

## PROLOGUE

In every complex modern society there is a State. A State is a set of related structured practices—which we usually call the legislature, the judiciary and the executive—whose object is to ensure that all citizens perform their socially allotted duties. This ensures that society—or the social relations of production—will reproduce itself structurally unchanged *ad infinitum*.

How States achieve these goals is the basis for distinguishing between them. First there is the structural and sometimes historical difference between *pre-modern* and *modern* States. Here what is most important is that the former did not and do not attempt to secure the active participation in, and support of, the population for State arrangements, while the latter rely for their power on the active consensus of the majority of their citizens in their claim to a legal monopoly of coercive power in society. Second, modern States themselves differ in the degree to which each relies on the different arms or combinations of arms of the State. Depending on time and place, some rely more on the legislature than the judiciary or the executive and *vice versa*, thus making this or that combination of agents of those structures the decision-makers in the last instance in all conflicts about the distribution of power within the State.

Since the privileged arm/s of the State are the ultimate locus of power in any society they are able to distribute social goods in different ways to different classes and groups. Thus the latter struggle for control of the State machinery and in particular the prized positions within their particular society. These can be either judicial, executive or legislative positions, or any combination of these.

What determines that distribution is the nature of the particular majority consensus in that society, that is, what popular attitudes are commonly held in that society as what we sometimes call the national “character” or “ideology”. So the way the national “character” develops is very important for the way a State functions.

This fact was recognised early in the accounts of the development of the nation or modern States in the nineteenth century. Usually these were seen as the result of the development of nationalist movements supposedly based on resistance to foreign oppressors. The account

was common whether the latter were the Austrians in Italy, the French in Spain, the Spanish in Latin America or the British in India and so on. National sentiment was seen as a naturally given prerequisite for State-building. Frequently, recent research has shown that those nationalist movements were limited to a small élite and were in no way popular in the sense of receiving active mass support from the population of the putative nationalities. Indeed, those nationalities did not exist as conscious realities, even when they were supposed to be all-important. Rather they were created afterwards by the State itself as a result of ruthless suppression of ethnic difference.

This latter research has re-emphasised the importance of the State in producing the national consciousness or ideology through practices which, while perhaps not having “national sentiment” on the neon sign at the top of the hill, added up to the production of a particular type of citizenry within the jurisdiction of the State.

The logical contradiction of the chicken-and-egg type—either the citizen produces the State or the State the citizen—is unreal. Once Karl Marx’ admonition to give up the problem of what begets what is followed, a historical or “non-abstract” solution is quickly reached. It is clear that the pre-modern State, in order to meet needs created by changes in the mode of production from feudalism to capitalism, slowly created a new type of political being, the citizen. In this way the State changed its own form in the same process. When the citizens, or active supporters of the existing system, were born, they were thus born together with the modern State, and were the real basis of its power, the bricks of the edifice. The revolutionary constitutions of the United States and France made this popular sovereignty quite clear, formally recognising that the democratic citizen and the capitalist State were like a Janus mask.

The way in which citizens appropriate to the new mode of production and social relations of production of the modern world of capitalism were formed can be described generally as follows. Often with the best of motives those who held power in the pre-modern State forced the populace into certain patterns of activity or practices: they disciplined them, cleansed them, educated them and gave them religion, sometimes of a lay sort. To do so they had to set up institutions of a new sort and fit them into existing State machinery, which meant altering it. Thus there were created a police force and new prison system; an education and a health system, directed at the reform of the entire population with a view to ensuring that they would be at work on time and work efficiently and disciplinedly while there. The altruism of the prison, educational and health reformers of the nineteenth and twentieth centuries is undeniable. Most sought to fit those under their tutelage for a new world by making them more orderly, healthier and more cultured. But even the most caring of institutions like hospitals had their routines of discipline which were enforced. Conversely, the most coercive, like the police, exercise the benevolence of blue-light discos.

All these structured practices had the object of reforming the person. In all cases the test of whether an individual had attained the requisite degree of reformation was his or her fitness for work. The test of social functionality was whether an individual could work. Work—and the realm of values derived from labour—was the crucial area when it came to measuring the effectiveness of State power. Power and its pursuit, or politics, thus was articulated with economics on the level of work and its organisation or the labour process. Those who owned the labour—through purchasing it—which everyone was schooled by the State to provide, therefore benefited most from the rationalised structure. The reason-guided or rationalised political universe being produced worked for the capitalist mode of production. Since it was not its expression it was not determined by economic developments of the mode of production, or immediately referable to it. On the contrary it functioned according to its own separate, though related, logic.

