
1800-01	New Mills Dereham Norwich						Lynn Lynn			Norwich

The context, and consequently the nature of disturbances, was markedly different in 1800. The harvest of 1799 was more promising and prices had fallen. However, once the crop had come in, the deficiency in yield due to hollow, light grains, sent prices back up. In contrast with the acute awareness of scarcity displayed in 1795, consumers still believed the harvest of 1799 to have been a plentiful one ‘and so they were doubly outraged at the idea of ‘starving in the midst of plenty.’<sup>367</sup>

Popular unrest was directed at those perceived to be keeping up prices. Mr Spract, a Norfolk miller, was set upon by a group of women at Dereham. According to the press, they were intent on taking ‘revenge on the millers, in consequence of the exorbitant price of flour and meal’. Spract was also accused of adulterating produce. He was ‘dragged... upon the ground’ by the crowd, who set about ‘pelting him with his own materials’. At Norwich, the producers and vendors of food were likewise the target of the crowd’s resentment.<sup>368</sup>

<sup>364</sup> R. Wells, *Wretched Faces*, 123-34.

<sup>365</sup> A. Charlesworth (ed.) *An Atlas of Rural Protest*, 97-103.

<sup>366</sup> *Norfolk Chronicle* 1800-01, *Norwich Mercury* 1800-01; *Bury and Norwich Post*, 1800-01; *Ipswich Journal* 1800-01 TNA: 42/51; ASSI; NRO: NCR Case 20a/25 City of Norwich Quarter Sessions Minute book 1794-1807.

<sup>367</sup> J. Bohstedt, *Riot and Community Politics*, 1, 18.

<sup>368</sup> *Norwich Mercury*, 20 Sept. 1800; HO 42/51 f. 349, J. Harvey to Portland, 22 Sept. 1800.



Figure 25: The nature and location of crowd actions in Somerset, 1800-01<sup>369</sup>

	March	April	May	June	July	Aug	Sept	Oct	Nov
1800		Frome Selwood	Walcot (Bath)				Montacute	Stowey	Bath
1801	Taunton Wellington Stogursey Stowey Goathurst Bridgwater Hill	Chard Ilminster						Farrington Gurney	
	Wayford South Petherton Old Cleeve								

All the disturbances in Somerset in 1800 (bar the deputation at Stowey in October) involved crowd actions against vendors or farmers (fig. 25). Although unrest was concentrated in the period of ‘hyper-crisis’, high prices and market malpractices appear as a prolonged issue, which elicited more violent responses. At Bruton in May, two of the most prominent millers in Somerset were shot at on their way home from market. Four months later, one of the victims - George Cox - was the target of the crowd at Farrington Gurney, who seized eight sacks of wheat from his wagon. At Minehead, threats contained in an anonymous letter to a local farmer were put into action in July, and his farm was burned down.<sup>370</sup>

The location and nature of protest became more complex in the spring of 1801, when price-setting crowds did not limit themselves to the market place, but proceeded to seek out producers - and magistrates - across the centre and south of the county, requiring their signatures to an agreement fixing the price of wheat, bread and other provisions (see

<sup>369</sup> SRO: Q/SO/17 Quarter Sessions order books; DD/AH 59/12; DD/MT/19/1/1; TNA: HO 42/50, 42/61; ASSI 25/1/3; *Bath Journal* 1800-01

<sup>370</sup> TNA: HO 42/50 f. 55 Col. Robert Stevens to Portland, 11 May 1800; ASSI 25/1/3; SRO: DD/MT/19/1/1 Assize Calendar Lent 1801; HO 42/50 J. F. Luttrell to Portland 31 July 1800.

Map 3.4, p. 119).<sup>371</sup> Following the example set in Devon, itinerant crowds were reported at Wellington on 24<sup>th</sup> March. Between 500 and 1000 processed some 20 miles from Stogursey, via Goathurst to Bridgwater and Hill on the 29<sup>th</sup>. Two different crowds were reported at Chard (c. 1400 people) and Old Cleeve on the 30<sup>th</sup>, and another at Ilminster on the 31<sup>st</sup> March.<sup>372</sup>

The prospect of crowds of this size was made all the more threatening by the discovery of a handbill at Wellington only a day before the reported disturbance. The bill made explicit connection between the apparent scarcity of provisions and the example of continental revolution:

‘Let half starv’d Britons all Unite,  
To tread Oppressors down;  
Nor fear the rage of Red or Blue  
Those Despots of the Crown...

...On Cursed Statesmen and their Crew  
Let Bolts of Vengeance fly;  
Let Farmers and Engrossers too  
Like Brute [?] be doom’d to die.

Then shall we live as Heav’n design’d  
On finest flour of Wheat;  
When all the Knaves are put to Death,  
Our joy will be Complete.

Then Raise your drooping Spirits up;  
Nor starve by Pitt’s Decree;  
Fix up the Sacred Guillotine;  
Proclaim French Liberty!!!

The local magistrates lost no time in reporting this to the Home Secretary and calling out the military.<sup>373</sup>

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<sup>371</sup> TNA: HO 42/61 f. 301 W. A. Sanford, Nynhehead to Portland 23 March 1801, f. 357 Codrington, Mayor of Bridgwater to Portland 28 March 1801, f. 387 Earl Poulett to Portland 30 March 1801 and f. 396 report to Portland, 01 April 1801; SRO: DD/AH 59/12 Stogursey corn disturbance papers 1794-1801.

<sup>372</sup> Map 3.4, 119.

<sup>373</sup> HO 42/61 f. 301, W. A. Sanford to Portland, 23 March 1801.

As exporters and importers respectively, the scarcity of 1795 impacted significantly on both Norfolk and Somerset. While disturbances were largely confined to market dependent communities in Somerset, protest was more diffuse in Norfolk complicating its suppression. The nature of the second crisis, namely high prices and the perception of a *false* scarcity, heightened popular discontent, and the market place provided a forum where grievances against ‘middlemen’ and ‘greedy’ producers could be aired. Incidents like the attack at Bruton in Somerset were rare, but other violent or inter-personal expressions of discontent were apparent in both counties in 1800 and 1801. The scale and diffusion of unrest in its final upsurge in the spring of 1801 tested the Somerset judiciary to its limit.

The magistracy in both counties, also had to contend with personal assaults, not just amongst the itinerant crowds in Somerset, but at Lynn in Norfolk, and Stockwood and Bath in Somerset, justices received threatening letters criticising their conduct; and at Holt (Norfolk), Justice Charles Collyer had several ricks destroyed by arson.<sup>374</sup> The evidence is not always explicit with regard to the nature of the justice’s apparent transgression, but these threats placed further pressure on their administration of the law. War with France and political agitation at home were also a pressing concern. Whether the threat of insurrection was genuine or not, the radical presence coloured perceptions of popular protest and the ways in which it was dealt with. Certainly Fellowes felt that the ‘most vigorous measures’ were not merely apt, but ‘just’.<sup>375</sup>

## ***2. Responses to Protest: Relief, Charity and ‘official’ paternalism***

Repression was preceded, and accompanied, by ‘softer’ tactics. As Wells and Bohstedt have highlighted, the judiciary mobilised means of redress established through more routine systems of local government in order to meet popular expectations regarding relief.<sup>376</sup> Alongside charitable subscriptions and parochial relief, the local justices

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<sup>374</sup> TNA: HO 42/50 f. 111 J. Bowen to HO, 17 May 1800, f. 156 Adams to HO, 7 June 1800, f. 153 Taylor to HO, 07 June 1800; HO 42/61 Magistrates of Holt to Portland, 07 Jan. 1801. See also Maps 3.3 and 3.4 esp. related incidents, 118-9.

<sup>375</sup> HO 42/36 Fellowes to Portland, 19 Oct. 1795.

<sup>376</sup> Bohstedt, ‘The Pragmatic Economy, the Politics of Provisions and the ‘Invention’ of the Food Riot Tradition in 1740’, 57, 77 and 78; Wells, *Wretched Faces*, 291-2.

carefully monitored marketing practices. These measures were employed from as early as 1793 in a bid to stave off riot and were persisted with as a means of restoring social bonds in the aftermath of disturbance.

Typically parish vestries and overseers of the poor regulated the distribution of relief, but the county justices had the final say in matters when payments were in dispute. This position as the ultimate arbiter in relief was used more extensively to manage the impact of dearth. Attributed to the meeting in the village of Speenhamland, Berkshire, in the midst of the 1795 famine, justices in several counties organized scales of allowances for impoverished labourers drawn from the parish rates. Calculations were made relating relief the size of the claimant's family and the price of bread. Although the system was not adopted consistently across England, increasingly, local benches of magistrates chose to adopt comparable measures.<sup>377</sup>

In response to the disturbances in Frome at the beginning of 1795, Justice Thomas Horner of Mells reassured concerned clothiers, and their employees, that 'no efforts of mine as Magistrate or Neighbour, will on occasion be wanting to promote, Collectively or Individually their Prosperity and Happiness.' Seeking both a remedy to the immediate issue of subsistence and the more persistent problems regarding adequate employment, Horner initiated an investigation into the conditions of the local clothworking industry and the cost of living, with a view to implementing a similar scheme to that of the Berkshire justices.<sup>378</sup> By implementing allowances for underpaid or underemployed labourers from the parish poor rates, Horner intended to prevent unrest and alleviate the pressures of high prices, crucially without pushing up real wage rates. In administering relief in this way - on a parochial level- magistrates secured the dependency of the labourers on their social superiors.<sup>379</sup>

But this sort of paternalist intervention, made through formal channels, did not sit easily with the ratepayers, or indeed, members of government. In 1796, Edmund Burke denounced financial aid to labourers as sentimental, 'affected pity', claiming it only

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<sup>377</sup> D. Eastwood, *Government and Community in the English Provinces, 1700-1870* (London: Macmillan Press, 1997) 131.

<sup>378</sup> Mells Manor Muniments: Correspondence of Thomas Horner including Relief scales form Berkshire and Gloucestershire 1795

<sup>379</sup> E. J. Hobsbawm and G. Rudé, *Captain Swing* (Lawrence and Wishart, 1969, this ed. London: Phoenix Press 2001), 50.

‘tends to dissatisfy them with their condition, and to teach them to seek resources where no resources are to be found, in something else than their own industry, and frugality, and sobriety.’<sup>380</sup> Burke had identified what would become the much-paraded flaws of this type of relief: that the allowances would push up the parish rates and increase the expectations of the poor in terms of their entitlements. Despite such criticisms, wage supplements in ‘Speenhamland parishes’ like Mellis, were increased in the second crisis of 1800-01; and by 1802, the cost of parish poor relief had more than doubled.<sup>381</sup> This increase reflected the changing pattern of relief expenditure in both counties in the last decade of the eighteenth century. Perhaps more concerning was the number of claimants in receipt of out-door relief: 60 per cent of total county expenditure in Norfolk, and 70 per cent in Somerset, was made to individuals away from parish institutions.<sup>382</sup>

Charitable subscriptions offered an alternative means of relief, and one that did not put such a burden on the parish rates, or engender a sense of entitlement for payments from local government coffers. The Lord Lieutenant of Norfolk, Marquis Townshend, had advocated the use of subscriptions in 1792. A sum had been raised to make up the price of flour to enable millers and bakers to sell their produce on at an affordable price. Townshend approved of the measure, as it did not gratify ‘the labourer with higher wages which he would insist upon being continued or probably spend at the alehouse.’ No doubt the Lord Lieutenant was also anxious to avoid any paid supplements, as the seamen of Yarmouth and Lynn had been agitating for an increase in wages.<sup>383</sup>

This mode of assistance encouraged deference and provided an opportunity for public shows of paternalism, but without the longer-term commitment implied in the manipulation of the regular channels of relief. In 1793, Chairman of the county sessions bench, Henry Jodrell, addressed the grand jury on the propriety of such measures. As ‘respectable farmers and gentlemen’, he reminded the jurors,

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<sup>380</sup> E. Burke, *The Works of the Right Honourable Edmund Burke*, vol. viii Three letters addressed to a member of the present Parliament on the Proposals for Peace with the Regicide Directory of France, (London: F and C. Rivington, 1801), 295.

<sup>381</sup> R. Wells, ‘The Revolt of the South West’, 22-3, see also *Wretched Faces*, 306-12, 357.

<sup>382</sup> PP: 1803-04 (175) Abstract of the answers and returns made pursuant to an act, passed in the 43d year of His Majesty King George III. Intituled, "an act for procuring returns relative to the expense and maintenance of the poor in England." 342 and 442.

<sup>383</sup> TNA: HO 42/22 ff. 219-33, Marquis Townshend to Lord Greville, 21 & 30 October 1792, ff. 353-4 11 November 1792; J. Bohstedt, *The Politics of Provision*, 236.

‘presiding over the parishes to which you belong, to attend from time to time to the price of corn, and those necessary articles of life which are proper for the comfort and support of the inferior sort of people, - to compare their possible earnings with their necessary expenditures’

He recommended that subscriptions should be raised to allow parish officers to procure ‘the necessaries of life’ and sell them on to labourers at a price they could afford. While Jodrell’s suggestions encouraged a Speenhamland-type arrangement, it was framed in terms of charity. He likewise cautioned against judicial involvement in the regulation of wages, as any ‘universal rule in this respect would be attended with more difficulties and inconveniences than the law was meant to remedy.’ The charge was subsequently published at the request of the magistracy.<sup>384</sup> This initiative persisted in 1795, in July a ‘numerous body of the poor’ from the village of St Faiths just outside Norwich, had assembled to address the Bench. The press reported that they wished to petition the magistrates for relief from ‘the present high price of meal and flour.’ In consequence, the justices ‘recommended to the inhabitants to subscribe a sufficient sum of money for the above laudable purpose, which was cheerfully acquiesced in’.<sup>385</sup>

Charitable relief was also implemented in a more piecemeal fashion to prevent imminent disorder. However, in Diss (Norfolk) at least, this was contingent merely on the threat of tumult. Despite agreeing to a subscription to alleviate the distress of the poor in the neighbourhood, the rate-paying inhabitants ‘cooled’ to the idea once the apprehension of disturbance had subsided. They did, however, feel they could stretch to a £30 reward for the detection of the author of the incendiary letter posted in the neighbourhood that had originally stimulated them to acts of charity.<sup>386</sup>

In Somerset, provision committees organised subscriptions and the distribution of provisions with considerable success, most notably at Bristol and also in Bath. The extension of economic hardship however strained such good will. By 1800, many of the middling-sort were feeling the pinch and could no longer afford to make charitable donations. Limits had to be applied to the claimants of charity. That year, the Bath

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<sup>384</sup> ‘A charge delivered to the Grand Jury of Norfolk, at the General Quarter Sessions held on Wednesday, Jan. 16, 1793, at the Shire-House on the Castle-Hill, Norwich, by Henry Jodrell Esq. Published at the Request of the Magistrates.’ Reproduced in G. Lamoine, *Charges to the Grand Jury 1689-1803*, Camden Fourth Series, vol. 43 (London: Royal Historical Society, 1992) 479-80.

<sup>385</sup> *Norwich Mercury*, 25 July 1795; see fig. 23.

<sup>386</sup> TNA: HO 42/50 T. Beevor to HO, 17 July 1800.

committee stipulated new criteria for relief, ensuring that all applicants had to have a personal recommendation from a subscriber.<sup>387</sup>

Cheaper, perhaps more popular measures were available to the magistracy by upholding the regulations for correct weights and measures and implementing the Assize of Bread.<sup>388</sup> A particularly consistent run of returns made to the Somerset quarter sessions highlight the concentration of summary convictions for deficient weights and measures and marketing irregularities, immediately prior to, and during the crisis of 1795. Only one comparable return had been made between January 1793 and October 1794; thereafter, 12 of 37 returns for summary convictions concerned the malpractices of hawkers and bakers, and eight of the convictions were made as the scarcity intensified between January and August 1795.<sup>389</sup> Jodrell's charge to the Norfolk bench in 1793 had also recommended careful attention to weights and measures, and confirmed that the county magistrates 'had taken the same into their consideration'.<sup>390</sup> The press in both counties bolstered these measures by widely publicizing the maintenance of the Assize of Bread and seizure of deficient provisions at markets by the attending magistrates, who generously distributed the stock amongst the poor.<sup>391</sup> The county judiciary also led by example in publicly resolving to reduce their own consumption of wheat and promoting alternative diets.<sup>392</sup>

Such 'crowd pleasing spectacles' reassured several sectors of the local community and provided timely reminders of the efficiency of the local judiciary and the propriety of the law.<sup>393</sup> In May 1795, the *Bath Chronicle* praised the magistrates who had intervened

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<sup>387</sup> S. Poole, 'Scarcity and the Civic Tradition: market management in Bristol, 1709-1815' in A. Randall, et al, *Markets, Market Culture and Popular Protest*, 91-114; *ibid*, *Popular Politics in Bristol, Somerset and Wiltshire 1791-1805* (PhD thesis, Bristol University 1993), 413-6, and 424. *Bath Journal*, 15 January and 19 February 1795, 23 June 1800.

<sup>388</sup> The Assize of Bread regulated the size of loaves according to the price of grain; loaves had a stable price, therefore their size fluctuated with the changes to the price of wheat. Although magistrates were not empowered to set the price of wheat, they could establish the cheapest market price to ensure the loaves were sold at their maximum weight. A. S. C. Ross, 'The Assize of Bread', *Economic History Review*, 9, 2 (1956), 332; E. P. Thompson, 'The Moral Economy of the English Crowd', 108-9.

<sup>389</sup> SRO: Q/RCC/bundle 1790-99.

<sup>390</sup> 'A charge delivered to the Grand Jury of Norfolk, at the General Quarter Sessions held on Wednesday, Jan. 16, 1793...' Reproduced in G. Lamoine, *Charges to the Grand Jury 1689-1803*, 480.

<sup>391</sup> See for example: *Bath Chronicle*, 07 and 14 Aug 1794, 30 Oct. 1794, 25 Dec. 1794, 28 May 1795; *Norwich Mercury*, 20 July 1795, 25 July 1795, 08 Aug. 1795.

<sup>392</sup> SRO: Q/SO 16 Order of Quarter Sessions, 15 July 1795; *Norwich Mercury* 20 July 1795

<sup>393</sup> A. D. Leadley, 'Some villains of the eighteenth-century market place', in J. Rule (ed.) *Outside the Law: Studies in Crime and Order 1650-1850* (Exeter: University of Exeter 1982) 23-7.

to placate the ‘misguided populace’ of Frome, who had ‘proceeded to compel the vendors of butter and other articles to reduce the prices.’ A fortnight later, the paper lauded the example of the same justices’ for their prosecution of forty hucksters for retailing goods by short measure.<sup>394</sup>

The Norwich Bench were under increasing pressure to do something about high prices throughout the summer and into the autumn of 1800. Despite maintaining the Assize of Bread, fining several millers and bakers during the summer, a ‘riotous disposition’ was so manifest in the city by the autumn, that the local troop of Yeomanry cavalry were being held in readiness. Popular demands made of the bench were compounded by a petition from the Grand Jury of the City sessions (comprised of the respectable inhabitants of Norwich) complaining about ‘the malpractices of several jobbers in the hay-markets, who constantly bought up the hay and re-sold it at advanced prices to the prejudice of inn-keepers and other regular buyers’.<sup>395</sup>

Matters appeared to be coming to a head in September when some of the millers and bakers in the market had been openly abused, and the justices had received yet another petition signed by the city’s skilled workmen and merchants regarding the high price of provisions. The magistrates were keen to resist disorder and protect the suppliers of the markets, but conscious of the need to address prices that were effecting more than the poor. They set about examining the millers and bakers ‘very minutely’, establishing the highest, but more importantly, the lowest prices of wheat, in order to more effectively regulate the Assize of Bread. The press welcomed their intervention in the market and praised their more proactive regulation of prices.<sup>396</sup>

In 1766, the more stringent measures taken against food rioters by the Norwich bench had met with the opprobrium of the city’s ‘middling sort’ (its smaller craftsmen and manufacturers) and resulted in the public shaming of some of its more prominent justices.<sup>397</sup> In 1800, it is clear that the city’s moral economic sensibilities persisted: this

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<sup>394</sup> *Bath Chronicle*, 14 and 28 May 1795.

<sup>395</sup> *Norwich Mercury*, 14 June – 08 Aug. 1800; TNA: HO 42/51 f. 349 Mayor Robert Harvey to Portland, 22 Sept. 1800.

<sup>396</sup> *Ibid*, HO 42/51 f. 349, and f. 373 Deputy Mayor Herring to Portland, 22 Sept. 1800; *Norwich Mercury*, 04 October 1800.

<sup>397</sup> Renton, ‘The Moral Economy of the English Middling Sort in the Eighteenth-Century: The case of Norwich in 1766 and 1767’ in A. Randall and A. Charlesworth (eds.) *Markets, Market Culture and Popular Protest in the Eighteenth-Century*, 128-30, 134.



time, the bench acknowledged both the discontent of the poor and the petitions of the marginally better off and intervened before serious disturbances took place. This was more than populist platitudes, the Norwich bench had to take seriously the demands of broad sectors of the community in order to ensure peace, and prevent a more concerted attack on their authority.

Although it has been suggested that popular comprehension of the moral economy was not based on common ideals, there was clearly a degree of shared understanding that resided somewhere between pure pragmatism and faith in the ‘common weal’.<sup>398</sup> At Bath in May 1800, Justice John Bowen had been actively engaged in dispersing and apprehending rioters who had attacked potato sellers in the market and gone out of the city to ‘pillage’ their stocks, and in one instance assault the gardener.<sup>399</sup> Despite the day’s events - and being the recipient of several anonymous threatening letters -, Bowen professed remarkable understanding. He concluded his report to the Home Office by confirming popular assumptions about the scarcity, laying the blame on producers who sold all their produce to ‘Higlers.’ The gardener who had been beaten by the crowd that day, ‘had imprudently boasted’ that he had over 100 sacks of potatoes ‘which he was determined to keep up till they should produce 1 guinea per sack altho. they cost him only 4’. Bowen felt that the ‘spirit of forestalling prevails much in the Markets at this and I believe I may add almost every other place’ and for ‘want of a better mode of punishing it’ he recommended prosecution for such offences. The Home Secretary, the Duke of Portland noted that Bowen had acted ‘with great probity’, but he thought it ‘very desirable to convince him and all people of the same description of the reality of the scarcity’.<sup>400</sup>

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The manipulation of relief, support and encouragement for charitable subscriptions, and regulation of market practices were implemented by the magistracy in both Norfolk and Somerset to prevent tumult and restore order to their communities. The actions of the

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<sup>398</sup> Boshtedt, *The Politics of Provision*, 14-15.

<sup>399</sup> TNA: HO 42/50 f. 111 J. Bowen to Home Office, 17 May 1800.

<sup>400</sup> *Ibid.* and annotation of the same by Portland.

magistracy were framed by established functions of local government and popular expectations of how local government was supposed to work.

A strong performative element is apparent in the very public bestowing of relief or charity, and the prosecution of ‘pernicious middlemen’, but as the evidence suggests, this was not merely a nod to public opinion. The magistracy had to take seriously the demands of the community – not just the poor – and carefully negotiate around issues of public expenditure, trade and welfare. Undeniably this was motivated by pragmatic and possibly professional concerns to maintain order and the status quo, but many of the justices’ statements and actions betray a sense of duty and obligation. These ameliorative measures were employed alongside the active suppression and prosecution of disorder, as a necessary means to restore social relationships and the legitimacy of their authority.

### ***3. Responses to Protest: suppression and the civil authorities***

*Figure 26. Responses to Protest: Norfolk*

	<b>JP in the first instance</b>	<b>Military Intervention</b>	<b>Nos. arrested* (and nos. of incidents resulting in arrest)</b>	<b>Military intervention and nos. arrested</b>	<b>Incidents leading to prosecution</b>	<b>Total crowd incidents</b>
<b>1795</b>	6 (86%)	4 (57%)	6 (2)	6	3 (42%)	7
<b>1800-01</b>	5 (83%)	2 (33%)	2+ (3)	2	3 (50%)	6

*Figure 27. Responses to Protest: Somerset*

	<b>JP in the first instance</b>	<b>Military Intervention</b>	<b>Nos. arrested* (and nos. of incidents resulting in arrest)</b>	<b>Military intervention and nos. arrested</b>	<b>Incidents leading to prosecution</b>	<b>Total crowd incidents</b>
<b>1795</b>	5 (63%)	5 (63%)	1?	1?	1	8
<b>1800-01</b>	7 (50%)	5 (33%)	17+ (7)	2	6	14

\* During dispersal/at the time of crowd incident

Figures 26 and 27 show an aggregation of the responses by the authorities to disorder in Somerset and Norfolk.<sup>401</sup> The data in column 1 confirm that the limited availability of the magistracy prevented them from responding to every reported incident in the first instance. The differences in judicial responses in both regions, reflects the distribution of acting magistrates in Norfolk and Somerset as outlined in the preceding chapter.<sup>402</sup> The higher proportion of responses by the magistracy in Norfolk follows the more even distribution of justices across the county. Indeed, the two incidents where no intervention by magistrates is counted can be attributed to the lack of clarity in the reports, rather than confirmation that the judiciary did not act.<sup>403</sup>

In Somerset in 1795, the three incidents where no initial judicial response was recorded all occurred in settlements without resident magistrates. The parish of Bruton, and the hundred as a whole had no resident justice; and Frome was served by magistrates living outside the town.<sup>404</sup> The disturbances of 1800-1801 stretched the civil authorities even further. Of the seven incidents where no judicial intervention was recorded, four took place at locations where there was no resident magistrate, and two were in Hundreds without any local justices.<sup>405</sup> The mobility and multiplicity of disturbances in March 1801, as well as their concentration (twelve locations were cited in ten days), complicated their suppression. As detailed below, magistrates had to leave their locales to serve neighbouring hundreds. Matters were made worse by absent justices, at least one gentleman had removed himself to Bath, and others were in attendance at the Assizes

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<sup>401</sup> Source: Mells Manor Muniments: Thomas Horner, papers and correspondence 1795; TNA: HO 42/34, 42/36, 42/50, 42/61, 42/51; WO/1/1093; KB 29/462, KB 1/29/1-2; NRO: C/S 1/15 QS Sessions books; MF/RO 36/1 NCR Case 20a/25 City of Norwich Quarter Sessions Minute book 1794-1807; SRO: Q/SO/17 Quarter Sessions order books; DD/AH 59/12; DD/MT/19/1/1; *Bath Chronicle 1795-1801*; *Bath Journal* 1800-01; *The Times, 1795-1801*; *Norfolk Chronicle* 1795-1801, *Norwich Mercury* 1795-1801; *Bury and Norwich Post*, 1800-01; *Ipswich Journal* 1800-01; B. Cozens-Hardy (ed) *Mary Hardy's Diary* (Norfolk Record Society, 1968); S. Poole, "Popular Politics in Bristol, Somerset and Wiltshire, 1791-1805" (PhD thesis, University of Bristol 1992), Appendix C.

<sup>402</sup> Chapter 2.2 and 2.3.

<sup>403</sup> Re riotous proceedings at Norwich where the magistrates subsequently issued handbills warning against disorder, *Norfolk Chronicle*, 09 May 1795; and a rescue attempt at Lynn where it is not explicitly stated whether the magistrates or the militia were responsible for arrests made, *Bury and Norwich Post*, 11 March 1801.

<sup>404</sup> Mells Manor Muniments: Thomas Horner, papers and correspondence 1795; *Bath Chronicle*, 14 May 1795; SRO: Q/JC/119-120; TNA: C 220/9.

<sup>405</sup> See Appendix 2, Map 4; Montacute and Wayford had no resident justices in the parish or hundred; no resident JPs in the parishes of Wellington or Old Cleeve.

sitting at Taunton. Considering the highly disturbed central region of the county had only c. 25 active magistrates, such deficiencies were felt acutely.<sup>406</sup>

When faced with crowds feasibly numbering into the hundreds, the use of military forces – both professional and voluntary – were the only means of augmenting the magistracy’s coercive power.<sup>407</sup> Bohstedt has highlighted the increasing use of armed forces in the crises of 1795-1801. His national averages indicate that the military was used in half of all disturbances in 1795, and two-thirds in 1800-01. This apparently increasing dependency, he argues, signalled a significant change in governance.<sup>408</sup> Indeed, his figures would suggest the preference for a ‘new firmness’ voiced by central government was adhered to, to a considerable extent. But, as Bohstedt suggests, this point must be qualified by the context: recourse to military power required less effort at this time, as the mobilisation of both professional and volunteer forces for war made them more readily available.<sup>409</sup> In both phases of riot, central government sought to capitalise on this asset, and advocated the use of military intervention to ensure supply routes in 1795 and the suppression of disturbance in 1800-01.<sup>410</sup> The magistracy, caught between the immediate need to suppress disorder and the longer-term ramifications of keeping the peace, interpreted these directives according to their local contexts.

The use of armed forces in both Norfolk and Somerset in 1795 follow the national pattern established by Bohstedt, but in 1800-01, the frequency of military intervention falls well short (tables 5 and 6, column 2). The use or otherwise of force in both counties was informed by local governmental infrastructure, as well as local governmental attitudes.

### *3.1 Responses in Norfolk*

In five of the six disturbances in Norfolk where armed intervention was recorded, local volunteer yeomanry troops were used. Most volunteer activity was concentrated in 1795,

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<sup>406</sup> SRO: Q/JC/119-120; TNA: C 220/9; see below, 3.2

<sup>407</sup> Randall, *Riotous Assemblies*, 35-8.

<sup>408</sup> Bohstedt, *The Politics of Provision*, 230.

<sup>409</sup> *Ibid*, 226-7.

<sup>410</sup> See below, 3.1 and 3.2

when they were involved in the suppression of half of all disturbances.<sup>411</sup> The disturbances in the autumn and winter of 1795 proved a greater cause for concern; they breached the bounds of the market place and saw the cooperation of different occupational groups.

In December at Wells-next-the-Sea on the north Norfolk coast, a group of women had prevented grain being exported to London. Joined by people from various neighbouring communities, including agricultural labourers, they succeeded in preventing its departure for several days. The Lord Lieutenant, Marquis Townshend, accompanied by Rev. Justice Dixon Hoste, rode out to Wells with the Pembroke militia to end the impasse. Nothing appeared to move the crowd: the magistrates had warned them of the illegality of their actions, they had offered them assurances that the local landowners would address their grievances, and after reading the Riot Act twice, the militia were sent in.<sup>412</sup> But the assembly was only dispersed after the arrival of Thomas Coke of Holkham. Coke was the local magistrate. His unexpected return to the region proved timely. After promising ‘assurance of attention to their real distress upon peaceable application’ he appointed a day to hear them. Apparently satisfied with these arrangements, the crowd consented to the corn being shipped.<sup>413</sup>

Coke made good his word and had organised ‘the best Regulations for supporting the Poor’. The ‘lower trades people’ of Wells however, were ‘dissatisfied at what they are to contribute and have disseminated their resentment amongst the Sailors’. The Lord Lieutenant received reports that the sailors had professed they would resist any further intervention in the town, and had they had the opportunity, they would have fired on the magistrates and militia.<sup>414</sup> Their example was, he feared, spreading through coastal towns: the Mayor of Lynn had been informed of ‘a Conspiracy to destroy the Town and Shipping in the Harbour by fire’. Townshend was convinced that ‘some connexion’ existed between the threats at Lynn and ‘attempts to detain Flour in other parts’. Earlier

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<sup>411</sup> *Norwich Mercury*, 27 May, 24 Oct., 26 Dec. 1795; *Norfolk Chronicle*, 24 Oct. 1795; Mary Hardy’s Diary, 90-91; HO 42/37 f.311.

<sup>412</sup> *Ibid.* 36; *Norwich Mercury*, 19 Dec. 1795.

<sup>413</sup> *Ibid.* Also HO 42/37 f. 173 Townshend to Portland, 16 Dec. 1795.

<sup>414</sup> TNA: HO 42/38 f. 118 Townshend to Portland, 1 Jan. 1796.

in December he had also received reports of violent and disruptive behaviour amongst the troops barracked at Yarmouth.<sup>415</sup>

The belligerence of the crowds in the north of the county, cooperation between artisans and sailors, and the presence of political radicals in the south was a most worrying situation to be faced with. Consequently Townshend mobilized volunteer forces across the county, creating something akin to a police network. As early as 1791, the Lord Lieutenant advocated the formation of associations of gentlemen and farmers. Writing to Lord Orford, he claimed,

‘In this county in particular...vigilance is necessary, as upon any sudden decline of the Norwich manufacture, or upon a rise in the price of provisions, riots have followed, and our magistrates in this part of the county have sometimes been intimidated to inaction or disgraceful compliance.’

Fearing risk of invasion, volunteer troops had been raised in the northern coastal areas of the county in 1782. Townshend’s Norfolk Rangers, established that year, were joined by the Hingham Corps and East Dereham troop by October 1794. By the autumn of 1795, troops had also been raised for Blofield and Lodden in the east of the county, and Clackclose and Lynn in the west.<sup>416</sup>

Townshend’s criticism of judicial timidity may have been directed at the City bench at Norwich, or towards some of his nearer neighbours – men such as Thomas Coke who voted against the county motion to raise volunteer troops in 1794.<sup>417</sup> From 1795 however, it is clear that the Yeomanry Cavalry were closely allied with the county commission of the peace. At least one officer in each of the six troops raised between 1794 and 1796 was an active county justice. Of the 23 officers in total, 14 were members of the commission of the peace and 12 were qualified magistrates.<sup>418</sup> The Yeomanry and volunteers played a pivotal role in the regulation of the country communities, one that relied upon their local connections.

Three days after the disturbance at Wells in 1795, a crowd stopped and seized five loads of flour on its way to Lynn, lodging it in a house at Sharrington. Justices Henry

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<sup>415</sup> HO 42/38 f. 56 Townshend to Portland, 5 Jan. 1796; HO 42/37 f. 354, Townshend to Portland, 4 Dec. 1795.

<sup>416</sup> J. R. Harvey (ed), *Records of the Norfolk Yeomanry Cavalry* (Norwich: Jarrold and Sons, 1908), 22-3, 32, 66-7, 74.

<sup>417</sup> *Ibid*, 40.

<sup>418</sup> *Ibid*, 74; NRO: C/Sda 1/14-18; TNA: C 220/9/8 and 9.

Jodrell, and Rev. Charles Collyer, assembled nearly one hundred gentlemen and farmers of the neighbourhood at Holt, who secured the flour and escorted it through their jurisdiction. The force was subsequently formalised as the ‘Loyal Holt Association’, and Jodrell was clear as to its purpose: he stated the absolute necessity of such an association ‘to make an Impression on the Mind of the common People that the *civil Power* was ever ready and determined to suppress all Violation of the publick Peace’. Jodrell’s example was met with the approbation of the Lord Lieutenant, who reported to the Duke of Portland that the presence of such volunteer troops had maintained the peace of many parts of the county. Townshend also highlighted a more subtle purpose: the presence of the yeomanry in several Hundreds across Norfolk, allowed for the ‘total communication of this County with the Sea Ports [to] be intercepted.’<sup>419</sup>

In addition to the regulation of communities inland by volunteers and the county judiciary, Townshend suggested to the Home Secretary that the Navy should assist in maintaining discipline in the coastal communities. He imputed the ‘refractory Conduct’ of the sailors at Wells to the lack of a press tender in the area; these holding ships were used to contain impressed men before they were assigned to a ship in service. Despite having denounced naval conscription and press gangs as unconstitutional in 1775, Townshend intimated that such a presence might be held over the men of Wells, as the town had ‘contributed the least of any to the supply of the Navy.’ His proposed cooperation between the Navy and the civil authorities thereby completed the policing of the county by both land and sea.<sup>420</sup>

The Norfolk yeomanry played a less visible role in the disturbances of 1800-01. The concentration of protest in market centres did not require the mobilisation of a ‘police force’ across the countryside. Although the Norwich City bench displayed a more conciliatory attitude than Townshend had in 1795, the Norwich mounted volunteers, raised by Alderman John Harvey in 1797, were kept in readiness in the county capital. The only disturbance requiring the intervention of the troop was at

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<sup>419</sup> TNA: HO 42/37 Townshend to Portland, 22 Dec. 1795; HO 42/37 to Townshend, 22 Dec. 1795, enclosed in Townshend to Portland, 23 Dec. 1795. See also *Norwich Mercury* 26 Dec. 1795. Emphasis added.

<sup>420</sup> NRO: MC 36/180-184; TNA: HO 42/38 f. 56 Townshend to Portland, 5 Jan. 1796; HO 42/37 f. 354, Townshend to Portland, 4 Dec. 1795; N. Rogers, ‘Liberty Road’, *Crowds, Culture and Politics in Georgian Britain* (Oxford: Oxford University Press, 1998), 92-3, 115; D. J. Ennis, *Enter the Press-Gang: Naval Impressment in Eighteenth-century British Literature* (Newark: University of Delaware Press, 2002), 38.

New Mills, where a group reported to be largely comprised of women, endeavoured to lower the price of flour. The emphasis here was once again on a show of civil strength: the Sheriff raised a posse of respectable inhabitants of the city, and Captain Harvey led a detachment of the Norwich volunteers ‘without uniform’ to New Mills. According to the *Norwich Mercury*, the appearance of the troop and their ‘gentlemanly deportment’ had the ‘happiest effect’, and the assembled crowd dispersed peaceably to their homes.<sup>421</sup>

### 3.2 Responses in Somerset

Almost the opposite response can be found in Somerset. Despite the deployment of nearly 8,000 professional troops in the region in 1801, and clear directions from the Home Secretary that their use was imperative to the restoration of peace, military forces were only involved in the suppression of one third of the disturbances in the county. Armed forces were deployed more frequently in 1795, but only on two occasions was this clearly at the behest of the magistracy.<sup>422</sup>

Certainly in comparison to Norfolk, there was little in the way of volunteer corps in Somerset. Writing to Thomas Horner at Mells, in November 1795, Captain Robert Stevens explained in some detail the difficulty in sustaining his troop in any one place for an extended period of time: illness, billeting and the process of raising the troop frustrated their speedy deployment. Stevens’ troop was reputedly the only one in the north of the county; the next closest troops were based at Yeovil, Crewkerne and Coker, all some 30 miles south of Frome. Coupled with the absence of a resident justice in the town, it is unsurprising that it was the leading clothiers, Messrs Sheppard, who had petitioned government for military assistance during the disturbances only a few months before.<sup>423</sup>

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<sup>421</sup> *Norwich Mercury*, 06 Sept 1800; Harvey, *Records of the Norfolk Yeomanry Cavalry*, 87.

<sup>422</sup> HO 43/12 Portland to Poulett, 3rd April 1801; see also fig. 27 and Map 3.4 for 1801 incidents; R. Wells, ‘The Revolt of the South West’, 35-6.

<sup>423</sup> Mells Manor Muniments: Capt. Robert Stevens to Thomas Horner, Nov. 1795; TNA: WO 1/1092; S. Poole, *Popular Politics in Bristol, Somerset and Wiltshire, 1791-1805*, (PhD thesis, University of Bristol, 1992), 466.



The reported intervention of soldiers on the side of the crowd at the market in Wells (Somerset), in April 1795, has been frequently cited as an example of the unreliability of militiamen during the subsistence crises.<sup>424</sup> According to John Turner - a canon of the Cathedral, Archdeacon of Taunton, and a county magistrate - men from the 122<sup>nd</sup> Regiment then quartered at Wells, entered the market 'with fixed Bayonets and compelled Persons who had purchased large quantities of Butter at nine pence half penny per pound to sell it at eight pence'. They continued to reduce the price of potatoes, and then moved out of the market 'to the limits of the city' to seek out more 'Jobbers' and compel them to sell on their goods at lower prices. Turner feared that this example might cause further unrest, and lamented his plight, 'being the only county magistrate residing here and altogether without Expectation of any assistance in case of Disturbance.'<sup>425</sup> Turner's statement can be read as quiet condemnation of the justices of the corporation.

Wells had its own bench, comprised of the mayor, the recorder and another justice elected from the city masters. Although the city courts were empowered to try misdemeanours, they were only convened as a formality; the majority of cases were agreed out of sessions, or failing that referred to the county bench, which sat in the city twice a year.<sup>426</sup> The correspondence between Turner and Colonel Shaw, commander of the regiment, showcase a dispute pitting townsmen against the militia, and the corporate bench against the county judiciary.

Turner does not appear to have been present at the disturbance, but his involvement was instigated by the complaints of some of the 'jobbers'. At least one of them had approached the Deputy Mayor after his butter had been seized, but several of those who had been targeted by the crowd subsequently complained to Turner.<sup>427</sup> From letters sent to the War Office prior to the market disturbance, it appears that tensions between the regiment and some of the city's tradesmen were well established. One of the complainants before Turner was the wife of a local Innkeeper, Mr James, who had hosted the officers of the 122<sup>nd</sup> quartered at his establishment. The officers had quit his house 'compelled by the repeated insolence of his conduct'. They claimed that Mr James and

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<sup>424</sup> E. P. Thompson, 'The Moral Economy of the English Crowd', 113; R. Wells, *Wretched Faces*, 104, Randall, *Riotous Assemblies*, 210. Bohstedt, *Politics of Provisions*, 184.

<sup>425</sup> TNA: HO 42/34 f. 348 Rev. John Turner to the Duke of Portland, 28 April 1795.

<sup>426</sup> See chapter 2.3 *Structures of government: the Boroughs*

<sup>427</sup> HO 42/34 f. 369 Shaw to Turner enclosed in Turner to the Duke of Portland, 6 May 1795.

his wife were both abusive and prone to drunkenness; in consequence, the Mayor had fined James for his offensive behaviour. This initial dispute led to further complaints against the regiment from James.<sup>428</sup>

Lieutenant Colonel Shaw, commander of the 122<sup>nd</sup>, was informed of Turner's report to the Home Secretary and confronted him in a letter, claiming most vehemently 'there is not a word of truth in your statement'.<sup>429</sup> Shaw explained that the presence of his men in the market had been at the behest of the Mayor of Wells, for 'preserving the Peace and Protecting the Peace Officers from the Mob not from the Soldiers'. Far from being inactive, Shaw and the city magistrates had apprehended the possibility of disturbance and went to the marketplace to maintain order. He argued (mistakenly) that Turner 'had no jurisdiction' there as a *county* magistrate, and accused him of thinking the 'City Magistrates either completely Indolent or grossly Ignorant.' Shaw praised 'The Manly conduct of the Magistrates of the Town so opposite to' Turner's, he suggested that had events transpired as Turner had claimed, it would have 'better become the duty of an Active Magistrate to have stepped forward' to intervene.<sup>430</sup> Shaw roundly denied that his men had been the originators of any disturbance.

No mention of the alleged riot was made in the press, lending some credence to Shaw's version of events. But Turner likewise lent weight to his case by submitting a series of depositions detailing the complaints made against the regiment.<sup>431</sup> What is clear is that those targeted by the crowd, and perhaps James the innkeeper in particular, endeavoured to enlist the county judiciary where the city justices would not, or were less likely, to intervene on their side. The shared jurisdiction at Wells created the space for benches to be played-off against one another.

The reluctance of the magistracy to utilize available military forces in 1801 can be attributed in part to the adoption of more conciliatory measures. Across the central region of Somerset, magistrates convened meetings with farmers to 'recommend' the

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<sup>428</sup> WO 1/1093 Shaw to Secretary of War William Windham, 23 April 1795

<sup>429</sup> HO 42/34 f. 363 Shaw to Turner enclosed in Turner to the Duke of Portland, 6 May 1795.

<sup>430</sup> Ibid. f. 365-6.

<sup>431</sup> HO 42/34 f. 369-73 Depositions enclosed in Turner to the Duke of Portland, 6 May 1795.

lowering of prices and encourage the supply of local markets.<sup>432</sup> But it was not merely a matter of paternalist sympathy: the mobility of the crowds touring central Somerset at the end of March prevented swift interception. Their largely orderly conduct also meant that violent suppression was potentially inflammatory.

The survival of a series of correspondence between resident gentlemen and members of the bench from March and April of that year present additional perspectives on the crises and how it was experienced. The letters provide another level of local evidence that compliments the correspondence sent back and forth between the county and central government. The events and the ways in which they were managed encapsulate the challenges faced by the magistracy in suppressing disorder.

On the 29<sup>th</sup> of March, more than a hundred predominantly agricultural labourers from the Stogursey area, assembled in the market place at Stowey. Having established a petition to reduce the price of provisions, they considered it the ‘most prudent step’ to enlist the support of a magistrate to make their case to local farmers and producers.<sup>433</sup> The nearest magistrate, John Acland of Fairfield House (Stogursey) was away at Bath. So the crowd attempted first to find Justices Major Tynte and Mr Parsons at Goathurst, but they were away at South Petherton dealing with a similar complaint. Failing to find a local justice, the crowd moved on, increasing ‘snowball like’, to the number of 1000 by the time they had reached Bridgwater.

A deputation from the assembly was sent to call upon Rev. Justice William Wollen, desiring him to sign their petition ‘and to be their friend.’ Wollen heard the labourers’ complaint but decided, ‘that they were acting in a very illegal manner’ and threatened to arrest them if they did not desist. The deputation refused to leave without their paper, Wollen ‘imprudently refused’ to return it, and a scuffle broke out. When he ‘became a little cool, and saw perhaps, the consequences that would ensue... he delivered it to them with the gratuity of a shilling a piece.’ As Mr Davis stated in recounting the events to Acland, this gesture was ‘a tacit acknowledgement that he was in the fault.’<sup>434</sup>

In consequence of this disturbance, troops had been called out in the town, but seamen from the quay, ‘declared that if the Soldiers fired, they would immediately

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<sup>432</sup> See below: R. Wells, ‘Revolt of the South-West’, 30.

<sup>433</sup> SRO: DD/AH 59/12/16 D. Davis to J. Acland, 01 April 1801.

<sup>434</sup> Ibid. and DD/AH 59/12/9 J. Evered to J. Acland 30 March 1801.

discharge their Pieces.’ Davis maintained that trouble had only been ‘prevented by the orderly behaviour of the Petitioners’. Having been again denied the support of a magistrate, the crowd left Bridgwater and made for Otterhampton, where they were intercepted by Justice John Evered of Hill House Farm. Evered ‘assured them with tears, that he felt for their Distresses, and promised to exert his utmost to relieve them.’ On these assurances the crowd were satisfied and returned home.<sup>435</sup> Confronted by a crowd estimated to be between 500 and a thousand strong, Evered had given a quite deliberate performance of paternalist authority. Davis claimed that his actions had earned him the affections of the people who declared they would ‘spill the last drop of blood in his defense’.<sup>436</sup> However Evered’s promises might be considered high-handed. Although Wollen was antagonistic, he had attempted to adhere to the letter of the law. Nonetheless, in losing his temper he failed to retain the authority bestowed upon him by the law and his status, and ended up brawling with the labourers and having to bribe them to leave. Davis’ comment to Acland, had *he* been faced with the situation, summarizes the critical dilemma of interpreting the law on the spot:

‘if you had given sanction to their proceeding, you would have been by many condemned, and that you did it from the motive of fear. If you had not, on the other hand, you would have been subject to the resentment of the people.’<sup>437</sup>

This division of opinion was widespread. The subsequent publication of recommendations and agreements between the magistrates and local farmers polarized opinion further.

Evered managed to make good his word when the local justices assembled at Bridgwater the following day to ‘seriously recommend’ that farmers reduce their prices to the levels posited in the crowd’s petition. Local responses to the measures passed at Bridgwater varied, as Davis had predicted. Many felt that the local authorities

‘have fix’d a Maximum for the price of Wheat under the pretence of recommendation, which the wisdom of Parliament would not attempt. And in so doing, they have been accessory to hasten a Revolution and contributed their Mite to accomplish the ruin of their country’.

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<sup>435</sup> DD/AH 59/12/16 D. Davis to J. Acland, 01 April 1801

<sup>436</sup> DD/AH 59/12/9 Estimates from J. Evered to J. Acland 30 March 1801 and DD/AH 59/12/16 D. Davis to J. Acland, 01 April 1801.

<sup>437</sup> DD/AH 59/12/16 David Davis, JP, to John Acland, JP, 01 April 1801.

Some of the farmers attempted to make alternative arrangements to defray the expense of relief across the whole community rather than letting it eat into their profits. They were also reluctant to stock the markets and bread shortages persisted.<sup>438</sup> On the other hand, some felt that ‘by their kind interposition,

they [the justices] have saved the lives of many People. And in so doing, they have also repressed the design of those mischievous Persons, who avail themselves of the Miseries of their Country to render it still more miserable.’<sup>439</sup>

The seditious handbill had been discovered at Wellington a little over a fortnight before, and Davis had reports that ‘the delegates of the Jacobin Party were very busy and active in this Neighbourhood’. The prospect of rebellion in Somerset was unlikely, but rumours of this kind altered perceptions of popular disturbances and the responses of authority to them.

Justice Evered, justified his concessions to the crowd from Stogursey, convinced that the most effective way to maintain social peace was ‘by adhering to [the] most conciliatory means in our Power’ thereby ‘stifling in its birth an Evil, which in its consequence would be attended with Calamities and Horrors too great for Language to express.’ Lieutenant General Simcoe, the regional military commander, concurred that the disturbances in Somerset were not inherently ‘disloyal’ although the continuation of ‘illegal acts’ would ‘have speedily terminated in rebellion’. Simcoe did not, however, share the same approach to prevention as Evered, he advocated the surveillance of the poor while the dearth continued, adherence to the letter of the law and the appropriate use of military force.<sup>440</sup>

As the level of unrest peaked at the end of March, the county bench was called together to receive legal clarification regarding the suppression of riot. The statement produced by the Crown counsel attending the Taunton Assize, strongly advocated the use of force, and can be read as a prompt for the magistracy to take more stringent measures. However, the questions posed to counsel by the county judiciary

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<sup>438</sup> DD/AH 59/12 143, D. Davis to J. Acland, 13 April 1801.

<sup>439</sup> DD/AH 59/12/134 Public notices from Bridgwater 31 March and 02 April 1801, DD/AH 59/12/143 D. Davis to Acland, 10 April 1801.

<sup>440</sup> DD/AH 59/12/9 J. Evered to J. Acland 30 March 1801; DD/AH 59/12/143 D. Davis to J. Acland, 10 April 1801; TNA: HO 42/61 Lt. Gen. J. G. Simcoe to King (HO), 07 April 1801.

underscored the complexities of law enforcement, and the crucial fact that a magistrate ‘cannot be in all places at once’.<sup>441</sup> Jurisdictional issues were also highlighted: while a justice might be excused if he pursued a crowd into a neighbouring division, there was some question of how far constables could stray from their place of appointment. And in all cases where jurisdiction might be in question, counsel agreed that the permission of resident magistrates should be sought.

The military, by contrast, were presented as a more effective and flexible solution to protest. The statement confirmed that the military could be deployed without recourse to the magistracy, nullifying the strictures faced by the civil force. But care was taken to couch the advocacy of force in terms that detracted from the professional status of soldiers: ‘The Duty of the military is the same as that of all Subjects, and they are alike bound to Use the means in their power to maintain the public peace.’<sup>442</sup> This last statement is significant; while it supported the use of more extensive military power, it was kept within an established paradigm of self-governance. Considering the concerns for popular insurrection mooted by Evered, Davis and Simcoe, those proposing more repressive measures still wished to draw short of any sort of public abrogation of English freedoms.

The Home Secretary, the Duke of Portland, was unimpressed by the conciliatory actions of the county authorities: in a letter to the Lord Lieutenant of Devon, Earl Fortescue, he lamented the ‘excessive forbearance and disposition to accommodate which had manifested themselves in the conduct of the Lord Lieutenant and several of the Magistrates.’<sup>443</sup> Portland had sent a set of resolutions to Earl Poulett, the Lord Lieutenant of Somerset, to circulate amongst the magistracy, leaving the local authorities in no doubt of the illegality of any attempts to set prices. Reinforcing the statement produced at the Assize, he stated that once the justices had made public assurances to protect the poor from the current scarcity of wheat, they were consequently obliged to meet any disturbance with the full rigours of the law.<sup>444</sup> But attempts by the county bench to meet

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<sup>441</sup> SRO: DD/TB/55/24/32 Queries regarding riot March 1801

<sup>442</sup> Ibid.

<sup>443</sup> HO 42/61 Portland to Fortescue, 23 April 1801

<sup>444</sup> HO 42/61 Portland to Earl Poulett, 30th March 1801.

the crowds' demands for lower prices persisted, alongside the resolutions for more dynamic suppression.

Apparently adhering to the 'new firmness,' Poulett rode out to meet a crowd at Ilminster on the 31<sup>st</sup> March. The crowd had been at nearby Chard the day before where they had held a magistrate and commander of a troop of yeomanry, Colonel Hanning, hostage for two hours. Hanning had been released when he had agreed to sign their paper, and had dismissed his troops. The same crowd, it was being reported, would have hanged a farmer with a halter had it not been for the timely intervention of some local gentlemen.

Poulett met the crowd, accompanied by troops. He received a deputation from them and 'expostulated and offered terms'. His terms were rejected three times over an hour and three-quarters. Losing his patience, Poulett threatened to set the troops amongst the crowd, and the delegation finally conceded. They dispersed having secured prices for provisions (although not at the level they set) that would stand until a meeting of the magistracy was convened.<sup>445</sup>

Simcoe wrote to Earl Poulett shortly after the disturbances at Chard and Ilminster, warning him of the impropriety of setting a dangerous example to the 'impatient poor, misguided by a set of Jacobins'. He entreated Poulett, 'by all that you hold dear...'

'... by your attachment to the constitution of the country, and the real happiness of every rank of society, in no one instance to compromise your own dignity and our common safety, by admitting for a moment that any persons, or body of people should force others to dispose of their property and not leave them to their own choice – a most illegal act, and in itself totally subversive of liberty and property, our household words so dear to the heart of every honest Englishman'.

Simcoe framed his appeal in terms of the nation and the law, espousing adherence to the legal protection of property as a means to insure British liberty. He also implied that in risking his 'own dignity,' Poulett compromised his authority as commander of the civil power in Somerset.<sup>446</sup>

The criticisms of Simcoe and the Home Secretary did not dissuade Poulett from convening the meeting of the magistracy as planned. On 4 April the farmers, millers, mealmen and Bakers met at Ilminster, and under the chairmanship of Poulett

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<sup>445</sup> Ibid. HO 42/61 Simcoe to Portland, 01 April 1801.

<sup>446</sup> HO 42/61 Simcoe to Portland, 01 April 1801.

‘voluntarily’ agreed to sell provisions at fixed prices.<sup>447</sup> No doubt the Lord Lieutenant exerted some influence as a local landholder, his seat at Hinton St George was five miles east of the town; but his connection, as well as his office, also denoted a responsibility to address the causes of unrest. The arrangements brokered by Poulett were offset by the trial and swift execution of two rioters within a fortnight of the meeting.<sup>448</sup>

The aftermath of the disturbances continued to betray the tensions manifested by the actions of the magistracy and the subsistence crises in Somerset. Portland had written to Poulett reminding him that the use of troops was imperative to the maintenance of order, and in slightly stronger terms, Simcoe boasted that there were enough troops in the vicinity of Chard to face Bonaparte himself. The aim was ‘to intimidate that part of the Country’ into submission.<sup>449</sup>

As Adrian Randall has suggested, the adoption of this stance saw judicial recommendations unravel.<sup>450</sup> Buoyed by the presence of forces in the area, the farmers reneged on the deal. Davis wrote again to Acland confirming ‘the Agreement entered into at Bridgwater is at an end.

What the consequence will be it is even unpleasant to surmise. The People here were two days without Bread, and I fear, from the fickle and avaricious Conduct of the Farmers they may put their Threatenings in Execution.’

To keep them in ‘awe’ a troop of horse was sent into the neighbourhood.<sup>451</sup>

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The disorder of 1801 laid bare the complexities of maintaining order; but the challenges faced by the magistracy were also evident in 1795 and 1800. In Norfolk in 1795, and in Somerset in 1801, crowd actions beyond the market place required the mobilisation of the civil forces over considerable tracts of land. These mobile protests were made all the

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<sup>447</sup> HO 42/61 Handbill detailing the agreement made at Ilminster, Somerset, 4 April 1801.

<sup>448</sup> HO 42/61 Poulett to Portland, 04 April 1801; see below: 3.4. *the use of the courts*.

<sup>449</sup> HO 42/61 Simcoe to King, 07 April 1801 and 08 April 1801; HO 43/12 Portland to Poulett, 03 April 1801.

<sup>450</sup> A. Randall, *Riotous Assemblies*, 238-9.

<sup>451</sup> SRO: DD/AH 59/12/144 D. Davis to J. Acland, 22 April 1801.



more concerning by radical agitation, and the cooperation of different occupational groups and communities.

The means of suppressing unrest were underpinned by the different governmental arrangements in each county as much as they were by differences in attitude. In Norfolk, the Lord Lieutenant, Marquis Townshend had been on his guard from 1791. He was able to mobilise the judicial divisions, assisted by troops of yeomanry, to create a network to police protest across the county. The complexity of juridical arrangements in Somerset and the uneven distribution of magistrates across the county could not withstand the scale of protest in 1801. Paternalist conciliation therefore, was offered as a means of preventing more significant rebellion.

The different responses in each county, nonetheless, underline the scope for autonomous action lodged with the county commissions. In contrasting ways, the magistracy tailored their responses according to their understanding of circumstances, even if it placed them at odds with central authority.

#### ***4. The use of the courts***

Less than half of the crowd actions in Norfolk and Somerset resulted in prosecutions (see tables 5 and 6 above). As the arrest figures show, very few of those involved were apprehended, let alone charged in court. Considering crowds could number into the hundreds, the ability of the magistracy to apprehend and prosecute significant numbers was severely curtailed by both manpower on the spot, and the subsequent expenses of incarceration and prosecution. The crowds' victims may also have been reluctant to pursue cases where significant sectors of the community would not share in their attempts to criminalise 'moral' regulation.<sup>452</sup> The social upheaval more comprehensive prosecutions would create also had to be taken into account. Consequently, the magistracy tended towards exemplary prosecution – at least at the Assizes and Quarter

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<sup>452</sup> Randall, Charlesworth, Sheldon, and Walsh, 'Markets, Market Culture and Popular Protest in Eighteenth-Century Britain and Ireland', 6.

Sessions. This selective and limited use of the courts was replicated across many of the effected areas in both 1795 and 1800-01.<sup>453</sup>

Quantifying cases that were brought before the courts, poses its own problems: firstly, it is not always possible to relate crowd actions to prosecutions. All the prosecutions included here are ones that can be clearly related to actions included in the enumeration above (figs. 22-5). Other prosecutions made in the period suggest that they may have been related to crowd actions – for example the case brought against Stephen Taylor, Jeremiah Green and John Rich at the Lent Assizes in Somerset in 1801: the three men were charged with ‘assisting in company’ in breaking into the mill of William Bough with intent to steal. Aside from the indications that they acted together and they had targeted a miller, this case cannot conclusively be seen as the result of popular action. Similarly, other charges of riot cannot be clearly linked to the subsistence crises: in 1795, three men were charged at the Somerset quarter sessions for riot and the assault of Edward Best, and at the next sessions, thirteen people were charged with riotously assembling and attempting to bring ‘scandal and infamy’ upon Mary Bobbett spinster. Both cases appear to have been motivated by personal disputes rather than community actions in response to dearth.<sup>454</sup>

Local justices may have preferred to deal with some of the rioters under summary jurisdiction, discharging them once they had given sureties for their good behaviour. However, this is almost impossible to estimate due to the paucity of records. There is some evidence of the use of informal sanctions, for example: prisoners taken up at Walcot (Bath) for a riotous assault on a suspected forestaller in May 1800, were processed back into the city where all but two of them ‘were dismissed with severe reprimands’. The arresting magistrate, Bowen, did, however, openly advocate the prosecution of ‘Higlers’ (like the victim) for being ‘the Cause of so much Clamour amongst the Poor.’<sup>455</sup>

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<sup>453</sup> Wells, *Wretched Faces*, 277-289; Bohstedt, *The politics of provision*, 218-224.

<sup>454</sup> SRO: DD/MT/19/1/1 Assize calendar Lent 28 March 1801; Q/SO 16 1795

<sup>455</sup> HO 42/50 f. 111, Bowen to the Duke of Portland, 17 May 1800; see also above 3.2

Figure 28: Prosecuting Courts in Norfolk

	<b>Assizes (nos. tried)</b>	<b>Quarter Sessions (nos. tried)</b>	<b>Borough Quarter Sessions</b>
<b>1795-6</b>	4	13	0
<b>1800-01</b>	2	0	1

Figure 29: Prosecuting Courts in Somerset

	<b>Assize (nos. tried)</b>	<b>Quarter Sessions (nos. tried)</b>
<b>1795-6</b>	1*	0
<b>1800-01</b>	9	7

\*Sent from trial in King's Bench to the County Assize

Even with relatively few cases brought before the courts in each county, rather different patterns in prosecutorial practices are discernable. At one level, the number of cases heard reflects the respective levels of protest experienced in each county: more prosecutions were made in Norfolk in 1795 than in 1800-01, whereas the significantly greater scale of unrest in the later period in Somerset saw more cases brought before the courts (see above figures 22-5, 28 and 29)<sup>456</sup>. On closer inspection, the selection of cases in both counties reveals particular judicial responses to local contexts and national pressures.

#### 4.1 The Norfolk Courts

None of the cases tried in Norfolk in 1795 were related to price-fixing crowds or market disturbances. All the prosecutions were made against those involved in the blockades at Diss and Sharrington, and for the reportedly insurrectionary meeting at Saxlingham.<sup>457</sup> In many respects, the county magistrates were towing the government line by focusing their attentions on these incidents. The Duke of Portland had sent a circular to the Lord Lieutenants of the counties in July 1795 emphasising the stringency with which the magistracy should treat all those who 'obstructed' the removal of grain and thereby the

<sup>456</sup> TNA: KB 29/462, KB 1/29/1-2; NRO: C/S 1/15 QS Sessions books; MF/RO 36/1 NCR Case 20a/25 City of Norwich Quarter Sessions Minute book 1794-1807; SRO: Q/SO/17 Quarter Sessions order books; DD/MT/19/1/1; *Bath Chronicle 1795-1801*; *Bath Journal 1800-01*; *The Times, 1795-1801*; *Norfolk Chronicle 1795-1801*, *Norwich Mercury 1795-1801*

<sup>457</sup> NRO: C/S 1/15-16, MF 657; *Norwich Mercury*, 16 Jan 1796, *Norfolk Chronicle*, 9 March 1796

government's program of supply. 'Every degree of legal authority', Portland maintained, should be employed to prevent 'all such unlawful proceedings' and the magistrates should be encouraged to 'issue their warrants for apprehending and seizing all persons concerned therein, in order that they may be dealt with according to Law.'<sup>458</sup>

These measures seemed to be employed with alacrity in Norfolk. Having taken two men during the Sharrington blockade, Henry Jodrell explained to Townshend his intention to 'apprehend 3 or 4 of the worst and commit them to be tried for riotous unlawful assembly.' The justice succeeded in his task, and seven men and women were tried for riot at the county sessions at Norwich in January 1796. The women were acquitted and the four men received sentences of imprisonment from six to nine months.<sup>459</sup> Five individuals were charged before the same bench for riot and rescue at Diss; three of whom were referred to the Assizes on potentially capital charges. James Beasor (alias Berry) was also committed to Aylsham bridewell for 12 months, and entered in to sureties to keep the peace for two years, for 'reading a seditious and libellous hand-bill...to a multitude of people'.<sup>460</sup> While the prosecutions served the interests of government, it must not be forgotten that the county's chief business was the production and export of grain. Townshend, and other justices as landholders and gentleman farmers were no doubt concerned to prevent such 'Outrages upon the Commerce of the County.'<sup>461</sup>

Figure 30: Charges

	<b>Riot</b>	<b>Riot +*</b>	<b>Other</b>
<b>1795-6</b>	7	5	1**
<b>1800-1</b>	1	2	0

\* Riot plus an aggravating circumstance: for example – riot and rescue, riot and assault, or riot and unspecified misdemeanour. \*\* For sedition.

<sup>458</sup> Mells Manor Muniments: Portland to Poulett, dated 25 July 1795, reprinted and circulated by the Clerk of the Peace for Somerset; reprinted in the *Norwich Mercury*, 08 Aug 1795.

<sup>459</sup> HO 42/37 f.311, Jodrell to Townshend 22 Dec 1795; C/S 1/15-16, MF 657; *Norwich Mercury*, 16 Jan 1796.

<sup>460</sup> HO 42/36 19 Oct. 1795; C/S 1/15-16, MF 657 (see above: *location of protest*), *Norwich Mercury*, 16 Jan 1796, see also figs. 9-11.

<sup>461</sup> HO 42/37 f. 210, Townshend to Portland, 23 Dec. 1795.

Figure 31: Verdicts

	Guilty at Assize	Not guilty at Assize	Guilty at QS	Not guilty at QS	Total
1795	1	3	9	5	18
1800-01	2	0	0	1 [City bench]	3

Figure 32: Sentencing

Year	Court	Charge	Prison ≤ 6 months	Prison ≤ 12 months	Sentence: other
1795-6	Quarter Sessions	Riot	5	-	-
		Riot & Rescue	-	-	3 referred to Assize*
		Sedition	-	1	-
	Assize	Riot & Rescue*	1	-	-
1800-1	Assize	Riot & Misdemeanour	-	2	-

Despite being the site of repeated market disturbances in 1795 and 1800-01, the Norwich justices showed little inclination to prosecute those involved. Only one case was brought before the borough bench in 1800, and the defendant was acquitted for their part in the disturbance at New Mills (above, figs. 28 and 31).<sup>462</sup> Again the memory of 1766 must have loomed large in Norwich. As detailed above, the execution of rioters under a Special Commission that year, had brought popular – and critically, cross-class – censure down on the city justices. Their management of crowd actions, particularly in 1800, was ensured to minimise social disruption.<sup>463</sup> The City magistrates did not need to lay themselves open to criticism by making unpopular prosecutions; all the cases tried by the county magistracy in 1795-6 were heard at the county sessions at Norwich. Many of the defendants (and feasibly the prosecutors) were not brought before their nearest court at Holt, where personal feeling may well have coloured proceedings, but tried centrally, at the county capital as a measured warning to all.<sup>464</sup>

<sup>462</sup> NRO: NCR Case 20a/25 City of Norwich Quarter Sessions, 10 Oct. 1800.

<sup>463</sup> Renton, 'The Moral Economy of the English Middling Sort in the Eighteenth-Century', 128-30, 134; above 3.2

<sup>464</sup> NRO: C/S 1/15 Sessions Books 1791-1800.

#### 4.2 The Somerset Courts

A very different pattern of prosecution is found in Somerset. The majority of cases in 1801, and the only case in 1795, were tried at the county assize (above, fig. 27). The emphasis here was on exemplary prosecution. In 1801, the assizes were convened at Taunton at the end of March, in the midst of unrest. The convictions were calculated to put an end to widespread protest in the county and the south west more generally (fig. 35).<sup>465</sup>

Figure 33: Charges

	Riot	Riot & theft	Theft (during crowd action)	'Exciting' riot
<b>1800-1</b>	4	9	2	1

Figure 34: Verdicts

	Guilty at Assize	Not guilty at Assize	Guilty at QS	Not guilty at QS	Unknown	Total
<b>1795</b>	1	0	0	0	0	1
<b>1800-01</b>	4	4	1	6	1	16

Figure 35: Sentencing

Year	Court	Charge	Prison ≤ 12 months	Sentence: other
<b>1795</b>	Assize	Exciting riot (neglect of duty as a JP)	-	Struck from commission of the peace
<b>1800-01</b>	Quarter Sessions	Riot	1	-
	Assize	Riot	1	-
		Grand Larceny	-	1 transported 7 years
		Felony Theft/breaking and entering	-	2 death

The use of the assizes also points to central intervention in the administration of justice in the county. A reluctance to prosecute amongst the local magistracy is discernable in 1795, and only one of the seven individuals tried by the Somerset bench between July 1800 and January 1801, was found guilty (figs 27, 34 and 35). The only case brought in relation to the 1795 disturbances provided an extraordinary example – the defendant

<sup>465</sup> R. Wells, 'The Revolt of the South West,' 42-5.

himself was a magistrate. This case and the capital conviction of two rioters in 1801 were certainly intended to counter popular protest and the over-conciliatory attitude of the local judiciary.

#### *4.3 George Donisthorpe and the crisis of paternalism*

In 1796, George Donisthorpe, gentleman and resident magistrate of Somerton, was tried for ‘wilful neglect of his duty as a magistrate’ in refusing to assist in quelling a riot and ‘with having rather encouraged it.’<sup>466</sup> The public prosecution of a Justice of the Peace was an exceptional occurrence.<sup>467</sup> His prosecution exemplifies the tensions between the exercise of judicial discretion in the context of unrest, and changing attitudes to the nature of local authority, particularly with regard to paternalist interventions in the chains of supply. Donisthorpe’s case was initially brought before the centrally administered Court of Kings Bench and subsequently tried publicly at the Somerset Summer Assizes in 1796. It is an exceptional case but one that has been largely overlooked thus far.<sup>468</sup>

Interrogating the archive of the King’s Bench reveals the full circumstances of the case, and provides a rare insight into the regulation of the magistracy at law.

The court of King’s Bench provided the only check on magisterial discretion; holding the power to review justices’ decisions and to punish magistrates for their actions. Douglas Hay has made a compelling case to show that due to a reliance on the magistracy as the ‘front-line’ of law enforcement, the King’s Bench tolerated a considerable amount of ignorance and misconduct amongst the county Commissions of the Peace.<sup>469</sup> In theory, a justice could be prosecuted by criminal indictment or criminal information but prosecution under the latter was especially rare. Magistrates were frequently given the benefit of the doubt, ‘even where a justice acts illegally... if he has acted honestly and candidly, without oppression, malice, revenge, or any bad view or ill intention whatsoever, the court will never punish him in this extraordinary course of an

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<sup>466</sup> *The Times*, 09 Aug. 1796.

<sup>467</sup> D. Hay, ‘Dread of the Crown Office: the English magistracy and King’s Bench, 1740-1800’ in N. Landau (ed), *Law, Crime and English Society* (Cambridge University Press, 2002) 19-45.

<sup>468</sup> Brief reference is made to it in Randall, *Riotous Assemblies*, 232, and in Poole, “Popular Politics in Bristol, Somerset and Wiltshire, 1791-1805” (PhD University of Bristol, 1992).

<sup>469</sup> Hay, ‘Dread of the Crown Office,’ 19-21.

information.<sup>470</sup> A criminal indictment was used to prosecute for intentionally illegal actions on the part of the magistrate, but an information was only warranted when “‘flagrant proofs of their having acted from corrupt motives’” were produced.<sup>471</sup> Despite the general leniency of the Court towards their brethren, Donisthorpe was brought before them under criminal information. Between 1790 and at least 1805, he was the only Somerset Justice to be informed against in the Kings Bench.<sup>472</sup>

The indictment against Donisthorpe described how a number of Somerton’s inhabitants ‘unlawfully and wickedly conspired combined and confederated together...with force and arms’ to seize wagonloads of corn deposited in the town for sale at the market on 28 July 1795. The case for the prosecution was based on accusations made by Richard Welch, a gentleman from Somerton, and James Lovell of Wells, a Baker and Cornfactor.<sup>473</sup>

According to Lovell, the target of the crowd was corn belonging to Thomas Burnell and Richard Pierce of Wells stored at the house of John Haggett, a Malster. The crowd obstructed the passage of the wagon leaving Haggett’s, stating that ‘the wheat should not be taken away and they had orders from Mr Donisthorpe to stop it.’<sup>474</sup> Mr Welch described how the most ‘dangerous consequences’ of this disturbance were prevented by ‘by the judicious interference’ of Rev. Walter Wightwick, resident and Justice of the Peace for Somerton.<sup>475</sup> Despite being ‘an aged and infirm man’, Wightwick ‘went amongst...the Rioters and used all the Arguments he could to prevail on them to disperse’. He also persuaded Burnell and Pierce to sell him the wheat for ‘the use of the Poor’. Lovell maintained that they consented, as they feared it would only be taken by force. The corn was then taken to the Reverend’s house, adjacent to Donisthorpe’s home.

Lovell continued that he was surprised that Donisthorpe had not been present in assisting Wightwick, particularly when the disturbance occurred in such close proximity to his house. Welch said he had seen Donisthorpe’s servant Samuel Martin going in and out of his master’s house, and accused him of being one of the most active of the rioters.

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<sup>470</sup> Ibid, 29.

<sup>471</sup> Ibid, 30.

<sup>472</sup> TNA: KB 29/449 – 464, Controlment Rolls, 1790-1805.

<sup>473</sup> KB 11/59 no. 2 1796 Indictment, KB 39/9 Contemporary index to affidavits, Easter 1891- Hilary 1805; KB 1/29/1 Depositions Hilary – Easter 1796, Hil. 1796 Richard Welch and James Lovell

<sup>474</sup> Ibid, KB 1/29/1 Hil. R. Welch

<sup>475</sup> Ibid, KB 1/29/1 Hil. R. Welch.



Lovell encountered Donisthorpe in the Bear Inn later that day, sitting in a public room ‘composedly smoaking a Pipe’.<sup>476</sup> When Lovell questioned his inactivity he replied, ‘that they [the rioters] had been with him the night before, and said they were starving’,

He told them it was better to steal than to starve. They asked the Magistrate if he would hurt them if they stopped the corn. He replied if you do not injure me, I shall not hurt a hair of your heads.

Lovell’s testimony compounded Welch’s accusation that Donisthorpe had prior knowledge of the incident and had actively encouraged the alleged disturbance.<sup>477</sup>

In his defence, Donisthorpe claimed that he had been absent from the town for the majority of that day, and that when he had been in the market, no disturbance had taken place. All the witnesses examined in support of Donisthorpe also testified that no riot had occurred, and that the people present had only assisted in moving, loading and unloading the corn in a peaceable manner.<sup>478</sup>

There had been prolonged shortages in the market at Somerton. John Barrett, a Baker, had been forced to cease baking for want of wheat.<sup>479</sup> Barrett and several others argued that the ‘Scarcity is Artificial and created by certain cornfactors and mealmen who forestalled and monopolized the Corn whereby there was little or no wheat brought into Somerton Market for sale other than that which was privately sold by sample to said Cornfactors and mealmen.’<sup>480</sup> So ‘middlemen’ - like James Lovell - were seen to frustrate ‘correct market practices’. Another Deponent explained that the people gathered in the market had only come to ensure that some ‘Wheat might be Lodged in the Market as usual in order that they...might purchase and have Bread’.<sup>481</sup>

Donisthorpe had made an attempt to quieten discontented voices the week before the incident. During a conversation that had taken place in a local inn ‘something passed respecting the stoppage of corn’ and Donisthorpe had been heard to say ‘there was corn enough in the town and neighbourhood and he would take care it should be kept there.’<sup>482</sup> Two parish constables and an overseer of the poor, present during the alleged riot,

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<sup>476</sup> KB 1/29/1, Hil. 1796 Welch.

<sup>477</sup> *The Times* 09 Aug. 1796. KB 1/29/1 Hil. 1796 Lovell

<sup>478</sup> KB 1/29/1 Easter 1796, Affidavits of Donisthorpe and twenty others (submitted as one statement)

<sup>479</sup> KB 1/29/1, *ibid*, Easter 1796 Affidavits of Donisthorpe, sig. statement of Barrett.

<sup>480</sup> KB 1/29/1 *ibid*, Easter 1796.

<sup>481</sup> KB 1/29/1 Easter 1796, *ibid*, sig.B Burroughes

<sup>482</sup> *The Times*, 09 Aug. 1796.

testified in support of the justice, maintaining that the inhabitants were merely helping to load and unload the corn. Constable Thomas Dowden argued that had there been any disturbance he, along with the local justices – including Donisthorpe - would have fulfilled their duties by assisting to quell it.<sup>483</sup>

Even testimony offered by the prosecution, can be read in support of Donisthorpe's inactivity as well as the plight of the poor. *The Times* reported that a clerical justice (probably Wightwick) had been called upon to read the Riot Act but declined: 'he did not think it proper to as he deemed it best to appease the populace by quiet means rather than to irritate them by rigid ones, declaring that he saw no necessity of putting in force any of the powers vested in him as a magistrate.'<sup>484</sup> *The Times* also confirmed that the corn had been bought by subscription for the use of the poor.<sup>485</sup> The authorities at Somerton - Donisthorpe, the constables and overseers, and even Wightwick indirectly - upheld popular appeals to the 'moral economy'. But their paternalist sentiment flew in the face of government concern for the free circulation of grain, and was punished accordingly.

Donisthorpe's actions were presented in such a fashion as to bring down the full force of the law. Not only was he accused of actively encouraging a 'conspiracy' amongst the townsfolk to riot, as it was framed in the indictment, but concern was expressed about the troop of volunteers he had raised. Richard Welch reported to the Kings Bench that the corps were armed 'and had been learning their Exercise', and that in consequence of the riot the peaceful inhabitants of Somerton were in fear for their 'persons and property'.<sup>486</sup> Welch also alleged that the clerk, who had sworn Donisthorpe's affidavits, was under the influence of the Justice and some of his witnesses. In consequence, he was accused of deliberately misleading the court in his attempt to claim no riot had occurred.<sup>487</sup> Parallels were even drawn between Donisthorpe's actions and those of Alderman Kennet, Mayor of London, who, in 1780, had failed to act decisively against the anti-Catholic rioters until the city faced devastation.<sup>488</sup> While the incident at Somerton bore little resemblance to the Gordon

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<sup>483</sup> KB 1/29/1 Easter 1796 Affidavits of Donisthorpe Dowden and others

<sup>484</sup> *The Times*, 09 Aug. 1796,.

<sup>485</sup> *The Times*, 09 Aug. 1796.

<sup>486</sup> KB 11/59 no. 2 1796 Indictment and KB 1/29/1 Hilary 1796 Welch

<sup>487</sup> KB 1/29/2 Easter 1796 R Welch; *The Times*. 09 Aug. 1796.

<sup>488</sup> *Ibid*, *The Times*.

Riots, the implication was that Donisthorpe and Kennett shared a supine disposition and sympathy for the rioters' cause.<sup>489</sup> The portrayal of Donsithorpe in this manner highlighted the worst abuses, and weaknesses, of magisterial authority.

Donisthorpe's case was presided over by Lord Chief Justice Kenyon who shared some of the sensibilities of judicial paternalism. He 'felt that the law must sustain the rights of the poor as well as the wealthy, [and] was profoundly convinced of the immorality as well as the illegality of...marketing offences.' During the dearth of 1795-6, Kenyon actively encouraged the prosecution of those in breach of the repealed laws against forestalling, regrating and engrossing. He believed that by asserting the legislation that underpinned the popular conception of the moral economy, he could, and had, prevented riots.<sup>490</sup>

Considering Kenyon's paternalism as well as the general leniency of the King's Bench to the lay magistracy, Donisthorpe's prosecution appears particularly harsh. It was within Kenyon's power to throw out the information, or at least refuse to grant a *rule absolute* and thus prevent a public prosecution before a special jury at the court of Assize. But Kenyon concluded the proceedings at the King's Bench by stating 'He was not then to decide on the guilt or innocence of this Gentleman. He hoped he was innocent. But he thought the door of justice ought not to be shut here,' that the case should go to trial at the Assizes and be 'discussed in the face of the Public'.<sup>491</sup>

Hay noted in his study of the Staffordshire magistracy, that criminal informations 'touched on issues of sharp political and social significance to gentlemen' and that a case was far more likely to be forwarded if the magistrate's behaviour 'cast a bad light on their class and office'. The stoppage and seizure at Somerton in July 1795 occurred three days after Portland's circular specifying the illegality of such actions and calling for their rigorous punishment.<sup>492</sup> In this context, Kenyon could not be seen to forgive riot, even when it stemmed from what was arguably misplaced paternalist concern. Donisthorpe

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<sup>489</sup> Ibid; E.P. Thompson, *The Making of the English Working Class* (London: 1963, this ed. London: Pelican, 1968), 77-8.

<sup>490</sup> D. Hay, 'Moral Economy, Political Economy and Law', 108-9.

<sup>491</sup> *The Times*, 09 Aug 1796.

<sup>492</sup> Mells Manor Muniments: Portland to Poulett, dated 25 July 1795, reprinted and circulated by the Clerk of the Peace for Somerset; see above: 3.4.1

had been presented – in the words of the indictment - as an ‘evil example’ to others.<sup>493</sup> He was perhaps already a contentious figure having been brought before the Assizes concerning a summary conviction in 1795.<sup>494</sup> In a judicial system still reliant on exemplars, Donisthorpe was a suitable target and his case provided a useful opportunity to make it explicitly clear to the public that riot was not to be tolerated and that not even the magistracy were beyond the reach of the law.

At the Somerset Assizes, Donisthorpe was defended by Thomas Erskine, a controversial figure who had secured the freedom of the leadership of the London Corresponding Society in the treason trials of 1794. The central theme of his argument drew heavily upon the tradition of judicial paternalism. Erskine presented his client as a Gentleman, loyal to the Establishment, concerned with the maintenance of order, who, ‘foregoing his own ease, and the pleasures of retired life... when some persons high in Administration thought we were in danger from foreign invasion and internal feuds’, had ‘raised at a very considerable expence and personal trouble, a corps of yeomanry to defend his country.’ Justice Donisthorpe, ‘feeling for the state of the poor’, was presented as ‘amongst the largest subscribers to relieve the distress, and consequently to quiet the minds of the starving poor.’<sup>495</sup>

Certainly his eloquent defence did not sway the judge who, in his summation, led the jury to find Donisthorpe guilty for having ‘not exercised the powers vested in him as a magistrate, in coming forward to prevent practices which were most illegal’.<sup>496</sup> He was convicted for negligence, falling short of inciting riot, and subsequently removed from the county Commission of the Peace. Perhaps Erskine’s most pertinent point was that Donisthorpe ‘acted according to his best discretion; and hard indeed would be the lot of Magistrates, were they not at liberty to judge for themselves.’ His argument tended to the base of magisterial authority, but it also highlighted its weakness. The nature of Donisthorpe’s prosecution made explicit the tensions between traditional paternalist forms of authority and the demands of central government. He provided a potent

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<sup>493</sup> KB 11/59 2 Indictment of Donisthorpe.

<sup>494</sup> *Lloyd’s Evening Post* 21 Aug 1795.

<sup>495</sup> *The Bath Herald*, 06 Aug 1796 (see also *The Times*, 09 Aug 1796).

<sup>496</sup> *Ibid.*

deterrent to other paternalists: even as a magistrate, he was not beyond the reach of the law.

Lord Kenyon ruled again in June 1801 regarding the interventions of the magistracy – but this was not a case regarding a criminal information, nonetheless the Mayor and Magistrates of Bath, found their conduct queried publically by the city’s bakers. The bakers had complained that the Magistrates had broken with established conventions by fixing the price of wheat according to the Bristol market, rather than by an average taken from prices at Warminster and Devizes (Wiltshire).<sup>497</sup>

The Bath justices claimed they had altered their processes because the bakers ‘used to buy up the grain at these markets [Warminster and Devizes] and practise methods to enhance the price of bread’; in light of these malpractices the magistrates ‘were induced to take the average from the great public market of Bristol, over which the bakers could have no influence.’ The bakers denied such callous behaviour arguing that the assize was then set so low, they ‘could not get a fair profit for their labour’.<sup>498</sup>

In this instance, Lord Kenyon firmly maintained his paternalist sentiments and ruled in favour of the magistrates. This case did not pertain to any disturbances, and the justices’ defence – Thomas Erskine again – had statutory precedents with which to back their decision. In making his ruling, Kenyon stated ‘that there never was a case where there was less occasion to make harsh remarks on the conduct of Magistrates than the present.’ They, he continued, ‘had a discretionary power in chusing what market they thought proper.’ The bakers were reproached for showing ‘an inclination to grind the faces of the poor, [and] they might do much mischief in their endeavour to enrich themselves.’<sup>499</sup> Kenyon’s ruling at this point was safely couched by the law, and the fact that the city and the county had been peaceful for some months. It is clear however, that his concern to support the attentions of the Bath magistracy to market practices was informed by the disturbances that had gone before.

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<sup>497</sup> *Morning Post and Gazetteer*, 26 June 1801; see also *The Times*, 26 June 1801; *Bath Journal*, 29 June 1801.

<sup>498</sup> *Morning Post and Gazetteer*, 26 June 1801.

<sup>499</sup> *Ibid.*

As Hay has shown in Kenyon's prosecution of Samuel Waddington for engrossing in 1800-01, the court of King's Bench played a significant part in shaping public opinion and policy in the debate over paternalist versus political economic measures in the context of riot.<sup>500</sup> While Donisthorpe's prosecution was markedly different from Waddington's, his trial was likewise used as a platform, in this case, to support government supply issues, and to establish the limits of judicial discretion.

#### *4.4 The trial of Samuel Tout and Robert Westcott, 1801*

Protest in Somerset in the spring of 1801 had effectively been put paid to by the execution of Samuel Tout and Robert Westcott. The two men were arrested for breaking in to a baker's premises at Old Cleeve in Somerset on 30<sup>th</sup> March. They were singled out from a crowd of more than twenty, as having forced the baker's wife, Mary Griffey, to sell them loaves of bread at 10d, and sign a paper promising to maintain this price.<sup>501</sup> Their prosecution exemplified central government's rejection of moral economic sentiment.

Tout and Westcott were tried only three days after their arrest at the Somerset Assize, already sitting at Taunton. Considering their actions in setting the price had been replicated in other parts of the county without eliciting sanctions, their case was framed to ensure that they would not escape punishment. They were indicted on three counts of capital felony: putting fear into the defendant in the process of stealing from their house, breaking and entering, and theft. The prosecution went to pains to emphasise the illegality of their actions and to detract from their willingness to pay for the goods. Mrs Griffey explained that the value of a loaf was in fact 1s and 6d, and that she had indeed been forced to part with it for less than the asking price. In his summation of the evidence to the jury, the Judge dismissed the first charge against the defendants, but carefully outlined the validity of the remaining two, concluding that the fact they had paid their own price for the bread, was

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<sup>500</sup> D. Hay, 'The state and the market in 1800: Lord Kenyon and Mr Waddington' *Past & Present* 162 (1999): 101-162.

<sup>501</sup> *The Trial of Samuel Tout and Robert Westcott, 1801* (Taunton: Thomas Norris, 1801); *Bath Journal* 13 April 1801.

‘the same as if they had taken it without paying anything, because no person has a right to fix the price, and take another persons property.’<sup>502</sup>

Both men were found guilty and sentenced to death with no hope of a reprieve. In passing sentence, the judge made the purpose of their trial explicit: he observed that Tout and Westcott ‘had formed part one of those mobs, who, under pretence of lowering the price of provisions, commit depredations upon the community.’ He hoped that all those within the court, and those ‘who were without’, ‘might learn from their fatal example the dreadful consequences which arise from such crimes.’<sup>503</sup>

The two men had been tried and sentenced within seventy-two hours of their arrest. While executions normally took place at Ilchester, in this instance they were removed to Taunton, on market day, ‘by way of a stronger example’. Tout and Westcott were hanged on the 15<sup>th</sup> April, under military guard in case of disturbance. None occurred and Earl Poulett, the Lord Lieutenant, hoped they would ‘have a good effect.’<sup>504</sup>

The case has been cited as a much needed example to counter the conciliatory attitude shown by much of the county magistracy.<sup>505</sup> The disturbance in the Stogursey area had taken place only the day before the riot at Old Cleeve, and the crowd at Chard had held Colonel Hanning hostage on the same day. The county authorities were in disarray and concessions to the crowd only seemed to perpetuate unrest. The draconian trial and execution of Tout and Westcott by centrally appointed judges and the Crown counsel, ensured the demands of the centre were met in the provinces, and levelled tacit criticism at the ability of the local magistracy to maintain order. But there is evidence to suggest that members of the county commission – beyond the Lord Lieutenant – were complicit in the handling of this case. The two magistrates who committed Tout and Westcott for theft were Thomas Gordon and Rev. George Trevelyan. Both were justices for the hundred of Willerton and Freemanners in which Old Cleeve was situated, and

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<sup>502</sup> *The Trial of Samuel Tout and Robert Westcott*; W. Blackstone, *Commentaries on the laws of England, in four books. By Sir William Blackstone, Knt. one of the justices of His Majesty's court of common pleas. And with notes and additions by Edward Christian, Esq. Barrister at law, and Professor of the Laws of England in the University of Cambridge*, vol. 4, Of Public Wrongs, sig. Larceny from the house, (London: A. Strahan and W. Woodfall, 1793-1795).

<sup>503</sup> *The Trial of Samuel Tout and Robert Westcott*; TNA: ASSI 25/1/3, Somerset Lent Assize, 1801.

<sup>504</sup> HO 42/61 Poulett to Portland, 04 April 1801; Wells, ‘Revolt of the South West’, 42; *idem*, *Wretched Faces*, 278.

<sup>505</sup> Wells, ‘Revolt of the South West’, 42.

Trevelyan was the closest magistrate to the village, living four miles away at Nettlecombe.<sup>506</sup>

The Assize grand jury, responsible for progressing indictments to trial, was usually comprised of ‘gentlemen of the best figure in the county’; increasingly their number was made up from the county magistracy.<sup>507</sup> Of the gentlemen included in the Somerset grand jury in 1801, approximately one third can be confirmed as acting magistrates for the county and three-quarters were members of the commission of the peace. None of them, however, were involved in the active suppression of riot on the ground. Perhaps more significantly, the foreman of the jury, James Bernard of Crowcombe, had a vested interest in the case as a resident justice for the division of Willerton and Freemanners. Bernard, and other of the Somerset justices, therefore, were also responsible for the gamut of capital charges Tout and Westcott faced.<sup>508</sup>

The involvement of county magistrates in this case does not alter the fact that it countered the level of concessions granted in Somerset, or that it no doubt offered the Home Secretary some satisfaction; but it does show that the local magistracy were not passive, and merely led by the centre into acts of judicial terror. As was the case in Norfolk, different benches or groups of justices held different perspectives on the best means of suppressing disorder, and in this particular context, the expediency of paternalist concessions.

## **5. Conclusions**

By paying closer attention to the physical arrangement of authority in each county, this chapter offers a more comprehensive understanding of judicial responses to disorder. Two markedly different patterns of judicial behaviour emerge as a result. The highly rationalised organisation of judicial divisions in Norfolk and the complimentary

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<sup>506</sup> SRO: Q/JC/119 Commission of the peace, 1794; Q/JCP/1 correspondence and lists 1801; TNA: ASSI 25/1/3, Somerset Lent Assize, 1801.

<sup>507</sup> Blackstone, *Commentaries on the Laws of England*, v. 4, chapter 23 ‘On the several modes of prosecution’; G. Glover Alexander, *The Administration of Criminal Matters (in England and Wales)*, (Cambridge: Cambridge University Press, 1915, reprinted 2010) 91.

<sup>508</sup> TNA: Grand Jury List deposited in the misdemeanours file, ASSI 25/1/12; SRO: DD/MT/19/1/1 annotated Assize Calendar 1801; cross-referenced with TNA: C 220/9 and SRO: Q/JC/119-124, Commission of the Peace 1794-1830; see also felonies, ASSI 25/1/3, Somerset Lent Assize, 1801.



organisation of the Yeomanry allowed Townshend to create a network with which to police the county in 1795. In Somerset, the uneven distribution of magistrates and the complexity of governmental arrangements frustrated the swift suppression of unrest most notably in the spring of 1801. Space was created for the itinerant crowds to take the upper hand. Consequently the Somerset justices resorted more frequently to conciliatory tactics than the Norfolk bench, whose energetic suppression of disorder adhered more closely to the demands of central government.

The adoption or otherwise of paternalist measures was not merely predicated on available resources. In both counties, genuine fears regarding the influence of radical and revolutionary agitation informed judicial activity. Reports of seditious meetings, and wage disputes and the potential for more widespread protest, particularly along the Norfolk coast, underpinned Townshend's concern for the total surveillance of the county. And as Evered explained to Acland, if the itinerant crowds touring the county were not brought back into the fold by conciliation, their number might prefigure a more significant rebellion. Indeed, as Randall and Hay have posited, recourse to the paternalist model provided the means of securing community cohesion in times of acute crisis.<sup>509</sup>

There is, however, evidence that adherence to paternalism was more than pragmatic. Thomas Horner's interventions at Frome, the attitude of both county and city magistrates at Bath and in Norwich, indicate that notions of duty and obligation to the governed were not necessarily timely platitudes. While paternalist regulation was clearly an important part of the judicial repertoire, as Randall and Charlesworth have argued, recourse to these practices signal the 'symbolic importance' of such actions 'as totems of a deep-rooted normality.' They were vital in the restoration of order and social relationships.<sup>510</sup>

In addressing the operation of governmental structures the complex of social and political relations negotiated by the magistracy have been drawn out. The Norfolk and Norwich benches offer a potent contrast in their preferences for hard and soft tactics. But they were, as discussed in chapter two, very different groups of people, working in different contexts. The Norwich bench bound in no small way by the moral economic

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<sup>509</sup> Hay, 'Moral Economy, Political Economy and law,' 109; Randall, *Riotous Assemblies*, 230-1, 238.