The effect, if not the conscious goal, of all of these reforming innovations was to put every person in the right place at the right time: at the right place in the production line where society was reproduced when the bell tolled and in bed with the right person when the working day was over. An ever-dwindling minority of people escaped from the enmeshing net of socially regulatory practices. Such people were always seen as a threat to the process of extending consensual or hegemonic rule to the majority. But as their world disappeared their views could be correctly presented as socially unreasonable, and ultimately as mad. In fact, they were seldom more than individuals who, having been through the mill, still refused to be disciplined to accord with the requirements of the capitalist society, unlike the majority. The coercive might of the State, growing ever stronger as more and more citizens became part of its power on being successfully reformed, was directed towards making them see reason. Their existential cries were finally almost totally stifled as they constituted more and more of the “irrecuperable” denizens of prisons, lunatic asylums, reform schools and hospitals.

Contrarily, those who learned to fit in were rewarded by being empowered through being given a particular sense of self and required to express it. The more they learnt their places and conformed, the more they acquired a sense of themselves as subjects and therefore individuals. As they were named, so they acquired their identity. For example, by subordinating themselves to the marriage laws of the State (something not done before 1753 in Britain), both parties obtained a status and identity which was passed on to their children who became “somebodies” through being able to reply to the question: “Who are you?” “I am Joe Blow.” That is, the son of Father Blow and Mother Blow in a family system given authority by the State. The catch was that Joe only established himself as a subject by referring to his subjection to a name that was given to him, over which he had no control. This process of singling themselves out as separate beings and thus unique could only proceed by layering more and more of such subordinations on to the original one which started before they were even born. To be Joe Blow, student, they had to accept the authority of the education system. Had they not done so they could not have been “student” and therefore different from apprentice-carpenter. When critics wrote later of the *angst* this produced, whether as that of the alienated individual or the lonely crowd, their concern was misdirected. No one could be an “anybody” unless they “got ahead” through accepting the system.

The loneliest people in this world were in fact the people who refused it, dropped out, and frequently ended in an isolation cell or strait-jacket. If it is true that the life of modern citizens provided little emotional or spiritual nourishment and ever more barren souls, it was increasingly the only life, and to choose against it made the resister subject to terrible sanctions. In societies where for the vast majority the only life they would lead would be ordered, regular and functional to the system, alternatives would have made them unhappy. These alternatives could only be known to model citizen-individuals as irrelevant fantasies or utopias. Since they did not live them in any way, they could not believe in them. This is not to say that their imaginary life was bounded by the material reality within which they acquired a sense of themselves. Dreams could not be controlled. Nor could the nostalgic myths and legends of other earlier ages passed down to console them. Often these dreams and myths were, however, peopled with terrible threats to order and stability—to the knowing of their place which allowed them to pass between Scylla and Charybdis. They knew that pockets of resistance to their world still existed—strangely bizarre places on which beliefs like anarchism fed. Some knew, through reading Sade, Soren Kierkegaard, Max Stirner and Frederick Nietzsche, that the orderliness of their lives hid the suppression of the other world of passions. But the nightmarish qualities of such demoniacal criticism made such writers the loneliest figures of the world—a terrible price to pay for living such views. In no way could

model citizen-individuals believe in the other, more positive dream of a world united organically by bonds of humanity, comradeship and trust. Who but a fool would leave a house unlocked? Maturity was coming to terms with life: not being a Don Quixote, though one could still play at being a Don Quixote.

Against the impracticality of dreamers, there was the reality that once made into subjects by subjection, each individual could stand up as a democratic citizen observing rules for action and was then faced with a State which in producing her/him was their own mirror image. Except for the marginalised critics it was basically not a coercive but an organising State, a regulariser and smoother of conflict; neutral in its administrative demeanour and following lawful rules of operation. This State embodied organisationally the most prized and rewarded virtues of a society seeking to leave behind the disorder of the passions, the arbitrary and irregular. It had balance, moderation, the avoidance of extremes and absolutes. It expressed a world of mediation and compromise of interests.