<sup>510</sup> Randall, Charlesworth et al, 'Markets, Market Culture and Popular Protest,' 15.

sensibilities of the city, were more embedded within it as tradesmen and entrepreneurs. The county justices' adherence to Portland's resolutions in 1795 was not necessarily evidence of deference to the centre, but a means of securing the commercial activity on which their estates were founded. Their ability to police the county was reliant on mobilising local connections and networks. The Yeomanry, comprised of gentlemen and their tenantry, and led by magistrates in many instances, augmented rather than detracted from the authority of the civil force. Divergent attitudes can also be found in Somerset, between the county and borough benches at Wells, and between the justices on the ground and those in the grand jury. Here, the issues revolved around conflicting perspectives on market regulation and the role of the judiciary. Unsatisfied with the corporate bench's apparent paternalist sympathies, the commercial interests at Wells sought to use the county justices' concomitant jurisdiction to address their grievances. In 1801, by seeking clarification on the use of the military, and in supporting the prosecution of Tout and Westcott, the magistrates on the grand jury signalled their dissatisfaction with paternalist concessions and their willingness to pursue more stringent means of restoring order. These conflicting perspectives in Somerset in 1801 contributed to the breakdown of social alliances that made paternalist measures work.

Divergent opinion within local government was indicative of both its strengths and weaknesses. It afforded scope for both independence and inconsistency. The crises of 1795-1801 highlighted many of the weaknesses of traditional magisterial authority. The lack of manpower was exacerbated by the exercise of judicial discretion. The prosecution of George Donisthorpe exemplified government distaste for judicial paternalism, and recast the pre-eminence of local authority and discretionary justice as the characteristics of arbitrary rule. But this period did not witness a more comprehensive attack on the traditional formations of local government. The magistracy retained their independence. As Eastwood has suggested, despite criticisms of the county magistracy, and judicial paternalism in particular, central government was unwilling to publically undermine the traditions of English governance when engaged in war with Revolutionary France and facing agitation for more egalitarian reform at home.<sup>511</sup>

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<sup>511</sup> D. Eastwood, *Governing Rural England* (Oxford: Clarendon Press, 1994) 19-20.

Governmental histories locate a more concerted challenge to the independence of the magistracy and patriarchal government in the 1830s. The Swing disturbances exposed the long-term effects of the social policies implemented in the last decade of the eighteenth century, and the weaknesses of both judicial discretion and traditional, personal forms of government.<sup>512</sup> But neither protest nor government histories have considered the responses of the magistracy to Swing in detail. Part II of this thesis seeks to redress this deficiency in our understanding and consider the decline of paternalism in a new context.

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<sup>512</sup> See chapter 1.4

## *Part II: The Magistracy and Swing*

The strain placed on rural society during the agricultural depression in the wake of the Napoleonic Wars, and the Swing disturbances in particular, placed unprecedented pressure on law enforcement and the administration of local government. Unemployment and underemployment, high rents, and tithes, exacerbated social tensions. Perhaps considered most pernicious was the widespread practice of subsidising the wages of impoverished labourers from the poor rates. The investigations of the poor law commissioners in the aftermath of Swing attributed the disturbances, to a considerable extent, to this maladministration of the poor laws.<sup>513</sup>

Inherent within that discussion was a reappraisal of the magistracy and the function of parochial authority. Nassau Senior, perhaps the most influential member of the Poor Law Commission convened in 1832, criticised the paternal relationship between local authorities and the poor. The alleged willingness of the local judiciary to support wage subsidies from the rates and intervene on the side of relief claimants, encouraged a dependency that generated an expectation of support. An expectation, it was claimed, that would only lead to increasing demands for relief and thus greater unrest as a means of achieving them.<sup>514</sup> The failure of the magistracy to effectively put down the disturbances of 1830 likewise furthered demands for more professional policing. Collectively, this contributed to a sense that forms of governance that privileged localism and discretion were incoherent and inadequate.<sup>515</sup>

With the implementation of the New Poor Law in 1834, the local justice of the peace was ostensibly removed from his pivotal position in the administration of relief.<sup>516</sup> This legislation, along with the extension of professional policing beyond the Metropolis, significantly altered the role of the magistracy, reducing their powers in local government and law enforcement, and moving control towards a system governed by policies established at the centre.

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<sup>513</sup> Chapter 1.3.

<sup>514</sup> P. Dunkley, *The Crisis of the Old Poor Law in England 1795-1834* (London: Garland, 1982) 98-100.

<sup>515</sup> D. Eastwood, *Government and Community in the English Provinces, 1700-1870* (Basingstoke: Macmillan, 1997), 132-3.

<sup>516</sup> S. & B. Webb, *English Local Government: Volume 1, The Parish and the County* (London: Longmans and Co, 1906, this edition, London: Frank Cass and Co. 1963) 603-4.

Histories of local government posit this intervention by the centre as the crisis point for paternalist governance.<sup>517</sup> The works of Wells and Bohstedt have also considered these changes as pivotal factors in the decline of judicial paternalism in the context of unrest in the nineteenth century.<sup>518</sup> But there remains little concerted study of the magistracy and the ways in which they dealt with the Swing disturbances. This section of the thesis seeks to redress the balance and pursue the decline of paternalism in this context.

In 1969, Eric Hobsbawm and George Rudé published their seminal monograph on the disturbances, *Captain Swing*. Widely acclaimed, their detailed study has been the stimulus for much subsequent work. Their comprehensive study created a history of Swing from below.<sup>519</sup> In establishing the scale of protest and the continuities in crowd action, they depicted Swing as a ‘coherent social movement’ that challenged the inequities of rural life.<sup>520</sup> The work that has followed has developed Hobsbawm and Rudé’s original thesis, debating the scale and diffusion of protest, its political origins and impact and more recently, its congruence with popular notions of moral economy.<sup>521</sup>

Most significantly, in terms of this thesis, Hobsbawm and Rudé devoted little space to the actions of the authorities. They noted, but largely dismissed, the variation in the

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<sup>517</sup> Dunkley, op. cit., 106; Webbs, *The Parish and the County*, sig. chapter VI, from 557; D. Eastwood, *Governing Rural England* (Oxford: Clarendon Press, 1994) 182-7, 262; idem, *Government and Community*, 132-4.

<sup>518</sup> See Chapter 3: *Introduction*

<sup>519</sup> E. J. Hobsbawm and G. Rudé, *Captain Swing* (Lawrence and Wishart, 1969, this ed., London: Phoenix Press, 2001); P. Jones, ‘Finding Captain Swing: Protest, Parish Relations and the State of the Public Mind in 1830,’ *International Review of Social History*, 54 (2009): 429.

<sup>520</sup> J. Brewer, ‘Microhistory and the Histories of Everyday Life’, *Cultural and Social History*, 7:1 (2010): 88; S. Poole, ‘Forty Years of Rural History from Below: Captain Swing and the Historians’, *Southern History*, 32 (2010): 7. See also Jones, op. cit., 431.

<sup>521</sup> For a recent overview: Poole, ‘Forty Years of Rural History from Below,’ 1-20. On diffusion: A. Charlesworth, *Social Protest in Rural Society: The Spatial Diffusion of the Captain Swing Disturbances 1830-1831*, Historical Geography Research Series, I (Norwich: Geo. Abstracts for the Historical Geography Research Group, 1979); and more recently, D. Myers and J. L. Przybysz, ‘The Diffusion of Contentious Gatherings in the Captain Swing Uprising’, *Southern History*, 32 (2010): 62-84. On political factors and impact: R. Wells, ‘Mr William Cobbett, Captain Swing, King William IV’, *Agricultural History Review* 45:1 (1997) 34-48; idem, ‘Social Protest, class, conflict and consciousness in the English countryside, 1700-1880’ in R. Wells and M. Reed (eds) *Class, conflict and protest in the English Countryside, 1700-1880* (London: Frank Cass, 1990) 121-214. On moral economy and Swing see P. Jones, ‘Swing, Speenhamland and rural social relations: the moral economy of the English crowd in the nineteenth century’, *Social History*, 32:3 (2007): 271-90, A. Randall and E. Newman, ‘Protest, Proletarians and Paternalists: Social Conflict in Rural Wiltshire, 1830-1850’ *Rural History*, 6:2 (1995): 205-27; C. J. Griffin, *The Rural War: Captain Swing and the Politics of Protest* (Manchester University Press 2012).

behaviour of the county authorities in suppressing and prosecuting unrest.<sup>522</sup> Indeed, there has been little interest in the multifarious responses of the authorities to disorder, since their work was published.<sup>523</sup> Carl Griffin's work on the south-eastern judiciary provides a noteworthy exception (see below). What attention has been paid has tended to focus on the repressive responses of the authorities, most notably the Special Commissions initiated to try Swing offenders, and the unprecedented scale of transportation used to punish those convicted. The county magistracy have largely been confined to the machinery of repression following the hardline established by central government.<sup>524</sup>

However, as established in part one of this thesis, the magistracy occupied a powerful and yet precarious position: they constituted the ultimate authority in terms of local government, ruling in both administrative and criminal matters. And as residents of the communities over which they presided, they also had a vested interest in restoring peace and maintaining order.<sup>525</sup> As Griffin's analysis of the Kent judiciary has shown, policies of law enforcement 'whilst loosely framed in the context of law, were not predetermined. They were dependent on the local contingencies which provided the context of events, personalities and the often odd juxtapositions created by unfolding events.'<sup>526</sup> Consequently, the actions of the magistracy are worthy of more concentrated attention, both to better understand the social politics which shaped the disturbances, but also the impact of Swing on the administration of local government at this time.

The following two chapters consider the Swing disturbances from the perspective of the local authorities: contributing to our understanding of the scope of the protests by offering a less reductive analysis of the actions of the county judiciary in suppressing disorder, and affording Swing a more pivotal role in historiographical discussions concerning the changing role of the magistracy and local government in the nineteenth century.

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<sup>522</sup> Hobsbawm and Rudé, *Captain Swing*, 262.

<sup>523</sup> Poole, 'Forty Years of Rural History from Below,' 17.

<sup>524</sup> C. Griffin, "Policy on the Hoof": Sir Robert Peel, Sir Edward Knatchbull and the Trial of the Elham Machine Breakers, 1830,' *Rural History*, 15:2 (2004): 129. See also Hobsbawm and Rudé, *Captain Swing*, chapter indicatively entitled 'Repression', 253-64; S. Poole, op. cit., 17.

<sup>525</sup> See Chapters 1 & 2.

<sup>526</sup> Griffin, "Policy on the Hoof," 130.

The analysis presented here is based on a continuation of the two regional studies of Norfolk and Somerset and the actions of their respective county commissions of the peace. Addressing the disturbances at a local level allows the differences in the manifestation of popular protest - and the responses to it - to be understood through an exploration of local contexts and governmental structures. As Adrian Randall has argued, '[c]lose attention to the local is clearly essential if we are to really understand the social politics, normally hidden from the historian's sight, which was worked out in high relief only when riot or protest erupted.'<sup>527</sup> Concerns have been expressed that the move towards micro-studies of Swing have the potential to fracture our understanding of it as a 'coherent social movement' by concluding that each outbreak of unrest was regionally specific: a response to, and contingent upon, specific conditions within a given area.<sup>528</sup> In many respects the two experiences of Swing in Norfolk and Somerset offer very different insights. Norfolk was one of the most disturbed 'Swing' counties, whereas Somerset remained comparatively peaceful. However, by reintegrating the two regional studies into a comparative analysis, continuities as well as disparities can be discerned, particularly with regard to the operation and attitudes of the magistracy, and contemporary perceptions of Swing as a movement.

Nassau Senior's criticisms of the magistracy in the wake of Swing echoed the disapproval of paternalist governance voiced forty years earlier during the subsistence crises of the 1790s. Although Edward Thompson cited the decline of paternalism (and the erosion of the moral economy) at this juncture, Senior's concerns betrayed the persistence of this form of social relationship.<sup>529</sup> Peter Jones has already advocated the use of Thompson's conception of the 'moral economy' as a paradigm for understanding the Swing disturbances, arguing that the form and function of the protests were informed by a 'legitimizing notion', a popular understanding of the 'right to subsistence'. Again

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<sup>527</sup> A. Randall, 'Captain Swing: A Retrospect,' *International Review of Social History*, 54:3 (2009): 427.

<sup>528</sup> Myers and Przybysz, 'The Diffusion of Contentious Gatherings in the Captain Swing Uprising', 63; Poole, 'Forty Years of Rural History from Below', 12-13.

<sup>529</sup> See chapter 3.

this was permeated by expectations regarding the role of the magistracy and the propertied classes to maintain the labouring poor.<sup>530</sup>

Griffin has extended the relationship between the eighteenth-century moral economy and Swing in 1830: rather than being a known paradigm through which grievances could be expressed, Griffin maintains that the accumulated experience of distress from 1790, and responses to it - both in terms of protest and official policy - had an historic and material relevance in 1830.<sup>531</sup> This context informed the interaction between the authorities and protesters. Indeed, Griffin identifies much of the 'stately gavotte' of the 'field of force' (as delineated by Thompson) in the nature of protest and responses to it. He also argues however, for the abrogation of the social relationship on which the moral economy rested. Adherence to a social compact based on fairness in the operation of the commonweal was not consistent amongst farmers, and consequently, not amongst the rioters in 1830; nor was its restoration in the aftermath of Swing long-lived. The New Poor Law, and legislation on policing, Griffin argues, were a betrayal of Swing's attempts to restore social bonds, a reaction to 'the crisis in social relations' that the disturbances had exposed.<sup>532</sup>

It is clear from the conciliatory actions of some members of the magistracy in response to the disturbances that notions of fairness extended beyond the expectations of the crowd. The authorities also capitalised on this popular conception of rights as a means of restoring order, maintaining peace and managing the aftermath of significant social upheaval. Debates regarding the appropriate or excessive use of paternal concessions permeates contemporary evidence regarding the role of the judiciary. The discussion presented here considers how far the local judiciary upheld this form of social relationship as a means of government, and the impact Swing and its suppression had on the institution of the magistracy and paternalist notions of governance.

The following chapter (four) considers the actions of the authorities in suppressing Swing. Foregrounded by a discussion of each region in the period between the end of the

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<sup>530</sup> Jones, 'Swing, Speenhamland and the moral economy', 274.

<sup>531</sup> Griffin, *The Rural War*, 9, and chapter 2: 29-65; idem, *Protest, Politics and Work in Rural England, 1700-1850* (Basingstoke: Palgrave Macmillan, 2014) 41.

<sup>532</sup> Griffin, *The Rural War*, 320-4.



French Wars and the outbreak of unrest in 1830, it concentrates on the issue of concessionary or repressive measures in the suppression of disorder. A debate that plagued the county benches, but that also resonates with the criticism of judicial conciliation in the crisis of 1795-1801. The study of Somerset in particular, provides the almost unique opportunity to study the absence of open protest: how the county magistracy prepared for 'imminent invasion' and their uses of traditional governance to stem the tide of unrest.

Chapter five focuses on the prosecution of those accused of perpetrating Swing offences. This analysis emphasises the use of the courts as structures of government. Pursuing the analysis of governmental structures and prosecutorial practices in chapters two and three, this chapter addresses the ways in which the judiciary manipulated the courts to restore particular social relationships and hierarchies. In addition to the courts of Norfolk and Somerset, this chapter incorporates a case study of the Wiltshire Special Commission, allowing stronger comparisons to be made regarding central government sponsored trials and the independent prosecutions in the counties. In doing so, this chapter offers new insights into the proactive role of the magistracy in the Special Commissions. The debate regarding the expediency of judicial concessions is pursued throughout the trials. Indeed the Norfolk bench and the Wiltshire Special Commission managed the prosecutions in such a way as to negate any sense of future entitlement to concessions levied by force. This chapter, and the section on Swing, concludes by addressing the investigation of the Poor Law Commissioners into the disturbances, and the implications their critique had for the continuation of the magistracy as 'rulers of the county'.

## *Chapter Four*

### *Rural War versus the Spectre of Swing*

From an enumeration of events, Swing manifested itself quite differently in Norfolk and Somerset (see fig. 36 below). The number of ‘Swing incidents’ in a region has been key in deciding which counties have warranted attention from historians. In consequence, ‘quiet’ counties have been overlooked. Somerset was described as one of the ‘marginal’ Swing counties by Hobsbawm and Rudé; in the two paragraphs devoted to the region in their seminal work, it was distinguished only by the fact that its disturbances had a ‘physical connection’ to those spreading from Wiltshire and Dorset. Despite the county remaining relatively peaceful throughout the winter of 1830, the Somerset magistracy were active, indeed at times panicked by, the spectre of Swing. Rather than concentrating on an enumeration of the attacks on threshing machines, and the incidence of riot and incendiary fires, an analysis of the actions of the local justices can reveal an alternative manifestation of Swing as *context*: what impact the threat of popular tumult had on the administration of the law and the interactions of authority with their communities. As Griffin has suggested, we must consider the very real impact the threat of Swing had. Latent or implied violence, or the proximity of more overt expressions of unrest, could and did inform the actions of the magistracy.<sup>533</sup> Despite the far greater level of open protest in Norfolk, continuities can be discerned in the concerns and actions of the magistracy in both counties.

This chapter will consider how the justices sought to prevent rebellion, and on a few occasions suppressed it; their communications with central government; and revealingly, their discussions amongst themselves. By focusing on the actions of the county magistracy, this approach reveals alternative perspectives and, possibly more significantly, the authorities’ perceptions of Swing as a *movement*: its causes, the scale and scope of protest, and debates regarding the most effective solutions for its suppression.

The extent to which Swing can be considered a movement has been the subject of debate since Hobsbawm and Rudé first lamented the failure of the Swing rioters to

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<sup>533</sup> C. J. Griffin, ‘The violent Captain Swing?’ *Past & Present*, 209:1 (2010) 153, 179.

‘link[...] up with the rebellion of mine, mill and city’.<sup>534</sup> While the authors spoke of a ‘movement’ of the agricultural labourers in 1830, they denied the existence of any political or truly proletarian collective consciousness. Subsequent studies have posited a range of factors in the diffusion of Swing, resurrecting the role of political radicals and communication networks, and latterly stressing the importance of regional contexts and experiences and the ways in which they informed the motives of the crowd.<sup>535</sup> More recent investigations have reached a sort of consensus, confirming Swing as a movement: one that was not nationally coordinated, but in its shared tactics and patterns of diffusion, a popular rising that embodied a mutual awareness amongst its participants.<sup>536</sup> But there has been little discussion of the perspective of the authorities. Their role in shaping the diffusion of protest has been acknowledged, but whether they saw Swing as systemic, or as an outpouring of local grievances, has not been drawn out. The authorities’ conception of Swing is an important consideration in understanding their responses to it.

Communications between justices, and from the counties to the Home Secretary, are permeated by the debate regarding the use of conciliatory or repressive measures to restore order. Both the out-going Tory, and new Whig administration were keen to suppress tumult swiftly. Radical agitation for parliamentary reform and the eruption of revolution on the continent in the summer of 1830 made central government especially wary of popular action. Although the government remained unwilling to intervene directly in the provinces, their communications with the county magistracy clearly advocated a hard-line against protesters and proscribed concessionary measures.<sup>537</sup>

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<sup>534</sup> E. J. Hobsbawm and G. Rudé, *Captain Swing* (Lawrence and Wishart, 1969, this ed. London: Phoenix Press, 2001) 19.

<sup>535</sup> A. Charlesworth, *Social Protest in Rural Society: The Spatial Diffusion of the Captain Swing Disturbances 1830-1831*, Historical Geography Research Series, I (Norwich: Geo. Abstracts for the Historical Geography Research Group, 1979); S. Poole, ‘Forty Years of History from Below’, *Captain Swing Reconsidered: Southern History*, 32 (2010): 12-18.

<sup>536</sup> R. Wells, ‘Social Protest, class, conflict and consciousness in the English countryside, 1700-1880,’ R. Wells and M. Reed (eds.) *Class, Conflict and Protest in the English Countryside, 1700-1880* (London: Frank Cass, 1990) 162-5; D. Myers and J. L. Przybysz, ‘The Diffusion of Contentious Gatherings in the Captain Swing Uprising,’ *Captain Swing Reconsidered: Southern History*, 32 (2010): 82; C. J. Griffin, *The Rural War: Captain Swing and the Politics of Protest* (Manchester: Manchester University Press, 2012) 321-2.

<sup>537</sup> C. Griffin, ‘“Policy on the hoof”: Sir Robert Peel, Sir Edward Knatchbull and the Trial of the Elham Machine Breakers, 1830,’ *Rural History*, 15:2 (2004):, 128-9, 138-41; see also Melbournes’s circular of Dec. 8<sup>th</sup> for example (discussed below).

Nonetheless, many magistrates were reluctant to take repressive action, acknowledging the dire situation of many agricultural labourers. Indeed, Hobsbawm and Rudé suggested the magistracy of Norfolk ‘had divided loyalties and were obviously dragging their feet’. The level of concessions granted by the Norfolk bench were described as ‘remarkable’.<sup>538</sup> This analysis was not pursued, nor has it been taken up subsequently. On closer inspection, the Norfolk justices took proactive measures in suppressing revolt, and in their correspondence, it is clear that the commission was not united over the issue of concessions. It is important to acknowledge that both repressive and conciliatory measures formed part of the repertoire of responses to riot, and are consistently evident in tandem. As the subsequent analysis shows, the responses of the judiciary were framed both in terms of local contingencies and national concerns. This debate regarding concession or repression reveals competing ideas regarding the role and abilities of local government, and more particularly the role of the judiciary.

### ***1. Swing in Context: Norfolk and Somerset***

In 1816, reports collated by the Board of Agriculture show that Somerset and Norfolk were in a similar predicament as depression deepened.<sup>539</sup> Respondents from both counties outlined the plight of the farmer: land value had increased, without wartime profits and with decreasing prices for produce, the farmer struggled to pay his rents and tithes. Consequently, smaller occupiers were giving up their tenancies, and those who persisted, could not afford to employ labour, or pay adequate wages.<sup>540</sup> Thus, increasingly, the poor applied to the parish for relief, further pushing up the rents and the rates. The burden of the depression appeared to affect every stratum of society: many landowners were forced to abate rents and retrench.<sup>541</sup> The majority of respondents to the Board testified to the increasing distress of the poor, and approximately half of them indicated an increase

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<sup>538</sup> Hobsbawm and Rudé, *Captain Swing*, 154, 257.

<sup>539</sup> Board of Agriculture, *Agricultural State of the Kingdom* (London: 1816).

<sup>540</sup> *Ibid*, esp.185-227; and Part II, 1-14.

<sup>541</sup> *Ibid*, esp. 192.

in the poor rates. The practice of relieving able, under-employed, labourers was lamented, as was the ‘too liberal application of the act by magistrates.’<sup>542</sup>

The problems highlighted foreshadowed many of the issues and social divisions underlying the disturbances of 1830: poverty was seen to be contributing to an increase in crime, particularly a greater number of prosecutions for minor offences at petty and quarter sessions. Justice Stone from Somerset advocated the reinstatement of badges for those in receipt of relief, ‘Reliance on charity of any kind’ he argued,

‘but more especially where it is not open to public observation, tends to deprive the soul of activity and energy, and sinks it into idleness, vice and profligacy...whilst this goes on, cunning and art take the place of exertion and fair dealing, and the ties of nature and society are both made subservient to the grand object – gain under any deception.’<sup>543</sup>

Stone’s anxiety was also reflected in concerns over the payment and use of tithes, ‘originally destined to support the Bishops, the Clergy and the Poor. How they are perverted from these purposes, is too generally known’. The reluctance of farmers to pay tithes was perceived to be ‘engendering hostility between the Rector and his Parishioners.’ Indeed, one respondent from Norfolk had some doubt as to ‘how the poor are to be kept peaceable’.<sup>544</sup> These divisions and the issues around which they revolved would come to the fore in the winter of 1830, although discontent in each county was manifested differently.

The data presented in fig. 36 clearly shows the difference in levels of disturbances across the two counties. It should be noted that the figures here are at variance with other enumerations of incidents. This is due in part to the source materials used and the process of classification. The events that have been counted for this study are only those that were perceived to be incidents related to the Swing agenda at the time. One of the problems with quantitative studies is that enumeration does not necessarily acknowledge the shifting and multifaceted nature of disturbances.<sup>545</sup> Consequently, there is some overlap between incidents of riot and incidents of machine breaking; on more than one occasion,

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<sup>542</sup> Ibid, 205. Referring to Gilbert’s Act 1782 that allowed monetary relief to able-bodied labourers outside of the workhouse: P. Jones, ‘Swing, Speenhamland and rural social relations: the moral economy of the English crowd in the nineteenth century,’ *Social History*, 32:3 (2007): 278.

<sup>543</sup> *Agricultural State of the Kingdom*, Part II (1816), 5 and 13-14.

<sup>544</sup> *Agricultural State of the Kingdom*, (1816), 190 and 219.

<sup>545</sup> A. Randall, ‘Captain Swing, A Retrospect,’ *International Review of Social History*, 54:3 (2009): 426; Poole, ‘Forty Years of Rural History from Below,’ 8-10. Problems of enumeration – particularly with regard to the FACHRS project methodology will be discussed in greater detail in chapter 5.

one ‘type’ of protest would become another. Likewise, the nature of the sources themselves limits comprehensive enumeration. The reporting of events to government, or the press, was dependent on the inclination and availability of correspondents.<sup>546</sup> The sources consulted for this study includes material that has hitherto been neglected; significantly, the correspondence between magistrates in Somerset.<sup>547</sup> What we have therefore is an outline of events; taking this as a starting point, the apparent disparity in numbers of disturbances, their nature and their distribution must be addressed.

*Figure 36: Number of Incidents associated with Swing in Norfolk and Somerset, October to December 1830*<sup>548</sup>

<b>Incident</b>	<b>Norfolk</b>	<b>Somerset</b>
Fire	8	2
Threatening Letter	1	10
Machine Breaking	4	0
Breaking Threshing Machine	18	3
Riot	17	4
Other*	2	0

\* Relating to one wage dispute and one industrial strike

Although both Somerset and Norfolk shared the same problems in 1816, their different manifestation in the disturbances of 1830 is due in part to structural differences within each county, and the experience of the depression between 1815 and 1830. Both counties were predominantly engaged in agricultural production but Norfolk was overwhelmingly an arable centre. Somerset’s agricultural economy was more mixed: encompassing arable, but more pastoral farming, significantly dairy production. It was in the arable farming areas of England that Swing was most prevalent.<sup>549</sup>

<sup>546</sup> C. J. Griffin, ‘Knowable geographies? The reporting of incendiarism in the eighteenth- and nineteenth-century English provincial press’, *Journal of Historical Geography*, 32 (2006): 38-56; see also *Introduction: a Note on Sources*.

<sup>547</sup> SRO: Q/JCP/ 7 Papers and Correspondence relating to Justices and the Commission of the Peace, 1830.

<sup>548</sup> Survey of Correspondence re Norfolk and Somerset TNA: HO 52; Somerset (SRO: Q/SO/21) and Norfolk (NRO: C/S 1/) Quarter Sessions Minute Books 1830-31; Calendars of Prisoners for Assize for Norfolk (MF/RO 36/1) and Somerset 1830-31 (DD/MT/19/1/1); *Norwich Mercury* and *Norfolk Chronicle*, *Bath Chronicle* and *Bath Journal* 1830-31; SRO: Q/JCP/7, Correspondence pertaining to the Commission of the Peace in Somerset 1830.

<sup>549</sup> PP: Census Returns for Counties of Norfolk and Somersetshire, 1801-1831; *Agricultural State of the Kingdom* (1816), Part II, 8.

### *1.1 Rural War: Swing and Norfolk, 1815-1830*

Norfolk boasted one of the most advanced agricultural economies in England, and was reputed for pioneering improvements in farming techniques. Such successes in reclaiming land and revolutionising method pushed land value up, and the expense of making and managing improvements, further added to the burdens of tenant farmers.

Threshing machines were produced and used in the region. Introduced to counter labour shortages during the Napoleonic Wars, they remained popular amongst the yeomanry as they allowed the farmers to get grain to market more quickly, and to hire cheaper, unskilled labour, especially women and children, to operate the machinery.<sup>550</sup> The majority of the county's population was involved in agricultural labour; hiring was generally on a daily basis, and competition for employment was intensified by an increasing population – particularly with demobilization after 1815. Employers were also unwilling to extend labourers' tenure in order to prevent claims to settlement in a parish. Wages were linked to the price of wheat and dropped steeply as prices fell; levels were particularly low in the south and southwest of the county. Wage levels also correlated with the size and nature of estates: the larger estates in the northwest and west of the county being considerably higher in comparison to the smaller, owner-occupied farms in the south and east. These farms were often poorly managed and the standard of farming was much lower.<sup>551</sup>

In 1820, 1821 and 1822, multiple petitions to parliament testified to the persistence of agricultural distress in the southern and central hundreds of Norfolk.<sup>552</sup> In response to the government's enquiry into the prevalence of supplementing wages from the poor rates, 14 of the 17 returning districts in Norfolk, confirmed that supplements were made. Twelve of the districts had also seen an increase in claims for relief amongst the

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<sup>550</sup> J. E. Archer, *By a Flash and a Scare: Arson, Animal Maiming, and Poaching in East Anglia 1815-1870* (Oxford University Press 1990; this ed. Breviary Stuff Publications, 2010) 28.

<sup>551</sup> *Ibid* 30-1; S. Wade Martins, *Norfolk: A Changing Countryside 1780-1914* (Sussex: Phillimore, 1988) 13.

<sup>552</sup> PP: 1822 (236) Agricultural distress. A list of all petitions, which have been presented to the House of Commons in the years 1820, 1821, and 1822; complaining of agricultural distress.

labouring community. The burden on the rates was felt from Holt on the North coast to Diss in the South.<sup>553</sup>

High prices, low wages, rents and tithes, and the imposition of machinery stimulated popular disturbances throughout the period 1816-1830. The Swing disturbances are rightly cast as another battle in a 'protracted rural war' in East Anglia.<sup>554</sup> A. J. Peacock, Paul Muskett and John Archer, in particular, have drawn attention to the most dramatic and open manifestations of agricultural labourers' discontent in 1816 and 1822. Food and wage riots broke out in the spring of 1816 at Downham Market in the west of Norfolk, and Brandon on the border with Suffolk, as well as at Littleport and Ely. In 1822, a spate of threshing machine breaking straddled the boundary of south Norfolk with Suffolk. The discussions of these phases of protest, in conjunction with broader studies of covert acts of rural protest (made most notably by Archer) have emphasised popular resistance to changes in the rural economy and society.<sup>555</sup>

While the protests of these years have served as an explanation for the occurrence and form of the Swing protests in Norfolk, they must also be considered as part of the context that informed the actions of the magistracy in 1830-31. Peacock in particular framed these protests as evidence of the breakdown of a traditional social order - the decline of the moral economy in essence, and the rise of untrammelled free market capitalism and its attendant stratification of social relationships: 'ideas of a just wage fixed and enforced by the justices of the peace were thrown over and the hind was turned out of his master's house and left to fend for himself.'<sup>556</sup>

In 1816, judicial regulation of prices and wages was demanded by a deputation of labourers sent to the assembled magistrates at Downham Market in West Norfolk. Unsatisfied with the compromise offered by the town's justices, the crowd attacked a mill

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<sup>553</sup> PP: 1825 (299) Labourers' wages. Abstract of returns prepared by order of the Select Committee of last session, appointed to inquire into the practice which prevails in some parts of the country, of paying the wages of labour out of the poor rates.

<sup>554</sup> Archer, op. cit. 49; C. J. Griffin, *Protest, Politics and Work in Rural England, 1700-1850* (Basingstoke: Palgrave Macmillan, 2014) 138.

<sup>555</sup> A. J. Peacock, *Bread or Blood* (London: Victor Gollancz, 1965); P. Muskett, 'The East Anglian Riots 1822', *The Agricultural History Review*, (1984): 2; Archer, *By a flash and a scare*, (2010).

<sup>556</sup> Peacock, *Bread or Blood*, 13.



and the Yeomanry were called out.<sup>557</sup> The following day, the magistracy capitulated to the demands of the labourers, mediated by one of the farmers. More than one provincial newspaper reported with incredulity that the labourers were to ‘have an advance of wages, and that the persons already taken should be allowed to return to their homes!’ Concessions, it was claimed, as a ‘mode of suppressing tumults...is sure to multiply them’.<sup>558</sup> The disturbances that followed these extraordinary concessions at Downham were swiftly repressed. In consequence of the 1816 riots, two of the Downham rioters were executed at Norwich, and five of those sentenced to death by a court of Special Commission were executed at Ely.<sup>559</sup>

In 1822, threshing machines, concentrated in the southern division of the county, were the avowed targets of the labourers. Twenty machines were broken in Norfolk, at Wymondham, Attleborough, and Snetterton, and in their immediate vicinity,<sup>560</sup> a figure comparable to the number broken in 1830 (see fig 36). According to one correspondent to the Home Office in 1830, the disturbances of 1822 were put down far more effectively than those in 1816 ‘by the most prompt and determined measures of the magistrates aided by a troop of yeomanry cavalry’, rather than any reliance on concessions.<sup>561</sup> Although the immediate response may have been more robust, the sentencing of those convicted for their part in the disturbances was certainly more lenient than those of 1816. The majority of those involved in the disturbances in Norfolk in 1822 received terms of imprisonment.<sup>562</sup>

Significantly, for the most part, those areas disturbed in 1816 and 1822 appear to have remained quiet in 1830. While the precedent of relative or at least short-lived success in 1816 and 1830 may have informed the rising in 1830, the geographical distribution of unrest was focused in the previously undisturbed areas in the north, north-east and centre of the county. Certainly the ultimate sanction handed down by the Special Commission at Ely and the Assizes at Norfolk in 1816 remained in popular memory, and

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<sup>557</sup> Peacock, *Bread or Blood*, 89-91; A. Charlesworth, *An Atlas of Rural Protest 1548-1900* (Kent: Croom Helm, 1983) 144; *Bury and Norwich Post* 29 May 1816.

<sup>558</sup> *The Star*, May 26 1816, also cited in Peacock, op. cit. 92-3.

<sup>559</sup> Peacock, op. cit. 93; see also Chapter 5.

<sup>560</sup> Muskett, ‘The East Anglican Riots, 1822’, 5.

<sup>561</sup> TNA: HO 52/9 ff. 101-2 Author obscured, Kilverston, to Melbourne, 2 Dec. 1830

<sup>562</sup> Muskett, ‘The East Anglian Riots 1822’, 5-9.

thus maybe considered to have had the desired effect in the west of the county.<sup>563</sup> Archer has attributed the lack of disturbance in south Norfolk to the absence of pernicious threshing-machines, removed in 1822 and not subsequently restored. Certainly the first instances of open protest in mid-November in North Walsham and Holt, and the subsequent riots at Reepham concerned attacks on threshing machines.<sup>564</sup>

The only area to see machine breaking in both 1822 and 1830 was Attleborough. In the Select Committee report of 1821, Attleborough had been highlighted as an area where the distress of *farmers* was greatest.<sup>565</sup> In 1830, it was the site of what was perceived to be one of the most serious incidents of riot. On December the 4<sup>th</sup> a group of labourers, having attacked the workhouse at Attleborough, proceeded to Rev. Frankland's property. The labourers threatened to destroy the chaff-cutting machine and held the aged clergymen for over three hours until he capitulated to their demands for a reduction in his tithes in order that they could be paid better wages.<sup>566</sup> According to Rev. Temple Frere, a justice of Diss, farmers had been complicit in the proceedings. Frere claimed that the Rector at Attleborough faced the 'rough justice' of being dragged through the pond by the crowd. When he appealed to the farmers present to assist, they 'attempted to persuade me that they had been brought there by force I saw no appearance of force, but on the contrary observed that there was an understanding between the Farmers and the Labourers.'<sup>567</sup>

The reluctance to pay tithes, evident from at least 1816, had been at the heart of the Norfolk farmers dispute in 1823. Six thousand had assembled at Norwich that year to hear the radical agitator William Cobbett; when, according to Archer, 'the meeting ended in spectacular fashion when the normally deferential tenantry voted in favour of Cobbett's resolution and petition'. Consequently, landowners and rectors reduced rents

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<sup>563</sup> See chapter 5.3

<sup>564</sup> HO 52/9 esp. ff. 174, 187, 193; *Norwich Mercury* and *Norfolk Chronicle*, 4 Dec 1830 to 22 January 1831; Archer, *By a Flash and A Scare*, 59-60.

<sup>565</sup> PP: Report from the Select Committee, to whom the several petitions complaining of the depressed state of the agriculture of the United Kingdom, were referred, 1821 (668), 189.

<sup>566</sup> *Norfolk Chronicle*, 15 and 22 Jan 1831.

<sup>567</sup> HO 52/9 fol. 75-77: Temple Frere to Melbourne letter of Dec. 3<sup>rd</sup> 1830, and fol. 65-67: letter of Dec. 6<sup>th</sup> 1830, Norfolk.

and tithes. Having dealt with the labourers' protests the previous year, they could not 'withstand the verbal attacks of their natural allies.'<sup>568</sup>

Despite the concessions granted, tensions between landowners and the yeomanry persisted. In March 1830, Lord Suffield used the opportunity as Chairman of the Bench at Quarter Sessions, to address the tenant farmers who comprised the grand jury on the subject of the poor rates: despite increases in the amount of relief, he argued, the condition of the poor had degraded. He alluded to the impact this had on social relationships within the county: 'that spirit of independence which formerly existed is now restrained...those social affections from which so much moral good might flow are now impaired.' Suffield openly acknowledged that the problems associated with poor relief, were due to a considerable extent, to the actions of the magistracy in their willingness to allow the rates to subsidise wages. After a lengthy discussion of the need to reform the existing poor laws, he concluded by considering the problems of wages, and significantly how the farmers were allowing the rates to make up wages they would not pay. Consequently he recommended the payment of a fair wage, at a rate that might be informally fixed amongst members of the parish vestries.<sup>569</sup>

The Grand Jury responded, claiming Suffield had blamed the yeomanry for the 'great odium of the present system'. Their solution lay with the landowners in a reduction of rents and tithes. Suffield reiterated his statements regarding the problematic conduct of the magistracy, suggesting that the fault lay with justices motivated by 'a false feeling of humanity, or by the irresistible impulse to relieve extreme and unmerited distress.' His final comments implied that the yeomanry expressed no 'regret for the degraded and miserable condition of the poor, or the slightest manifestation of a desire to improve that condition.' A week later the *Norwich Mercury* published a conciliatory statement that publicly assured peace between the gentry and their tenantry, at least in the short term.<sup>570</sup>

But Swing as it was manifest in Norfolk was not entirely confined to the 'rural war' in the minds of the authorities. The proximity of disturbances to the county capital, made the prospect of disorder spreading to urban areas a terrifying possibility (see Map 4.1,

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<sup>568</sup> Archer, *By a Flash and a Scare*, 56.

<sup>569</sup> *Norwich Mercury*, 3 March 1830.

<sup>570</sup> *Ibid*, 3 March, and 20 March 1830.

p.182). Writing from Norwich at the end of November 1830, the Lord Lieutenant, John Wodehouse, informed Lord Melbourne that he ‘tremble[d] for this town. The Mob are trying to force in to Norwich and to unite in great force.’ Wodehouse was particularly concerned for the extension of machine-breaking amongst the city’s depressed textile manufactories. As a result, military forces in the county were concentrated on the protection of the capital.<sup>571</sup>

Some insisted on distinguishing elements of unrest, particularly the occurrence of arson in previously undisturbed areas, from the problems associated with agricultural society. The fires at Irmingland and Lingwood were unequivocally attributed to the ‘work of some diabolical incendiary’ but the labourers stood ‘exonerated from all manner of suspicion’. This proved somewhat ironic in the case of the Lingwood fire, as the labourers who had assisted in putting-it out, got drunk on the beer they had been given in reward, and proceeded to the neighbouring farm and demolished the threshing machine there. But in the press, the two incidents remained separate; the disorderly actions of the labourers did not detract from their praiseworthy conduct in putting out the fire.<sup>572</sup>

Justice Berney at Eynesford, believed the fires to be ‘entirely occasioned by foreign influence’ and the labourers’ disturbances by ‘agricultural distress.’ He had information on ‘persons of very gentlemanly appearance having been prowling about some Premises on my property’; and claimed, ‘Upon minute enquiry your Lordship will find that the whole country is overrun with Foreigners.’<sup>573</sup> In the neighbouring hundred of North Greenhoe, the magistrates had arrested an Irish vagrant, suspected of being an incendiary. They also arrested his acquaintances: a black man, a Portuguese man, two Italians and several other Irishmen - ‘all suspicious characters and vagrants’.<sup>574</sup>

Even where disturbances were clearly perpetrated by Norfolk residents, some believed the examples of popular action on the Continent were to blame. Edward Grigson, Wodehouse’s attorney at Watton, argued that ‘if it had not been for the late Stir in France and Brussells [sic] I believe every thing would have been quiet.’<sup>575</sup> One

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<sup>571</sup> HO 52/9 ff. 167-8, Wodehouse to Melbourne 29 Nov. and ff. 144-7 30 Nov. 1830.

<sup>572</sup> *Norwich Mercury*, 04 and 11 Dec. 1830.

<sup>573</sup> HO 52/9 ff. 90-1 Berney to Melbourne, 2 Dec. 1830..

<sup>574</sup> HO 52/9 ff. 161-2 JPs of the Hundred of North Greenhoe, Walsingham Bridewell, to Melbourne 29 Nov. 1830.

<sup>575</sup> NRO: WLS XLIX/54 Letter 11 Dec 1830 Grigson from Watton, to Ld. Lt. Wodehouse

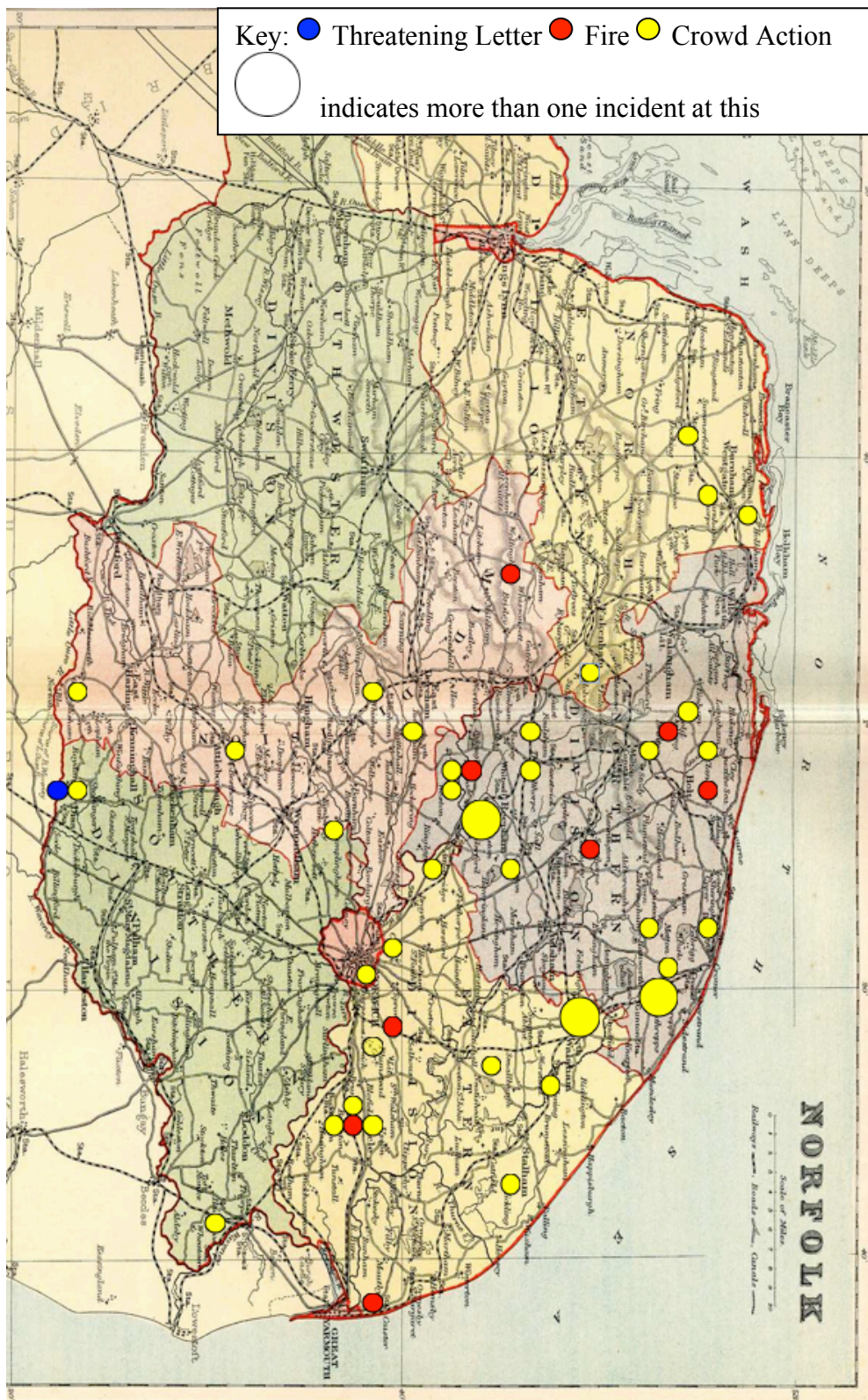
anonymous correspondent to the Home Office reported that republicans were mixing with the labourers, giving a ‘more political tendency’ to their ‘indignation and their desires’. Having been within the ‘same’ mob twice, he noted the presence of weavers and mechanics, and that the new cries of ‘We shall never do till we get some heads off till some blood is let’ were met with ‘general approbation’.<sup>576</sup> The nature of this report did less to ease the minds of the authorities as the insinuations here allied agricultural, urban and revolutionary causes. As well as allowing the most serious instances of disorder to be distinguished from the distress of the agricultural labourers, fear of foreign elements also heightened anxieties.

The continued experience of depression in Norfolk was certainly a factor in the disturbances of 1830. Annual reports to parliament evidenced the poor situation of small farmers and labourers across the county, and informed their interactions with the magistracy in the build up to Swing. Nor can the disturbances of 1830 be divorced from earlier incidents of protest. Not only do the same grievances emerge, but the ways in which they had been dealt with – be it through conciliatory or repressive measures – informed the nature and location of protest in 1830. This context complicated the task of the magistracy, particularly the extent of social divisions between labourers and farmers, and farmers and the gentry. Despite the apparent polarisation of Norfolk society, an understanding of social, particularly paternal, responsibilities would permeate the rhetoric and actions on all sides in the next battle in the rural war. But the scale of protest nationally, and its manifestation in previously undisturbed areas in the North and East of the county, perhaps made Swing something more. Even if the attachment to ‘foreign agitation’ was an act of denial, these immediate and long-term considerations informed the response of the Norfolk judiciary to Swing.

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<sup>576</sup> HO 52/9 ff. 176-182 Anon. near Aylsham to Peel, 25 Nov.1830.

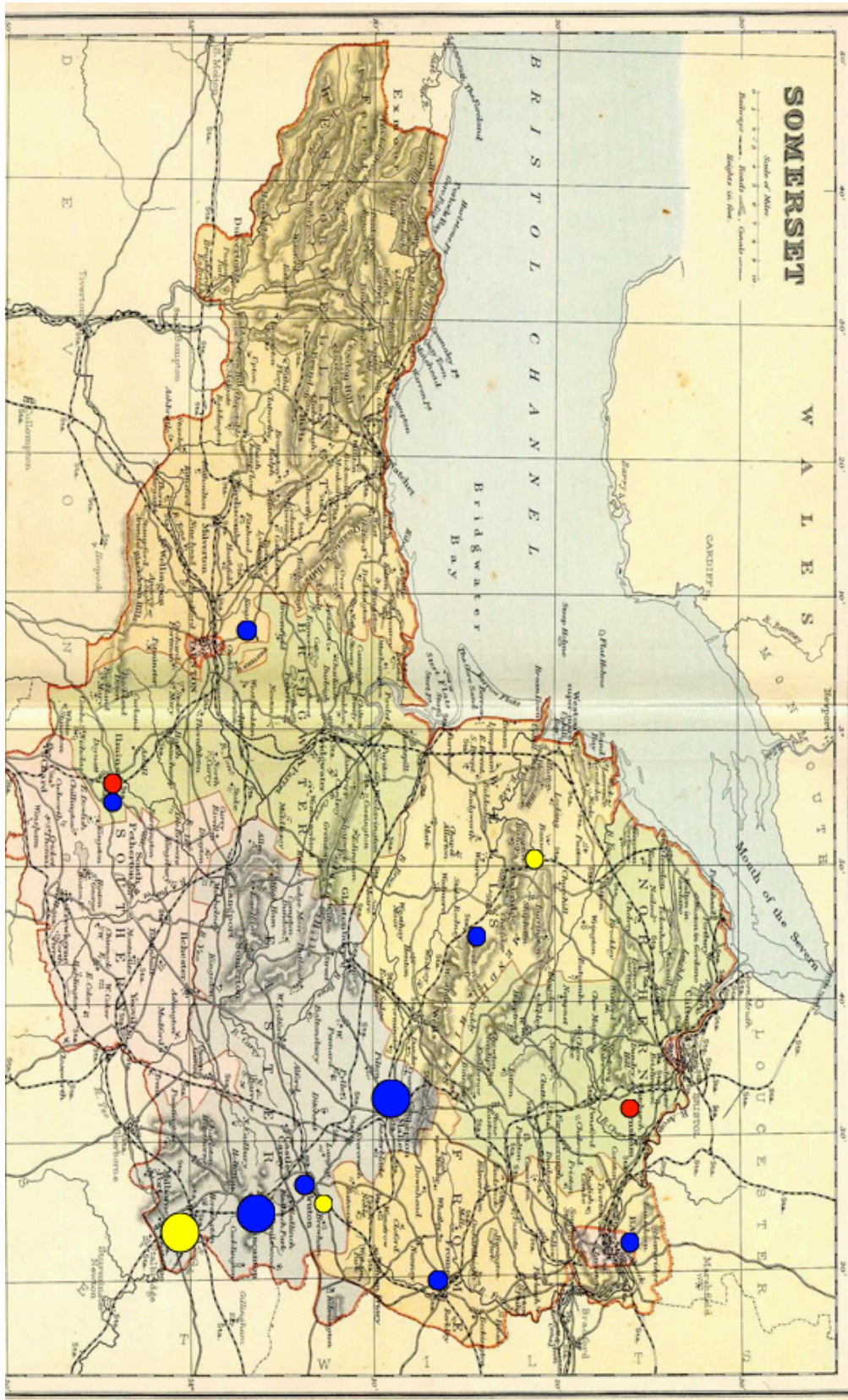
#### 4.1. Swing Incidents: Norfolk



Map of Norfolk by F. S. Weller, originally published in *The Comprehensive Gazetteer of England and Wales, 1894-5* (London and Edinburgh: William Mackenzie 1894-5) <http://ukga.org/images/maps/Norfolk.jpg> Data added by author (see appendix 4)

## 4.2. Swing Incidents: Somerset

Map of Somerset by F. S. Weller, originally published in *The Comprehensive Gazetteer of England and Wales, 1894-5* (London and Edinburgh: William Mackenzie 1894-5) <http://ukga.org/images/maps/Somerset.jpg> Data added by author (see appendix 4)



## 1.2 *The Spectre of Swing: Somerset, c.1815-1830*

The relative peace of Somerset can be attributed to its different socio-economic structure – it was not a typical ‘Swing’ county. Agricultural production in the county was diverse, dominated by pastoral farming, particularly dairying. In the east of the county, dairy farming appeared to weather the depression marginally better than arable sectors. Production here also formed part of a wider area of manufacture including parts of Wiltshire. Grain production was largely confined to the Vales of Taunton and Ilchester; these regions could not meet the demands of the population, so Somerset’s markets were supplemented by grain from Wiltshire and counties further east.<sup>577</sup>

Petitions complaining of distress were sent from these grain producing regions in 1822. In 1820 and 1821, complaints had been concentrated in depressed manufacturing regions like Frome and Shepton Mallet. While poverty was a general concern, it was more acute in urban areas, particularly the declining textile centres.<sup>578</sup>

The returns regarding labourers’ wages in 1825 confirmed that while poor relief expenditure was reducing in many hundreds, Whitestone (the district encompassing Shepton) and Frome, were the only two where claims were increasing.<sup>579</sup>

The textile industry in Frome had been in decline for some years, and disturbances amongst the weavers had broken out in 1822 and 1823.<sup>580</sup> William Cobbett had visited Frome on his ‘Rural Rides’ in 1822. He sympathized with the plight of hundreds of weavers, now out of employ, and being forced to work on the roads for next to nothing. He blamed their dejected state on the ‘bluff manufacturers’ who called upon the yeomanry and magistracy to keep the poor in check, threatening them ‘when they dare to ask for the means of preventing starvation in their families’.<sup>581</sup> Although Cobbett invoked a somewhat melodramatic scene, the poor of Frome continued to suffer from the deterioration of the textile trade there. In January 1830, the magistrates sitting at the

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<sup>577</sup> *Agricultural State of the Kingdom*, (1816) part II; see also Chapter 2.1.1

<sup>578</sup> PP: Agricultural distress. A list of all petitions, which have been presented to the House of Commons in the years 1820, 1821, and 1822; complaining of agricultural distress 1822 (236); *Agricultural State of the Kingdom*, (1816) part II, 1-2, 8; W. Cobbett, *Rural Rides* (First published 1830, this ed., Aylesbury: Penguin, 1967) 339-41.

<sup>579</sup> PP: Labourers' wages 1825 (299).

<sup>580</sup> SRO: DD/SLI/20/2/5 notes on the North Somerset Yeomanry, 1794-1947

<sup>581</sup> Cobbett, *Rural Rides*, 339-41.



county quarter sessions received a letter from the inhabitants ‘describing the great distress that prevails in that town, and praying for relief’.<sup>582</sup>

It was in these areas, not amongst the agricultural community, that disturbances occurred prior to 1830, however, not on the scale of those experienced in Norfolk and elsewhere. It is perhaps unsurprising therefore that Somerset only experienced three outbreaks of riot during the Swing disturbances. However, it is clear from the number of threatening letters received in the county, and their urban distribution that tensions existed in Somerset society (fig. 36 above). Indeed, the reliance on relief in depressed centres like Frome, limited the possibility for impoverished workers ‘to resist openly the masters of the parish and the other paymasters.’<sup>583</sup> The timing and nature of the incidents that did occur were framed by the social and economic context within the county, but also by the progress of the disturbances in neighbouring regions. From the perspective of the Somerset magistracy, the spectre of Swing had arrived by November, manifest in incendiary fires, threatening letters, radical agitators and in the apprehension of imminent invasion from the rioters in Wiltshire.

On 10th November 1830, the Lord Lieutenant of Somerset, the Marquis of Bath, wrote to the county’s clerk of the Peace, Edward Coles, instigating a ‘confidential’ investigation into the ‘state of the public mind’. Lord Bath was already concerned about spurious reports in *The Times* regarding the poor level of wages in Somerset – apparently penned by a Justice in Kent. He also reported the firing of two or three ricks in his neighbourhood a few nights before.<sup>584</sup> Relatively contained fires were also reported as the work of incendiaries at Ilminster in the second week of December, and at Keynsham at the end of the month, and a pair of suspected incendiaries on horseback had been spotted at Yeovil and Chard (see Map 4.2, 183). These incidents contributed to the sense of potential trouble that pervaded the otherwise quiet county.<sup>585</sup>

The fire at Ilminster had been the subject of a threatening letter received a week before the incident. Just prior to the arrival of the letter, William Hammond, the oldest

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<sup>582</sup> *Bath Journal*, 18 Jan. 1830.

<sup>583</sup> C. J. Griffin, ‘The culture of combination: solidarities and collective action before Tolpuddle’ *The Historical Journal*, 58:2 (2015): 462.

<sup>584</sup> SRO: Q/JCP/7 Lord Bath to E. Coles Clerk of the Peace, 10 Nov 1830

<sup>585</sup> *The Bath Chronicle*, 12 Dec 1830; HO 52/9, f. 628 J. Philips, 27 Nov 1830, W. East 1 Dec 1830, R. Phippen, 6 Dec 1830, f. 548, E. Coles, 16 Dec 1830.

magistrate in the Ilminster Division, had perceived an ‘unusual disposition of discontent amongst the lower and even some of the middle classes of this neighbourhood’. He admitted that the tenant farmers were much oppressed by high costs and poor prices for their produce, and could no longer afford to pay proper wages.<sup>586</sup> Threatening letters were also sent to Frome, Taunton, Shepton Mallet, and Walcot in Bath.<sup>587</sup> Many of these letters attacked the use of both agricultural and textile machinery perceived to have been the causes of poor wages and unemployment.<sup>588</sup> The letter addressed to two silk manufacturers in Shepton, ominously declared, ‘Swing must of necessity soon be here’.<sup>589</sup> The distribution of these letters was distinctly urban (see Map 4.2, p. 183), however, the grievances voiced by their anonymous authors illustrate how the concerns of the poor were shared across both agricultural and manufacturing communities, and this commonality proved of particular concern to the authorities.

Justice Moysey of Bath, writing to the Secretary of State, expressed particular concern about the potential for riot in manufacturing centres like Frome and Shepton, as well as the collieries around Bristol and reported that there were ‘many disaffected among the lower orders in Bath’.<sup>590</sup> As was the case at Norwich, both the central and local authorities prioritised preventing an alliance between urban and rural labourers. Indeed, the government’s minimal intervention in Somerset during the winter of 1830 was focused on the larger urban settlements of Bath and Bristol.<sup>591</sup>

The authors of the threatening letters capitalised on the sense that Swing was an all-pervasive movement. The Shepton Mallet letter claimed Swing was acting through his agent in the town. Justice Henry Hobhouse believed there to be a ‘system of threatening letters’ distributed by agitators from outside the county. Both he and one of his tenants had received letters.<sup>592</sup> He was convinced that ‘From the contents of the letter to me it is obviously not the production of a very low sort of person, nor of anyone conversent with this Country.’ Hobhouse lived in Wincanton close to Somerset’s border with Wiltshire;

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<sup>586</sup> HO 52/9 f. 600 Hammond to Melbourne, Dillington, 1<sup>st</sup> Dec. 1830.

<sup>587</sup> *The Bath Chronicle*, 11 Nov and 2 Dec 1830; HO 52/9, f. 600; fol. 633, Nalder, 26 Nov 1830; fol. 555, E. Coles, 12 Dec 1830; fol. 548, E. Coles, 16 Dec 1830.

<sup>588</sup> HO 52/9 f. 600, 633, 555, and 548..

<sup>589</sup> HO 52/9 f. 633 enclosure, anonymous letter signed Swing

<sup>590</sup> HO 52/9 f. 636 Moysey to Peel 13 Nov 1830

<sup>591</sup> HO 52/9 f. 610 Campbell to HO 2 Dec 1830; Hobsbawm and Rudé, *Captain Swing*, 257.

<sup>592</sup> HO 52/9 f. 634 H. Hobhouse to Melbourne 23 Nov 1830.

consequently his concerns regarding the influence of ‘foreigners’ was compounded by the threat of the Wiltshire rioters ‘marching forward into this County.’<sup>593</sup> To make matters worse, the suspected incendiaries seen at Chard and Yeovil were wanted in connection with arson attacks in Pewsey (Wiltshire). But the Justices in Hobhouse’s division were prepared: they had already met to establish a plan to resist the Wiltshire rioters should they ‘invade’. Likewise, Justice Vincent Stuckey of Langport was ‘keeping a sharp eye out’ for a man riding about on horseback enquiring about the location of threshing machines.<sup>594</sup>

Hobhouse’s concerns were not unfounded. The first riot to take place in Somerset was at South Brewham on 26 November, a few miles away from the county boundary with Wiltshire. The assembled labourers threatened to destroy the threshing machine situated there. It was also in the vicinity of Maggs of Wincanton (just south of South Brewham) who had been producing threshing machines from at least 1815.<sup>595</sup> The only actual case of machine breaking by labourers occurred on December 1<sup>st</sup> at the two neighbouring villages of Yenston and Henstridge. It was the day of the riot at Stalbridge, a small town in Dorset, on the road south from Yenston and Henstridge (see Map 4.2, p. 183). According to a report in the *Bath Chronicle*, the same group of labourers perpetrated all three riots.<sup>596</sup>

Aside from a disturbance at Banwell (see below) the riots in Somerset were connected to the disturbances in neighbouring counties. Indeed, the absence of collective action in the county may also be attributed to the suppression of disturbances outside it. Peace had been restored in Wiltshire by the end of November, credited to the ‘great zeal’ of the Yeomanry Cavalry who rode out to suppress tumult, most notoriously in the ‘Battle of Pythouse’ – reputedly the bloodiest incident of the Swing disturbances.<sup>597</sup> As Andrew Charlesworth has suggested, the ‘movement’ of Swing began to falter as it moved west. After the initial vacillations by the authorities in eastern counties, a more repressive attitude was manifested in the actions of the Hampshire justices and the use of

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<sup>593</sup> HO 52/9 f. 594, H. Hobhouse, 1 Dec 1830.

<sup>594</sup> HO 52/9 f. 591, East to Melbourne 1 Dec 1830, f. 628, J. Philips to Melbourne, 27 Nov. 1830, f. 634, Hobhouse to Melbourne, 23 Nov. 1830, f. 578, Stuckey to Melbourne, 7 Dec. 1830.

<sup>595</sup> See fig. 37 and Map 4.2; Hobsbawm and Rudé, *Captain Swing*, 360.

<sup>596</sup> Hobsbawm and Rudé, *Captain Swing*, 129-130; *The Bath Chronicle*, 9 Dec 1830.

<sup>597</sup> See Chapter 5.

force in Wiltshire. As Justice John Mills of Ringwood (Hampshire) argued, it was better to act ‘offensively... attacking the rioters instead of waiting for them’. By mid December 1830, the Special Commission was sitting at Winchester, checking the further spread of unrest to the West through draconian exemplary sentencing.<sup>598</sup>

As well as concern for the spread of Swing from Wiltshire, the Somerset magistracy had to contend with the interference of local political agitators and the presence of the notorious Radical orator Henry Hunt. Hunt had been at Glastonbury on December 3<sup>rd</sup> at a reform meeting, and he also addressed meetings in Chard and Taunton twice. Hunt’s presence at Taunton generated considerable concern amongst the justices.<sup>599</sup> The report of Mr. Robert Ayerst – a gentleman awaiting his entry into the new Commission of the Peace – stated in no uncertain terms that Hunt preached nothing but ‘sedition and treason’. According to Ayerst, Hunt had used ‘the most ‘inflammatory language’’ to tell the crowd of countless threshing machines that had been ‘justly destroyed’, and how he hoped for the destruction of more, and that he had already visited ‘most of the principal towns in Kent’.<sup>600</sup> Allegedly, all this was said in the presence of the civil forces including a party of Yeomanry and numerous Special Constables, some of whom cheered Hunt’s oration.<sup>601</sup> Ayerst’s account certainly implicated Hunt in the spread of the Swing disturbances, so much so, that the government saw this as an opportunity to prosecute him if the account could be corroborated.<sup>602</sup> More significantly perhaps, the presence of Hunt and the perception of his influence bolstered the sense that agitators outside Somerset society could spark rebellion, or at least expose tensions within it.<sup>603</sup>

Hunt’s associate Rev. Henry Cresswell attempted to foster the local farmers as allies. In a handbill he called for the farmers to recognize that they were not the ‘tame and willing and *obedient* slaves’ of the landowning classes by supporting Radical parliamentary reform. Cresswell’s position as the Incumbent of Creech St. Michael

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<sup>598</sup> Charlesworth, *Social Protest in a Rural Society*, 17; see for example, HO 52/7 ff. 21-3 John Mills, Ringwood, to Melbourne, 26 Nov. 1830; Hobsbawm and Rudé, *Captain Swing*, 258.

<sup>599</sup> HO 52/9 f. 582, R. G. Ayerst, 6 Dec 1830.

<sup>600</sup> HO 52/9 f. 582.

<sup>601</sup> SRO: Q/JCP/7 H. Hobhouse to E. Coles, 8 Dec 1830.

<sup>602</sup> HO 52/9 f. 582, R. G. Ayerst, 6 Dec 1830.

<sup>603</sup> C. J. Griffin, ‘The culture of combination’, 465-6.

further outraged Justice John Evered who felt Cresswell had foregone his position and social responsibilities as ‘a Clergyman of the Established Church.’<sup>604</sup> The press reported that many farmers felt that Hunt had ‘shewn a good example to the large landed proprietors by reducing his rents and tithes’.<sup>605</sup> Here the radical agenda in the context of Swing placed further pressures on the local authorities. Justice Hammond reported to the Home Office from Ilminster, he ‘perceived an unusual disposition of discontent amongst the lower and even some of the middle classes’.<sup>606</sup> Letters from the Clerk of the Peace, Edward Coles, also implicated Hunt in frustrating the recruitment of special constables; and one farmer, who had spoken against Hunt, had subsequently been the recipient of a threatening letter.<sup>607</sup>

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Neither county was immune to the pressures of depression after 1815. Poverty, rising poor relief, and - as chapter 5 will show – an increase in the business before the criminal courts, were shared concerns for the local authorities by the autumn of 1830. However, protest manifested itself in different ways in Somerset and Norfolk.

The judiciary in Somerset was not faced with the same level of overt protest, but in many parts of the county they perceived the *potential* for more protracted disturbance. Fires and letters signalled that some communities, such as the impoverished weavers of Frome and Shepton Mallet, and the labourers of Ilminster, shared the grievances articulated through Swing. The situation was further exacerbated by widespread disorder in neighbouring Wiltshire, and the presence of radical reformers allying their campaign with the complaints of farmers and the middling sort. In Norfolk, extensive open protest erupted in November 1830. The disturbances there stemmed from long-term structural problems in arable production, aggravated further by the tensions that existed between all classes of society. The magistracy had to negotiate these social divisions as part of an on-going ‘rural war’.

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<sup>604</sup> HO 52/9 f. 544, J. Evered, 17 Dec 1830 and f. 552a, H. Cresswell, handbill dated 27 Nov 1830.

<sup>605</sup> *Bath Chronicle*, 16 Dec 1830.

<sup>606</sup> HO 52/9 f. 600, Hammond to Melbourne 1 Dec 1830

<sup>607</sup> HO 52/9 f. 548, Edward Coles to Phillips, 16 Dec 1830 and f. 555, 12 Dec 1830.

Although the national, and even international context coloured the perception of protest in both counties, local contexts and local history necessarily framed the responses of the authorities to the Swing disturbances. Arguably felt most acutely in Norfolk, the magistracy had to consider the long-term repercussions of their actions.

## ***2. Suppressing Swing***

From the outset, responsibility for the suppression of riot and the restoration of peace rested with the county commissions of the peace. Aside from the enduring distaste for intervention by the state in local matters, the political context of 1830 inhibited direct involvement by central government. Revolution in France and Belgium in the summer appeared all the more threatening with the revival of Whig and Radical agitation for parliamentary reform. Widespread discontent regarding Wellington's Tory administration, especially their anti-reform stance meant, 'there was a reluctance on the part of the middle class to join any force which might be ordered to act against the rioters.' The government's unpopularity made them wary of deploying troops to suppress uprisings; as Halevy suggested, 'the least step in this direction and Wellington would be accused of attempting the role of a British Polignac and might well find that instead of suppressing riot he had provoked revolution.'<sup>608</sup> With the escalation of machine breaking in the east, the Home Secretary's 'interventionism was intensified and his advice became more severe.'<sup>609</sup> Although the government could not take a 'pro-active role in the physical suppression of events', both Robert Peel, and his Whig successor, Viscount Melbourne, sent out agents to act in an advisory capacity and maintained a continuous correspondence with local law enforcement, allowing them to attempt 'to manipulate the application of the law' from a distance.<sup>610</sup>

In a circular dated November 25<sup>th</sup>, Melbourne recommended the 'Sussex Plan' to every County Commission. The Duke of Richmond in the West of Sussex, had enrolled a constabulary force of shopkeepers, yeomen and respectable labourers, and organised

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<sup>608</sup> E. Halevy, 'The Triumph of Reform, 1830 – 1841', *A History of the English People in the Nineteenth Century*, vol. III (New York: Barnes and Noble, 1961) 9; Charlesworth, *Social Protest in a Rural Society*, 12.

<sup>609</sup> Griffin, 'Policy on the Hoof', 128.

<sup>610</sup> *Ibid*, 138.

them into sections and districts under local commanders ‘and sent them out as mobile units to occupy villages, whether already rebellious or likely to become so.’<sup>611</sup> The public, however, did not consistently welcome these measures. Echoing critics in both counties, the *Norwich Mercury* argued that the special constables were only effective as an immediate, short-term measure to suppress disorder. Without addressing the distress of the poor, peace could not be sustained.<sup>612</sup>

Thus the magistracy, left largely unaided, were responsible for the suppression of tumult with a limited civil force. The Sussex Plan, or similar schemes of enrolling Special Constables, offered a temporary remedy for policing, but as local government, the judiciary had to consider more long-term solutions that addressed the root causes of unrest. Concessions to the labourers’ demands therefore, had to be considered.

### *2.1 Activity in the ‘absence’ of Swing: Somerset 1830*

Even in the absence of any outbreaks of open protest, the Somerset justices were anxious regarding the adequacy of the civil force in the first weeks of November. Many members of the commission wrote to Edward Coles, clerk of the Peace, entreating him to allow new justices to act as their divisions of the county were inadequately provided for.<sup>613</sup> The High Sheriff, James Gordon, wrote to Coles expressing his concern for the ‘unprovided state’ of the area to the South of Bristol. If more gentlemen were not enlisted as magistrates, it would ‘leave 18 miles of populous country without a single magistrate.’<sup>614</sup>

Gordon’s division had been under-provisioned from at least 1819.<sup>615</sup> The High Sheriff was certainly concerned with the maintenance of order, resorting only a few months earlier to an exceptional display of judicial authority. In September 1830, Gordon ordered the execution of three incendiaries to be staged at the scene of their crime, at Kenn, two miles from his estate. Attended by the Chief Constable, 100 special

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<sup>611</sup> Hobsbawm and Rudé, *Captain Swing*, 256.

<sup>612</sup> *Norwich Mercury*, 25 Dec 1830

<sup>613</sup> SRO: Q/JCP/7 Davis to Coles 29 Nov, Gordon at Bedminster 13 Dec, J. Lee Lee at Ilminster 22 Dec. 1830.

<sup>614</sup> Q/JCP/ 7 Gordon to Coles, 13 Nov. 1830.

<sup>615</sup> See chapter 2.3.2

constables, other justices and local landowners, the sentence was carried out in front of a crowd of thousands.<sup>616</sup>

Exemplary punishment might have provided a ‘salutary warning’ to the community at Kenn, but in the absence of open protest in the winter of 1830, the county commission had to consider other means of preventing disorder. With the circulation of the Sussex Plan, Lord Bath, the Lord Lieutenant, immediately recommended these measures to the Somerset justices.<sup>617</sup> But the establishment of a sort of police force, when little manifestation of riot was evident, was a contentious move for the magistracy to make.

Political critics made much of its illiberality. At Taunton, Henry Hunt deemed the establishment of constabulary and yeomanry forces as ‘unnecessary measures, and only calculated to deter people from demanding their just rights which might now be obtained by an unanimous call from all parts of the Kingdom for Parliamentary Reform’.<sup>618</sup> Certainly in Somerset, the magistracy were anxious to avoid the perception of such measures as oppressive. Instead, they were justified as a precautionary measure against a *foreign* element – those ‘Wicked Agents’ and ‘evil disposed persons, coming from those Districts which have been disgraced by Scenes of Riot and Outrage.’<sup>619</sup> Nonetheless, many felt that the presence of these organised forces would create alarm amongst the peaceable inhabitants, or prove antagonistic to the disgruntled populace.

Justice John Barrow of Wedmore would not implement the Sussex Plan explaining to Lord Melbourne that he would ‘decline taking further measures unless I again hear from your Lordship feeling confident that... the Inhabitants of this very extensive and populous parish (altho’ many of them have considerably felt and are suffering from the oppression of the times) remain Loyal, Peaceable and well disposed’. He believed ‘the measure recommended by your Lordship may cause much uneasiness in the Neighbourhood and produce more harm than good’.<sup>620</sup>

The establishment of a constabulary force at Bath aroused considerable concern about the effect it would have on the social season. So much was the public concern that

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<sup>616</sup> S. Poole, ‘A lasting and salutary warning’: Incendiarism, Rural Order, and England’s Last Scene of Crime Execution’, *Rural History*, 19:2, (2008): 163-77; see chapter 5.1

<sup>617</sup> SRO: DD/WY/199 printed copy of the Sussex Plan

<sup>618</sup> TNA: HO 52/9 E. Coles to the Home Office, 16 Dec. 1830.

<sup>619</sup> HO 52/9 f. 612, W. P. Thomas, Dec. 2<sup>nd</sup> 1830; fol. 596 Trevor to Melbourne 30 Nov 1830.

<sup>620</sup> HO 52/9 f. 589, Barrow to Melbourne 30 Nov 1830.



Mayor Davis was forced to defend his actions in the press: Davis claimed ‘He had, of course, no discretion in the matter – no alternative’ but to act according to the legislation and the government’s recommendation to enrol Special Constables.<sup>621</sup>

In the first week of December, the magistrates of Somerton (a declining agricultural town) were in constant apprehension of disturbances in their neighbourhood.<sup>622</sup> So panicked were they by the prospect of Swing that the justices succeeded in enlisting the Somerton and Langport troop of Yeomanry cavalry to aid in the suppression of the expected riot. No disturbance occurred. Their peers were scathing in their comments concerning the measures taken by the Somerton magistrates: Justice Thring writing to Edward Coles exclaimed, ‘What a phantom they contrived to conjure in the Somerton division this week; it was indeed much ado about nothing.’<sup>623</sup> Even Lord Bath agreed that ‘the dismissal of the Yeomanry would tend to allay anxiety and alarm’.<sup>624</sup> The Langport troop subsequently made a public appeal to their Captain - Justice Vincent Stuckey - to use his influence ‘with the landed proprietors and clergy to ease their burdens’ as tenants and tithe-payers.<sup>625</sup> In the context of social discontent, the necessity of enrolling members of the community into a force to regulate it - be it as Special Constables, or as the Yeomanry Cavalry - created the opportunity, the political space, for the populace to confront the authorities.

Justice Clarke of Wellington met with some resistance amongst the farmers in his jurisdiction when attempting to enlist them as special constables. He was presented with a paper signed by half of those who paid tithes to him, calling for him to lower them, retrospectively, from the previous New Year. Having remonstrated with them, Clarke explained that ‘[s]everal have withdrawn from the combination and I have gladly acted towards them as if nothing of the kind had taken place but some still hold out and annex as a condition to be sworn in special constables that their demands shall be complied with’. The farmers were bargaining with their loyalty. Clarke was keen to appear

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<sup>621</sup> *The Bath Chronicle*, 2 and 23 Dec 1830.

<sup>622</sup> A P Baggs, R J E Bush and Margaret Tomlinson, 'Parishes: Somerton,' in ed. R W Dunning, *A History of the County of Somerset*: Volume 3, (London: Victoria County History, 1974), 129-153; SRO: Q/JCP/7 Thring to Coles, 10 Dec 1830; TNA: HO 52/9 621 Lord Bath to Melbourne 6 Dec 1830.

<sup>623</sup> Q/JCP/7 Thring to Coles, 10 Dec 1830

<sup>624</sup> HO 52/9 f. 621, Lord Bath to Melbourne 6 Dec 1830

<sup>625</sup> *The Bath Chronicle* 23 Dec 1830

immoveable in the face of such threats and suggested that the most unwilling might be made an example of, and be indicted:

‘we only wish that those whose situation in life makes them competent to know better should be convinced by legal proceedings that they must act better lest by chance their bad example should extend to the Peasantry and we should be compelled to punish them for acts into which they are led by the bad conduct of those that employ them.’<sup>626</sup>

Clarke was not only securing his own financial interest but calling for his natural allies to be punished for their disloyalty.

At a meeting to swear in special constables at Banwell, Rev. Moncrieffe became apprehensive that the measure might cause alarm, and postponed it. The men that had assembled for the meeting ‘having been regaled with beer, were accordingly dismissed’. They did not go home however but ‘became themselves the originators of a serious disturbance’. They demanded money, beer, bread and tobacco, all of which was supplied by local shopkeepers; a loaf was then placed on a pole and carried aloft, ‘and they swore they would have a larger sized loaf and two shillings a day wages’. When one man was arrested, other members of the crowd broke into the house where he was incarcerated and freed him, subsequently parading him ‘in triumph around the village, in a chair’.<sup>627</sup> The press reported the incident with little concern, attributing the ‘disposition to riot’ to the ‘effects of intoxication.’<sup>628</sup> Somewhat ironically, in their attempts to prevent disorder, the Somerset justices found that precautions alone could excite alarm, and even expose tensions within their communities that in other counties were played out under more violent circumstances.

## *2.2 Alliance and conspiracy: suppressing Swing in Norfolk 1830*

Despite the Norfolk Bench’s characterisation as indolent, the Lord Lieutenant, John Wodehouse, was active from the moment disturbances broke out in the north east of the county, pre-empting governmental support for establishing constabulary forces.<sup>629</sup> The Norfolk Yeomanry who had proved so vital in the suppression of unrest in the 1790s, had

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<sup>626</sup> HO 52/9 f. 542, J. Clarke, 20 Dec 1830.

<sup>627</sup> *The Bath Chronicle*, 9 Dec 1830.

<sup>628</sup> *The Bath Chronicle*, 9 and 13 Jan 1831.

<sup>629</sup> HO 52/9 f. 193 Wodehouse to Peel, 23 Nov. 1830.

been disbanded without the prospect of revival in 1827. Despite calls from the Norwich bench in particular, funding for the troops could not be maintained.<sup>630</sup>

Unsurprisingly, reluctance to enrol in support of the civil force was also experienced in Norfolk. Here, justices were confronted by a farmer-labourer alliance that reputedly amounted ‘to a case of conspiracy’.<sup>631</sup> Indeed, the magistracy were rightly convinced that ‘there can be little doubt that many of the outrages ...take place with the deliberate connivance of some of the farmers.’<sup>632</sup> The assertion of the farmers’ interests occurred as the intensity in machine breaking waned at the beginning of December.

Justice Robert Plumtre reported to the Home Office that many of the magistrates perceived ‘a great disinclination in the class of society above the lower orders to contribute their services to the preservation of the public peace’. He enclosed a paper from Holt ‘as a specimen of that disposition which they fear is becoming too prevalent in the County.’<sup>633</sup> The situation at Holt reflected the same circumstances as those at Wedmore in Somerset. The inhabitants had declined to enrol as special constables, defending their decision in terms of local social relations: ‘our poor have continued to evince the most peaceable disposition, and express their willingness to rely upon the liberality of their employers as to the Wages which they are to receive.’ The labouring poor of Holt had ‘declared they should have regarded it as so hostile an act towards them that a riot would have been the consequence.’ Although this divergence of opinion had led to some bad feeling at Holt, ‘the landowners and clergy in the neighbourhood have since come to [agree to] ...reducing their rents and tithes so as to enable the farmers to employ and properly pay the labourer.’<sup>634</sup>

As was the case in Somerset, at Holt the presence of serious unrest in its environs, and the call for the community to assist the authorities created the opportunity for the labourers and yeomanry to extract concessions without recourse to outright violence. Writing to the Home Secretary, Colonel Wodehouse admitted that the implementation of

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<sup>630</sup> J. R. Harvey (ed.), *Records of the Norfolk Yeomanry Cavalry* (Norwich: Jarrold and Sons, 1908), 236-8.

<sup>631</sup> Archer, ‘*By a Flash and a Scare*’, 63; see also Hobsbawm and Rudé, *Captain Swing*, 152.

<sup>632</sup> TNA: HO 52/9, ff. 125-6: “Memoranda as to Co: Norfolk” 1 Dec. 1830.

<sup>633</sup> HO 52/9 f. 164: Robert Plumtre to Melbourne, The Shire Hall, Norwich, 29 Nov. 1830.

<sup>634</sup> HO 52/9 ff. 16-17: W. Withers to Melbourne, Holt 2 Dec. 1830.

the Sussex Plan had ‘been productive of Mischief by affording the Farmers in a Body an opportunity of expressing their discontent at the Landlords and the Clergy.’<sup>635</sup>

The alliance between farmer and labourer against the clergy played out in a more violent manner in several instances, particularly in the south of the county. Similar disinclination to act was found at a meeting at Harling, just south of Attleborough. The ‘principal occupiers’ declined to enrol ‘thinking it advisable not to take any steps that could in any way irritate the feelings of the lower Class.’ Their determination to deal with matters amongst themselves clearly did not have the desired effect: four days after the meeting a ‘mob’ attempted ‘to compel the Rector of Banham to lower his Tithes, but not finding him at home they departed intending to return.’ Two days later the riot at Rev. Frankland’s took place.<sup>636</sup>

At Haddiscoe, Rev. William Boycott called a public meeting to discuss the issue of wages. He overcame his reluctance to offer any abatement in tithe payments when one of the assembled farmers publicly declared he would give everything he was refunded to the labourers; as a result, Boycott felt compelled to consent to a refund.<sup>637</sup> It was widely acknowledged that ‘the assembly was, in some measure, convened by Rev. Gentleman himself’. Indeed the jury at the county sessions refused to condone Boycott’s action, and acquitted all charged in relation to the meeting. Sergeant Frere took the opportunity to use Boycott’s misfortune as a salutary example: ‘everyone who looks at this case must see that concession only produces further violence.’<sup>638</sup>

### *2.3 A question of concession or repression*

The level of concessions granted by landowners, clergy and magistrates in Norfolk – despite the extent of violent protest – proved to be contentious. Decisions made at differing levels of county government created disparities and awkward precedents. The insular and localised operation of justice in Norfolk foundered in the context of Swing.<sup>639</sup> The debate over the validity of such measures was not confined to Norfolk; the actions of

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<sup>635</sup> HO 52/9 ff. 72-3 Wodehouse to Melbourne, Norwich, 4 Dec 1830.

<sup>636</sup> HO 52/9 f. 79. Copy of a letter to the Rev. Slapp from Attleborough Hall, 30 Nov. 1830.

<sup>637</sup> *Norwich Mercury* 15 Jan 1831

<sup>638</sup> *Norwich Mercury* 22 Jan 1831; see chapter 5.

<sup>639</sup> See chapter 2.

conciliatory magistrates were strongly disapproved of by government. Indeed the issue was contested across all the counties affected by Swing, and formed part of the critique of the institution of the magistracy more generally in its aftermath.

The public concessions made on 24<sup>th</sup> November, after the first incident of machine breaking in North Walsham, were described by Hobsbawm and Rudé as a ‘remarkable’ display of ‘indulgence’ on the part of the magistrates.<sup>640</sup> The North Walsham bench had recommended the disuse of Threshing Machines, and an increase in wages. Similar concessions were made by the magistrates at Gallow and Diss.<sup>641</sup>

In a letter to the Lord Lieutenant, John Wodehouse, the Home Secretary responded to these measures with telling brevity: ‘I trust that your expectation that the simple Concession with respect to the Thrashing Machines, will be attended with the desired Effect’.<sup>642</sup> It was not. In addition to the example of concessions from various districts across the county, Lord Suffield suggested that Wodehouse had unwittingly agreed to 2s a day being a just wage when remonstrating with a crowd, stimulating further demands for increases in wages.<sup>643</sup>

Wodehouse’s instructions to the magistracy on December 2<sup>nd</sup> stated, ‘the most forcible measures must be adopted against the Rioters, no conciliatory language must be used till they are overcome.’<sup>644</sup> This was not so much a change of direction but a reiteration of the necessity for vigorous as well as ameliorative measures; the Lord Lieutenant had rode out on several occasions to disperse crowds and apprehend rioters.<sup>645</sup> Employing a combination of ‘firm’ and conciliatory measures was advocated in many quarters, including by representatives of government: Colonel Brotherton, who had been sent throughout the Swing counties of the West, determined a combination of ‘energetic’ and conciliatory measures was most efficient in restoring peace.<sup>646</sup>

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<sup>640</sup> Hobsbawm and Rudé, *Captain Swing* 154-155.

<sup>641</sup> *Norwich Mercury* 11 Dec. 1830

<sup>642</sup> HO 52/9 Melbourne to Wodehouse 26 Nov. 1830.

<sup>643</sup> HO 52/9. ff. 151-3 Suffield to Melbourne, Gunton Park, 30 Nov 1830; NRO: WLS XLIX/54, 426X9 Kimberly Correspondence.

<sup>644</sup> HO 52/9 f. 37-8, Hoseason quoting Wodehouse’s instructions in a letter of 13 Dec 1830..

<sup>645</sup> See for example HO 52/9 f. 187-8 letter of 24 Nov, f. 174-5 letter of 26 Nov., f. 169-70 letter of 27 Nov, and ff. 110-113 letter of 27 Nov 1830.

<sup>646</sup> HO 52/11 ff. 100-03, Brotherton to Melbourne, 28 Nov 1830; Hobsbawm and Rudé, *Captain Swing*, 258.

By the beginning of December it appeared that peace was returning to Norfolk. Consequently, a general address was made by the Committee of Magistrates at Norwich on the 3rd. This announcement recommended the

‘general Disuse of THRESHING MACHINES as a friendly concession on the part of Proprietors to public opinion, and as proof of their anxiety to remove as far as possible every pretext for the violation of Laws.’<sup>647</sup>

This step was more significant than the localised concessions already granted, it was almost unprecedented in the context of Swing as it was a *countywide* measure delivered from the bench.

Local opinion was divided over the validity of Wodehouse’s recommendations. William Withers, an attorney writing from Holt, argued that the ‘timely adoption of conciliatory measures’ would have prevented outrages throughout the county. Reductions in rents and tithes at Holt ‘had more effect in tranquillising the minds of the people’. At nearby Briston the magistrates had failed to remonstrate with the people. Instead the military were sent in and the arrests made, Withers alleged, sparked more acts of violence. A few days later, a reduction in rents and tithes was agreed but as a consequence of the magistrates timing, the poor ‘perceive that the relief they obtain is extorted from the Fears, and not granted from the good Feeling of the higher orders.’ Withers was particularly concerned with the erosion of social relations if force was used. Considering the poor ‘know the causes of their distress’ force would make them unite, ‘they will act together either openly or secretly for effecting a common object, and it is much to be feared they will not ultimately be satisfied with a mere increase of wages.’<sup>648</sup> Withers advocated concessionary measures in order to maintain a set of social relations where the poor were beholden to authority.

Withers’ assessment was born out by events at Reepham. Sir Jacob Astley, High Sheriff of the County and an acting magistrate, was reproached for having ‘so much rashness, so little conduct’ in his management of a disturbance expected there on the 24<sup>th</sup> November. Allegedly, Astley had entered the town at the head of 100 horsemen, expecting a mob, but ‘only the boys of the town’ were there ‘having been scattered and nearly ridden over by the entrance of these horsemen at full gallop’. The boys ‘avenged

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<sup>647</sup> HO 52/9 f. 19, An address to the Inhabitants of the County of Norfolk 3 Dec 1830.

<sup>648</sup> HO 52/9 f. 16-17, letter of 12 Dec 1830.

themselves by throwing a few stones' which was enough to scare some of the horsemen. Astley then gave the order to charge the crowd 'innocent as most of them were and mixed with women'. The yeomanry overturned several people and left the High Sheriff to find a way of escaping the crowd who were 'very justly exasperated'.<sup>649</sup> Social relations on Astley's estates close to the town were already fraught. An Overseer of the Poor and tenant of Astley's had been the victim of an incendiary attack in the preceding week. His rash actions on the 24<sup>th</sup> did not discourage, and quite possibly encouraged, further disturbances that occurred at the town in the next three days.<sup>650</sup> Shortly after Astley's ousting, he publically supported a recommendation for the disuse of threshing machines made at Melton Constable, less than ten miles north of Reepham.<sup>651</sup>

Lord Suffield was highly critical of the concessions of the North Walsham magistrates, so much so he 'almost reproached them with inactivity'. The magistrates 'all avowed their disinclination to take severe measures against an oppressed class, until forced to do so for the preservation of life and property.'<sup>652</sup> Suffield was not unjustified in his concern that the concessions had left them at the mercy of the mob. Indeed he felt any force would be 'of no avail'. He was not entirely opposed to relieving the situation of the poor but he felt 'strong condemnation of the lawless proceedings' and the restoration of peace should come before any concession. His criticism was framed more in terms of the uneven process of granting concessions. He feared that neighbouring districts would soon demand the same level of relief won in North Walsham. The countywide recommendations issued on December 3<sup>rd</sup>, might therefore be interpreted as an attempt to establish parity that would prevent such situations.

Thomas Hoseason, one of the justices for the hundred of Freebridge Marshland, raised a more specific problem with the general recommendations made at Norwich. Hoseason resided in the far west of Norfolk, an area considered 'separated from the rest of the county', and one that had remained almost entirely peaceful.<sup>653</sup> The concessions granted in response to the disturbances in the east had the potential to disrupt this

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<sup>649</sup> HO 52/9 ff. 176-182 Anon. near Aylsham to Peel, 25 Nov. 1830,

<sup>650</sup> *Norwich Mercury*, 13 Nov. 1830; White, *History of Norfolk*, 500, 503, 510; Hobsbawm and Rudé, *Captain Swing*, 185; see Map 4.1.

<sup>651</sup> HO 52/9 f. 149 notice to farmers, 26 Nov. 1830

<sup>652</sup> HO 52/9 ff. 110-113 letter of 27 Nov 1830.

<sup>653</sup> Description from TNA: KB 1/37/1; see Chapter 2.4.1; HO 52/9 f. 37-8 letter of 13 Dec 1830.

otherwise quiet locale. Hoseason explained, that as a result of the previous acts of machine-breaking,

‘Policies insuring Farming stock be void, if thrashing machines shall be used on the premises. Such a Resolution at this moment will greatly add to the Farmers difficulties; Especially since the Committee of Magistrates at Norwich...have printed and circulated the ... address under date the 3<sup>rd</sup> instant.’<sup>654</sup>

Thrashing machines were deemed ‘absolutely indispensable...but particularly so in this hundred.’ The crops ripened much later there, so they would harvest it green, meaning the wheat was ‘a fine and heavy sample, a flail will not touch it which makes Thrashing Machines to us not only necessary but invaluable.’ Indeed, he had written to Colonel Wodehouse, Lord Lieutenant of Norfolk, to explain their peculiar circumstance.

Hoseason was in a predicament: the Farmers wished to defend and continue to use their property, but ‘they are recommended to give them up, by so large a body of magistrates, their minds become paralised’.

The ‘majority of the magistrates being Men of Rank as well as large Land owners, even M.P.s have sent notices to their tenants that if they Continue to use Thrashing Machines, they will not only incur their displeasure but most likely be removed from their farms.’

In pointing out the partiality and manipulation of societal bonds by other (perhaps more established) county justices, Hoseason, having already been challenged in his judicial conduct,<sup>655</sup> was keen to present himself in the best light. He assured the Home Secretary that he had ‘recommended the Use and Protection of Thrashing Machines at all risks and hazards’ and had always paid his labourers no less than two shillings a day.<sup>656</sup>

In a different manner to Suffield, Hoseason’s criticism of concessionary measures referred specifically to the disunity countywide policies provoked amongst the magistrates. He saw little place for paternalist sympathies in the maintenance of order, he believed ‘all Magistrates should be obliged to Act together, and upon the same principle which is strictly to adhere to the Law.’<sup>657</sup>

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<sup>654</sup> HO 52/9 ff. 37-8 letter of 13 Dec 1830.

<sup>655</sup> A criminal information was laid against Hoseason at the Court of King’s Bench in 1811 for ruling in his own cause; see chapter 2.4.1.