The organisers of the myriad social functions of the State were the more prized by the majority the more they attained that serene, disinterested attitude of being *au dessus de la mêlée*. Wisdom contained no passion; sensuousness and life were evacuated from it. Such societal reason was what went on in the heads of these organisers, and to them the population paid deference as those who “do not know” do to those that “do know”. They constituted a new priesthood located in the key decision-making positions of the society, strong in the knowledge that they enjoyed popular support for their last say on social arrangements. Yet they could only see matters from their point of view, according to and within the rationality of the State and its subset of their particular organisation. Had the adviser to the minister attempted to write his report in poetry, the poor fellow would have been packed off for a rest cure.

It thus becomes essential for an understanding of the nature of the modern State to see not only what the specific nature of the privileged modes of reason are but also which other modes they exclude. The point is not merely to establish that the people through consensus give the State its power—a power unheard of in a despotism—but also that they accord power to particular places and processes in that State. The modern State is not uniform except in structure. Each State has emerged from a different history where remnants from past classes and structures resisted with greater or lesser success the hegemonising reorganisations of social practices or lives within certain borders, and each State is consequently specifically different from any other. Even where the privileged arm is the same in two States—it is often argued that all is subordinate to law in former British States—the structure and form of the reason within that arm may be different.

The emergence of the modern State in Britain illustrates clearly these generalisations. In it there is both the common Europe-wide theme of the replacement of a system of coercive by hegemonic, or administrative, rule in the eighteenth and nineteenth centuries and the way this necessarily took on a particular, differentiated structure in the history of that emergence.

### *The European model*

When the transformation began England was ruled by a rough, corrupt and slightly blood-thirsty class of aristocrats and landed gentry. They controlled practically all offices of State and the judiciary and owned the supreme law-making body of Britain, the parliament whose seats they inherited, bequeathed, and bought and sold. The English monarch was already little more than a figurehead who swore before he or she was crowned never to pretend to the power of suspending or executing laws without the consent of parliament.<sup>1</sup>

The rulers usually left the populace to manage their own affairs in time-immemorial fashion. But when it came to punishing those who threatened the social order they were draconian in the punishments they meted out. This they did in their capacity as the “hanging” judges of the assizes which visited country centres twice a year. The population was then treated to the theatre of the courts and the public executions intended to remind it of the terrifying power of the rulers. Suddenly, in the space of little more than a lifetime, gibbets disappeared from the English landscape. With them disappeared the millennially old world in which social and State power depended on terror.

A new system of power had emerged by 1832. By that year the old ruling class no longer ruled, it led. How and why had this happened?

Let us start to answer by making sense of a single letter which Allan Ramsay, Scotsman, wrote to Denis Diderot, Langrois, in late January 1766. The bulk of Ramsay’s letter concerned a third very successful book by Cesare Beccaria, Milanese, published in 1764 and which was a best-seller throughout Europe. It was entitled *Crime and Punishment*.<sup>2</sup>

The letter was merely one example of traffic in ideas which not only spanned western Europe and was heedless of national frontiers but also took place between people who would later take up different political opinions. Grimm’s *Correspondance littéraire* symbolically centralised this traffic in Paris where it would contribute to social and political revolution. It also flowed to England, Scotland and Ireland where one of the people mentioned in the letter would become famous as the brother of the greatest opponent of the French Revolution.

Beccaria had become the cult figure of this élite of correspondents because of his book. Coming from a society whose brutality and arbitrariness were much worse than those of England, he had shuddered with horror at “so many terrible and useless torments” imposed as retribution by the rulers on the population of the Italian peninsula. His book argued that:

In order for any punishment not to be a violence by one or many against a private citizen, it should be essentially public, prompt, necessary, the least possible in the given circumstances, proportionate to the crime, and dictated by the laws.<sup>3</sup>

Such sensibilities certainly struck a chord with some readers. Voltaire (François Marie Arouet) echoed it in his *Commentaire à Beccaria*, where he bewailed the execution for infanticide of “a beautiful, well-made, accomplished” girl. What most excited his readers was Beccaria’s assertion that in making punishment fit the crime, criminals could be reformed and ultimately society would be saved from harm.<sup>4</sup>