<sup>656</sup> HO 52/9 ff. 37-8 letter of 13 Dec 1830.

<sup>657</sup> Ibid.



Certainly the strongest censure came from government in a circular issued by Melbourne on December 8<sup>th</sup>. The Home Secretary ‘observed, with great Regret,’ those Justices of the Peace that had approved a ‘uniform Rate of wages’ or recommended the discontinuance of threshing machines, and instructed them to ‘oppose a firm Resistance to all Demands’ for wages and against agricultural machinery.<sup>658</sup> Perhaps through fear of more directed reprimands many of the responses to the circular concurred with Melbourne.<sup>659</sup> The number of disturbances and concessions associated with the issue of tithes were reflected in some of these responses. Clerical justices were squarely blamed for the misconduct in Norfolk, ‘who besides being in bad Odour with the People’ were ‘fearful of acting with the promptitude decision and firmness which is required in a Magistrate.’<sup>660</sup>

Wodehouse was not so agreeable in his response where he stoically defended the conduct of the Norfolk magistracy. The circular had ‘been the cause of great uneasiness to many of our Magistrates...I have indeed heard with deep regret that some who were the most active in the late trying occasions, have determined to act no longer.’ He claimed the priority of every magistrate had been the apprehension of offenders and their commitment to trial. But, in the particular context of economic hardship,

‘we could not forbear to admit, that wages had been generally too low, and that we thought that, under the actual difficulty of finding employment for the Labouring Poor, which has too long existed, Threshing Machines ought to be discontinued.’

Wodehouse finally declared,

‘that, under a perplexing choice of difficulties we have so acted as to check the spirit of insubordination in a much shorter time than has been the case in other counties, and that we have in no instance acted under the influence of threats and intimidation.’<sup>661</sup>

Wodehouse’s defence epitomised the problems faced by the magistracy in keeping the peace. The suppression of disorder was of paramount concern, however, as leaders of their communities they also had to address the underlying causes of discontent.

Conciliatory measures were seen as a legitimate part of the limited repertoire of actions

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<sup>658</sup> SRO: DD/WY/199 printed circular sent to the county commissions, 8 Dec 1830.

<sup>659</sup> For example see HO 52/9 f. 47 letter of 12 Dec. and f. 191 letter of 10 Dec 1830.

<sup>660</sup> HO 52/9 ff. 39-40 John Deyns (land agent) to Melbourne 11 Dec 1830, outside of letter annotated ‘Imbecility of the Magistrates Cause of the Late Disturbances’.

<sup>661</sup> HO 52/9 ff. 14-15 Wodehouse to Melbourne 16 Dec. 1830

available to them; the Norfolk justices invoked a particular conception of judicial paternalism to renew failing societal bonds.

The magistrates at Norwich offered their concessions ‘as a token of good will and feeling for those, whose lot is cast in a more humble station.’ Despite the displays of sympathy, the Justices at Norwich invoked the terror and majesty of the law in reminding the people of their reciprocal obligations: ‘that duty which they owe as subjects, and that gratitude, which they ought to feel as men, to a gracious and benevolent King, who has proved by his attention to the rights and complaints of his people, that he is no less a Father than a Sovereign. Let them reflect also before it is too late that ‘he beareth not the sword in vain’.<sup>662</sup>

The justices at Melton Constable emphasised local connection:

‘the Magistrates, who live among you and know you, cannot but respect it [poverty] and pity it, and desire to relieve it to the utmost of what they are allowed by law. More they cannot do. It would be false of them to promise it, as it would be unfair of you to expect it but as they have done the most painful part of their duty, and would again do so because it is their duty, in apprehending some of those who were engaged in breaking machines, so they do most cheerfully undertake that which is equally but more agreeably their duty – to protect the poor man, and see that he has all the rights to which he may be justly lay claim.’<sup>663</sup>

Although the justices set the limits on their capabilities at law, their expressions of sympathy acknowledge a shared understanding of what was considered right and just; but they establish the parameters of this within the law, casting the expectations of the poor as an abrogation of legitimate bounds should they manifest themselves in disorder.

Nonetheless, the concessions and recommendations made had proved problematic. The uneven distribution of measures, and their implementation at a local level (as was the case at North Walsham, Gallow and Diss for example) established a precedent which neighbouring communities could call upon to justify a change in their own circumstances, and therefore stimulate further disorder. More significantly, many of the concessions made by the Norfolk magistrates were public, and clearly emanated from the bench, rather than in their private capacity as landowners, gentlemen and clerics. This endowed the labourers’ protests with the legitimacy of the law. It was widely reported that the rioters at East Tuddenham brandished a paper claiming they ‘had got an authority

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<sup>662</sup> HO 52/9 f. 19, An address to the Inhabitants of the County of Norfolk 3 Dec 1830.

<sup>663</sup> HO 52/9 f. 147a, Notice from the meeting of the JPs of Melton Constable 25 Nov 1830.

from the magistrates to break threshing machines'. Lord Suffield had even received reports that machines had been broken in the presence of magistrates.<sup>664</sup>

The opportunity to seek legal redress fostered the sort of expectation and dependence on the magistracy that was so criticised in their administration of the poor law. Suffield had met with other justices in his division and agreed

‘not to put forth any *public* recommendations as to the amount of wages because the obligation to advance upon those terms would be an *obvious concession* on our part to the feelings of a mob, but we agreed to dictate to our tenants such a rate of wages as we consider to be *just and reasonable*’.<sup>665</sup>

This mode of concession was used to side-step criticisms that the authorities had responded to intimidation, and potential accusations of illegality in setting wages. It also allowed the justices to exert their paternalist influence to assist the poor, but in a manner that divorced their action from their role as a representative of the law. Encouraging a deferential relationship still retained its utility as a means of ensuring social cohesion and control, but in this private context, allowed the law to retain a disinterested distance.

The preference for private concessions – or at least ones not associated with the institution of the magistracy – prevailed in Somerset. There is less discussion of conciliatory measures probably due to the relative peace of the county. Nonetheless, measures were taken to alleviate the condition of the poor. Certainly many of these were taken as precautionary measures to ensure that order prevailed.

Meetings of magistrates, landowners, farmers and clergy were held at Bathampton, Wrington and Lymphsham to address the relief of the poor. The meeting at Wrington was focused on the relief of the miners at Rowberrow and Shipham, their ‘good conduct and peaceable demeanour justly entitle them to the commiseration and assistance of the public.’ Relief was made through a charitable subscription rather than any official sanctions. More charitable schemes and subscriptions were made into the New Year at Bath and Frome.<sup>666</sup>

Some reductions in tithes and increases in wages were made but magistrates – or gentlemen acting in their judicial capacity – were absent from these meetings. Rev. J.

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<sup>664</sup> *Norwich Mercury*, 15 Jan 1831; TNA: HO 52/9 f. 151, Suffield to Melbourne 30 Nov. 1830

<sup>665</sup> HO 52/9 ff. 151-3, Suffield to Melbourne, 30 Nov. 1830.

<sup>666</sup> *Bath Chronicle* 2, 9, 23 Dec 1830 and 6 Jan 1831.

Stephenson of Lympsham was held up as an ‘Example to Clergymen, Landowners and Farmers’ for reducing his tithes by fifty per cent. At the same meeting local landowners agreed to cut their rents to the same extent, in order to relieve the vast number of labourers out of employ, and ‘seeking relief from the Overseer.’ Mr Loaring of Ilminster offered to increase his labourers’ wages if farmers in the area would do the same. In this grain-producing region, concern to ensure the labourers remained peaceful appears more acute: ‘the farmers in this neighbourhood are very busy putting down their thrashing-machines.’<sup>667</sup>

Following the same line as Suffield in Norfolk, Justice Stuckey of Langport, who had been prevailed upon by his troop of Yeomanry to exert pressure on their landlords, admitted to the Home Secretary that he had made concessions to his tenants, but everything had been done ‘gradually and quietly’. He saw no better way to ‘prevent Contagion from spreading’ than ‘through the exertion of local influence’.<sup>668</sup>

### ***3. Conclusion***

By taking a regional approach to the Swing disturbances, the long-term and immediate structural causes that account for the different manifestation of unrest in Norfolk and Somerset can be more accurately discerned. In Norfolk, dependence on arable production and the intensification of agriculture meant the effects of depression were felt more acutely in the aftermath of the Napoleonic wars. Social tensions persisted, erupting into more open expressions of discontent in 1816, 1822 and 1830. By contrast, Somerset’s more diversified economy allowed the county to weather the depression a little better. Here, poverty was more problematic in the declining manufacturing centres such as Frome. In 1830, the experience of Swing in Somerset was directly affected by the progress of the disturbances in neighbouring counties.

This sort of contextual approach is not new, however by focusing on the actions of the magistracy, greater insight into the nature and significance of the disturbances in each county is gained. In Somerset, Swing did not have a strong physical presence in the form

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<sup>667</sup> Ibid, sig. 06 and 13 Dec. 1830

<sup>668</sup> TNA: HO 52/9 f. 608, V. Stuckey to Melbourne, 2 Dec 1830.

of open protest, but rather a spectral one manifested in fires and threatening letters, and external agitators, that nonetheless affected the nature and operation of social relationships and local government. While many of the county judiciary attributed the disturbances to political radicals and foreign agents, the apprehension of disorder in the depressed manufacturing towns and agricultural regions such as Frome, Shepton Mallet, and Somerton, betrayed an awareness of the genuine structural causes underpinning the labourers' grievances. Despite remaining comparatively peaceful, the spread of Swing across Southern England threw the divisions in Somerset society into sharp relief.

The awareness of the disturbances provided opportunities: opportunities for radical reformers to bolster their campaign, and for the government to counter by attempting to prosecute them as the instigators of rebellion. There was an alliance amongst the labourers of both rural and manufacturing communities, although to the relief of the authorities their shared grievances did not erupt into collective action. And the calls of the magistracy for the community to assist in policing, created the space for grievances to be aired and bargains to be struck.

From at least November of 1830, the Somerset judiciary saw the possibility of Swing spreading to their county. In response, they were keen to establish their authority by augmenting the civil force and punishing any disturbance severely. The magistracy also sought to prevent disorder by maintaining community cohesion. This was achieved by publicly associating the origin of disturbances with radical agitators and rioters from other parts of the country, elements from outside Somerset society, and by seeking the support of all sectors of the community as Special Constables, even though this proved problematic in some cases.

In Norfolk, enduring agricultural depression and social tensions manifested themselves in protracted, often destructive protest. Most problematically for the magistracy, not only did they have to contend with the protests of the labourers, but with the pernicious involvement of the disgruntled tenant farmers. Unlike 1822 and 1823 where the grievances of the labourers and farmers were expressed in isolation, in 1830, the justices faced the two allied. The scale of unrest likewise tested the existing structures of government. In several instances, localised measures intended to prevent disorder, stimulated further popular demands, undermining the judiciary as a whole.

Although the context and manifestation of Swing was markedly different in Norfolk in comparison to Somerset, continuities in magisterial attitudes and actions can be discerned. The necessity of augmenting the civil force – as it had in Somerset – created the space for social tensions to be expressed. In Norfolk however, the farmers did not only take advantage of the space created by the enrolling of special constables, they used the labourers to extract concessions in a reduction of rents and tithes.

To a lesser degree in Norfolk, apprehension of foreign elements stirring up unrest within the county concerned the local judiciary, particularly with regard to the potential for disturbances in Norwich. As was the case in Somerset, there was a perception of Swing beyond county borders, as a movement, an external threat that could trigger unrest. As we shall see, the manipulation of xenophobic feeling became more significant in the trials of Swing perpetrators in Norfolk, allowing the most problematic incidents of protest to be divorced from the enduring distress of the agricultural labourers.<sup>669</sup>

On the whole, the Norfolk magistracy could not ignore the reality of poverty. Indeed the extent of the concessions granted, in the recommendation of the disuse of threshing machines, and setting levels of wages, showed the magistracy were acutely aware of the labourers' distress. The application of these measures generated considerable debate, not just in terms in of their potential to stimulate unrest, but also regarding the role of the magistracy.

While Colonel Wodehouse and many of the other Norfolk justices adhered to a particular conception of the paternalist function of the magistracy, central government, as well as other members of the commissions of the peace (in both counties) wished to make a distinction between the paternalist social relationship, and the function of the magistracy as law enforcement and local government.

The efficacy of paternalist concessions can be challenged when addressing the evidence from Norfolk. Concessions had been made in 1816, 1822, and to the farmers in 1823, however, the same grievances were voiced in 1830: the same rate of wages was

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<sup>669</sup> See Chapter 5.

called for, reductions in rents and tithes were still perceived as necessary, and the use of threshing machines still aggravated the plight of the labourers.<sup>670</sup>

In both counties, but again most acutely in Norfolk, the Swing disturbances also highlighted the deficiencies of local law enforcement based on voluntary service, social status and personal connection. Even when the civil force was augmented, the social and personal nature that was supposed to unite them, made them unreliable. The subsequent trial of the perpetrators of unrest provided an important opportunity for both national and local government to check the spirit of discontent and to attempt to re-establish social cohesion.

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<sup>670</sup> Peacock, *Bread or Blood*, 93; Muskett, 'The East Anglian Riots 1822', 5-9; Archer, *By a Flash and a Scare*, 52, 56.

## *Chapter Five*

### *'The protection of the local authorities': Prosecuting Swing in Norfolk and Somerset 1829–1834*

By the end of 1830, approximately 1,900 prisoners awaited trial for their part in the Swing disturbances that had affected over twenty English counties throughout the autumn and winter. In five counties, where machine-breaking and damage to property had been most prevalent, the government appointed Special Commissions to try Swing offenders outside the usual court schedule.<sup>671</sup> The repressive sentences meted out by these centrally appointed, irregular courts, have somewhat eclipsed the prosecution of Swing offenders at county quarter sessions and regular Assize courts. Little comment has been made on the process of prosecution in general: how the cases were selected and how the charges were framed. In neglecting this avenue of research, we overlook the opportunity to address the actions and attitudes of the regional authorities.

Carl Griffin's most recent - and extensive - work on Swing in the south of England, has addressed this deficit in part, by considering the interaction of the state with the county authorities in organising the Special Commission at Winchester. He has shown that Peel, and latterly Melbourne, did not seek to override judicial discretion in the selection of cases for trial. Sending government solicitors, notably Maule and Tallents, into the provinces ensured that suitable examples were made of the worst offenders. However, government was reluctant to bear the financial burden of wholesale prosecutions, and sought to avoid accusations of prejudicial meddling in the administration of the law.<sup>672</sup>

But the operation of the regular regional courts has not been interrogated in the same detail. The significance of the county courts of quarter sessions as the seat of *local government* has been marginalised in the context of the Swing disturbances. The county sessions, convened by the magistracy, were responsible for all non-capital criminal cases

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<sup>671</sup> Quotation in chapter title: The attorney general quoted in J. H. Barrow (ed.) *The Mirror of Parliament*, vol. 1 (London: 1831). E.J. Hobsbawm and G. Rudé, *Captain Swing* (Lawrence and Wishart, 1969, this ed. London: Phoenix Press, 2001.), 258.

<sup>672</sup> C. J. Griffin, *The Rural War: Captain Swing and the Politics of Protest* (Manchester University Press, 2012) 231, 248-59; R. Wells, 'Mr William Cobbett, Captain Swing, King William IV', *Agricultural History Review*, 45:1 (1997): 37.



and local administrative matters.<sup>673</sup> The trials therefore, can be seen as an exercise of local government; at this juncture they were integral to the maintenance of peace and to the restoration of social relationships in the aftermath of unrest. They also provided the county judiciary with a much needed opportunity to present themselves both locally and nationally as the able and legitimate ‘rulers of the county’.

Griffin’s analysis of the trial of the first machine breakers at Elham in Kent has shown how the actions of the magistracy impacted on the movement of the disturbances and on the attitudes of central government. It has also highlighted how the county authorities tempered their responses according to their immediate social contexts.<sup>674</sup> Eric Hobsbawm and George Rudé noted that in some county courts a Swing offender ‘might expect a more reasonable chance of acquittal than in others’, however, the breadth of their study precluded the depth necessary to understand why the judiciary appeared more lenient in some counties.<sup>675</sup> This chapter investigates the ways in which the county commissions of the peace in Norfolk and Somerset structured the prosecution of Swing offenders at Assize and quarter sessions.

Hobsbawm and Rudé highlighted Norfolk as one of those counties where, unlike Wiltshire, a Swing offender had a better than average chance of acquittal. Indeed, the Home Secretary, Lord Melbourne, had reproached the magistrates for the concessions they made to rioters during the disturbances. The apparently merciful sentencing in the Norfolk courts was cast in *Captain Swing* as a continuation of placative judicial attitudes.<sup>676</sup> However, this is an oversimplification. Griffin’s discussion of the sentences passed on the Elham machine breakers reveals that what Sir Robert Peel (Melbourne’s predecessor) described as, the ‘unparalleled lenity’ of the local judiciary, was due in part to an awareness of the general unpopularity of threshing machines and local economic conditions, but also due to fear of popular reprisals. The perceived betrayal of the labourers by one justice had already caused him to be the victim of an incendiary

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<sup>673</sup> See chapter one.

<sup>674</sup> C. Griffin, “‘Policy on the Hoof’”: Sir Robert Peel, Sir Edward Knatchbull and the Trial of the Elham Machine Breakers, 1830’, *Rural History*, 15 (2004): 127–28, 137.

<sup>675</sup> Hobsbawm and Rudé, *Captain Swing*, 262.

<sup>676</sup> *Ibid*, 257–62.

attack.<sup>677</sup> From the evidence presented here, the Norfolk magistracy's comparatively light handling was as much a consequence of a tactical decision to make examples than any expression of humanitarian leniency. Significantly, the following analysis addresses the Special Commission issued for Norfolk in the spring of 1831, which has hitherto been ignored by all other studies of Swing.<sup>678</sup>

Placing the prosecutions in the context of local judicial decision-making allows us to understand the discrepancies in prosecutorial practice, and how far the local judiciary broke with the interests of central government. In stark contrast to Norfolk, Somerset remained largely undisturbed, but parallels can nevertheless be drawn between the two counties in the way prosecutions were structured and in the use made of exemplary justice.

As well as grounding these trials within their immediate, local contexts, the practice of the courts in each county will be considered in relation to prosecutions and court sessions throughout 1829 and 1832. The actions of the Norfolk and Somerset bench will also be compared to the Wiltshire Special Commission convened at Salisbury. This supplementary study allows for further consideration of how central government and the local authorities cooperated in these extraordinary prosecutions, acknowledging the role the county magistracy played in the pre-trial process and as members of the Grand Jury. It also provides the basis for a comparison between state-sponsored trials and those kept within the purview of the justices of the peace.

### ***1. The Context of Prosecution***

In the years immediately preceding the trials of 1831, the courts of Norfolk and Somerset, like those of Wiltshire, tried very few of those offences most closely associated with Swing: riot, machine breaking and arson. The counties' assize calendars for 1829 and 1830 contained six cases of arson and one of riot (see fig. 37), but in nearly every case it appears that personal disputes, rather than social protest, underpinned the prosecutions. Certainly the response of the court indicates that little significance was accorded to these

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<sup>677</sup> Griffin, "Policy on the Hoof", 132–37.

<sup>678</sup> See below, 5.3.

cases: five of the seven prosecutions were either dismissed before they had been heard or the defendants were acquitted.<sup>679</sup>

Figure 37: Cases characterized as ‘Swing’ offences January 1829-October 1830

<b>Offence:</b>	<b>Arson</b>	<b>Riot</b>	<b>Machine Breaking</b>
<b>County:</b>			
<b>Norfolk</b>	2	1	0
<b>Somerset</b>	3	0	0
<b>Wiltshire</b>	1	0	0

The vast majority of cases put through the courts in the period immediately before Swing were for varieties of theft. It is difficult to assess how far appropriative crime served as an indicator of social protest, but the magistracy in all three counties saw a distinct correlation between poverty and crime.

In the south west, wages were declining, while petty theft and poaching were perceived to be on the increase.<sup>680</sup> Although the Somerset magistrates had been praised for the declining number of felonies tried at the assizes, the heavy business at the county quarter sessions had been a persistent concern from at least the end of 1829.<sup>681</sup> At the Easter Sessions of 1830, the Chairman John Phelps observed with regret the number of prisoners for trial, in particular the prevalence of convictions for hay and fowl stealing. But ‘Poverty’, he claimed, ‘cannot be admitted as an excuse for such offences’. He saw the remedy in stringent sentencing; he recalled the positive influence of the examples made of hay stealers five years previously. Consequently, at the 1830 sessions, ten of

<sup>679</sup> For this para. and table: NRO: C/S 1 MF 660 Quarter Sessions books 1829-30; SRO: Q/SCA/1-30 Calendar of Prisoners: Assize, and Q/SCS/28-59 Calendar of Prisoners: Quarter Sessions, 1829-30; Wiltshire and Swindon History Centre, Chippenham [hereafter WSHC], A1/125/55 Calendar Prisoners Quarter Sessions 1829, A1/125/55 Calendar Prisoners Quarter Sessions 1830; *Norfolk Chronicle*, *Norwich Mercury*, *Bath Chronicle*, *Bath Journal*, *Devizes and Wiltshire Gazette*, 1829–1830.

One such case concerned James Charles Baynton, who was sentenced to death at the Somerset Assizes in August 1829 for the destruction of two hay ricks. Baynton’s motivation was quite extraordinary and wholly unconnected to the social and economic context of the county. Baynton was in Somerset from London, visiting his lover: when their affair was thwarted by her father and friends, he ‘conceived the idea of self-destruction...he would commit an act which should make his life forfeit to the laws of his country, and which would free him from existence while it left him at liberty to make his peace with God.’ See *Bath Chronicle*, 27 Aug and 03 Sept 1829.

<sup>680</sup> *Bath Journal*, 26 April 1830; *Devizes and Wiltshire Gazette*, 12 and 19 March 1829; Hobsbawm and Rudé, *Captain Swing*, pp. 76, 118.

<sup>681</sup> *Bath Journal* 18 Jan, 19 July, 23 Aug 1830.

those tried for theft of crops or fowl were imprisoned for terms ranging from five weeks to a year, and one man was transported.<sup>682</sup>

At the Summer Assizes in Somerset in 1830, one case stands out, not for the motives of the perpetrators but for the mode of their punishment; for here, three incendiaries were hanged in what was the last scene of crime execution in England. This grizzly affair was staged at Kenn in the North West of the county with great pomp and circumstance, and only weeks before the outbreak of Swing. The three labourers had fired Farmer Benjamin Poole's wheat mows in retaliation for the prosecution of an unlicensed alehouse.<sup>683</sup> At the behest of the High Sheriff, James Adam Gordon, the prisoners were executed on Kenn Moor, on 8th September 1830. They were not afforded the relative mercy of the drop-system, but suspended from a gallows and dropped from the back of a wagon in front of a crowd of over twelve thousand onlookers.<sup>684</sup>

Steve Poole has argued that the draconian response of the Somerset authorities had less to do with the circumstances of the crime than with the reputation of the community in which it was committed. The punishment of the offenders was intended to 'create a lasting impression of judicial and hierarchical order on a poorly governed parish'.<sup>685</sup> While few would consider this to be a 'Swing incident', to limit the treatment of this case by positioning it outside a discrete movement denies its relevance in the continued context of local governance. The execution of the three incendiaries was orchestrated to show the troublesome inhabitants of Kenn, and the county at large, that authority reigned.

Similar concerns regarding an increase in crime, and of poaching in particular, were expressed in Norfolk. But the response of the Bench to the perceived causes was perhaps more compassionate than that of the justices in Somerset. Both the Lord Lieutenant, John Wodehouse, and the Sessions' Chairman, Lord Suffield, attributed the increase in cases of poaching and theft to rising prices, the operation of the Game Laws and the poor law.<sup>686</sup>

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<sup>682</sup> *Bath Journal*, 26 April 1830.

<sup>683</sup> S. Poole, "'A Lasting and Salutory Warning': Incendiarism, Rural Order and England's Last Scene of Crime Execution, *Rural History* 19 (2008): 1–15.

<sup>684</sup> *Ibid.*, 4, 10; *Bath Journal*, 13 Sept 1830.

<sup>685</sup> Poole, "'A Lasting and Salutory Warning'", 10.

<sup>686</sup> *Norwich Mercury*, 24 Jan and 04 April 1829, 03 April 1830.

The plight of the poor was frequently debated at the county sessions. However, it is clear that the attitude of the bench was informed by long-term antagonisms between the grandee landowners, tenant farmers, and labourers. In the Spring of 1829, Justice Plumtre took the opportunity as Chairman of the Sessions to address the grand jury on the impropriety of supplementing labourers' wages from the poor rates; a practice – he argued – that was 'extremely pernicious in its tendency – very unfair in its operation... and calculated to destroy industry, and independence of feeling on the part of the peasantry'.<sup>687</sup> Lord Suffield, as Chair of the county bench, took up the cause in 1830. He addressed the Norfolk grand jury, claiming the situation of the agricultural labourer, 'has become so wretched from the extreme depression of wages. The demoralising consequences, in the increase in poaching and theft, have become so alarming, that it is of the utmost consequence to apply a speedy remedy'. The grand jury, comprised of the county's yeomen, took offence at the implication that the current state of distress rested with their failure to pay a proper wage. The jurymen retorted that all solutions lay in the hands of landholders (many of whom – like Suffield – were listening from the bench) in the reduction of rents and tithes.<sup>688</sup>

The social tensions played out in the courtroom may have contributed to the only incident of riot that was prosecuted in 1829 (see fig. 37). In April, six labourers were indicted for a riot at Kenninghall at the Norfolk Lent Assize. Allegedly, the prisoners had accosted two other labourers in a field and 'swore they would break our tools, and learn us to go to work there'. Neither riot nor assault was proved and the defendants were all acquitted. The presiding judge considered the case to be problematic but purely in terms of it taking up the court's valuable time: in his summation he argued it would 'have been better if the magistrate had reprimanded the prisoners and discharged them, rather than have sent them to the Assizes.'<sup>689</sup>

Despite the relative absence of offences explicitly associated with social protest, the business of the courts highlights the tensions that existed between the county magistracy and the populace in the months before Swing. The distress of the agricultural poor and the incidence of crime was a pressing concern but the magistracy did not foresee the scale

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<sup>687</sup> Ibid, 02 May 1829.

<sup>688</sup> *Norwich Mercury*, 3 March 1830; see also chapter 4.

<sup>689</sup> *Norwich Mercury*, 11 April 1829.

of the disturbances that would follow. The ‘riot’ at Kenninghall, and the sporadic rick-burning in Norfolk and Wiltshire might be considered as precursors to the disturbances of 1830, certainly as indicators of discontent. However, the attitude of the court limited these cases to private, localised matters not worthy of serious sanction. If the ‘salutary warning’ from Kenn could be taken as an indicator, disorder in Somerset at least, would be met with sharp reprisals.

## ***2. The Special Commissions: the example of Wiltshire***

The Swing Special Commissions opened in mid-December 1830, and by mid-January over 500 prisoners had been tried at Winchester and Salisbury. Special commissions were also issued in Berkshire, Dorset and Buckinghamshire.<sup>690</sup> These irregular courts occurred outside the bi-annual circuits of the court of assize, by permission of the central authorities, and were reserved for ‘those offences which stand in need of immediate inquiry and punishment’.<sup>691</sup> The courts were presided over by judges from the courts at Westminster and had – as the regular Assizes – the power to levy the ultimate sanction of death. Leaving no doubt as to the purpose of the trials in 1830, Judge Alderson stated, ‘[w]e do not come here ... to inquire into grievances. We come here to decide law’.<sup>692</sup>

In ten days, the Special Commission at Salisbury tried 339 prisoners and convicted 206. Not all those apprehended for their part in the disturbances were committed for trial. For example, 18 of the 35 individuals taken in Tisbury connected to the riot at Pyt House were discharged or dismissed on their recognizance after examination by the justices.<sup>693</sup> Nonetheless, the number presented for trial was the largest group of prisoners to be tried in consequence of the disturbances.<sup>694</sup> It had been expected that the commission would try all capital offences as exemplars, and the minor cases would be dealt with by the local

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<sup>690</sup> Hobsbawm and Rudé, *Captain Swing*, 258.

<sup>691</sup> W. Blackstone, *Commentaries on the laws of England, in four books. By Sir William Blackstone, Knt. one of the justices of His Majesty's court of common pleas. And with notes and additions by Edward Christian, Esq. Barrister at law, and Professor of the Laws of England in the University of Cambridge*, vol 4 chapter 19, 12th edition (London: A. Strahan and W. Woodfall, 1793-1795) 267.

<sup>692</sup> *Ibid*, 267; Hobsbawm and Rudé, *Captain Swing*, 259.

<sup>693</sup> *The Times*, 3 Dec 1830; TNA: ASSI 24/18/3 Special Commission minute book.

<sup>694</sup> Hobsbawm and Rudé, *Captain Swing*, 259.

judiciary at quarter sessions.<sup>695</sup> However, only five prisoners were scheduled for trial at the next quarter sessions, and four others were left for trial at the Lent Assizes.<sup>696</sup>

The scale of prosecution was partly a matter of pragmatism: from November, the county clerk had requested that persons convicted of minor offences unconnected with *Swing* should not be sent to the county gaols, which were ‘filling so rapidly by the apprehension of rioters’. Upwards of 100 prisoners had already been delivered to Devizes. By early December, the number committed on charges of riot and machine breaking was 123; a further 80 were held at Fisherton gaol, and ‘several’ more at Marlborough Bridewell.<sup>697</sup> Consequently, the county magistrates sought a comprehensive gaol delivery at the Special Commission. Lord Melbourne, who had supported the reservation of minor cases to the quarter sessions, wrote to the Earl of Radnor, confirming his agreement ‘with the Magistrates in the view... that the clearing of the Gaols will be of great public convenience.’<sup>698</sup>

Far from the Special Commission constituting a remedy for the ‘over-tenderness of local magistrates’,<sup>699</sup> the Wiltshire bench was complicit in the trial of the vast majority of offenders at Salisbury. But it was not merely a matter of practicality in emptying the gaols; the Grand Jury, responsible for progressing indictments to trial, was comprised entirely of county justices.<sup>700</sup> Making a show of the alliance between the county and Assize judges, members of the Wiltshire commission were among the one hundred members of the local gentry and nobility in the cavalcade that opened the trials at Salisbury. The High Sheriff had recommended their attendance ‘to shew that the higher and respectable Classes of Society are organized to suppress any riotous proceedings.’<sup>701</sup>

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<sup>695</sup> WSHC: 1553/12 Circular to the Magistrates from Edward Ings, County Clerk, Devizes, 15 Dec 1830.

<sup>696</sup> WSHC: A1/125/57 Calendar of Prisoners 1831, Quarter Sessions 15 Feb 1831.

<sup>697</sup> WSHC: 1553/12 Circular to the Magistrates from Edward Ings, County Clerk, Devizes, 15 Dec 1830 and letter from Mr Ings to Salisbury, 5 Dec 1830; J. Chambers, *The Wiltshire Machine Breakers*, vol i, (Hertfordshire: Jill Chambers, 1993) 90.

<sup>698</sup> WSHC: 1553/12 Ld. Melbourne to the Earl of Radnor, 17 Dec 1830.

<sup>699</sup> Hobsbawm and Rudé, *Captain Swing*, 258.

<sup>700</sup> TNA: ASSI 24/18/3 Special Commission minute book; PP: Justices of the Peace. Return of all persons appointed to act as justices of the peace in each and every county in England and Wales, 1836 (583) 77-8.

<sup>701</sup> WSHC: 1553/12 Tugwell to the Clerk of the Peace, 14 Dec 1830; J. Chambers, *The Wiltshire Machine Breakers*, vol. i. 94-5.

The level of unrest in Wiltshire stemmed in part from engrained structural problems: the county was ‘notorious for its low agricultural wages and extensive unemployment and rural poverty’. The use and production of threshing machines, and the decline of the textile industry across the south west further exacerbated the nature of rural employment.<sup>702</sup> The disturbances moved from the east of the county, from the tumultuous border shared with Hampshire, to the west of Wiltshire. Outbreaks of riot and machine-breaking were concentrated in areas to the south and east of Marlborough, around Salisbury and Devizes. The suppression of disorder by the beginning of December was attributed to a significant extent to the exertions of the Yeomanry Cavalry.<sup>703</sup>

The majority of cases tried by the Special Commission were for machine breaking or robbery. Due to the prevalence of the destruction of threshing machines – a non-capital offence – in the indictments, far fewer faced the death penalty than those tried at Winchester. However, the severity of the court can be seen in its unprecedented use of transportation. Over one hundred prisoners received the maximum penalty for breaking a threshing machine, seven years transportation.<sup>704</sup> In the ten cases regarding the destruction of non-agricultural machinery the penalties were greater still: nine of the prisoners were found guilty and sentenced to death but their sentences were commuted to transportation for life.<sup>705</sup> In all, 152 people were sentenced to be transported, for terms of between seven years and life by the Special Commission, and all bar one reached Australia.<sup>706</sup>

Government involvement in the prosecutions at Salisbury was limited to cases ‘of a very serious or an aggravated nature.’ The process of selection did not ignore the situation of the offenders. William Tallents, one of the Crown lawyers who had been at Winchester for the Hampshire Special Commission was sent on to Wiltshire. In addition to all depositions made to the county justices, he sought information on the circumstances of those committed: whether they were employed, at what rate of wages and whether they

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<sup>702</sup> A. Randall and E. Newman, ‘Protest, Proletarians and Paternalists: Social Conflict in Rural Wiltshire, 1830-1850.’ *Rural History*, 6:2 (1995): 206.

<sup>703</sup> *Ibid*, 206-8; Hobsbawm and Rudé, *Captain Swing*, 123-7, 253.

<sup>704</sup> TNA, ASSI 24/18/3 Special Commission minute book; Hobsbawm and Rudé, *Captain Swing*, 259.

<sup>705</sup> TNA, ASSI 24/18/3 Special Commission minute book; Chambers, *The Wiltshire Machine Breakers*, vol. i, 104–211.

<sup>706</sup> TNA, ASSI 24/18/3 Special Commission minute book; Hobsbawm and G. Rudé, *Captain Swing*, Appendix II, 308–9.



were ‘suffering under actual distress together with any other particulars of their situations’.<sup>707</sup>

As Hobsbawm and Rudé noted, the Wiltshire Commission appeared to be more sensitive to the age and circumstances of those brought before it than its predecessor in Hampshire: for instance, James Ford and Edward Looker, amongst others, both escaped the noose because of their ‘tender years’ and otherwise good character.<sup>708</sup> Nonetheless, the court made potent examples of those involved in some of the bloodiest disturbances during Swing.

The Special Commission opened with those cases supported by the Crown. The first case tried concerned the destruction of a threshing machine belonging to John Bennett, Member of Parliament and foreman of the Grand Jury at the Special Commission. According to Mr Bennett, approximately 400 labourers had assembled and approached his farm, Pyt House, threatening to destroy ‘all the thrashing machines in the country, and that they would have two shillings a day’. The Hindon troop of Yeomanry arrived too late at Mr Bennett’s to prevent the destruction of his threshing machine but engaged the rioters and a battle ensued; the troop met the stones of the crowd with bullets. In the fray, Mr Bennett had his hat knocked off and his nose bloodied; several of the rioters were wounded and one labourer, John Hardy, was shot dead.<sup>709</sup>

Bennett was already an unpopular figure: his estates lay in Tisbury parish where wages were low and unemployment was high. As a progressive farmer he was a proponent for the use of agricultural machinery, and in his role as Member of Parliament he supported the continuation of the Corn Laws that were seen to maintain the high price of bread. Indeed, Bennett had complained to the Lord Lieutenant of Wiltshire, the Marquis of Lansdowne, that he had struggled to recruit farmers as Special Constables,

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<sup>707</sup> WSHC: 1553/12 Circular from the Clerk of the Peace at Salisbury, 15 December 1830; Request from Tallents via Wilton, 27 Dec 1830.

<sup>708</sup> Hobsbawm and Rudé, *Captain Swing*, 259; TNA, ASSI 24/18/3 Special Commission minute book; Chambers, *The Wiltshire Machine Breakers*, vol. i, 111–12, 196.

<sup>709</sup> WSHC 1553/12 Notice of arrangements for the Special Commission, 21 Dec 1830; TNA, ASSI 24/18/3 Special Commission minute book 1 Jan 1831; *The Morning Chronicle*, 3 Jan 1831; Hobsbawm and Rudé, *Captain Swing*, 126; Chambers, *The Wiltshire Machine Breakers*, vol. i, 104.

leaving him almost entirely unassisted in defending his property in the wake of the ‘battle’.<sup>710</sup>

Bennett’s position as prosecutor, magistrate, MP and juryman was publicly criticised by Henry Hunt, who argued Bennett had ‘acted as judge, jury, and witness, in his own cause, and that he had done all he could to hang the unfortunate men’. Bennett defended himself in parliament, stating that he had not been involved in his judicial capacity in any of the cases where he was the victim, and had only appeared in court as a witness for the prosecution. He also claimed he had declined to give evidence where the men convicted were facing death.<sup>711</sup> Despite Bennett’s apparent concern for the labourers embroiled in the disturbances, those involved in the machine-breaking at Pyt House felt the full rigour of the law.

Lord Arundell – Bennett’s neighbour - testifying to the character of James Mould of Hatch, one of the defendants, described Mould’s wretched existence: having struggled to maintain his family, his wife and six children were left wholly unsupported after his incarceration. Whilst awaiting trial, the family had been struck by typhus killing two of the children. Despite such pitiful circumstances and reports of a good character, Mould, along with 12 others received the maximum penalty of seven years transportation. Two others were acquitted and two were sentenced to 12 months in prison at hard labour. James Blandford, singled out by Bennett as a recidivist, received consecutive maximum sentences and was transported for 14 years.<sup>712</sup>

Hunt had also alleged that the Wiltshire magistrates had selected those for trial in an attempt to ‘make these riots useful in getting rid of all individuals who were personally obnoxious to themselves and other landholders.’ He claimed that he had evidence from the wives of the Hindon rioters, who believed their husbands had been selected because they were known poachers.<sup>713</sup> Certainly one correspondent writing to the Clerks for the Special Commission from Chilmark (less than three miles from

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<sup>710</sup> R. Moody, *Mr Bennett of Wiltshire: the life of a county Member of Parliament, 1773-1852* (East Knoyle: Hobnob Press, 2005), 191; Randall and Newman, op. cit. 208, 210.

<sup>711</sup> Barrow, *The Mirror of Parliament*, 88-91.

<sup>712</sup> Hobsbawm and Rudé, *Captain Swing*, 126; TNA, ASSI 24/18/3 Special Commission minute book 1 Jan 1831; *The Morning Chronicle*, 3 Jan 1831.

<sup>713</sup> Barrow, *The Mirror of Parliament*, 84.

Tisbury) hoped the prisoners ‘will receive the Punishments they merit’ believing ‘several of them have before Trespass’d against the Laws of their Country.’<sup>714</sup>

Bennett was familiar with some of the men involved; he had admonished Blandford who had ‘already been in many scrapes, but that this was the worst affair in which he had ever been engaged.’ Blandford had previously been convicted at the summer Assizes in 1827, for stealing a purse belonging to Henry Lambert. Despite allegedly robbing Lambert of £15, he received a comparatively light sentence, and was committed to Fisherton gaol for a year.<sup>715</sup>

Bennett did not shy away from Hunt’s accusations, emphasising the utility of exemplary justice:

‘[A] selection certainly did take place; when so many persons were concerned in the riots, it was natural that we should select only the worst characters for trial, and should be influenced by the previous good character of men.’<sup>716</sup>

The indifference shown to Mould can likewise be explained by his position in local society – according to Bennett, as a farmer, grocer and cattle-dealer, Mould could not claim that his actions were motivated by distress, or perhaps, as Arundell had, that it was any sort of justification for mercy.<sup>717</sup> Indeed, Bennett was convinced that some of the more respectable members of the Tisbury community were complicit and culpable for the riot on his property.

Samuel Alford, a tenant of Lord Arundell’s at Tisbury, was accused of commanding the crowd that destroyed Bennett’s threshing machine. In a letter to Arundell he explained that he had rode out to meet the crowd at Fonthill, and dissuaded them from destroying the factory of Mr Faquhar. He succeeded in persuading them to move on, only for them to take down the threshing machine of Mr Turner (apparently with the proprietor’s consent) and then to progress to Pyt House. Alford was also charged with fuelling the labourers’ demands for an increase in wages. He admitted that he had encouraged his men, and other local labourers, to attend the vestry meeting convened to

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<sup>714</sup> WSHC: 1553/12, letter from Henry King, Chilmark, 29 Dec 1830.

<sup>715</sup> Barrow, *The Mirror of Parliament*, 88; WSHC: A1/125/53a, Calendar of Prisoners for Warminster Sessions, 10 July 1827 and Calendar of Prisoners for Marlborough Sessions, 16 Oct 1827.

<sup>716</sup> Barrow, *The Mirror of Parliament*, 88 and 91.

<sup>717</sup> *Ibid*, 91.

discuss the issue of wages, which had been arranged as a preventative measure prior to the disturbances taking place.

Arundell wrote to the Home Secretary to defend his tenant, describing him as ‘the most sensible, prudent and humane man on my Estate’ and extolling ‘his kindness to the poor’, and ‘his willingness to come into measures for bettering their condition in a Parish in which the Poor have been more oppressed and are in greater misery as a whole than any other Parish in the Kingdom.’<sup>718</sup> Bennett himself had testified to the misery of the labourers’ conditions in 1817, estimating that three-quarters of the working population had their wages supplemented from the parish rates.<sup>719</sup>

Government interest in the case was – like that of Mould - piqued by the involvement of Alford as a farmer, and perhaps as a vestryman.<sup>720</sup> Arundell was in no doubt that much of the evidence against Alford was propagated by his opponents in the administration of relief. Compounding the ferocity of parish politics, he went on to explain that many had attributed the disturbances to the machinations of Tisbury’s non-Anglican inhabitants; Arundell, a Catholic, and Alford as a dissenting Congregationalist, were both implicated.<sup>721</sup> Bennett did not remark on the role of religion but he did allude to the disruptive influence of Alford and the parish overseers in Parliament.<sup>722</sup>

The ‘Battle of Pyt House’ exposed a web of social conflict in Tisbury. Its prosecution offered the opportunity to restore order, to eliminate problematic elements from the community and to punish those whose actions transgressed societal bounds.

Peter Withers and James Lush were the two prisoners left for execution by the Salisbury Special Commission.<sup>723</sup> Their offences were marked additionally by accusations of violent conduct, in Withers’ case throwing a hammer at a constable and speaking in terms

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<sup>718</sup> Ibid, 90; TNA: HO 52/11 ff. 162-6 Lord Arundell to Lord Melbourne, 6 Dec. 1830.

<sup>719</sup> PP: Report from the Select Committee on the Poor Laws, 1817 (462) 87.

<sup>720</sup> TNA: HO 52/11 ff. 49-50 Lt Col. Mair to Melbourne, 26 Nov 1830; WSHC: 1553/12 W. Tallents to Mr Cobb 26 Dec 1830.

<sup>721</sup> TNA: HO 52/11 ff. 162-6 Lord Arundell to Lord Melbourne, 6 Dec. 1830; Jane Freeman and Janet H Stevenson, ‘Parishes: Tisbury,’ in D A Crowley (ed.) *A History of the County of Wiltshire: Volume 13, South-West Wiltshire: Chalke and Dunworth Hundreds*, (London: Victoria County History, 1987), 195-248.

<sup>722</sup> Barrow, *The Mirror of Parliament*, 90.

<sup>723</sup> TNA, ASSI 24/18/3 Special Commission minute book 6 and 7 Jan 1831; *The Morning Chronicle*, 12 Jan 1831; Chambers, *The Wiltshire Machine Breakers*, vol. i, 216–17.

‘to put down the Magistracy’. Withers had initially been committed ‘only for a riot’ but ultimately faced capital charges for ‘maliciously wounding a magistrate’.<sup>724</sup> In passing sentence, Judge Vaughan commented on the ‘lenity of Mr Bennett’ without which those tried for the destruction of his threshing machine, might have found themselves in the same predicament as Withers. James Lush was capitally convicted for robbing Bartlett Pinnegar during a riot. When Pinnegar had drawn a pistol on the crowd and threatened to shoot, the crowd had rushed him, and a serious scuffle ensued. Both men were sentenced to hang on 25th January but the day before their execution, through substantial public and political pressure, the sentence was reprieved and they were transported for life. Lush had been spared because he had ‘on several occasions, interfered to prevent personal violence’, and in Withers’ case there was some suggestion that he had acted to defend himself.<sup>725</sup>

The cases against Peter Withers, James Lush, and James Blandford and his co-defendants, all concerned outright physical conflict; and at Pyt House and in the case of Withers, attacks on authority. In punishing the actions of the labourers so severely the court not only made an example of the most sensational incidents of disorder, but also mitigated the use of violence by the ‘victims’, and the authorities, as a proportionate response.

The Salisbury Special Commission dominated the prosecution of Swing offenders in Wiltshire. The scale of the disturbances, and their character, warranted ‘this extraordinary exercise of the Royal authority’. It also served as an antidote to the widespread concessions granted during the riots.<sup>726</sup> The magistrates from Devizes had felt compelled to recommend a ‘general advance of wages’ of ten shillings a week, justifying their actions in terms of parity:

‘this we find to be the wages recommended in the South of this county. The magistrates have agreed to the same in Pewsey and in many other parts...With regard to the labourers of those Parishes where they would have taken 5/- or 9/- per week we consider that they would have remained satisfied only until they discovered that in other Parishes they received 10/-.’<sup>727</sup>

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<sup>724</sup> Barrow, *The Mirror of Parliament*, 95.

<sup>725</sup> *The Morning Chronicle*, 12 Jan 1831; Chambers, *The Wiltshire Machine Breakers*, vol. i, 229–31; Barrow, *The Mirror of Parliament*, 79 and 88.

<sup>726</sup> TNA: HO 52/11 ff. 55, 103 and 106 Devizes public recommendations and Marlborough.

<sup>727</sup> HO 52/11 f. 106 Devizes JPs to the Home Office, 29 Nov 1830.

Colonel A'Court, a magistrate resident near Warminster, exclaimed that he knew of nothing more likely to provoke unrest than the 'proclamation of the magistrates at Devizes...interfering in the most direct manner with the price of labour. I contend my lord, that Magistrates have no such power.' In a similar tone to many of those critical of concessions in Somerset and Norfolk, A'Court argued that,

'as landowners and Individuals their recommendations would have been most reasonable. It is only when such a proclamation issues from the constituted authorities that it becomes dangerous. The district of Salisbury, Pewsey and Devizes have now adopted the scale recommended at Andover...can it be expected that the Labourers in Dorset, Somerset and Devon will be satisfied with their present wages?'<sup>728</sup>

Reports from Colonel Brotherton stationed near Warminster did little to instil confidence in the Wiltshire bench. His correspondence with the Home Office betrayed a lack of confidence in the local magistracy in the suppression of disorder, insinuating the majority were inactive and that concessionary measures had been prevalent.<sup>729</sup>

Such criticisms pointed to the necessity of restoring the reputation of local government. A'Court's statement resonated with Melbourne's circular issued on December 8<sup>th</sup>, that condemned concessions issued from the Bench. While the Special Commissions were certainly an opportunity for central government to assert their interests, they were not unsupported in the provinces. Indeed, in Wiltshire the Special Commissions were seen as financially expedient, a means of defraying the expense of prosecution nationally, as well as providing an opportunity to reassert governmental authority. And although the trials were presided over by centrally appointed judges, the local magistracy played a significant part: in the selection of cases, and in bringing them to trial, both as members of the Grand Jury and as prosecutors.

The management of the Special Commissions was publically debated, fuelling reformist agitation. Cobbett forwent any explicit comment in 1831, merely hinting at the prejudicial '*forming of the juries with regard to the charges and other acts of the Judges, with regard to the sentences*' (original emphasis).<sup>730</sup> Hunt, however, was more definite in

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<sup>728</sup> HO 52/11 f. 127 Col. A'Court to Lord Melbourne, 30 Nov 1830; see also chapter 4.

<sup>729</sup> Chambers, *The Wiltshire Machine Breakers*, vol. i, 99; Hobsbawm and Rudé, *Captain Swing*, 127; Randall and Newman, 'Protest, Proletarians and Paternalists,' 211.

<sup>730</sup> Cobbett's *Political Register*, 15 Jan 1831.

his commentary in Parliament. Despite divergent opinions on the matter, the debates on both sides of the House were permeated by questions and critiques on the exercise of justice and the position of the magistracy.

Hunt highlighted the problems arising from the light sentencing of those prosecuted in the earliest phases of protest, particularly in Kent. Those convicted were sentenced to imprisonment for ‘only a few weeks, and some only a few days.’ What he complained of was ‘either that the leniency which was shown in the first instance was not continued throughout, or that, in the first instance, an example was made for the purpose of preventing others from following in the same steps, by shewing them not only that they were violating a great moral principle, but that they might be required to atone for with their lives.’ Crucially, he claimed that, ‘The poor do not think they have committed any great moral offence’; the concessions given by so many of the magistrates compounded this sense of legitimacy.<sup>731</sup>

He went on to highlight the difficulty for Members of Parliament acting as magistrates, unable to ‘restrain their feelings’ or remain unbiased when ‘the plaintiff in a case were my friend, and the defendant an opponent’; although his comments were limited to the political realm, implicit within his critique were the problems manifest in voluntary government where the judge is connected to those he is ruling over.<sup>732</sup>

Despite being generally opposed to the sentiment of Hunt’s speech to the House, John Smith of Sussex shared in some of his criticisms, he was ‘convinced that the magistrates in many places have been justly arraigned for an excess of mercy. I think the exercise of so much lenity was not the proper way to deal with these infatuated men, and that greater severity was necessary.’ He, however, attributed peace to the ‘strong arm of the law’: ‘The late special commissions, by intimidating the misguided peasantry, were one of the great causes which operated to prevent a continuance of tumult and outrage.’<sup>733</sup>

Hunt called for parliamentary support of a general amnesty for all prisoners sentenced by the Special Commissions, arguing ‘there will be no peace in the country unless the poor are convinced that the laws are administered with mercy as well as

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<sup>731</sup> Henry Hunt cited in Barrow, *The Mirror of Parliament*, 79.

<sup>732</sup> Ibid, 79 and 88.

<sup>733</sup> Ibid, 93.

justice.’ MP George Lamb highlighted the danger of extending such a mercy: ‘Are we to bring them again among the magistrates who committed them, among the persons who prosecuted them, and among the witnesses who gave evidence against them?’ According to Lamb, an amnesty would only compound the feelings of injustice around their sentences, and thus cause further tumult. The debate between Hunt and Lamb emphasised the familiar dichotomy faced by the magistracy and the courts in this context: their decisions were not limited to the enforcement of the law; they had to consider the long-term ramifications of the prosecutions in a society where the judiciary were closely connected to the populace, and not afforded the protection of professional disinterest.

Providing the final word in the debate, the Attorney General offered his insights on the Special Commissions. He reiterated the great number charged before the courts - one thousand by this point, 700 of which were from Wiltshire and Hampshire; but this he claimed, was only a selection of a far greater number. Many he explained had not been tried because of an unwillingness to prosecute on the part of the victim, and several bills had been thrown out, many of the magistrates being aware that some had been ‘seduced’ into criminal acts. Indeed he suggested that the trials ‘were much more remarkable for lenity than for the reverse.’<sup>734</sup>

Through the unprecedented use of transportation, the Commission made an extraordinary example of the Wiltshire rioters. While a process of selection was employed, the number of those who were prosecuted was extensive enough to send a potent message to the populace - both in Wiltshire and beyond - that disorder would be met with the full force of the law.

The trials exposed not only the scale of the protests, but many of the structural and interpersonal problems that underpinned them. They also provided the opportunity for both national and local government to reassert their interests and control. Indeed, the Attorney General made it explicit that ‘one of the leading principles of the prosecutions [was] the protection of the local authorities’.<sup>735</sup> Most particularly in the capital convictions of Withers and Lush, and in the prosecution of the Pyt House rioters, the

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<sup>734</sup> Barrow, *The Mirror of Parliament*, 95.

<sup>735</sup> *Ibid.* 95.



Commission judges – with the assistance of the magistracy – pressed the dangers of attacks on the established authorities and validated the violent response with which they were met. The severity of sentencing throughout also served as a corrective to judicial concessions made during the disturbances thus negating any moral justification for the rioters’ actions. Although the scale and management of prosecutions was very different in Norfolk and Somerset, the ‘protection of authority’ is a recurrent theme. As had been the case in Wiltshire, the prosecutions were more than the means of punishing criminal behaviour; they facilitated the restoration of particular social hierarchies and relationships.

### ***3. Prosecuting Swing in Norfolk and Somerset***

*Figure 38: Numbers tried for Swing offences 1831, disaggregated by court*

<b>Court:</b>	<b>Special Commission</b>	<b>Assizes</b>	<b>Quarter Sessions</b>
<b>County:</b>			
<b>Wiltshire</b>	339	6	5
<b>Norfolk</b>	8	3	158
<b>Somerset</b>	n/a	1	21

Figure 38 shows the discrepancy in numbers tried across the three counties. At one level this is purely a reflection of the level of disturbances experienced in each region. According to Hobsbawm and Rudé’s enumeration, Wiltshire saw more than twice as many incidents of unrest than Norfolk.<sup>736</sup> What is more significant is the distribution of prosecutions across the courts.

Prior to this study, the fact that Norfolk had a Special Commission to try Swing offenders has been overlooked. At the request of the Lord Lieutenant, Colonel John Wodehouse, the court was convened in March 1831; it fell outside the circuit of special commissions in the Home Counties, and was of a rather different form to those at Winchester or Salisbury. As Colonel Wodehouse explained, ‘yet many of the Persons

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<sup>736</sup> Hobsbawm and Rudé, *Captain Swing*, appendix I Distribution of Disturbances by County; for Norfolk and Somerset see chapter 4 and Maps 4.1 & 4.2, pp. 182-3 above..

here probably heretofore borne of good Characters ... were compelled either by open violence or threats to commit the felonies with which they stand charged'. The Magistrates wished to review all cases 'and only send those to trial, who were seen and known to be Ringleaders and Active Agents in perpetrating the Outrages' which 'might fully answer the ends of justice, and be a great saving of Expense to the Country'.<sup>737</sup> Wodehouse made the case for a system of exemplary punishment. Rather than the punishment of large numbers of people, as had been the case at Salisbury, in Norfolk, the use of specific exemplars was perceived to be both financially and socially expedient.

Therefore, the majority of 'Swing' cases prosecuted in Norfolk were tried not by Special Commission, but at the county court of quarter sessions. In January 1831, 158 people stood accused of machine breaking and riot; 68 of them were discharged on their own recognizance or acquitted. In Somerset, the county judiciary tried all of the cases associated with Swing. At the Epiphany Sessions, eight were charged in relation to the destruction of threshing machines, six of whom were convicted, and 13 men were indicted for riot: five were convicted, the other eight were still to be apprehended.<sup>738</sup> Very few Norfolk cases were 'reserved for the higher tribunal' of the Assize courts but three cases of machine-breaking at the paper mills at Lyng were tried at the Thetford Assize, and the eight prisoners held for arson were remanded for trial by Special Commission at Norwich.<sup>739</sup> In Somerset, there was no Special Commission, only one case was referred to the Assizes, and that was thrown out.<sup>740</sup>

By prosecuting the majority of cases at the county quarter sessions the magistrates of Norfolk and Somerset kept the framing of the trials within their jurisdiction, allowing them to prioritise local interests above those of the higher courts and central government. Indeed, Sergeant John Frere who presided over the Norfolk sessions, felt that the prosecutions in all counties were better administered by men with local connection and should not be subject to the pressures of public opinion:

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<sup>737</sup> TNA: HO 52/9 Wodehouse to Melbourne, 10 Dec 1830.

<sup>738</sup> NRO: C/S 1 MF 660 Quarter Sessions Minute Books, January 1831; *Norfolk Chronicle*, 22 Jan 1831; SRO: Q/SR/459 Quarter Sessions Rolls Epiphany 1831; *Bath Chronicle*, 6 and 13 Jan 1831.

<sup>739</sup> *Norwich Mercury*, 22 Jan and March 12 1831; NRO: C/S 1 MF 660 January 1831; TNA, ASSI 94/2116, 94/2117

<sup>740</sup> SRO: Q/SCS 60–86, January 1831, Q/SCA 1–30 Lent 1831; Hobsbawm and Rudé, *Captain Swing*, 129–30.

‘The punishment of offenders must not be carried into execution because forsooth the London press have taken it up...How is it possible that they can better know what is necessary to be done in Hampshire and Berkshire than those who are aware of the whole nature of the case.’<sup>741</sup>

But the organisation of the county trials was not without thought to their public impact: all, bar one, of the prosecutions made in January 1831 were tried at Norwich. In the regular circuit of county sessions, cases would also be tried by adjournment at Kings Lynn and Little Walsingham, facilitating more convenient gaol delivery from Swaffham and Walsingham bridewells. No cases associated with the disturbances were tried at the meeting at Lynn on the 25th January, and only one was heard by the Walsingham bench on the 28<sup>th</sup>. All the prisoners from Swaffham and Walsingham were delivered to the county capital to face an unusually full bench of magistrates.<sup>742</sup>

The majority of cases heard at the Norfolk quarter sessions concerned machine breaking. In passing sentence on those accused, Sergeant Frere was clear in his purpose, ‘to prevent a recurrence of such conduct, by the effects of example’. Those who received the most stringent sentence of transportation were a particularly necessary example. Having made a countywide recommendation for the disuse of threshing machines during the disturbances, the magistrates had been subjected to government criticism, which placed the blame for on-going disturbances with the over-conciliatory attitude of the bench.<sup>743</sup>

Although the Lord Lieutenant had unashamedly defended the measures taken by the Norfolk judiciary in suppressing disorder<sup>744</sup>, it is evident that the prosecutions at the quarter sessions were framed in such a way to emphasise the competency and credibility of the local judiciary. At the opening of the court, the *Norwich Mercury* reported that the bench was ‘crowded with Magistrates’, encompassing ‘the leading noble men and gentlemen of the county’. Despite this show of social strength from the Norfolk elite, the sessions were presided over by Sergeant Frere.

Notwithstanding the importance Frere placed on local men administering local matters, he cast himself as an impartial arbiter – a non-resident (although a close

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<sup>741</sup> *Norwich Mercury*, 22 Jan 1831.

<sup>742</sup> NRO: MF 660/4, C/S1 Norfolk County Quarter Sessions books January 1831; *Norwich Mercury* 8 Jan 1831; see also chapter 2.

<sup>743</sup> See chapter 4.

<sup>744</sup> See chapter 4.

cousin from Cambridgeshire) and ‘not engaged in any of these prosecutions in preference to any of my able colleagues who might, from fatal necessity, have been in some degree concerned in proceedings’.<sup>745</sup> While his presence was used to remove the Norfolk justices from any accusations of partiality or abuse of their power, the Sergeant drew attention to ‘the great care and discretion used by the committing magistrates’ celebrating the fact that ‘not one bill connected with the late unhappy outrages was thrown out by the Grand Jury.’<sup>746</sup>

The proceedings nonetheless revealed the problematic nature of their concessions. More than one testimony claimed the prisoners’ had said ‘they had got an authority from the magistrates to break threshing machines’.<sup>747</sup> This popular notion of legality was most evident in the round of machine breaking focused upon the settlements of Cawston, Heydon, Dalling, and Reepham.

Henry Parnell was prosecuted for his involvement in two incidents of machine breaking in the area around Field Dalling at the end of November. One witness stated that Parnell had declared that Justice Sir Jacob Astley had given ‘him leave to break all the machines he could find’.<sup>748</sup> Parnell’s claim was in reference to the public notice from the justices of Melton Constable recommending the disuse of threshing machines that had been signed by Astley along with several others. The magistrates had met the morning after Astley had had to retreat from an angry crowd at Reepham.<sup>749</sup> Following the example of Astley and his colleagues, a meeting was held at Dalling on the same day, and made similar recommendations.<sup>750</sup>

The sense of legitimacy derived from the concessions was not merely used to bolster the rhetoric of the crowd: a few days later at Whinburgh, and then at East Tuddenham, crowds intent on destroying threshing machines made similar assertions and actually ‘had a paper in their hand, and offered to show it.’<sup>751</sup>

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<sup>745</sup> *Norwich Mercury*, 8 Jan 1831.

<sup>746</sup> *Norfolk Chronicle*, 22 Jan 1831.

<sup>747</sup> *Norwich Mercury*, 8 and 15 Jan 1831.

<sup>748</sup> *Norwich Mercury*, 8 Jan 1831

<sup>749</sup> See chapter 4.

<sup>750</sup> *Norwich Mercury*, 04 Dec 1830

<sup>751</sup> *Norwich Mercury*, 8 and 15 Jan 1831

Accordingly then, in passing the maximum penalty for machine breaking, seven years transportation, on men such as William Catchpole and James Gunton— prominent figures in the round of destruction, and the men who produced the paper at East Tuddenham — the magistracy checked suggestions that they had tacitly sanctioned criminal behaviour. Parnell was acquitted on one count of machine breaking, but failed to escape the full rigour of the law: he was charged and prosecuted on a second count of machine-breaking, and sentenced to twelve months in prison.<sup>752</sup>

However, Sergeant Frere noted that the Norfolk disturbances lacked those ‘flagrant acts of violence’ that had accompanied other incidents of machine breaking; occasions, he continued, that ‘imperiously call for much more severe examples than I am happy to say is requisite here’.<sup>753</sup> He attributed the more tempered response of Norfolk machine breakers to the stringent example made of the Ely and Littleport rioters in 1816, whose violence had been met with severity. Of the 24 rioters sentenced to death by the Special Commission that sat at Ely that year, five were executed and buried together with the epitaph ‘May their awful fate be a warning to others’.<sup>754</sup> Only nine of the 65 prisoners charged with breaking threshing machines in 1830 received the maximum seven years transportation for it.<sup>755</sup>

Four cases of riot were focussed on as particular examples, all of which were characterised by attacks on figures of authority. At Southrepps, Docking, Haddiscoe and Attleborough, the labourers sought redress from clergymen or magistrates and in all cases a confrontation ensued. David Pye was singled out for his involvement in the riot at Southrepps. This disturbance was drawn upon as one of the first, and most violent in the county, ‘with no excuse of example set them by their neighbours.’ Pye had attempted to rescue a relative already taken by the magistrates and military that had been called out to disperse the crowd. He was identified by Rev. Justice William Rees as very prominent in

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<sup>752</sup> NRO: MF 660/4, C/S1 Norfolk County Quarter Sessions books, ff. 45-6; *Norwich Mercury*, 15 Jan 1831.

<sup>753</sup> *Norwich Mercury*, 15 Jan 1831.

<sup>754</sup> F. Knight, ‘Did Anticlericalism exist in the English Countryside in the Early Nineteenth-Century?’ in N. Aston and M. Cragoe, *Anticlericalism in Britain c. 1500–1914* (Stroud: Sutton, 2000), 164; C. Johnson, *An Account of the Ely and Littleport riots in 1816* (Ely, 1893, reprinted Littleport: George T. Watson, 1948.), 66, 77.

<sup>755</sup> *Norwich Mercury*, 15 Jan 1831.

the mob and armed with a bludgeon. Although the justices' clerk stated that Pye had been struck by the troops, his case was considered to be of 'a very aggravated nature', and worthy of 'a very severe punishment'. Pye's situation was exacerbated by a previous conviction for sheep-stealing in 1818, when the court had shown mercy due to his young age, and he had escaped execution. But in 1830, he was strongly criticised by the judge: 'instead of that lenity having had the effect of deterring you from the commission of crime, you have been found to persevere in disobedience of the law.' Consequently, Pye was sentenced to eighteen months in prison.<sup>756</sup>

The case made against the Docking rioters was presented as a more overt attack on authority. Sergeant Frere stated, 'If ever a tumultuous and riotous assembly approached the crime of high treason, it was this.'<sup>757</sup> The rioters were accused of an assault on Justice John Davey and one of his special constables. Davey had gone to remonstrate with the assembled crowd, but his attempts to point out their illegality proved futile. His horse was knocked down, at which point he read the Riot Act, but continued to try to address them. One of the constables was knocked to the ground and struck at whilst prostrate. Davey attempted to assist the felled man and was pelted with stones, one 'rendering him insensible; a surgeon's attendance was necessary, and his life was actually placed in jeopardy.'<sup>758</sup>

Sergeant Frere used the case as a forum to emphasise the role of the magistracy and the propriety of the existing social order. He acknowledged that the labourers had every right to approach the justices for redress, but he could not conceive of how 'an attack upon the persons or the destruction of the property of their best friends and employers [would] in any way alleviate their wretchedness?' Davey's conduct was lauded as 'mild and conciliatory', only serving to highlight the actions of his assailants as 'so uncharacteristic of an Englishman.'<sup>759</sup>

In his sentencing, Frere continued to imply that this incident exceeded matters of local grievance. In framing it as treasonous, he suggested that the rioters intended to 'go throughout the country to affect a particular purpose'. Seven men were convicted for their

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<sup>756</sup> NRO: MF 660/4 Quarter Sessions books, f. 39; *Norwich Mercury*, 15 Jan 1831; *Norfolk Chronicle* 22 Jan 1831.

<sup>757</sup> *Norwich Mercury*, 22 Jan 1831.

<sup>758</sup> *Norfolk Chronicle*, 22 Jan 1831.

<sup>759</sup> *Ibid.*

involvement in the riot, receiving sentences of between four months and two years in prison. The most stringent sentence of 24 months was handed down to James Goatson. He was proved to be the man who knocked down Davey's horse and who had struck the constable, and was further reproached for being 'the elder of a family'; his younger relative, Edward, was sentenced to four months, having already served time in prison, and for his connection to 'this bad family.'<sup>760</sup>

Frere's only doubt regarding the conviction of the defendants was 'whether they ought not to have directed the Jury to acquit the prisoners of the misdemeanour and send them to a higher tribunal to be tried for treason':

'there was a general attack on the Magistracy, an attack upon the government, a defiance of the law and levying war; and had the prisoners been sent to answer for the treason, their lives would have been justly forfeited.'<sup>761</sup>

Despite the heavy terms of imprisonment handed down, considering the scope the court had attributed to this disturbance, the Docking rioters sentences were framed as an act of clemency.

The disturbances at Attleborough and Haddiscoe were also marked by the challenges they posed to the Establishment. The Attleborough rioters were deemed an exceptional case, more particularly due to the apparent complicity of the farmers in their actions. The aged Rev. Fairfax Franklin (also a member of the Commission of the Peace) was held captive for several hours. Whilst escaping he was struck at by the crowd who eventually dispersed when the military arrived. Some 200 labourers and 20 farmers were reported to be present, but no more than one or two of the farmers gave any assistance to Franklin. The labourers had attempted to force an increase in wages and consequently a reduction in tithes to achieve that end. The court was certain that 'some pre-meditated understanding, some unfair and unhandsome communication' existed between the labourers and their employers. Indeed, the Reverend and his companion Mr Dover claimed they saw 'something like concert between some of the farmers and the labourers'.<sup>762</sup>

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<sup>760</sup> NRO: MF 660/4 Quarter Sessions books, ff. 48-9; *Norfolk Chronicle*, 22 Jan 1831.

<sup>761</sup> *Norwich Mercury* 8 and 22 Jan 1831.

<sup>762</sup> *Norwich Mercury*, 15 Jan 1831 and *Norfolk Chronicle* 22 Jan 1831.

In the prosecution, everything was done to highlight the criminality of the labourers involved in the disturbances. The crowd assembled at Franklin's property were also accused of attacking the Attleborough workhouse. Their abuses were greater still because they took place in the early hours of a Sunday morning. Frere went to pains to highlight the immorality of this breach of the Sabbath. More sinister were the insurrectionary undertones of some of the statements the rioters were alleged to have made. Samuel Smith had been heard boasting, 'that the devil was dead; they were the strongest party, and always should be; that this was only the beginning; that they were at the feet but should go up to the head'.<sup>763</sup>

Seven men were sentenced for their involvement. The perceived ringleaders, labourers Robert Smith, Samuel Smith and John Stacey, were imprisoned for two and a half years, two years, and 18 months respectively.<sup>764</sup> In answering queries regarding the absence of farmers in the convictions, Frere stated that if other men 'no matter in what situation they might be' had been detected and apprehended, they 'would most assuredly have been dealt with equal if not greater severity than any of the prisoners at the bar'.<sup>765</sup> There is no evidence to suggest that any of the farmers present were ever brought before the court. Despite his ordeal, Rev. Franklin appealed for the release of the Smith brothers, highlighting their previous good behaviour; but – perhaps unsurprisingly - his petitions fell on deaf ears.<sup>766</sup>

The imprisonment and attempt to exact a reduction of tithes from the Rev Ellison at Haddiscoe was directly compared to the experience of Franklin. Described as 'a more unfeeling and unmanly offence... in extent perhaps it falls short of the riot at Attleburgh [sic.], but in daring and disobedience to the law, it was scarcely its parallel.' Sergeant Frere used the case as an opportunity to dispute the idea that had apparently informed these disturbances, that the poor were entitled to one third of the tithes. The judge claimed this was a falsehood spread amongst the labourers by pernicious radicals endeavouring to effect a change in the payment of tithes. The two most prominent figures

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<sup>763</sup> *Norwich Mercury*, 15 Jan 1831 and *Norfolk Chronicle* 22 Jan 1831.

<sup>764</sup> NRO: MF 660/4 Quarter Sessions books, f. 42; *Norfolk Chronicle* 22 Jan 1831; R. Lee, *Unquiet Country: voices of the rural poor, 1820–1880* (Bollington: Windgather, 2005) 20.

<sup>765</sup> *Norfolk Chronicle* 22 Jan 1831.

<sup>766</sup> NRO: C/Saa 1/15 F. Franklin to the Visiting Justices of the County Gaol 25 July 1831 and 22 Sept 1831.



in the disturbance, Charles Turner and John Soames were both sentenced to twelve months imprisonment in Norwich Castle.

The issue of tithes and the intervention of farmers were also central to the case of a riot at Burgh St Peter. The incumbent of the parish, Rev. William Boycott had agreed to meet representatives from the labourers to discuss the issue of wages. He alleged that the crowd that came to meet him abused him and attempted to extort money from him. Gorbald, one of the defendants, had argued with Boycott and threatened him, claiming wages were too low, and ‘that the farmers said they were so oppressed by me [Boycott] they could not pay, and I must reduce my tithes’. Initially the clergyman refused to give any sort of concession claiming that the yields were so great the tithes could be paid comfortably. However, he explained that ‘nearly all the farmers were present’, and when one publicly declared he would give everything he was refunded to the labourers, Boycott felt compelled to consent to a refund.<sup>767</sup>

Mr Palmer, speaking on behalf of the defendants, mounted a successful defence. Under cross-examination it transpired that Gorbald had clearly stated that he had no intention of physically harming Boycott. Palmer also argued that the crowd had assembled and dispersed peacefully. One other defendant, Turner, had been accused of abusing Boycott, but this was cast as legitimate criticism; apparently the Reverend had neglected his duties as a clergyman by failing to visit the sick or relieve the poor. All the defendants were acquitted.<sup>768</sup>

In his summation, Frere compared Ellison’s ordeal and Boycott’s altercation. The disparities he saw were that Boycott was considerably younger, and relatively new to his position and the community, and he could not escape some of the blame as ‘the assembly was in some measure, convened by the Reverend Gentleman himself’. Consequently, Boycott’s case was held up as proof ‘that concession only produces further violence’. This did not however make it any easier for the learned judge to accept the verdict presented by the jury:

‘If from some scruple of conscience – if from some stretch of ingenuity, they could come to such a conclusion, whatever notion they could have had in their minds I know not, but such a verdict makes me reflect on and join in the sentiment with the poet when he said, ‘England with all thy faults, I love thee still.’

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<sup>767</sup> *Norwich Mercury* 15 Jan 1831.

<sup>768</sup> *Ibid.*

Frere had expressed similar misgivings about the acquittal of rioters at Honing, but with both cases chose to present them as a reflection of the fairness inherent within trial by jury.<sup>769</sup> It is impossible to say how far Boycott's poor reputation influenced the jury, but it is evident in their attitude, and from the cases at Attleborough, Haddiscoe and Burgh St Peter, that existing social relationships influenced the outcomes of the prosecutions as much as the nature of the disturbances.

Sergeant Frere maintained that any farmers proved to have been complicit in the disturbances would be punished, sentiments which echoed those made by the Judges at the Salisbury Special Commission; however, little effort appeared to be made on this front by the trial jury or the Norfolk magistrates.<sup>770</sup>

The only farmer tried at the sessions in January 1831 was Lee Amis of Roughton, who was charged with instigating a riot. On 29<sup>th</sup> November 1830, another farmer at Roughton, Stephen Sutton, was accosted and 'bustled about' by a mob of 12 to 20 labourers. He had previously refused to see their delegation to discuss the issue of wages. The disgruntled labourers accused him of being 'the person who oppressed the poor.' Amis had witnessed the rough treatment of Sutton, and had called out to them: 'they were all damned fools if they let me [Sutton] escape, for I was the one who had oppressed them; now was the time to stand up for their rights, which was a stone of meal per day, and the farmers could afford to give it.'<sup>771</sup>

Amis was a small farmer, occupying eight to ten acres of his own. He and Sutton had had dealings together in parish matters. At local vestry meetings Amis had been critical of the practice of paying labourers out of the rates 'instead of being paid good wages'. How far the meagre circumstances of the defendant, or his previous disputes with the victim, led the jury to acquit Amis is uncertain. They may have also considered the incident to have been the product of drunkenness, the crowd having been given beer by many others – a fact that was drawn attention to in the proceedings.<sup>772</sup> Clearly, while parochial politics had informed the disturbance at Roughton, the jury did not seek to make an example of Amis as a troublesome farmer. Indeed, the attitude of the jury in this

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<sup>769</sup> *Norwich Mercury* and *Norfolk Chronicle* 22 Jan 1831.

<sup>770</sup> *Norwich Mercury*, 8 Jan 1831; *Morning Chronicle*, 3 Jan 1831.

<sup>771</sup> *Norwich Mercury*, 8 Jan 1831.

<sup>772</sup> *Ibid.*

case, and in their generosity to the rioters at Burgh St Peter may have been influenced by their sympathy with men of a similar standing – yeomen who shared the burden of tithes and poor rates. Certainly the Norfolk courts had been a forum for disputes between the ruling classes and their inferiors in matters of local politics before.<sup>773</sup>

Aside from Amis, two separate indictments were brought against two other farmers at the county sessions in April 1831. The Crown attempted to prosecute John Carman and David Roll for ‘exciting riot’ the previous winter. Carman was acquitted because there was ‘no venue laid’ of the alleged incident in the indictment. The chief witness for the prosecution against Roll, Mr E. Wodehouse (also a member of the Commission of the Peace), wished to ‘withdraw all further prosecution, with a view to putting an end to these cases, and in the hope the defendant would see the impropriety of his conduct and desist from such a course of proceeding in the future’.<sup>774</sup>

Before the proceedings had begun at the Norfolk sessions, Sergeant Frere outlined the purpose of the trials: the gravity of the offences warranted ‘the rigour of the law if the bonds which keep society together are to be preserved.’<sup>775</sup> The management of the prosecution of Swing offenders in Norfolk was calculated to restore social order in its broadest sense. In trying the majority of the perpetrators at quarter sessions, the county magistracy had – in theory at least – greater control over the outcome of the process.

The Norfolk magistracy were comparatively lenient in their sentencing of ‘Swing’ offenders: forty-eight per cent of those brought before the court were either acquitted or discharged on their own recognizance (see fig. 39 below). However, the examples made of the machine breakers, and of the rioters at Docking and Attleborough in particular, were used to check any sense of legitimate entitlement amongst the populace. The strong sentencing in these cases served to counteract the concessions that had been made by the magistracy and act as a deterrent to any who sought to challenge the established authorities. Indeed, the local press was awed by the stringency of the examples made at

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<sup>773</sup> See chapter 4 and above.

<sup>774</sup> *Norwich Mercury*, 19 April 1831.

<sup>775</sup> *Norfolk Chronicle* 22 January 1831.

the sessions.<sup>776</sup> This selection of exemplary cases would eventually culminate in the capital cases tried by the Special Commission at Norwich.

As was the case in Wiltshire, the proceedings also revealed the socio-political divisions in county society. In both literal and symbolic terms, the Attleborough riot presented the most awful consequence of an alliance between the labourers and the yeomanry in a co-ordinated attack upon authority, but it was the labourers that bore the brunt of the reprisals, while the farmers were taken back into the fold. There were indications however that the magistracy could not have it all their own way, for on more than one occasion the jury ruled according to popular mores rather than bowing to the will of the Bench.

*Figure 39: Sentencing at Quarter Sessions 1831*

<b>Sentence:</b>	<b>Transported</b>	<b>Imprisonment:</b>	<b>Imprisonment:</b>	<b>Acquitted/Discharged</b>
<b>County:</b>		<b>≥ six months</b>	<b>&lt; six months</b>	
<b>Norfolk</b>	9 (6%)	33 (21%)	44 (28%)	68 (48%)
<b>Somerset</b>	1 (8%)	3 (23%)	7 (54%)	2 (15%)

NB re Somerset: 8 others were indicted at the same sessions for the riot at Banwell but were still to be apprehended. Four verdicts re the Norfolk cases are unknown

The Somerset judiciary also chose to keep the punishment of Swing offenders within their influence by trying all cases at the county quarter sessions. Unlike Wiltshire and Norfolk, there was little discussion of the framing of the trials; the local press being preoccupied with the terrifying examples made at Salisbury and in the Home Counties.<sup>777</sup> When the sessions opened in January 1831, the ‘unusually large attendance of magistrates’ was noted. As had been the case in Norfolk, the justices presented a show of strength, both in numerical terms but also in terms of status. On this occasion the bench

<sup>776</sup> Ibid.

<sup>777</sup> *Bath Chronicle* and *Bath Journal* December 1830-January 1831.

included rare appearances from aristocratic justices as well as numerous gentlemen.<sup>778</sup> Attention was also paid to the numbers for trial: of the 118 prisoners – fewer in total, it was observed, than the previous year – only 13 appeared in connection with the Swing disturbances. The magistracy were keen to emphasise that ‘not more than six charges for rioting and breaking machines occur in the whole list’.<sup>779</sup>

Somerset by no means shared the same level of tumult as Norfolk, but punishment was nevertheless comparatively robust. As fig. 39 shows, only two of the men tried escaped punishment. The most severe sentences were passed on Isaac Wheeler and George Eavis. Wheeler had threatened to destroy a threshing machine in a minor riot at South Brewham on the county boundary shared with Wiltshire.<sup>780</sup> He encountered Martin Drew, the owner of the machine, in one of the local public houses where they had both been drinking. Drew was told that if his thrashing-machine was not taken down by the morning, it would be burnt down. Wheeler was singled out as the ‘ringleader of the party’ that accosted Drew, and he received four months imprisonment for his actions. Only 21 of the prisoners tried at the equivalent court in Norfolk, for the actual destruction of threshing machines, received prison sentences of the same length or greater.<sup>781</sup> Although Wheeler’s confrontation with Drew might be attributed to inebriation or personal quarrels, he had threatened arson. His sentence reflected the gravity which attended such a serious felony.

George Eavis was involved in both incidents of actual machine breaking to occur in the county, and he was also indicted for riot. He was sentenced to the maximum penalty of seven years transportation. The disturbances occurred at Yenston and Henstridge, on the same day, and in close proximity to the Stalbridge riot in Dorset.<sup>782</sup> The stringency of Eavis’ sentence was reflected in the petition sent on his behalf to the Home Secretary: 347 people from Henstridge, including the Minister, Churchwardens, Constables and

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<sup>778</sup> *Bath Chronicle*, 06 Jan 1831; see also chapter two.

<sup>779</sup> *Bath Chronicle*, 06 Jan 1831; *Bath Journal*, 10 Jan 1831.

<sup>780</sup> Hobsbawm and Rudé, *Captain Swing*, 129.

<sup>781</sup> SRO: Q/SCS 60–86 January 1831; *Bath Journal*, 10 Jan 1831; NRO, C/S 1 MF 660 January 1831; *Norfolk Chronicle*, 22 Jan 1831.

<sup>782</sup> SRO: Q/SCS 60–86 January 1831; *Bath Journal*, 10 Jan 1831; Hobsbawm and Rudé, *Captain Swing*, 130.

Overseers of the Poor, testified to Eavis' industrious nature and hitherto 'irreproachable character.'<sup>783</sup>

Although there was little public discussion of the sentencing of Eavis and Wheeler, the comparative severity of their sentences reflects an intolerance to disorder, even on a small scale in Somerset, and the magistracy made their position perfectly clear. The rioters indicted at the same sessions were uniformly convicted for a disturbance that appeared to stem more from opportunity and inebriation rather than considered grievances. At Banwell, several labourers had assembled to be sworn in as Special Constables; when the attendant magistrate, Rev. Moncrieffe, decided to postpone the meeting, the men, by then somewhat inebriated, seized the opportunity to make their own demands for higher wages and lower prices in a riotous manner.<sup>784</sup>

The press reported the incident with little concern, attributing the 'disposition to riot' to the 'effects of intoxication.' However, the local magistracy struggled to regain control: 'All attempts to restore order were useless; and although one of them was apprehended and placed in confinement in a house used as a temporary prison, the rest immediately procured pick-axes and iron bars, and actually demolished the premises. They then carried their liberated companion in triumph around the village, in a chair, and threw the prison bed and furniture into the river.'<sup>785</sup>

Although the men had initially assembled at Banwell to show their willingness to assist the magistracy in the maintenance of order, their drunken antics had made a mockery of the proceedings. Consequently all of those 'deluded men' apprehended for the disturbance were toughly dealt with and sentenced to terms of imprisonment and hard labour of up to six months.<sup>786</sup> Only five of the men were tried in January, true bills were found against eight others who were still at large. The prosecution of these men was pursued. By April, six of the remaining rioters had been apprehended and were tried at the Easter Sessions. Four of them were dismissed for want of evidence, but Charles Hurley was found guilty and sentenced to three months imprisonment at hard labour.<sup>787</sup>

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<sup>783</sup> TNA: HO 17/50 George Evis, HP 10.

<sup>784</sup> *The Bath Chronicle*, 9 Dec 1830; see also chapter 4.

<sup>785</sup> *The Bath Chronicle*, 9 Jan 1831.

<sup>786</sup> *Ibid*, 9 and 13 Jan 1831.

<sup>787</sup> *Ibid*, 18 April 1831.

The only case reserved by Somerset's magistrates for the Assize was one regarding a threatening letter, and that was dismissed as no true bill. In Wiltshire, a total of six cases relating to the disturbances were tried at the regular Assizes rather than by Special Commission.<sup>788</sup> Norfolk, as we have seen, removed very few cases to the higher courts but those cases that were, and the mode of their prosecution were orchestrated for maximum effect. The Assizes were usually held at Thetford but the Special Commission sat at Norwich to hear the cases of what the Assize judges described – in private correspondence – as a 'particular class of prisoner'.<sup>789</sup> Of the eight on trial for the destruction of various ricks and agricultural property by arson, Richard Nockolds was the only person executed for a Swing offence in Norfolk.<sup>790</sup>

The opening of the Special Assize at Norwich was described as 'an epocha in the history of Norfolk'. It was the first Lent assize to have been held in the city. Much was made of the fact that the presiding Judge, Sir Edward Alderson, was a 'native' of the county. Indeed, the proceedings were framed, in the press at least, to emphasise the power and identity of the county. Parallels were also drawn with the Special Commission held in Norwich in 1766 'for the trial of the rioters' involved in protracted market disturbances. Ominously, the harsh sentencing of the men tried was revisited: 'A great many prisoners were convicted and sentenced to various terms of imprisonment, two... were executed'. Noting the charges before the court - Nockolds and his accomplices for arson, and several poachers for murder - Alderson considered them to be 'offences of the deepest dye'.<sup>791</sup>

Authority viewed arson with particular abhorrence: incendiaries worked in secrecy, with no other motive than injuring their victim through the destruction of property.<sup>792</sup> As Norfolk's landowners publicly exclaimed,

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<sup>788</sup> WSHC, A1/125/57 Calendar of Prisoners 1831, Quarter Sessions 15 February 1831; *Devizes and Wiltshire Gazette*, 10 March 1831.

<sup>789</sup> *Norwich Mercury*, 12 March 1831; TNA, HO44/ 52 4 and 8 March 1831

<sup>790</sup> S. Evans, 'The Life and Death of Richard Nockolds Hand Loom Weaver of Norwich', in M. Holland (ed.) *Swing Unmasked: The Agricultural Riots of 1830 to 1832 and their Wider Implications* (Milton Keynes: FACHRS, 2005), 170–84.

<sup>791</sup> *Norfolk Chronicle*, 26 March 1831.

<sup>792</sup> S. Poole, "'A Lasting and Salutary Warning'", 4–5. The only prisoner to be executed in Wiltshire was Henry Wilkins, charged with burning down a cottage, *Devizes and Wiltshire Gazette*, 10 March 1831.

‘It is for the honour of our country, it is for our credit as men, that we must find out and punish these cowardly miscreants. Englishmen were never assassins! Englishmen were never incendiaries ...’<sup>793</sup>

It was supposed by many at first that the disturbances were the work of foreign agents fomenting revolution. Justice Berney, writing to Lord Melbourne, was convinced that the fires were ‘entirely occasioned by foreign influence ... a set of Hell Hounds who are carrying devastation through every part of [the country]’.<sup>794</sup> Nockolds was not a foreigner, but aspects of this xenophobic attitude permeated his case. In the words of Judge Alderson, he was ‘not an agricultural labourer ... driven to extremities’ but a weaver residing in Norwich. He had given up ‘the restraints of religion’ and been corrupted by Cobbett and Carlisle; the Sunday reading-room he had established was seen as a nursery of dissent.<sup>795</sup> All legitimacy that could be derived from the plight of the labourers was denied Nockolds; the judge concluding, ‘you therefore committed this act for the purpose of exciting general confusion and alarm throughout the country’.<sup>796</sup> Nockolds’ trial and his execution were conducted in Norwich, his home and the county capital, as opposed to Thetford, where the assizes were usually held, to ensure maximum exposure. He was hanged in front of his family and a considerable crowd, who watched in silence. There had been only one other execution in Norwich in the previous nine years.<sup>797</sup>

#### **4. The aftermath**

It is clear that Norfolk’s magistrates dealt with Swing offenders in terms of exemplary cases. Their leniency must also be seen in the wider context of social conflict in Norfolk over a longer period, for local perceptions of Swing’s relatively non-violent expression in the county were only so in comparison to the (by then) notorious Littleport and Ely riots

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<sup>793</sup> R.M. Bacon, *A Memoir of the Life of Edward Third Baron Suffield* (Norwich: 1838), 324; and reproduced in J.E. Archer, *By a Flash and a Scare*, 60.

<sup>794</sup> TNA, HO 52/9 f. 90-1 Justice Berney to Lord Melbourne, 2 Dec 1830.

<sup>795</sup> *Norwich Mercury*, 2 and 16 April 1831.

<sup>796</sup> *Norwich Mercury*, 2 April 1831.

<sup>797</sup> *Norwich Mercury*, 25 April 1829: Richard Everett was hanged in April 1829 for horse-stealing. The press claimed that only one other execution had taken place in Norwich in the previous six years. From a survey of two local newspapers between 1829 and Nockolds’ execution in 1831, no other execution is reported to have taken place in Norwich during that period.



of 1816. The magistracy of 1830 structured the prosecution of Swing offenders to restore a particular form of social peace, one that emphasised traditional hierarchies and allegiances. Their lenity does suggest they sympathised with the labourers' grievances, and this was betrayed by many in letters to the Home Secretary. Justice Berney, while convinced that foreign agitators perpetrated the fires, saw more overt disturbances as the result of genuine distress and 'that the demands of the labourers are but too just'.<sup>798</sup> Lord Suffield reported that the magistrates of North Walsham 'all avowed their disinclination to take severe measures against an oppressed class, until forced to do so for the preservation of life and property'.<sup>799</sup>

Such reports would have done little to inspire the government's confidence in the Norfolk judiciary, but the harsh examples they made served to counter their original concessions and their association with the escalation of machine breaking. The Bench also aimed to prevent any continued alliance between the labourers and farmers. In the disturbances of 1816 and 1822, the magistracy had had to contend with riots and machine-breaking perpetrated by labourers, and in 1823, the authorities faced an unprecedented meeting of disgruntled farmers at Norwich. In 1830, Swing saw the cooperation of the labourers and their employers – as was the case at Attleborough – with dangerous consequences. As John Archer has argued, Norfolk's gentry 'could perhaps live with an angry work-force but to withstand the verbal attacks of their natural allies, their tenants, in the rural war was unthinkable and beyond them'.<sup>800</sup>

Richard Nockolds' prosecution met the demands of both central and local government. Wells has highlighted the Home Office's anxiety to secure convictions for arson, and to lay blame for popular depredations at the door of 'notorious radical publicists' such as Cobbett and Carlile.<sup>801</sup> Nockolds was certainly not as well-known, but his execution satisfied the ends of government: providing a terrifying example, and papering over long-term structural problems in Norfolk society, by tying the most 'heinous' Swing offences to elements outside the agricultural community.

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<sup>798</sup> TNA, HO 52/9 f. 90-1 Justice Berney to Lord Melbourne, 2 Dec 1830.

<sup>799</sup> TNA, HO 52/9 f. 110-13 Lord Suffield to Melbourne, 27 Nov 1831.

<sup>800</sup> J. Archer, *By a Flash and a Scare*, 56.

<sup>801</sup> R. Wells, 'Mr William Cobbett, Captain Swing and King William IV', esp. 47-8.

The trials in Norfolk did little to resolve the long-standing differences between labourers, farmers and landowners; threatening letters were sent to prosecutors, and throughout the trials and for the greater part of 1831, fires blazed.<sup>802</sup> The alliance between farmers and the labourers however, was extinguished. At Brampton Hall near Aylsham, a farmer was praised by the courts for arming himself and resisting the demands of labourers; an example the bench thoroughly recommended.<sup>803</sup> At the October Sessions, Daniel Hammant was sentenced to two years in the county gaol for his part in the destruction of a threshing machine. A sense of unease persisted in the county: in December 1831, Justice Hoseason writing to the Home Office cited the same issues plaguing Norfolk agricultural society.<sup>804</sup>

Having so few cases, the Somerset magistrates had greater scope for the punishment of every offender in 1831. But their consistent prosecution of those involved in the disturbances was intended to signal that any signs of insurrection would be nipped in the bud. The Assize judge praised the county for having none of those cases ‘of that deep moral dye’ which he had tried in other parts of the country, ‘and even on the last time I visited this town’ when he alluded to the Kenn incendiaries.<sup>805</sup> How far the terrifying spectacle of their execution impacted on the potential for conflict in Somerset is difficult to gauge; however, in an open letter to *The Times*, George Emery, deputy lieutenant of the county, recommended that terrible example as a means of successfully checking incendiarism.<sup>806</sup> Aside from the tumultuous meeting at Banwell, and a single individual prosecuted for riotous assembly at Cheddar, Kenn and the Winterstoke district in general, remained peaceful in the winter of 1830 at least.<sup>807</sup>

Despite the lack of serious and widespread disturbances in Somerset, the magistracy had remained on their guard throughout the winter of 1830, suggesting that while there were few incidents of open protest, the judiciary still saw the potential for disturbance. In the New Year, writing to the Clerk of the Peace, the Lord Lieutenant, the Marquis of Bath, hoped the convictions at Quarter Sessions would stop incendiaries, but

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<sup>802</sup> *Norwich Mercury*, 22 Jan 1831; *Ibid*, 95.

<sup>803</sup> *Norwich Mercury*, July 1831.

<sup>804</sup> NRO: MF 660/4 Quarter Sessions books, Norwich, 19 October 1831; TNA, HO 64/3 f. 341-2, Hoseason to HO Dec 21 1831

<sup>805</sup> *Bath Journal*, 4 April 1831.

<sup>806</sup> *The Times*, 21 Sept 1830.