We can make sense of the letter only by looking outside it, as the network of correspondents and readers of *Crime and Punishment*—whether or not they agreed with Beccaria—read the book in the context of other ideas. To explain his success it is necessary to put these ideas together in a certain structure. Fundamental were those elaborated in the French *Encyclopédie* which had many imitators. Under the editorship of Diderot, Ramsay’s correspondent, the multivolume mother of encyclopaedias proposed simply that if statements were limited to what could be empirically proven, they would be of universal validity. They then could be used to enlighten mankind about the right order needed everywhere for social life. The result would be greater happiness for all.<sup>5</sup> The followers of the Enlightenment were thus social engineers intent on radical social transformation. What Beccaria seemed to offer was a practical tool for translating their desires into practice. But it was a tool which presumed a raw material and a product of a particular type. Beccaria identified the raw material as an “essential man”, whose laws of operation determined even the latter’s taste and style of expression.<sup>6</sup>

The members of the network thought that it could be established empirically what the workings of this man added up to. Indeed one of them wrote a book on Man as Machine. In Beccaria’s book these men-machines were seen as essentially good. To explain their



obvious departure from goodness he argued that history had corrupted them through the poor social arrangements which had existed. This was a notion he derived from Jean-Jacques Rousseau, another of his mentors. Closer in historical time for Beccaria were the arrangements of feudalism in decline. Beccaria thought that the sufferings of those who broke the laws of that society and were executed, tortured, sent to the galleys, or thrown into memory holes were explained by the inadequacy of legal systems based on feudal power. In turn the latter was based on a property system which excluded the exploding population of the seventeenth and eighteenth century from the sole means of livelihood. He believed that the system had made the population into “things”. Consequently, he believed that a complete rejection of history in favour of a totally new society suitable to the essential man should be the goal. This new society should be a centralised State with a universal set of standards applicable to all citizens since the latter were essentially the same. Once this was done they would change from things into “persons”.<sup>7</sup>

The goal of the regularised lawful intervention of the State in society, in the context of such a world-view, would have been obvious to many. It was summed up by Immanuel Kant late in the century as the creation of that individual who had the courage to use his own intelligence, to refuse the role of “guardians” claimed by others over him.<sup>8</sup> The rational citizen, once produced, would be the subject—not the object—of social forces. But since they would be created in his own image—he would be their mirror reflection—he would voluntarily support the rational centralised State. So Beccaria argued that the sovereign who would produce the laws which produced the citizen could only rule effectively as the expression of the “will of all”. On such a sovereign depended the efficacy of the laws. Thus he wrote:

every act of authority of man over man which is not essential is tyrannical. It is on this basis that the right of the sovereign to punish crimes is based: on the necessity to defend the deposit of the public good from particular usurpations; and the punishments are the more just, the more holy and inviolable is the security and the greater the liberty which the sovereign preserves for the subjects. Let us consult the human heart and in it we will find the fundamental principles of the true right of the sovereign to punish crimes, since there is no advantage to be hoped from political morality if it is not based on the indelible sentiments of man. Any law which deviates from this will always meet an opposing resistance which will win in the end, in the same way that any minimal force, continuously applied will beat any violent movement applied to a body.<sup>9</sup>

So Beccaria believed that law would be of no effect or reduced effect, if the power of the sovereign did not rest on the consensus of the subject. The presupposition was that both the sovereign and the citizen had a common capacity for reason and the law could be presented in the language of that reason. This continued the tradition of civil law and natural law, which went back two centuries and was explicitly the basis for Beccaria’s insistence that all laws be in a short simple code which anyone could understand.<sup>10</sup>

Initially his proposals were adopted only in minor Italian States but they were ultimately endorsed in the Civil and Criminal Codes of Napoleon to become the basis of the Europe-wide civil law system in the nineteenth century.

### *The English “time immemorial ways”*

The British Isles were not hospitable ground for such notions, because they contradicted the fundamental notions of the common law. Since the early seventeenth century English lawyers had refused the pretensions of all non-lawyers—including the monarch—to reason about the justice of the law. They argued that the law was an “ancient [and artificial] wisdom”

which could only be learnt in a long apprenticeship and on which only the judiciary could pronounce. Thus Coke rebuked James I for his pretension that since he could reason like any other man, he should be able to reason about the law. The argument of the common lawyers was that *history* had made them the *guardians* decried by Kant.<sup>11</sup> Unlike Beccaria, the prevailing opinion in England at the time was that history was not to be rejected. Indeed, Ramsay, in the letter mentioned, although a Scot and thus less likely to love the common law, as he came from a country where civil law traditions died hard, rebuked Beccaria for his hatred of existing social arrangements. He denied that those nations who had shortened the passage to human happiness had done so through deliberately introducing legislation based on rational principles:

They will tell him that, if he took the trouble to examine carefully the history and archives of the nations which he apparently has in mind, he would find that the laws which he foreshadows, came out of such [historical AD] combinations and such human vicissitudes, whose right to legislate he so disdainfully disputes.<sup>12</sup>

Indeed, in 1766, the English ruling class, and many of those from Scotland and Ireland, staunchly held the belief that Britain alone of the nations of Europe had not sunk into the despotism Montesquieu had described.<sup>13</sup> It was not long since parliament had asserted in the Bill of Rights and the Act of Settlement its dominance over the monarchy. Those documents embodied the decisions of the courts in a string of cases decided in the seventeenth century against monarchical pretensions to centralising power in its hands.

Henry Fielding epitomises the position of English opinion before Beccaria's book was read. In 1751 he published his *Enquiry into the Causes of the late increase of Robbers etc. with some proposals for remedying the Growing Evil*. The title itself shows the prevalent reformism of the English when facing social problems, which is in stark contrast with the *tabula rasa* approach of Beccaria and most of the continental European intelligentsia. Unlike Beccaria, Fielding saw existing social problems not as the product of feudal arrangements but of the development of trade and merchant capitalism. He accepted as given the defeat of feudalism in Britain and the existence of free institutions. The effect of trade and commerce had been to make the people wealthy. This had two further consequences, which he noted. On the one hand, wealth bred luxury and thus vanity and idleness in some sections of the people, a contagion which could spread to the "useful part of mankind". On the other, "having totally changed the Manners, Customs, and Habits of the People, more especially of the lower sort", it had led to their no longer knowing their place. From being subjects, or in subjection, which is the same thing, they aspired to equality.

The end of the old orderliness of society was due to this failure of every class to fit into its right place—"to aspire to a degree beyond that which belongs to them". His object thus was to ensure their return to that voluntary subservience to the laws in which all civil government was based.

Fielding made no bones that it was the lower sort of people who would have to be adjusted, and not the ruling class, to which he was almost sycophantically deferential: "I am not so ill-bred as to disturb the Company at a polite assembly". He thus proposed that the remedy should be to redress the excessive wealth and luxury allowed by the existing laws to the poor whence he believed the social problem arose.

Instead of continuing the policy of earlier periods of extending poor relief, he argued that poor relief should be reduced. So harsh a proposal in the context of existing conditions is explained by the notion he had of the poor. He defined the latter as those without an estate of their own, or without saleable skills. He then further subdivided them into categories of those who could not work; those who wanted and were able to work; and those who were

able to work but would not do so. Finally he asserted that the last were “much the most numerous class”, the others being few in numbers.

Since they chose idleness, which was at the root of vanity and thus of crime—which threatened the social order—they should not be rewarded for their own unemployment but punished by being set to work.

For Fielding the problem of social disorder would be solved if the magistrates compelled everyone to work, even when they were in jail. Through such labour they would again become the sort of subjects they had been before the social fabric had been disturbed by the rise of merchant capitalism.

Consequent on such a proposal was his view that it was essential that the poor be stopped moving around even if they had not committed any offence. Not surprisingly, Fielding's book ended by proposing a draconian series of new laws designed to foster a sedentary workforce. The sanctions these laws imposed were designed to deter and act as an example to others even if they did not fit the crime. He cited a dictum of Lord Hale with approval. It ran: “Death itself is necessary to be annexed to law in many cases by the prudence of the lawgivers, though possibly beyond the simple Merit of the offence simply considered.”<sup>14</sup>

So before the arrival of Beccaria's book in England, one of the foremost jurisprudential writers of that society still believed that social control could be exercised by continuing the old draconian style of earlier centuries. Now, however, it was directed to new objects. Instead of simply being retribution it was directed to forcing everyone to settle down and work, so that they would be reconstituted as citizens who would not threaten the pre-existing order.