<sup>807</sup> SRO: Q/SO/21 1825-32.

he had received reports of a recent attack in his neighbourhood on the property of a prosecution witness in the late trials.<sup>808</sup> In April 1831, a partly government-sponsored reward was offered for the capture of incendiaries who had fired the property of Mr Good at Banwell - just 10 miles south of Kenn.<sup>809</sup> Although we cannot always equate the motives of incendiaries with social protest, Somerset's judiciary had to consider arson attacks focussed on agricultural property throughout the Spring of 1831 and through the Autumn and into the Winter of 1832.<sup>810</sup>

In neighbouring Wiltshire, incendiarism also continued to concern the authorities, and issues surrounding wages persisted in on-going labourers disputes and strikes.<sup>811</sup> Perhaps the legacy of Swing can also be discerned in some of the prosecutions made in the aftermath of the disturbances. At the Summer Assizes, Sarah Wheeler was found guilty of arson despite the clearly domestic circumstances of the crime. Refusing to consider the pleas of the defendant or her witnesses, the judge 'told them that circumstances had nothing to do with a case like the present'. Wheeler was spared the noose but the judge warned her that she would be more than likely transported for life. In the same court, Job Hetherall was sentenced to be transported for life for sending a threatening letter. In his summation to the jury, the judge went to considerable lengths to stress that proof was only required that the prisoner had *caused* the letter to be written or sent. The jury returned their verdict immediately.<sup>812</sup> Such stringent examples failed as a deterrent: in the Spring of 1832, the Assizes had to rule again, in cases concerning anonymous threats to burn farms, and actual acts of agricultural incendiarism.<sup>813</sup>

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<sup>808</sup> SRO: Q/JCP/7 Marquis of Bath to Edward Coles, 12 Jan 1831.

<sup>809</sup> *Bath Journal* 18 and 25 April 1831.

<sup>810</sup> *Bath Journal*, 11 April, 14 Nov, 12 Dec 1831, and 2 Jan 1832; TNA, HO 64/2 ff. 33-5, parish of Drayton, 17 Jan, ff. 73-4 from D. Williams, 14 April and ff. 280-1, Davies to HO 19 Nov 1831.

<sup>811</sup> Chambers, *The Wiltshire Machine Breakers*, vol. i, 243-45.

<sup>812</sup> *Devizes and Wiltshire Gazette*, 21 July 1831.

<sup>813</sup> *Devizes and Wiltshire Gazette*, 8 March 1832.

Figure 40: Perceived causes of the disturbances of 1830-1831 from responses to the Poor Law Commissioners

Cause	Norfolk	Cause	Somerset
Education	1	Attitude of labourers	1
Population increase	1	Foreigners/strangers	1
Sanctioned by authority/justified	1	Press	1
Foreigners/strangers	2	Sanctioned by authority/justified	1
Law Enforcement	2	Poor social relationships	2
Press	2	Poverty	2
Attitude of labourers	3	Employment	3
Following example (Kent)	3	Wages	3
Not distress	3	Political agitation	5
Poverty	3	No answer	16
Farmers	6		
Machinery	6		
Poor social relationships	7		
Poor Law	8		
Employment	12		
No answer	12		
Political agitation	13		
Wages	13		
Total respondents:	41	Total respondents:	25

Source: Responses to question 53: information on the cause and consequences of the agricultural riots and burnings 1830 and 1831, 'Rural Queries', Appendix B, V. from the *Poor Law Commissioners Report 1834*

The investigations of the poor law commissioners in 1834, afford a slightly longer view of the aftermath of Swing. The report attributed the disturbances, to a considerable extent, to the maladministration of the relief system. Inherent within that discussion was a reappraisal of the magistracy and the function of parochial authority. Paternalist concessions were cast as inflammatory, as a 'perversion of the traditions of reciprocity': when the authorities failed to meet the needs of the labourers 'they had resorted to discriminating violence in order to enforce their supposed rights and the duties of their superiors'. The magistracy appeared to have been cowed into submission but also to share in part, what Nassau Senior described as the 'anarchical doctrines' of the labourers.<sup>814</sup> The perceived failure of the county judiciary to effectively put down the disturbances of 1830 only contributed to a sense that the magistracy were increasingly ineffective.

<sup>814</sup> P. Dunkley, *The Crisis of the Old Poor Law in England 1795-1834* (London: Garland 1982) 98-9.

Research conducted by the commissioners within the counties directly addressed what the perceived causes of the disturbances were. The responses from Norfolk and Somerset do not present any revelations regarding the origins of disorder, but they do point to concerns about the efficiency of the local authorities in terms of law enforcement.

Respondents from both counties cited poor wages and a want of employment as the main structural causes for the disturbances (fig. 40, above). In Norfolk, this was exacerbated by the prevalence of agricultural machinery and the intervention of farmers. Significantly though, both counties gave greater weight to the role played by political agitators.

The blame did not rest solely with the likes of Cobbett and Hunt, but also with pre-existing political organisations and Beer Shops – establishments that were widely associated with the dissemination of seditious material and the formulation of insurrectionary plots. Colonel Harvey, visiting convicted machine breakers held in Norwich Castle, reported that,

‘their spirit [was] completely subdued, that they were satisfied with the justice of their sentences but it was very apparent that in many instances been misled...he was convinced that the outrages never originated with the men, but that they were paid and encouraged by others’.

A few respondents also connected the Press with the circulation of subversive ideas and information regarding the riots. Certainly in Norfolk it was felt that news of the disturbances in Kent had inspired the labourers.<sup>815</sup>

Very few of the respondents attributed the riots to an ill-disposed populace. Only three respondents – all from Norfolk – attempted to deny that the unrest stemmed from genuine distress; the respondent from Stiffkey attributed disorder to idleness. In Bishops Hull, Somerset, poverty was acknowledged as a cause, but alongside a ‘pure love of mischief’.<sup>816</sup> Several answers, particularly from Norfolk cited the breakdown of social relationships as a contributing factor. In part this was attributed to the administration of

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<sup>815</sup> See in particular responses from: Brockdish, Brooke, Cockley Cley, West Rainham, Saxlingham, Sulthorpe, Shottisham and Worstead in Norfolk; and Crowcombe, Kingston and Yeovil in Somerset; ‘Rural Queries’, Appendix B, V. from the *Poor Law Commissioners Report 1834*. *Norwich Mercury*, 29 January 1831.

<sup>816</sup> See responses from Bishops Hull, Somerset and Brooke, Little Massingham, Starston and Stiffkey, Norfolk.

the poor laws. A churchwarden of West Rainham in Norfolk suggested that ‘too much indulgence, on the part of the Magistrates, to the complaints of the Poor... has made him depend more on his interest with the Magistrates than on his own exertions; and the consequence has proved, dislike to his Master, and destruction to his property.’<sup>817</sup>

Predictably, in the answers for Norfolk, farmers were frequently cast as the instigators of riots. In responses predominantly from magistrates, clergymen and churchwardens, the issue of wages was complicated by demands for a reduction in rents and tithes; and the availability of tracts discussing the clergy and their apparent abuses of the tithe system augmented bad feeling.<sup>818</sup>

On the whole, the role of the magistracy was not openly called into question, but the impact of the concessions made during the disturbances was discussed. Rev. Doctor James Ward, writing from Coltishall (Norfolk) stated, ‘the general compliance with the demands made by them [the labourers], of having their wages and their allowances increased, gave the appearance, to them, of justice to their cause, and taught them the use of a power which they have not yet forgotten’. William Kemp of Gissing echoed Ward, fearing a precedent for action had been set: ‘the Poor have been taught their strength when acting in union... and will resort to the same means when they wish another rise.’<sup>819</sup> In Somerset, similar concerns were expressed that the ‘rioters in general were under the impression that their proceedings were sanctioned and encouraged by authority.’<sup>820</sup> There was however, little evidence that the concessions had lasted. In his report to the commissioners on Norfolk and Suffolk, Mr. Henry Stuart confirmed that relief was given by many landowners and clergy regarding tithes and rents, ‘but I could not learn that the labourer derived any benefit from it’.<sup>821</sup>

The apparent strength and volatility of the labouring poor, both during and in consequence of the disturbances, raised the issue of effective policing. The respondent from Scole (Norfolk) argued that without the Yeomanry Cavalry, and the reluctance of the justices to call on the military, the rioters had gained an advantage. From Little Massingham, Mr Brereton agreed that the ‘consequences are, increased contempt for

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<sup>817</sup> Response from West Rainham, 319; see also Little Massingham, Thursford and Wymondham.

<sup>818</sup> See Brockdish, Brooke, Gissing, Saxlingham, Shottisham and Starston.

<sup>819</sup> See Coltishall and Gissing, 309 and 314.

<sup>820</sup> See Weston, 408.

<sup>821</sup> H. Stuart, Appendix A, 381; see also responses from Downham Market and Gissing.

superiors and authorities, and the necessity for an improved, more active, and united Police, to preserve the discipline of the country.’<sup>822</sup>

Policing and the maintenance of order did not feature strongly in the responses from county residents. However, in the reports presented to the commission by Stuart (for Norfolk) and Captain Chapman (for Somerset), the state of rural law enforcement appeared to be in dire need of reform. Stuart stated that Norfolk was bereft of any ‘organized means...for the enforcement of public order.’ Rural policing was limited to parish constables, associations for the protection of property and the magistrates. The constables proved unreliable, being ‘frequently swayed by the ties of relationship or friendship.’ The associations were limited in scope: they raised subscriptions to fund a few extra constables and offered rewards, but they had no significant preventative or detective capacity, and were clearly not available to everybody. Stuart did not criticise the magistracy; he acknowledged that the Swing disturbances had been ‘suppressed by the ordinary means possessed by the local authorities’ and the justices had ‘displayed great firmness on the first appearance of disturbance’. Nonetheless, a ‘very general feeling was expressed to me [Stuart] of the inadequate protection they afford to persons or property.’<sup>823</sup>

Stuart also testified to the persistent occurrence of fires in Norfolk. He did not see it as the product of any system, or movement, but he was concerned by the failure to detect the perpetrators. Arson, it was alleged, had become the principal means of expressing discontent and challenging the authorities. He recalled an incident where a clergyman had been sent to quell a ‘riot’ in a beer shop; he threatened to take the parties involved before the magistrates for punishment and ‘the next week a stack of hay belonging to him was burnt.’ The men in the beer shop had made threats but nothing could be proved.<sup>824</sup>

Stuart concluded his report in dramatic tones declaring, ‘that a widely extended moral depravity prevails, which can only be controlled by the establishment of a more efficient and vigilant system of police... to secure that speedy detection of crime which can only protect society from falling into an utter state of lawlessness and violence.’<sup>825</sup>

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<sup>822</sup> See Little Massingham and Scoble, 317 and 321.

<sup>823</sup> H. Stuart, Appendix A, 381.

<sup>824</sup> Ibid, 381.

<sup>825</sup> Ibid, 382.

The report from Somerset did not make explicit reference to the disturbances of 1830, however, similar concerns were voiced regarding the state of law enforcement in the county. ‘Nothing’ Captain Chapman stated, ‘can well be more inefficient than the existing means of control’. The constables were neither fit for, nor active in their duty; the obligations of the role were considered ‘irksome, sometimes difficult, and involving much responsibility’ and therefore attended with little care, or carried out only for the ‘emolument they receive.’ As well as the deficiency in constables, Chapman reported a lack of resident magistrates in urban areas such as Frome and therefore ‘the want of some efficient police, and some head in cases of riot, is much felt’. A desire for a reformed system of policing was widespread in Somerset. However, Chapman found that ‘every where there was the same disinclination to incur expense for the purpose.’<sup>826</sup>

The careful management of the prosecution of Swing offenders succeeded in checking any further outbreaks of collective action, however, it is clear that in all three counties, discontent continued although expressed through the more subversive medium of incendiarism. The reputation of the county justices in the aftermath of the Swing disturbances does not appear to have suffered as much as has been suggested. The responses from Norfolk and Somerset to the Poor Law Commissioners did not explicitly attack the institution of the magistracy, however, criticisms were voiced regarding the danger of concessions made by officials and the inefficiency of the system of policing dependent on voluntary service and local connection. Reform, it would seem, was welcomed by the majority, but not necessarily at the expense of judicial control. Indeed, Chapman’s report clearly indicated a preference for the establishment of a professional police force, but under the control of the county magistrates.<sup>827</sup>

## ***5. Conclusion***

By emphasising the trials of Swing offenders by the county magistracy as calculated acts of local government, this chapter has aimed to provide a more nuanced understanding of the framing of the prosecutions and their significance for the management of the

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<sup>826</sup> Captain Chapman, Appendix A, 466-7.

<sup>827</sup> Ibid, 467.



aftermath of unrest. The suppression of disorder was a complex process, and the precise nature of repression was framed by local social and political contexts, and local history, as much as by statute law and the demands of central government.

In the years immediately preceding the disturbances, there were few incidents of protest or incendiarism to alert the authorities to the levels of discontent in their communities. Crime however, was a concern and perceived to be an indicator of distress. In Somerset, poverty was acknowledged, but not excused, as a motive; and the example of the Kenn execution signalled the magistracy's intolerance to disorder. The Norfolk judiciary appeared to be more compassionate to the poor, but their attitude was informed by long-term disputes between themselves, their tenants and the labourers. This context points to the social tensions and judicial attitudes that would underpin the prosecutions of 1831.

Although their management and structuring of the prosecutions varied, some attitudes were shared by the judiciary at every level. Of paramount concern – as expressed by the Attorney General – was the protection of local government. Consequently, the magistrates and judges made potent examples of those who attacked or subverted the authorities. In Wiltshire and Norfolk, the judiciary were also keen to protect their integrity as legitimate rulers having appeared to capitulate to the labourers' demands by making such widespread concessions. The extent of crowd violence may well have been over-emphasised by the courts, as Griffin has suggested.<sup>828</sup> In Norfolk, the most violent incidents of riot, at Docking and Attleborough, were even considered in terms of treason, dismantling any notion of a moral justification for the labourers' actions. Across those counties most affected by Swing, and particularly where central government had a hand in the prosecutions, presenting collective action as violent was significant in delegitimising the motivations of the crowd.<sup>829</sup>

Concern for the maintenance of social order, and social hierarchy, is also evident in the judiciary's 'xenophobic' expressions. Keith Snell has pointed to the role of 'local xenophobia' in checking the development of class-consciousness. Particularly in the depressed conditions following the Napoleonic Wars, concerns for limited resources and

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<sup>828</sup> C. J. Griffin, 'The violent Captain Swing?' 154;

<sup>829</sup> R. Wells, 'Mr William Cobbett, Captain Swing, King William IV', 47.

employment opportunities strengthened prejudice and fear of ‘foreign’ interlopers. Swing, however, highlighted the possibilities of collective action across parish, occupational and even county boundaries.<sup>830</sup> In the processes of selection and mode of prosecution, not only were radical incendiaries excluded from the legitimacy of the labourer’s cause, but notably at the Salisbury Special Commission, it was considered ‘more inexcusable’ for craftsmen and non-agricultural labourers to be the perpetrators of depredations.<sup>831</sup> Rather than acknowledge the structural causes of unrest, the authorities could blame a foreign element for the destruction of ‘that bond of mutual interest and goodwill which ought ... to unite the higher and lower classes of the community’.<sup>832</sup>

The mass disturbances experienced in Wiltshire apparently warranted mass prosecutions in the centrally administered Special Commissions. And examples were made of the offenders on an unprecedented scale: two-thirds of those tried were convicted, and more than half of those individuals were transported.<sup>833</sup> While central government signalled its concern for the ample prosecution of offenders by convening the court at Salisbury, the total delegation of responsibility for the prosecutions to the Special Commission cannot be held up as proof of a lack of confidence in the local judiciary. As the evidence presented here has shown, the county magistrates were complicit in the prosecutions, by supporting the selection of cases for trial and ensuring their progress before the Bench. The level of tumult experienced in the county, and undoubtedly the extent of the concessions granted, meant the Wiltshire justices had as much of a vested interest in presenting themselves as competent and rigorous governors as the administration at Westminster.

The influence of the magistracy in the prosecutions at higher courts is borne out by the organisation of the Norfolk Special Commission. But in contrast to Salisbury, it provided little more than an opportunity to stage the execution of Richard Nockolds as a classic example of judicial terror. On the whole, in Somerset and Norfolk, the magistrates

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<sup>830</sup> K. Snell, ‘The culture of local xenophobia’, *Social History*, 28:1 (2003) 23, 26, 28-9.

<sup>831</sup> Hobsbawm and Rudé, *Captain Swing*, 259. For example see the case of William Hayter, TNA: ASSI 24/18/3 Special Commission minute book, 4 Jan 1831; Chambers, *The Wiltshire Machine Breakers*, vol. i, 138–39. See also discussion of Nockolds above.

<sup>832</sup> Justice Parke addressing the Wiltshire Special Commission, 1 Jan 1831; Chambers, *The Wiltshire Machine Breakers*, vol. i, 101–2.

<sup>833</sup> TNA: ASSI 24/18/3 Special Commission minute book, January 1831; Hobsbawm and Rudé, *Captain Swing*, 259, 262–63.

preferred to keep the trials entirely within the purview of local authority at the county quarter sessions.

Although Somerset produced few disturbances, the majority of the county's offenders were tried and convicted, and received robust punishment. Norfolk experienced considerable unrest and made carefully selected examples. In structuring these prosecutions the magistracy were comparatively lenient: the precedents of the previous disturbances of 1816 and 1822 caused the justices to reflect more favourably on the Swing rioters. The magistracy also took into consideration the complex relationship between landowners, tenants, and labourers – ensuring the interests of the propertied at the expense of the poor worker.

The stringency of the prosecutions in Somerset and the examples in Norfolk appeared to prevent further incidents of collective protest after 1831. But the prosecutions did little to heal enduring social divisions. The reports made to the Poor Law commissioners showed a continued belief in a 'foreign' element fomenting discontent, but they also testified to the persistence of social divisions, and in Norfolk at least, the challenges to authority manifested in acts of incendiarism. Despite the criticisms voiced by Nassau Senior, the respondents from Norfolk and Somerset did not explicitly condemn the magistracy as an institution. But criticism of the nature of local government, in particular, its foundation on personal connection and voluntary service was implicit. The dependency of the poor on the magistracy, the legitimacy derived from officially sanctioned concessions, problems of partiality - and at a base level – the sheer manpower necessary for effective law enforcement was questioned throughout. These concerns resonated with criticisms levelled at the magistracy during the disturbances, and in their wake, locally and within parliament. Consequently, calls for reform in the administration of local government, and policing were made. While the proposed measures tended towards the professionalisation of law enforcement, the position of the magistracy as superintendents of local government – from the evidence in Norfolk and Somerset at least – was left largely unchallenged.<sup>834</sup>

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<sup>834</sup> Above, Rural Queries IV, esp. 381 and 467.

## *Chapter Six*

### *Conclusions: structures of government, protest and the magistracy*

This thesis has addressed calls for more concerted studies of the actions and attitudes of the authorities to social protest. It has endeavoured to offer a more nuanced analysis of judicial responses to protest, and the nature of social relationships that underpinned them, by focusing on the county magistracy and the institutions and structures of power for which they were responsible.

Edward Thompson, Roger Wells, Andrew Charlesworth, and more recently Carl Griffin (amongst others), have drawn attention to the period from c.1790-1834 as a watershed in English social relationships.<sup>835</sup> Popular demands for ‘the right to subsistence’ (to borrow Peter Jones’ phrase) precipitated by acute economic crisis, took on a new colour in view of political agitation at home and abroad.<sup>836</sup> This context altered the ‘political space’, or ‘field of force’ in which ‘the crowd might act and might negotiate with the authorities.’<sup>837</sup> Judicial tolerance for collective, or riotous popular action diminished, limiting the ability of the politically and economically dispossessed to articulate and seek redress for their grievances. Increasing recourse to the ‘repressive agencies’ instigated a realignment of popular interests in opposition to authority, and consequently the decline of paternalist governance.<sup>838</sup> The impact this reconfiguration of political space had on the nature of popular protest has stimulated considerable debate, much of which has stemmed from the Wells-Charlesworth dispute regarding the resort to ‘covert’ rather than ‘overt’ means of resistance. Popular access to judicial mediation underscored this apparent dichotomy.<sup>839</sup>

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<sup>835</sup> E. P. Thompson, *The Making of the English Working Class* (London 1963; this ed. Pelican 1968); R. Wells, ‘The Development of the English Rural Proletariat and Social Protest, 1700-1850’ (1979); A. Charlesworth, ‘The Development of the English Rural Proletariat and social protest, 1700-1850: a comment,’ *Journal of Peasant Studies*, 8 (1980): 101-111; C. J. Griffin, *The Rural War: Captain Swing and the Politics of Protest* (2012).

<sup>836</sup> P. Jones, ‘Swing, Speenhamland and rural social relations: the moral economy of the English crowd in the nineteenth century’, *Social History*, 32:3 (2007): 274.

<sup>837</sup> E. P. Thompson, ‘The Moral Economy Reviewed’ in idem. *Customs in Common* (1991) 261

<sup>838</sup> Idem, ‘The moral economy of the English Crowd in the eighteenth-century’ (1971); R. Wells, ‘The Development of the English Rural Proletariat and Social Protest, 1700-1850,’ *The Journal of Peasant Studies* 6 (1979): 115-139.

<sup>839</sup> R. Wells, *ibid*; A. Charlesworth, ‘The Development of the English Rural Proletariat and social protest, 1700-1850: a comment,’ esp. 106.

This analysis of the changing nature of social protest and the relations that underpinned it runs parallel to the changing nature of governance in this period. The autonomy of local government and the discretionary capability of the magistracy facilitated the negotiation of popular grievances that met both the needs of authority and the community at large. The strain placed on local government by war, economic crisis and calls for political reform, was brought to the fore in the context of social protest, contributing to demands for the reformation of county government in the first decades of the nineteenth century.<sup>840</sup> The basis for the analysis pursued here therefore, has been a consideration of the structures of government and the role they played in shaping the political spaces that framed popular interaction with authority. This approach is needed in order to understand the complexity of judicial responses to disorder. It also provides a lens through which to view constellations of social relationships at this critical juncture.

The arrangement of county government was regionally contingent, and must therefore be addressed at a local level. The two case studies of Norfolk and Somerset reveal markedly different governmental arrangements, reflecting the counties' respective productive capacities and population distribution. The organisation of justices, and petty and quarter sessional divisions in Norfolk structured a system of locally orientated administration. Somerset's juridical and jurisdictional arrangements were more convoluted, exposing the difficulties faced by the county magistracy, which were articulated more explicitly in the correspondence to the clerk of the peace.<sup>841</sup> Both patterns of government were reinforced through the manipulation of membership of the commissions of the peace, bolstering the system of localised justice in Norfolk and ameliorating under-provisioned districts in Somerset.

The distribution of judicial groupings across the two counties shaped responses to social protest and the political spaces available to their communities. The absence or lack of resident justices in Somerset prevented a swift response to protest in 1801, prompting the magistrates on the ground to employ more conciliatory measures. Conversely, the

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<sup>840</sup> D. Eastwood, *Government and Community in the English Provinces, 1700-1850* (Basingstoke: Macmillan Press, 1997), 131-4.

<sup>841</sup> Chapter 2: *Mapping the Magistracy*; SRO: Q/JCP 1-7, 12 Papers and Correspondence relating to Justices and the Commission of the Peace, 1801-1830

ordering of the Norfolk magistrates, and their close relationship with the county yeomanry, provided the basis for a regional police network in 1795. In the absence of the volunteer troops in 1830, however, the local benches of Norfolk concentrated their efforts on and within their specific jurisdictions, establishing patterns of response that, while locally relevant, jarred with countywide recommendations and created issues of parity in neighbouring districts. Other spaces for popular intervention persisted between county and borough benches, and when the magistracy in both counties endeavoured to mobilise the middling sort to aid the civil force in 1830, the yeomanry and tenantry used the opportunity to bargain their assistance for reductions in rents and tithes.

The move to paternalist conciliation in the absence of armed support resembles aspects of the overt/covert polarity debated by Wells and Charlesworth. Indeed the case of Frome would tend to support Wells' original argument further: the declining manufactories and increasing reliance on relief from at least the 1790s, and the swift suppression of open protest in the 1820s, left the impoverished townsfolk with only recourse to threats in 1830, unable to confront the parish authorities or their employers.<sup>842</sup> But, as Griffin has argued, we must be aware of the 'terror and bodily effects generated by violent gestures, symbols and threats.'<sup>843</sup> At Frome and Shepton Mallet textile workers appropriated the moniker of Swing. To paraphrase Griffin, it provided a trope that united disparate communities. If not the actual connections between 'rural' and 'urban' communities, then the 'shared if differently contoured experience' of poverty allowed Swing to act as a metonym amongst the dispossessed.<sup>844</sup> Indeed, from the perspective of the authorities, the manifestation of Swing in Somerset, in incendiary fires, threatening letters, radical rabble-rousers, and riots on its borders, was enough to stimulate them to act. Rather than emphasising the number of disturbances, overt or covert, addressing the activity of the authorities highlights the impact the perception of unrest had on the administration of the law and the interactions of the authorities with their communities.

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<sup>842</sup> Chapters 2.1 and 4. *Rural War versus the Spectre of Swing*; C. J. Griffin, 'The Culture of Combination: solidarities and collective action before Tolpuddle,' *The Historical Journal* 58:2 (2015): 456-7, 462.

<sup>843</sup> C. J. Griffin, 'The violent captain Swing?' *Past & Present* 209 (2010): esp. 179.

<sup>844</sup> *Ibid*, 164, *idem*, 'The culture of combination', 479.

The recourse to paternalist measures was not merely a matter of pragmatism. Despite the availability of military support in 1801, the Somerset magistracy were reluctant to call upon them without a detailed discussion of the nature and terms of their deployment. Even when the grand jury and Crown counsel had settled the matter, judicial pressure was still applied to producers to encourage reductions in prices.<sup>845</sup> Similar persistence in the expediency of concessions was voiced by Lord Lieutenant John Wodehouse in 1830. He, with other members of the commission, could not ignore the very real problems that existed in their communities.<sup>846</sup> How far the continued adherence to paternal ideals can be attributed to the social composition of the bench is difficult to assess. The extent to which new members altered the character of local government is questionable; processes of differentiation based on title, occupation and background unravel when interrogated.<sup>847</sup> Perhaps what is more pertinent is the persistence of particular values associated with the archetypal gentleman justice. Following Eastwood's assessment of the Oxfordshire bench, the aspirations of 'lesser gentlemen', men like Blake and Poole, and perhaps Hoseason, testify to the continuation of a judicial mentality that advocated superintendence of government by the gentry and the exercise of local influence.<sup>848</sup>

There is certainly evidence that there was broader adherence to notions of paternalist governance beyond the gentlemen justice and the labouring poor. At Norwich the demands of the city's manufacturers and craftsmen highlighted the deep-rootedness of moral economic values across sectors of the community. This relationship, made apparent in Renton's analysis of market regulation in the 1760s, clearly persisted in 1800.<sup>849</sup> This may well have been influenced by the shared demographic of the Norwich bench and its constituents. Nonetheless, the middling-sort must be taken into account as part of the 'field of force' as King has suggested.<sup>850</sup>

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<sup>845</sup> Chapter 3 *The magistracy and the crisis of paternalism*: 3.2

<sup>846</sup> Chapter 4.2.3 *A question of concession or repression*

<sup>847</sup> Chapter 2.4 *The Social Composition of the Magistracy*

<sup>848</sup> D. Eastwood, *Governing Rural England* (Oxford: Clarendon Press, 1996) 76, 79.

<sup>849</sup> S. Renton, 'The Moral Economy of the English Middling Sort in the Eighteenth-Century: the case of Norwich in 1766 and 1767' A. Randall and A. Charlesworth (eds) *Markets, Market Culture and Popular Protest in Eighteenth-Century Britain and Ireland* (Liverpool University Press, 1996) 115-36. Chapters 3.2 & 3.4

<sup>850</sup> P. King, 'Edward Thompson's Contribution to Eighteenth-Century Studies. The Patrician: Plebeian Model Re-examined' *Social History*, 21:2 (1996): 226.

King's proposed model of triangular social relations is very apparent in this context, and had a significant bearing on the political space in which protest played out. As King highlighted, this is evident in Thompson's own analysis of the subsistence crises when the judiciary and the poor allied to prevent 'pernicious middlemen' frustrating the moral economic operation of the market.<sup>851</sup> This is born out in many instances in chapter three, but there are also clear cases where the middling sort could also 'triangulate': using the law to assert their own interests. At Wells, for example, in 1795, the town's tradesmen enlisted the support of Rev. John Turner, a county justice, to check the more paternalistic sentiments of the city bench. The judiciary and the middling sort might also cooperate in their regulation of the poor. Again, King has addressed this in the context of the summary courts, but as the evidence from Norfolk shows, the bench sought their support for placatory initiatives through well-publicised charges to the grand jury, using them to disseminate policy on the ground.<sup>852</sup> The triangulation of social relationships was more pronounced in 1830. In Norfolk, the impact of the post-war depression on the county's farmers and their hostility to landlords was played out in public debates regarding the maintenance of the poor, again in the arena of the grand jury chamber. Come the autumn of 1830, this was manifest in a more dramatic fashion, when farmers' allied themselves with the labourers' cause, on occasion – as was the case at Attleborough – in open protest. In both Somerset and Norfolk, the 'squeezed middle' capitalized on the political space created by plebeian unrest, bargaining their loyalty in return for concessions.<sup>853</sup>

This complex of relations, which had to be negotiated by the judiciary, frustrated the suppression of unrest via conciliatory and coercive means. Indeed, the evidence submitted to the Poor Law Commissioners in 1832 regarding the causes of disturbance, reflected the conflicting interests of farmers, parish officers and clergymen that impeded the operation of local government.<sup>854</sup> The space for negotiation framed by the institutions of the magistracy was accessible to more than the gentry and the poor; but it is also clear that it was failing in the context of economic depression and political crisis. Tending to

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<sup>851</sup> Ibid, 226.

<sup>852</sup> Chapter 3.2 & 3.3

<sup>853</sup> Chapter 4.2

<sup>854</sup> Chapter 5.4



King's further point regarding the limits of the paternalist model, the magistracy struggled to control their own rituals.<sup>855</sup> In this context, judicial paternalism became increasingly problematic, and as Douglas Hay has argued, the subject of public debate. The end of the eighteenth century, Hay has suggested, brought about 'immense change in the nature of public-order calculations'.<sup>856</sup> The efficacy of paternalist governance was questioned. Evident throughout discussions presented here, between justices, and the county commissions and central government, criticisms of the magistracy's handling of unrest were framed in terms of the dependency it engendered, and, more significantly, the potential to embolden the labouring poor.<sup>857</sup> The role of the courts, perhaps the last weapon in the judicial arsenal with which authority could be secured, is significant. The courts were the site of very public contests regarding the probity of concessionary measures. It was a forum in which policy lines could be drawn.<sup>858</sup>

Some of the most notable trials in the aftermath of unrest, those presided over by centrally appointed judges either at the Assizes or under Special Commission have been read as central intervention in the provinces, signalling government's dissatisfaction with the magistracy.<sup>859</sup> Certainly the prosecution of Justice George Donisthorpe in 1795 was framed to put pay to misplaced paternalist concern, casting his use of discretion as conspiratorial and tyrannical. Despite the best efforts of Thomas Erskine, and in spite of Kenyon's paternalist sensibilities, the trial was pursued to the Assizes, to be 'discussed in the face of the public'.<sup>860</sup> The trial of Tout and Westcott in 1801, and the Special Commissions in the aftermath of Swing, likewise served to meet the ends of justice, as far as central government was concerned. However, this perspective ignores the role of the local judiciary in the operation of the higher courts. The grand jury at both the Assizes and Special Commissions were largely comprised of county justices, who were charged with the selection of cases for trial. More than complicit in these central

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<sup>855</sup> P. King, 'Edward Thompson's Contribution to Eighteenth-Century Studies. The Patrician: Plebeian Model Re-examined', 222.

<sup>856</sup> D. Hay, 'The state and the market in 1800: Lord Kenyon and Mr Waddington' *Past & Present* (1999): 158.

<sup>857</sup> Chapter 3.3.2 and Chapter 4.2.3

<sup>858</sup> D. Hay, 'The state and the market in 1800: Lord Kenyon and Mr Waddington' 103, 156-7.

<sup>859</sup> R. Wells, 'The Revolt of the South West, 1800-01: A Study in English Popular Protest', 50; E. J. Hobsbawm and G. Rudé, *Captain Swing* (Lawrence and Wishart, 1969; this ed. Phoenix Press, 2001) 258.

<sup>860</sup> Chapter 3.4.3; *The Times*, 9 Aug 1796.

interventions, the Wiltshire justices actively sought a Special Commission for the county and made a great show of the unity of authority at the opening of the court. Cooperation between county and central government was also apparent in the organisation of the Special Commission at Winchester.<sup>861</sup> The convening of a Special Commission for Norfolk in 1831, a fact overlooked by all Swing's historians thus far, was likewise, at the behest of the county bench.<sup>862</sup>

Continuity can also be discerned in the framing of cases between the higher courts and county quarter sessions. In Wiltshire and Norfolk, the process of selection was directed to divest Swing and the grievances it articulated of all legitimacy. The violence of crowd actions was emphasised as 'a perversion of the normal politics of social relations'.<sup>863</sup> Presiding at Norfolk, Sergeant Frere imputed the actions of the Docking and Attleborough rioters to be treasonous; acknowledging their right to seek redress from the magistracy Frere was unable to countenance why they should wish to attack the property 'of their best friends and employers'.<sup>864</sup> The narrative presented via the courts was intended to redefine social bounds: the transportation of recidivists, the penalties levied against non-agricultural workers, and the characterisation of the most violent acts as 'un-English', allowed the judiciary to make terrifying examples which were distinguished from the genuine distress of rural workers. The xenophobic sentiments that permeated some of the trials further sought to divide the rural and urban.<sup>865</sup> Even the light handling of the farmers appears as a calculated measure to end inter-class class collaboration between the middle and lower orders, particularly when there was some resistance to the bench manifest in the petty jury. Somerset provides a rather different picture, but not one marked by any sense of lenity. With relatively few prisoners for trial, the county magistracy had scope for comprehensive punishment, making their intolerance to disorder – actual or threatened – clear.<sup>866</sup>

Although there was little explicit suggestion in the counties' respondents to the Poor Law Commissioners in 1832, that the gentry should be removed from the

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<sup>861</sup> C. J. Griffin, *The Rural War: Captain Swing and the Politics of Protest* (Manchester University Press, 2012) 248-59.

<sup>862</sup> Chapter 5.3

<sup>863</sup> C. J. Griffin, 'The violent Captain Swing?' 154.

<sup>864</sup> Chapter 5.3; *Norfolk Chronicle*, 22 Jan 1831.

<sup>865</sup> Chapter 5.3; K. Snell, 'The culture of local xenophobia', *Social History*, 28:1 (2003): 23, 26, 28-9.

<sup>866</sup> Chapter 5.3

superintendence of local government, the efficacy of voluntary service and the inconsistencies produced by judicial decisions were questioned.<sup>867</sup> Despite the strength of the courts' rhetoric and sentencing, the purpose of the trials the preceding year- 'the protection of the local authorities' - betrayed some of the weakness of county government. The trials reflected concern amongst the judiciary to counter the level of concessions extracted by force, and to reassert their collective authority after so much inconsistency was evident in the immediate responses to unrest. As Justice Hoseason complained, 'all Magistrates should be obliged to Act together, and upon the same principle which is strictly to adhere to the Law.'<sup>868</sup>

Throughout the period considered here, the elision of judicial and social authority, the basis of magisterial power, was becoming increasingly problematic. It facilitated negotiation but also created disparity and awkward precedents. The preference for private charity evident in both counties, particularly in 1830, indicated a desire to separate judicial authority from paternal social control, thereby limiting popular appropriation of the law and government as 'legitimations for protest'.<sup>869</sup> This division was achieved in part by reforms in local government. Magistrates were not removed entirely from the regulation of poor relief under the New Poor Law. They were ex-officio Guardians of the poor by virtue of their judicial office. But, as Eastwood has highlighted, the new poor law administration had a leveling effect: magistrates now shared power with elected Guardians, and both were subject to policy determined by a central board.<sup>870</sup> The autonomy of the magistracy that created the spaces for paternal negotiation was finally checked.

The purpose of this thesis has been to show the utility of addressing social protest from the perspective of the authorities, and more particularly, through the operation of governmental structures. This approach exposes the complex of social relations that underpinned social protest, the structures that shaped it and informed the regionally contingent responses of authority. These interactions on the ground, while frequently

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<sup>867</sup> Chapter 5.5

<sup>868</sup> Chapter 4.2.3; HO 52/9 ff. 37-8 letter of Dec. 13<sup>th</sup> 1830.

<sup>869</sup> E. P. Thompson, 'Eighteenth-century English society: class struggle without class?' *Social History*, 3:2 (1978): 154.

<sup>870</sup> D. Eastwood, *Government and Community*, 134

triangular in form, also crossed horizontal, occupational communities, and were corralled by the vertical structures of government. Particularly in the context of crisis at the turn of the nineteenth century, the tensions manifest at every intersection of government were exposed by social protest, prompting a redefinition of social relationships through a concomitant reformation of local government.

This study has been necessarily limited in scope, privileging particular phases of unrest to expose the operations of the magistracy in a comparative framework. The legacy of social protest in both counties needs to be considered more broadly. Despite their best efforts to segregate rural and urban communities in their handling of disorder, links persisted between occupational groups in shared grievances, which informed the actions of authority. Work has begun on this in the West: Griffin has shown how the experience of protest and its suppression across communities and over the longer-term informed the development and response to rural trade unionism at Tolpuddle in 1834.<sup>871</sup> The ‘rural war’ in Norfolk begs the same treatment. The protests of 1816 and 1822 clearly informed the experience of Swing in the county. To gain an even clearer understanding of the responses to unrest in 1830, judicial activity in these preceding years needs to be analysed more closely. There is likewise scope to pursue this further into the nineteenth century to address resistance to the New Poor Law in the county. Within the new framework of administration old tensions subsisted. The demands of the poor and judicial opposition to the restriction of local discretion held on to the vestiges of paternalist governance, but, as Digby has suggested, the more ‘liberal’ attitude of the magistracy was ‘swamped’ by the ascendancy of the ‘elected farmer-guardians’. This social interaction, framed by new governmental structures needs to be unpacked to consider the impact it had on the shaping of class relations.<sup>872</sup>

The interactions and connections between judicial personnel, and between the judicial benches and other seats of local power, particularly the parish vestry, also need to be investigated in greater depth. Indicated throughout the discussions here, the interests of minor property-holders and ratepayers influenced social dynamics. As Eastwood has suggested, constitutional changes in parish government from 1818-19 started the process

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<sup>871</sup> C. J. Griffin, ‘The culture of combination’ op. cit. (2015)

<sup>872</sup> A. Digby, *Pauper Palaces* (London: Routledge and Kegan Paul, 1978), chapters 11 and 12, esp. 210, 214, 224.

of the professionalization of local administration. How far this impacted on the authority of the magistracy, and their negotiation of social relationships, requires further investigation.<sup>873</sup>

The proposed extension of the approach employed in this study testifies to its utility. Understanding the nature and operation of authority is vital to understanding resistance to it. By viewing protest through the structures of government that mediated social relationships, the full complexity of this interaction is exposed and a more nuanced picture of social conflict is made visible.

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<sup>873</sup> D. Eastwood, *Government and Community*, 131.

### ***Appendix 1: Population Distribution***

Map 1 Somerset Population Distribution 1801

Map 2 Somerset Population Distribution 1831

Fig. 1 Somerset Population by Hundred 1801

Fig. 2 Somerset Population by Hundred 1811-1831

Map 3 Norfolk Population Distribution 1801

Map 4 Norfolk Population Distribution 1811-1831

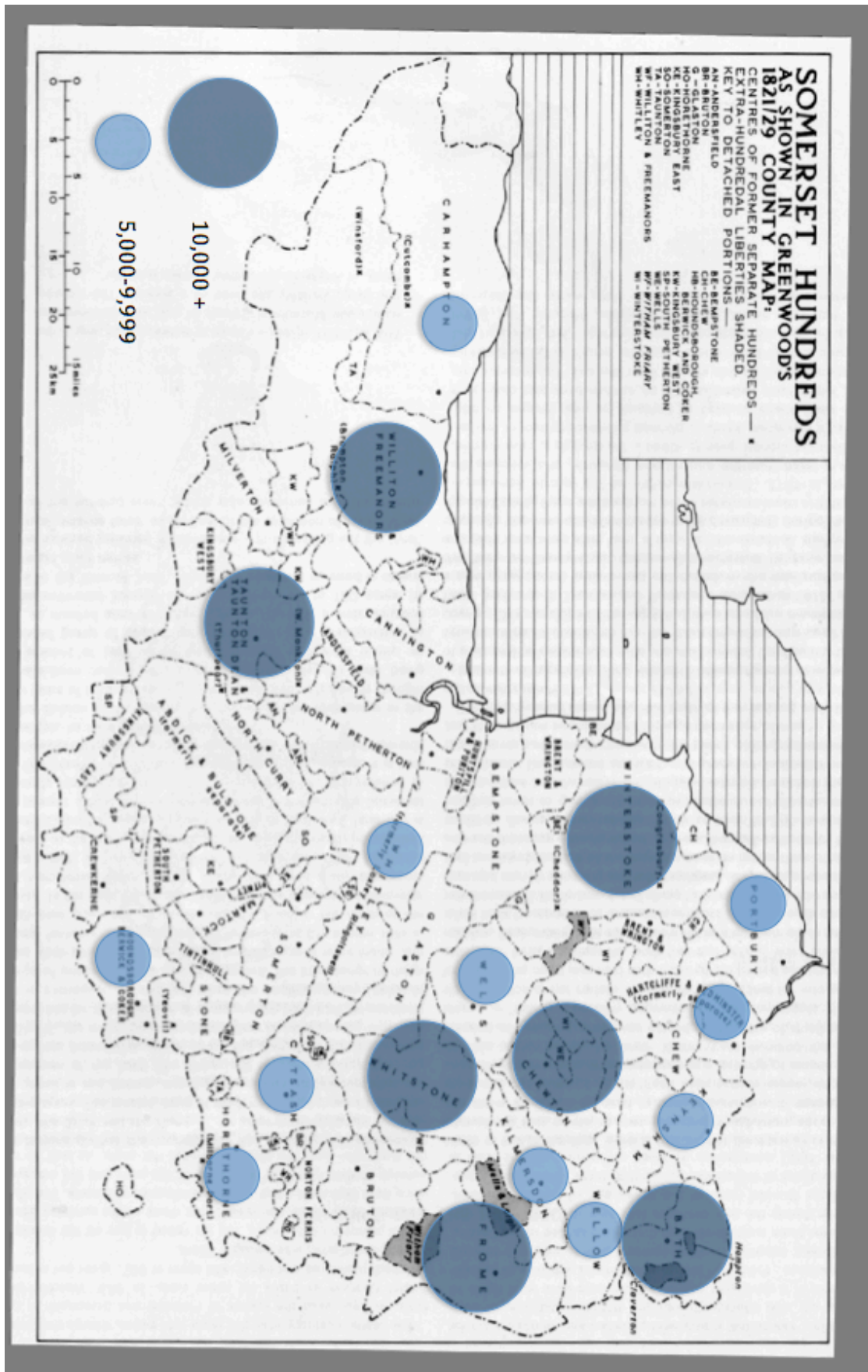
Data source: PP, Census returns for Norfolk and Somerset, 1801-1831

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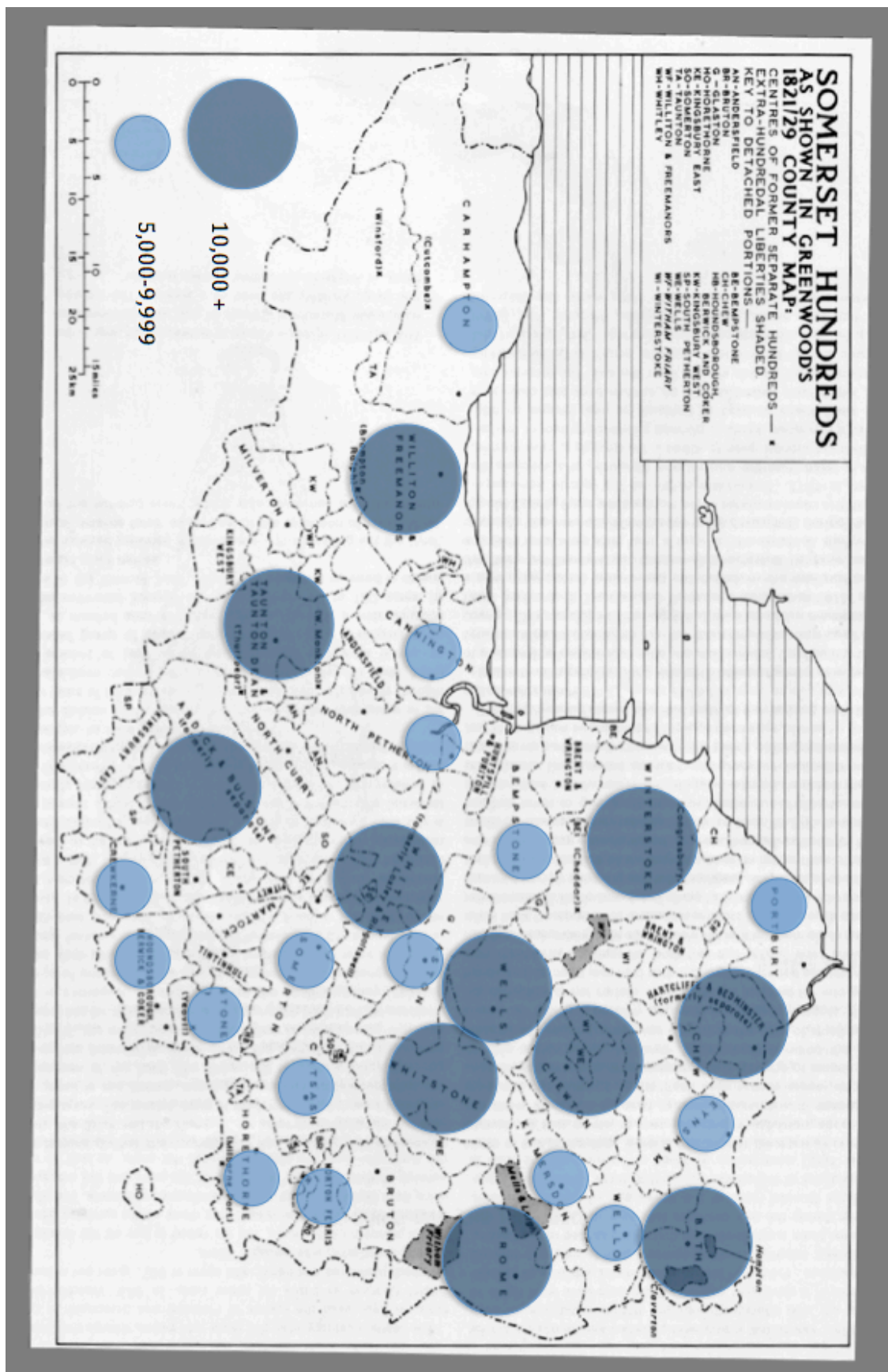
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# 1. Somerset Population Distribution 1801