Fielding had himself admonished the readers of his book that:

to have a just Notion of our Constitution, without a competent knowledge of the Laws, is impossible. Without this the reading over our historians, may afford amusement, but very little Instruction in the true essentials of our Constitution. Nor will this knowledge alone serve our purposes. The mere lawyer, however skilled in his profession, who is not versed in the genius, Manners and Habits of the People, makes but a wretched politician.<sup>15</sup>

We shall follow his admonition to look at the people since it is clear that his own misunderstanding of the latter explained why Beccaria's views in favour of consensus and not force replaced those of Fielding.

What had in fact changed in British life? Britain was still an overwhelmingly rural society in 1764. Industry was only nascent. Thus any changes of significance were taking place in the countryside. The first and most important of these was the enclosure movement which had started two centuries earlier but which was accelerating in the mid eighteenth century. Where only 400,000 acres were enclosed in 1702–60, a further 568,640 were enclosed in 1760–1820. The pattern continued in the nineteenth century when it again accelerated mightily. At the centre of this process in England it was uneven and gradual by the eighteenth century, despite its brutal beginnings, but at the periphery in Ireland and in Scotland it proceeded throughout the period very rapidly and with great brutality. In their brilliant opening chapter to *The Common People*, its authors describe the battle of Culloden (1746)—the prelude to the Highland clearances—as the destruction of a primitive tribal and racial world of customary communal relations established by kin. In its place was “a form of society in which each man was an individual . . . free to sell his life and labour”.<sup>16</sup>

Enclosure meant throwing the smaller cottage farmer off the land that from time immemorial he and his kith and kin had worked in an endless but economically sufficient labour and consolidating it in large landholdings held by the ruling class. It also meant production of grain and wool for the marketplace instead of production for direct consumption. Vast numbers of people formerly employed by the system fought for a proportionately decreasing



number of rural jobs. The number of labourers in the country grew from 1,275,000 in 1688 to 3,500,000 in 1815. Those who could not find work close to home started to tramp around the countryside in search of it, and gradually migrated towards the huge city of London.<sup>17</sup> Particularly noticeable in this gradual southern migration were the women, whose roles as dairymaids and occasional field labourers no longer existed in the changed system of agriculture.<sup>18</sup>

By the time Beccaria's book arrived in England these expropriations and the corresponding migration southwards of the unemployed population had been going on for several generations. The total number of vagrants between or without jobs had grown greatly with each generation, from about 300,000 in 1688 to 1,900,000 in 1815.<sup>19</sup> This meant an increase from 4 per cent to 12 per cent of a population which had itself doubled in these years to seventeen million persons.

The most recently uprooted, often Irish and Scots, travelled in families and tried to maintain their traditional cultures alive at all levels. But those who had been on the move for more than one generation had lost all sense of cultural or even family ties. In his semi-autobiographical account of 1728, Daniel Defoe begins:

I have read . . . that a great many Great Men in history, could never tell their own fathers, which is indeed my own case: for even my good mother could not inform me truly.<sup>20</sup>

The vagrants were a motley lot whose occupations can be gauged from the list of those already prohibited vagabonds in an Act of Charles II (13 and 14 Car II, c.12): patent gatherers, gatherers of alms, collectors for prisons, gaols or hospitals; fencers or bearwards; common players of interludes; minstrels and jugglers; pretending to be gypsies or to a crafty science; playing or fitting at unlawful games; unauthorised peddlers or chapmen; beggars and those pretending to be soldiers, mariners, seafaring men, or pretending to go to work at harvest.

Similar groups had been present in society for centuries as marginals who were tolerated by the rest of the society for most of the time. Indeed, one of Fielding's complaints was that even in the middle of the eighteenth century no one really prosecuted such people until they committed a serious offence. But where Henry VIII had categorised them in his sixteenth-century legislation as "valiant beggars", by the middle of the eighteenth century they were regarded as vagabonds and by the end of the century had been dubbed a criminal class. The changing attitude of the State and society towards these hapless victims of the change in the mode of production was a result of changing notions of property. What had once belonged to the commons and was there to be used by all gradually became a matter of value to the owners and was regarded as private. We take as an example Munsche's study of the Game Laws in Wiltshire between 1750 and 1800. Since as early as 1389 the law had tended to make hunting the preserve of those owning property, that is, of the ruling class. Then, with the development of commerce, game became marketable in the eighteenth century and commercial poaching started. New laws were introduced to stop the trade in poached game. While Wiltshire went through a comparatively mild form of transformation in the agrarian and industrial revolution, an increasingly efficient network of gamekeepers and informers was developed to prevent the poaching operations. Then the *Night Poaching Act* (1770) made imprisonment automatic for those convicted while convictions increased dramatically.<sup>21</sup> Studies of different counties of England by Beattie and Hay show that there was a strong correlation between price rises and the increase of indictments for different crimes as the hapless cottagers sought to solve their penury by helping themselves in traditional and less traditional ways.<sup>22</sup>

While crime which did not correlate with war and death was more common near and in the great urban centres, too much should not be made of the rural/urban distinction even

near London. Although the city had a million inhabitants by 1745, it in fact ended at Hyde Park Corner and rural highwaymen were operating a half-hour walk from Marble Arch. (A Cockney “ventures through Hyde Park Corner as a cat crosses a gutter.”<sup>23</sup>) What was distinctive about the area around the great Wen was the development of habitual criminality by those vagrants who had drifted there over two or three generations and were even apprenticed into crime from an early age.

It was their pilfering and violence that caused alarm after 1750. Fielding wrote his book to respond to it:

In fact, I make no doubt that the streets of this Town, and the Roads leading to it, will shortly be impassable without the utmost hazard; nor are we threatened with seeing less dangerous Gangs of Rogues among us, than those which the Italians call the banditi.<sup>24</sup>

Thus there were two parallel yet linked sorts of crime in England. The first occurred mainly in the countryside, where traditional activities like smuggling and poaching were being criminalised and there was sometimes vigorous, socially approved opposition to the new regulations. This took place where traditional society was being affected directly and for the first time by the development of merchant capitalism. The second, occurring mostly in the cities and especially London, was facilitated by the greater possibilities for petty criminality. Here, those involved had often long been thrown out of traditional occupations, often generations before. In 1795 Patrick Colquhoun of the Thames magistracy noted that £1,200,000 was being stolen each year from commercial premises and ships near London, and that receivers had increased ten times in number since 1775.<sup>25</sup> Even making allowance for the inaccuracy of his statistics, we must recognise what a great increase in crime there had been.

This increase took place despite the increase in the number of crimes punishable by death, particularly evident in the 1750s and 1760s, and duly applauded by the ruling class of England. By 1766 it was quite obvious to some that the draconian principles of Fielding’s book were not working to prevent crime. So Beccaria’s book was reviewed favourably in 1767 in the *Annual Register* by a writer who might have been Edmund Burke, and an English translator of Beccaria wrote in 1769:

It may be objected that a treatise of this sort is useless in England, where from the excellence of our laws and government, no examples of cruelty and oppression are to be found. But it must be allowed that there is much still wanting to perfect our system of legislation . . . The Confinement of debtors, the filth and horror of our prisons, the cruelty of the jailors, and the extortion of the petty officers of justice, to all of which may be added the melancholy reflection, that the number of criminals put to death in England is much greater than in any part of Europe . . .<sup>26</sup>

This began the grafting of the principles of enlightened social engineering coming from Beccaria and the continent on to those traditionally used in Britain. The first major synthesis of those views and the positions of those trained in the common law was Sir William Eden’s *Principles of Penal Law* of 1771. Eden came down firmly in favour of the need to make punishment fit the crime if the object was the prevention of crime, and specifically warned against increasing the severity of punishment. Like Beccaria before him, he urged a sparing use of the death penalty “as our last melancholy resource”. He stressed the need for the principles of law and order to be built on sentiments of “natural justice” as well as those of public utility.<sup>27</sup>

The idea that punishment should be directed at prevention of crime through an emphasis on reform, and not retribution, had vast implications about the policing of the society. In the middle of the eighteenth century there were practically no police forces as we know them. The citizens themselves had to apprehend lawbreakers in a hue and cry and bring them