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## 2. Somerset Population Distribution 1831



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**Figure 1: Somerset Population 1801: 5,000-10,000+**

<b>Hundred</b>	<b>Total Population 1801</b>
Bath, City of	32200
Frome	15474
Kingsbury East/West	14858
Willerton and Freemanners	12319
Chew and Chewton	12318
Winterstoke	11817
Whitestone	10996
Petherton North/South	10038
Whitley	8731
Taunton Dean	8580
Abdick and Bulstone	8058
Wells Forum	7815
Keynsham	6946
Kilmersdon	6731
Carhampton	6616
Houndsborough (Berwick and Coker)	6053
Hartcliffe with Bedminster	5797
Taunton, Town of/Borough	5794
Catash	5760
Bath Forum	5726
Portbury	5620
Horethorne	5614
Wellow	5059

**Figure 2: Somerset Population Tables: hundreds with population 10,000 +**

1811

Hundred	Population	Majority Occupation
Bath City and Bath Forum	43833	Manufacture
Frome	16598	Manufacture
Chew and Chewton	13382	Agriculture
Winterstoke	13355	Agriculture
Willerton and Freemanners	12429	Agriculture
Whitestone	11093	Agriculture

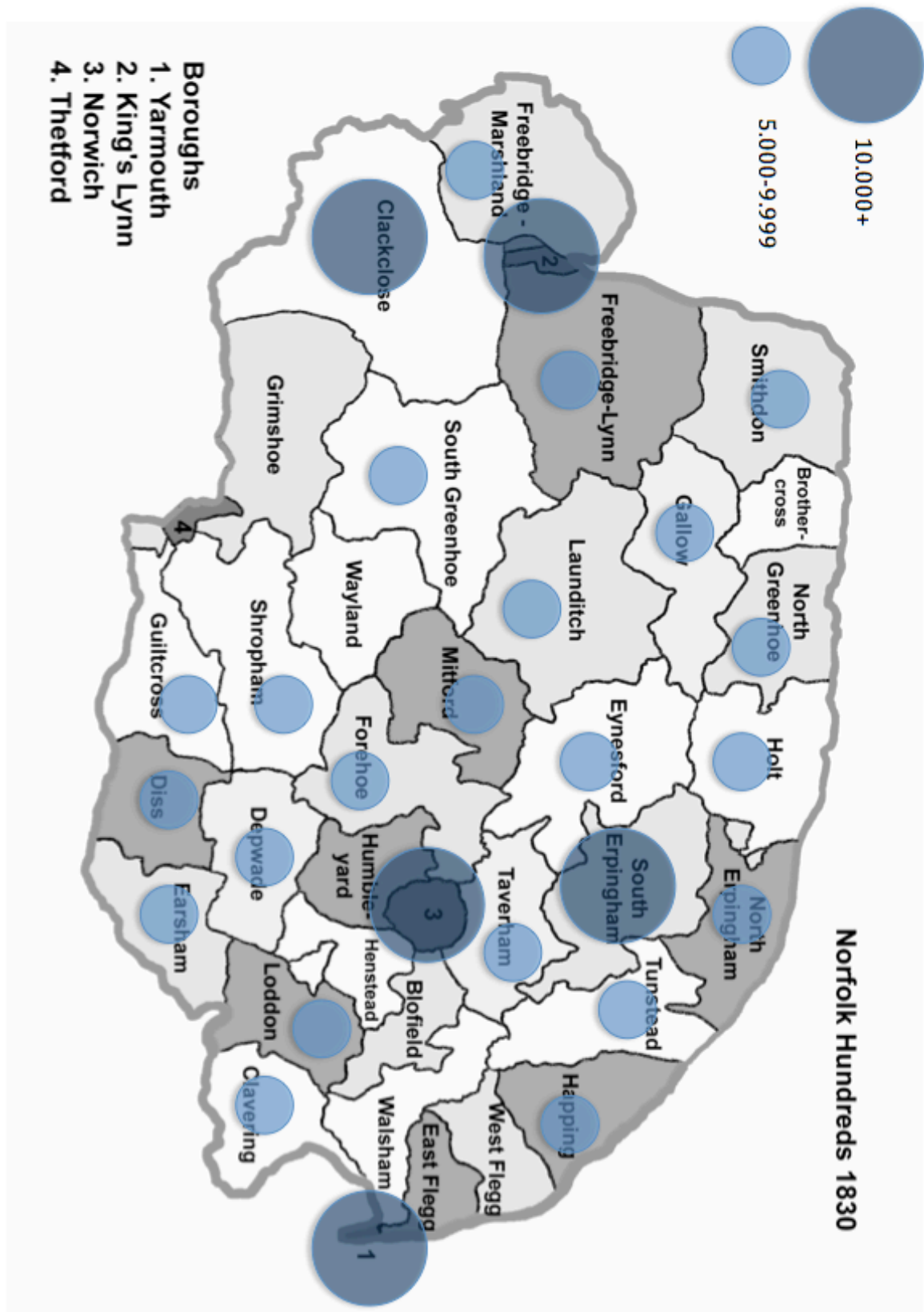
1821

Hundred	Population	Majority Occupation
Bath City and Bath Forum	53426	Manufacture
Frome	20565	Manufacture
Winterstoke	17119	Agriculture
Chew and Chewton	16066	Agriculture
Willerton and Freemanners	14026	Agriculture
Whitestone	12004	Agriculture
Hartcliffe with Bedminster	11419	Manufacture
Whitley	11408	Agriculture
Taunton Dean	10401	Agriculture
Wells Forum	10130	Agriculture

1831

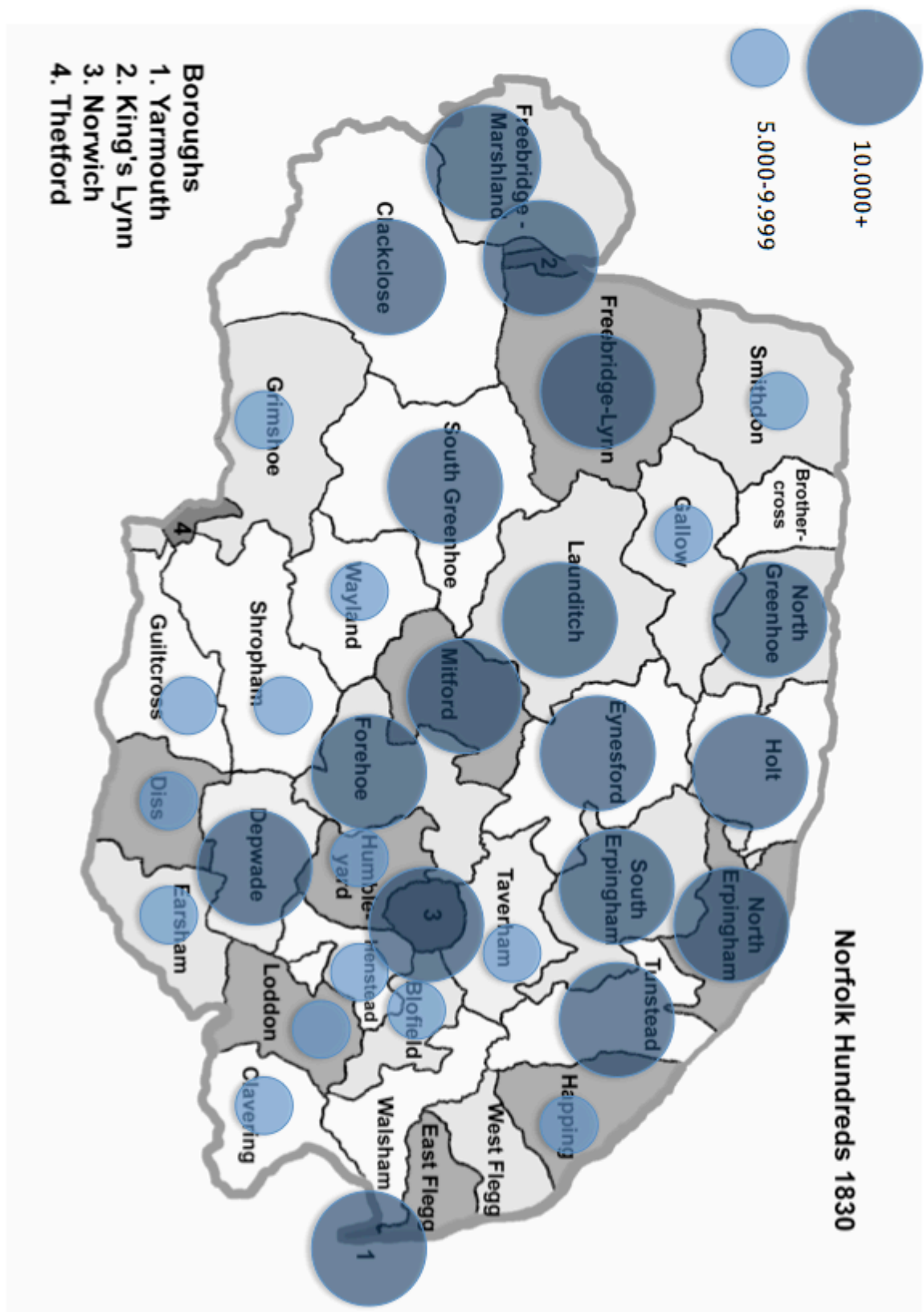
Hundred	Population	Majority Occupation
Bath City and Forum	59172	Manufacture
Taunton and Taunton Dean	22427	Town: Manufacture T. Dean: Agriculture
Frome	19884	Manufacture
Winterstoke	19511	Agriculture
Chew and Chewton	17932	Agriculture
Hartcliffe w. Bedminster	17047	Manufacture
Willerton and Freemanners	14717	Agriculture
Whitley	12794	Agriculture
Whitestone	12412	Agriculture
Wells Forum	11420	Agriculture
Abdick and Busltone	11231	Agriculture

### 3. Norfolk Population Distribution 1801



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#### 4. Norfolk Population Distribution 1831



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**Figure 3. Norfolk Population 1801 10,000-5,000**

Hundred	Population 1801
Norwich	36832
Great Yarmouth	14845
Clackclose	11720
Erpingham South	11487
Kings Lynn	10096
Forehoe	9508
Launditch	9484
Tunstead	8398
Eynesford	8175
Freebridge Lynn	8051
Mitford	7960
Depwade	7780
Greenhoe North	7516
Holt	7486
Greenhoe South	7277
Diss	7072
Erpingham North	7043
Earsham	6955
Freebridge Marshland	6534
Shropham	6487
Gallow	6305
Smithdon	5963
Loddon	5389
Guiltcross	5317
Clavering	5116
Taverham	5111
Happing	5095

**Figure 4. Norfolk Population Tables: hundreds with population 10,000 +**

1811

<b>Hundred</b>	<b>Population</b>	<b>Majority Occupation</b>
Norwich	37236	Man
Great Yarmouth	17977	Man
Clackclose	13311	Agr
Erpingham South	11612	Agr
Forehoe	10263	Agr
Kings Lynn	10259	Man

1821

<b>Hundred</b>	<b>Population</b>	<b>Majority Occupation</b>
Norwich	50288	Man
Great Yarmouth	18040	NA
Clackclose	16277	Agr
Erpingham South	12909	Agr
Kings Lynn	12253	NA*
Forehoe	12192	Agr
Launditch	11483	Agr
Freebridge Lynn	10537	Agr
Mitford	10158	Agr

1831

<b>Hundred</b>	<b>Population 1831</b>	<b>Majority Occupation 1831</b>
Norwich	61116	Man
Great Yarmouth	21115	NA
Clackclose	17663	Agr
Erpingham South	14898	Agr
Forehoe	13838	Agr
Kings Lynn	13370	Man
Launditch	12639	Agr
Freebridge Lynn	12227	Agr
Mitford	11495	Agr
Freebridge Marshland	11274	Agr
Eynesford	10957	Agr
Tunstead	10593	Agr
Holt	10416	Agr
Greenhoe North	10411	Agr
Greenhoe South	10237	Agr
Erpingham North	10160	Agr
Depwade	10031	Agr

## *Appendix 2: Distribution of Magistrates by Hundred*

Maps 1-4: Somerset, 1801-1831

Maps 5-7: Norfolk 1811-1831

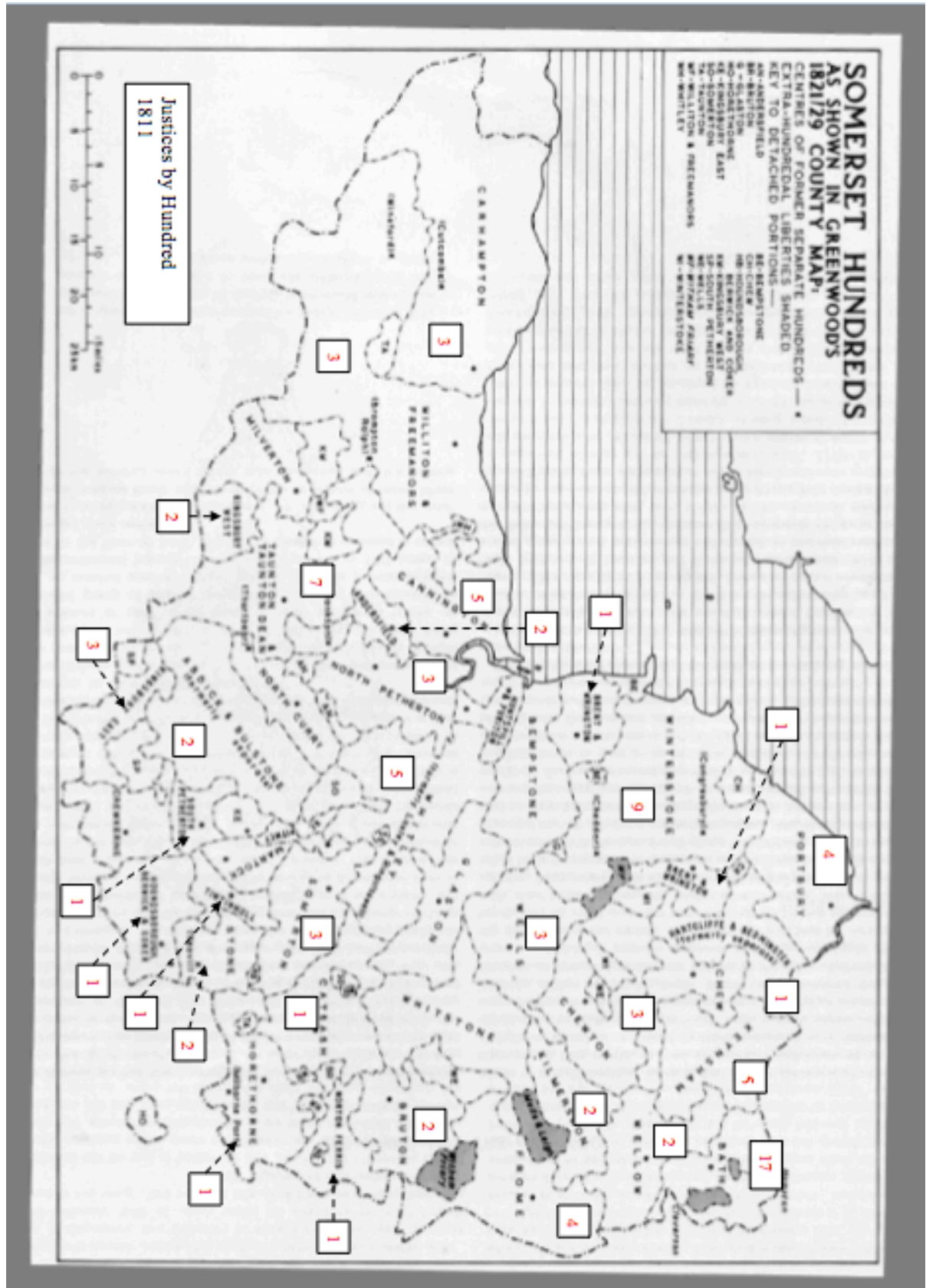
Data sources: NRO: C/Sda 1/14-18 Commission of the Peace 1798-1830; SRO: Q/JC/119-124, Commission of the Peace 1794-1830, TNA: C220/9 8 and 9, books of the Petty Bag Office  
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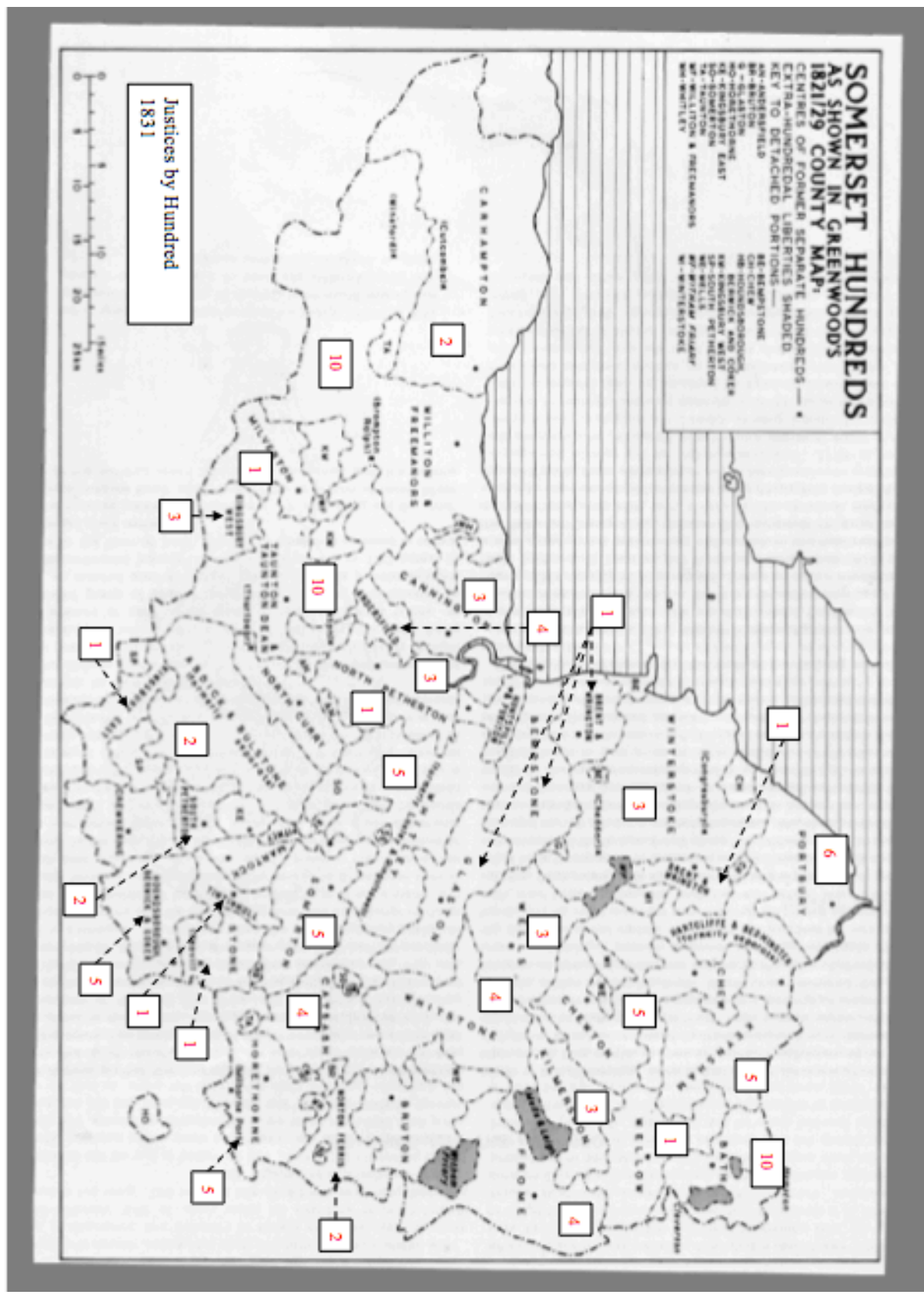
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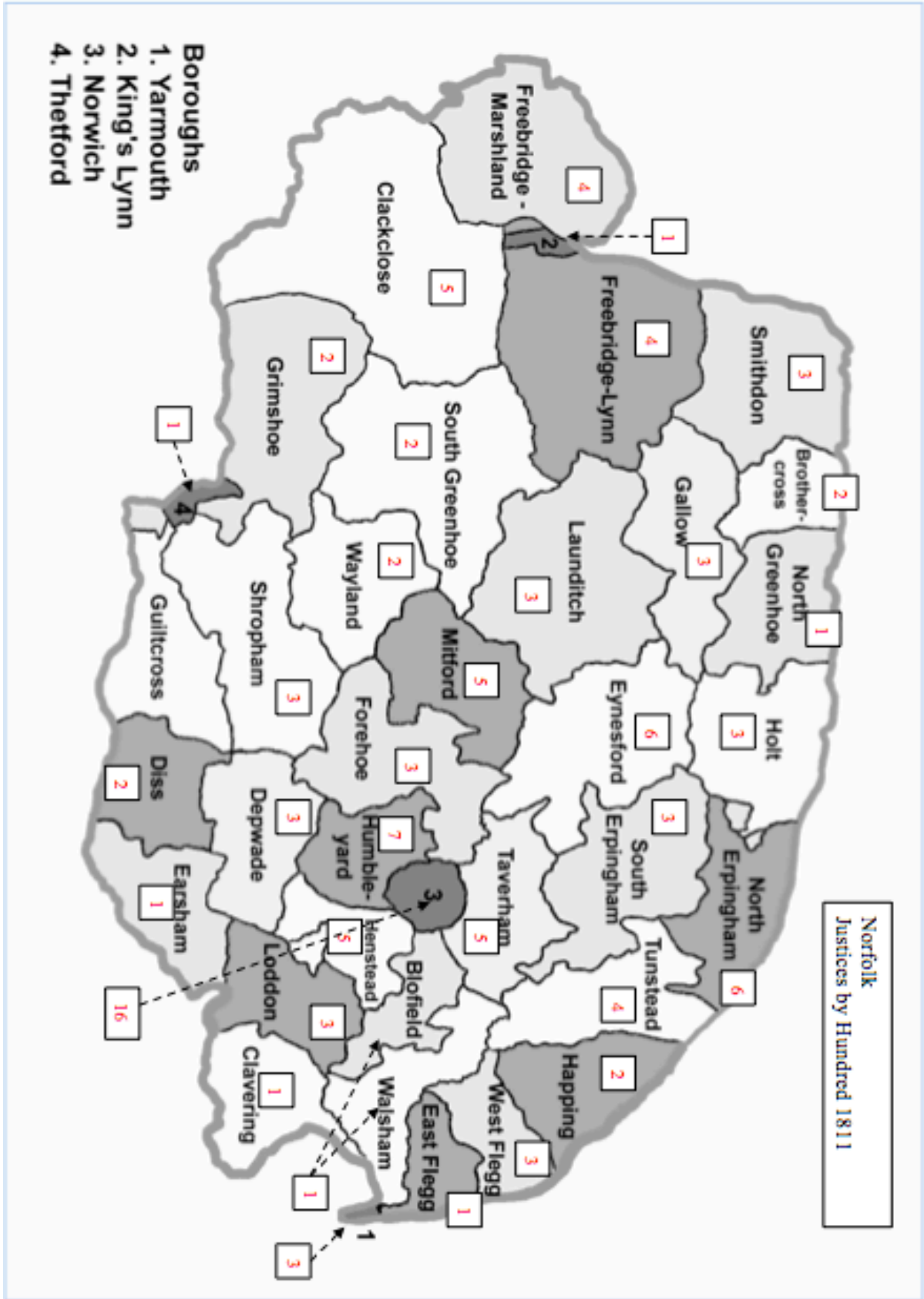


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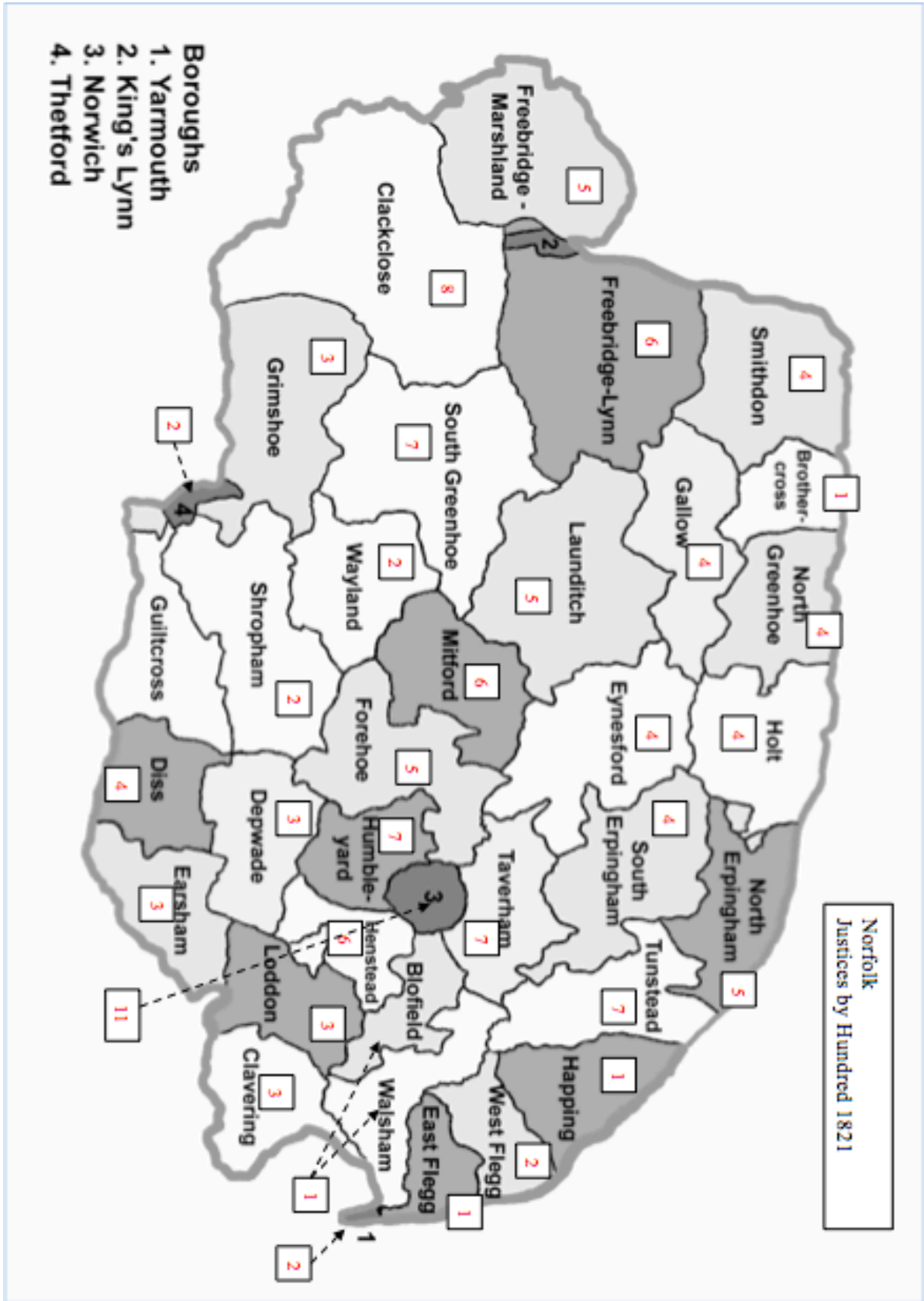
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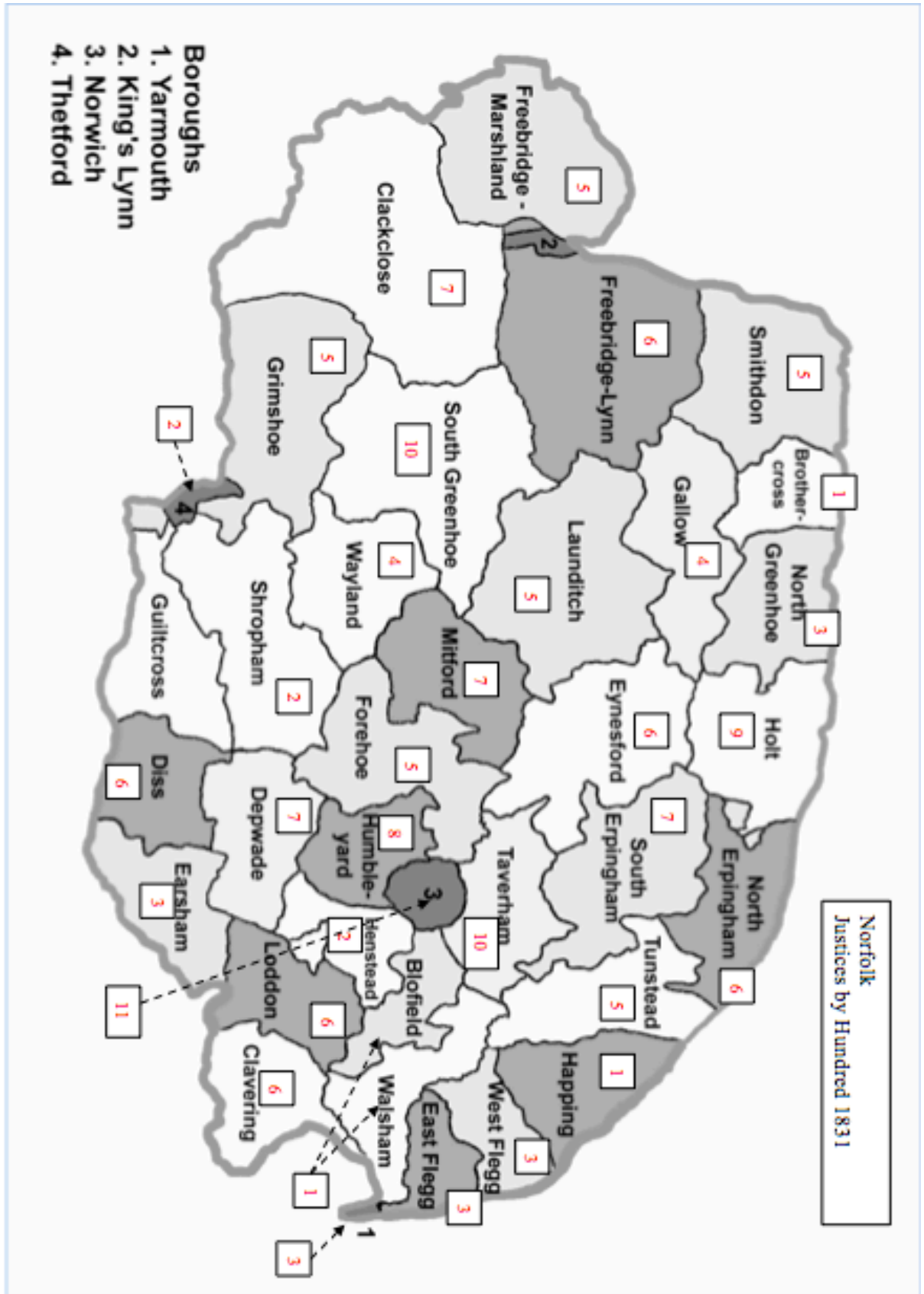
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*Appendix 3: Justices at Quarter Sessions*

1. Somerset 1790-1831
2. Norfolk 1790-1831

Source: SRO: Q/SO/16-21; NRO: C/S 1 MF 657-660

## 1. Somerset 1790-1831

Source: SRO: Q/SO/16-21. Five-year sample plus years included in protest analyses.

Bridgwater

Total sessions over sample period = 12

Bridgwater sessions only held in summer, generally July

Taunton

Total sessions over sample period = 11

Taunton sessions held in October annually

Wells

Total sessions over sample period = 22

Wells sessions were biannual, Epiphany and Easter

<b>Bridgwater</b>						
<b>JP ID</b>	<b>Name</b>	<b>No. of sessions</b>	<b>Span years</b>	<b>Also at Taunton</b>	<b>Also at Wells</b>	<b>Local</b>
227	Parsons, H.	11	36	6	1	TRUE
56	Dickinson, Wm.	10	36	9	12	FALSE
47	Combe, R. T.	9	31	9	17	FALSE
577	Wollen, W.	9	30	0	0	TRUE
30	Allen, J	6	35	2	2	TRUE
69	Evered, J.	6	30	3	3	FALSE
279	Acland, J.	6	26	6	8	TRUE
477	Templer, G. H.	6	20	0	4	TRUE
586	Brickdale, M.	6	20	3	6	FALSE
642	St. Albyn, L.	6	16	4	3	TRUE
659	Blake, M.	6	16	6	10	FALSE
754	Poole, T.	6	16	5	10	TRUE
217	Gale, J.	5	29	6	1	FALSE
248	Hales, P.	5	26	0	0	FALSE
254	Elton, A.	5	21	4	10	FALSE
433	Phelips, J.	5	15	4	7	FALSE
481	Tynte, C. K.	5	29	3	3	FALSE
778	Stuckey, V.	5	16	6	8	FALSE
89	Hanning, Wm.	4	21	7	11	FALSE
171	Templer, Geo.	4	11	2	4	TRUE
218	Guerin, J.	4	31	5	4	FALSE
301	Burland, J. B.	4	11	2	9	FALSE
499	Warre, J. T.	4	11	3	3	FALSE
535	Hobbs, T.	4	20	0	2	FALSE
570	Warre, F.	4	20	7	5	FALSE
639	Acland, P.P.	4	15	4	2	TRUE
735	Matthew, J.	4	11	0	4	TRUE
775	Stone, W.	4	15	6	2	FALSE
840	Phippen, R.	4	15	3	8	FALSE
464	Sanford, W. A.	3	35	5	3	FALSE



<b>Taunton</b>						
<b>JP ID</b>	<b>Name</b>	<b>No. of sessions</b>	<b>Span years</b>	<b>Also at Bridgwater</b>	<b>Also at Wells</b>	<b>Local</b>
47	Combe, R. T.	9	31	9	17	TRUE
56	Dickinson, W.	9	36	10	12	FALSE
89	Hanning, W.	7	31	4	11	TRUE
403	Luttrell, J. F.	7	34	0	0	FALSE
570	Warre, F.	7	11	4	5	TRUE
217	Gale	6	30	5	1	TRUE
227	Parsons, H.	6	34	11	1	FALSE
279	Acland, J.	6	26	6	8	FALSE
424	Pinney, J. F.	6	16	0	3	FALSE
472	Tripp, H.	6	31	2	0	TRUE
659	Blake, M.	6	16	6	10	TRUE
775	Stone, W.	6	16	4	2	TRUE
778	Stuckey, V.	6	16	5	8	FALSE
218	Guerin, J.	5	31	4	3	TRUE
464	Sanford, W.A.	5	35	3	3	FALSE
754	Poole, T.	5	16	6	10	FALSE
254	Elton, A.	4	15	5	10	FALSE
426	Popham, A.	4	11	0	1	FALSE
433	Phelips, J.	4	11	5	7	FALSE
545	Luxton, L. H.	4	10	3	2	TRUE
639	Acland, P. P.	4	15	4	2	FALSE
642	St. Albyn, L.	4	16	6	3	FALSE
666	Carew, G. H.	4	10	0	0	TRUE
674	Clarke, J.	4	16	0	0	FALSE
762	Sanford, E. A.	4	11	3	6	TRUE
808	Hobhouse, H.	4	21	2	7	FALSE

<b>Wells</b>						
<b>JP ID</b>	<b>Name</b>	<b>No. Sessions</b>	<b>Span years</b>	<b>Also at Bridgwater</b>	<b>Also at Taunton</b>	<b>Local</b>
254	Elton, A.	19	31	5	4	FALSE
47	Combe, R.T	12	36	9	9	FALSE
56	Dickinson, W.	12	36	10	9	FALSE
89	Hanning, W.	11	31	4	7	FALSE
25	Turner, J.	10	25	0	0	TRUE
93	Horner, T. S.	10	16	0	0	TRUE
213	Gould, H.	9	25	2	0	TRUE
301	Burland, J. B.	9	11	4	2	FALSE
279	Acland, J.	8	30	6	6	FALSE
448	Sherston, P.	8	11	0	0	FALSE
692	Doveton, J. F.	8	21	2	1	TRUE
800	Whalley, R. T.	8	15	0	0	FALSE
840	Phippen, R.	8	16	4	3	FALSE
302	Band, J.	7	11	1	0	TRUE
412	Morgan, F. B.	7	11	1	2	TRUE
433	Phelips, J.	7	11	5	4	FALSE
651	Barrow, J.	7	16	2	2	TRUE
749	Phillott, J. S.	7	11	1	0	TRUE
802	Williams, T.	7	21	0	0	FALSE
808	Hobhouse, H.	7	16	2	4	FALSE
102	Jolliffe, T.S.	6	11	1	1	FALSE
328	Drake, F.	6	10	3	2	TRUE
397	Langton, W. G.	6	20	3	2	FALSE
586	Brickdale, M.	6	11	6	3	FALSE
812	Hood, A.	6	11	2	0	FALSE
822	Bathurst, J.	6	6	3	1	TRUE
655	Bennett, J. Jnr	5	6	1	1	FALSE
888	Rous, G.	5	6	0	0	TRUE
558	Methuen, J. R.	4	6	0	0	TRUE
870	Lee, J. L	4	2	1	2	FALSE
659	Blake, M.	10	16	6	6	FALSE
754	Poole, T.	10	16	6	5	FALSE
762	Sanford, E. A.	11	6	3	4	FALSE
778	Stuckey, V.	8	16	5	6	FALSE
779	Taylor, E.	4	10	3	2	FALSE

## 2. Norfolk Sessions 1790-1831

Source: NRO: C/S 1 MF 657-660

Holt: 30 Sessions in the sample; twice a year (by adjournment)\*

Little Walsingham: 34 sessions in the sample; twice a year\*

Norwich: 87 sessions in the sample; four times a year\*

Kings Lynn: 47 sessions in the sample; three times a year \*

Swaffham: 16 sessions in sample; met once a year\*

<b>Holt</b>								
<b>JP ID</b>	<b>Name</b>	<b>No. Sessions</b>	<b>Span years</b>	<b>Also at KL</b>	<b>Also at LW</b>	<b>Also at Nor</b>	<b>Also at Sw</b>	<b>Local</b>
84	Collyer, C.	20	28	0	18	6	0	FALSE
329	Girdlestone, Z.	15	30	0	5	1	0	TRUE
451	Thomlinson, J. W.	13	20	0	2	1	0	TRUE
330	Gay, J.	11	33	0	5	6	0	TRUE
60	Astley, J. H.	10	33	0	5	2	0	TRUE
178	Sandiford, P.	10	23	1	11	3	0	FALSE
73	Jodrell, H.	9	20	0	0	13	0	TRUE
186	Norris, R.	9	30	0	13	3	0	TRUE
324	Elwin, M.	8	10	0	2	25	0	TRUE

<b>Little Walsingham</b>								
<b>JP ID</b>	<b>Name</b>	<b>No. Sessions</b>	<b>Span years</b>	<b>Also at Holt</b>	<b>Also at KL</b>	<b>Also at Nor</b>	<b>Also at Sw</b>	<b>Local</b>
84	Collyer, C.	18	30	20	0	6	0	FALSE
186	Norris, R.	13	21	9	0	3	0	TRUE
171	Hoste, D.	12	33	1	0	0	1	FALSE
415	Langton, W. H.	12	21	1	0	0	0	TRUE
178	Sandiford, P.	11	21	10	1	3	0	TRUE

Norwich								
JP ID	Name	No. Sessions	Span years	Also at Holt	Also at KL	Also at LW	Also at Sw	Local
14	Beevor, T.	34	25	0	0	0	0	TRUE
133	Plumptre, R.	29	25	0	0	0	0	TRUE
324	Elwin, M.	25	10	8	0	2	0	FALSE
247	Fellowes, R.	21	28	0	0	0	0	TRUE
152	Evans, T. B.	18	20	0	0	0	0	TRUE
208	Postle, J.	18	15	0	0	0	0	TRUE
0	Suffield, E.	16	16	0	0	0	0	TRUE
1	Bacon, E.	14	15	1	0	0	0	FALSE
73	Jodrell, H.	13	20	9	0	0	0	FALSE
117	Adiar, W.	13	20	0	0	0	0	TRUE
275	Beevor, T Jnr	13	21	0	0	0	0	TRUE
321	Dillingham	13	6	0	0	0	0	FALSE
0	Kerrison, R.	11	10	0	1	0	0	FALSE

Kings Lynn								
JP ID	Name	No. Sessions	Span years	Also at Holt	Also at LW	Also at Nor	Also at Sw	Local
115	Dering, J. T.	37	39	0	0	0	12	TRUE
220	Folkes, W. J. H.	24	21	0	1	2	3	TRUE
25	Rolfe, E.	19	36	0	0	0	1	TRUE
69	Coldham, J.	19	28	0	0	0	2	TRUE
366	Rishton, M. F.	19	24	0	4	0	3	TRUE
11	Folkes, M. B.	18	30	0	0	3	3	TRUE
335	Hoseason, T.	17	16	0	0	1	2	TRUE
40	Hamond, A.	16	36	0	1	0	2	TRUE
70	Styleman, H.	14	26	0	1	0	1	TRUE
399	Parke, B.	14	10	0	0	0	0	TRUE
112	Hare, T.	13	28	0	0	1	1	TRUE
294	Wood, P. S.	12	3	0	0	0	2	TRUE
99	Plestow, T. B.	11	6	0	0	2	1	TRUE
373	Tyssen, S.	11	16	0	0	0	6	TRUE

Swaffham								
JP ID	Name	No. Sessions	Span years	Also at Holt	Also at KL	Also at LW	Also at Nor	Local
115	Dering, J. T.	12	39	0	37	0	0	TRUE
24	Mason, W.	6	15	0	0	0	1	TRUE
196	Yonge, W.	6	31	0	3	0	0	TRUE
373	Tyssen, S.	6	16	0	11	0	0	TRUE
318	Caldwell, R.	5	15	0	7	0	1	TRUE
66	Parry, Edw.	4	5	0	1	0	0	TRUE
98	Smith, J.	4	6	0	0	0	1	FALSE

#### *Appendix 4: Map Sources*

For Maps 3.1-3.4, pp. 116-9

Source: Mells Manor Muniments: Thomas Horner, papers and correspondence 1795; TNA: HO 42/34, 42/36, 42/50, 42/61, 42/51; WO/1/1093; KB 29/462, KB 1/29/1-2; NRO: C/S 1/15 QS Sessions books; MF/RO 36/1 NCR Case 20a/25 City of Norwich Quarter Sessions Minute book 1794-1807; SRO: Q/SO/17 Quarter Sessions order books; DD/AH 59/12; DD/MT/19/1/1; *Bath Chronicle 1795-1801*; *Bath Journal 1800-01*; *The Times, 1795-1801*; *Norfolk Chronicle 1795-1801*, *Norwich Mercury 1795-1801*; *Bury and Norwich Post, 1800-01*; *Ipswich Journal 1800-01*; B. Cozens-Hardy (ed) *Mary Hardy's Diary (Norfolk Record Society 1968)*; S. Poole, "Popular Politics in Bristol, Somerset and Wiltshire, 1791-1805" (PhD thesis, University of Bristol 1992), Appendix C.

For Maps 4.1 and 4.2, pp. 182-3

Source: Survey of Correspondence re Norfolk and Somerset TNA: HO 52/9; Somerset (SRO: Q/SO/21) and Norfolk (NRO: C/S 1/ Quarter Sessions Minute Books 1830-31; Calendars of Prisoners for Assize for Norfolk (MF/RO 36/1) and Somerset 1830-31 (DD/MT/19/1/1); *Norwich Mercury* and *Norfolk Chronicle*, *Bath Chronicle* and *Bath Journal 1830-31*; SRO: Q/JCP/7, Correspondence pertaining to the Commission of the Peace in Somerset 1830.

Maps of Norfolk and Somerset by F. S. Weller, originally published in *The Comprehensive Gazetteer of England and Wales, 1894-5* (London and Edinburgh: William Mackenzie 1894-5)

Digital images available from the UK Genealogy Archives:

<http://ukga.org/images/maps/Norfolk.jpg>

<http://ukga.org/images/maps/Somerset.jpg>

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Q/SO Quarter Sessions Order Books  
Q/SR Quarter Sessions Rolls  
Q/RCC Petty Session Returns  
Q/AGI/14, Q/AGS/14, Q/AGW/14 registers of prisoners, Ilchester, Shepton Mallett and Williton gaols  
Q/SCA/1-30 Calendar of Prisoners: Assize, 1829-30  
Q/SCS/28-59 Calendar of Prisoners: Quarter Sessions, 1829-30  
Q/C/3/7 Correspondence from Justices Clerks listing local magistrates and frequency of their meetings, 1819  
Q/C/5 Petty Sessional Divisions 1829-30  
DD/SAS/C2402/37, map of petty session divisions, 1831  
DD/MT/19/1/1 Assize Calendars  
DD/TB/55/24/32 Crowcombe Court Manuscripts, Taunton Lent Assize, 1801  
DD/AH 59/12 Acland Hood of Fairfield Manuscripts, Stogursey corn disturbance papers 1794-1801  
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C/Sda 1/14-18 Commission of the Peace 1798-1830  
MF/RO 36/1 Marsham Papers, Assize Calendars  
NCR Case 20a/25 City of Norwich Quarter Sessions Minute book 1794-1807  
C/Saa 1/15 Records of Gaol Committee and Visting Justices, 1828-1835  
BL/AB 16/3/1-2 Bradfer-Lawrence Collection, abstracts of title, sale particulars etc, 1716-1814  
MC 36/180-184, 543X2 Preston of Beeston Collection, Letters from George First Marquess Townshend, 1755-1764  
WLS XLIX/54, 426X9 Walsingham (Merton) Collection, estate and personal correspondence and papers, 1830

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