

## Investigating responses to theft in early modern Wales: communities, thieves and the courts

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*ABSTRACT.* This article makes use of the rich deposits of pre-trial documents in the court archives of early modern Wales, focusing on the county of Denbighshire, to investigate attitudes and responses to theft. Qualitative research on this subject tends to emphasize or privilege actively law-enforcing behaviour that led to trials; while that is the inevitable emphasis of court records, I argue that we need to examine witness testimonies more closely in order to understand responses that did not match up to the ideals of vigilance and communal responsibility. Drawing on modern criminological research, I explore ‘suspicion’ and the decision-making processes leading to various outcomes: non-action; investigation and prosecution; alternative resolutions that bypassed the courts. Finally, I explore the everyday ‘world of stolen goods’ and its social and economic rewards in local networks of reciprocal favours, gifts and alliances.

Research into property crimes in early modern southern Britain has followed two main paths. Firstly, the English research, especially in the 1970s and early 1980s, tended towards an emphasis on quantitative analysis, measuring patterns of prosecutions and outcomes.<sup>1</sup> Secondly, there has been research with a far stronger qualitative emphasis, which has been a particular feature of the small but growing body of research on crime on the Welsh side of the border.<sup>2</sup> For England, this now covers a variety of topics: investigative responses to theft (demonstrating the importance of private initiative in the detection and prosecution of property crimes);<sup>3</sup> examinations of particular types or contexts of theft;<sup>4</sup> and, most

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recently, consideration of the gendered dimensions of theft<sup>5</sup> and detailed examination of the eighteenth-century use of discretion in property crimes.<sup>6</sup>

Nonetheless, the ‘qualitative turn’ in the history of early modern crime has tended to focus on violent offences (often with a strongly gendered emphasis), particularly homicide, infanticide and witchcraft, rather than mundane property crimes.<sup>7</sup> Historians such as Natalie Zemon Davis and Malcolm Gaskill have established that sophisticated narrative strategies were used in accounts of homicides given to authorities by witnesses or the accused, selecting and editing in order to persuade legal officials of a particular version of events, to enhance or mitigate the heinousness of a killing. Convicted killers petitioning for pardon told dramatic stories of sudden anger and provocation, contrasted to the cold-blooded premeditation of murder; witnesses shaped depositions ‘to make a convincing case to men whose task it was to evaluate the evidence before taking appropriate action’.<sup>8</sup> However, witness depositions in theft cases still tend to be treated as ‘straightforward’, transparent reports (allowing only the possibility of malicious prosecutions).<sup>9</sup> Yet, for example, purchasers of stolen goods were often prominent among those witnesses, individuals who might have come (however temporarily) under suspicion, or who at least might have been liable to censure for irresponsible behaviour: their testimonies simply cannot be viewed as neutral.

For all witnesses, deciding just what and what not to say to examining magistrates was another part of a discretionary decision-making process. As in coining cases, ‘blatant perjury’ may be less of a problem for interpretation than that witnesses ‘reshaped, embellished or edited versions of the truth’, to improve the likelihood of successful prosecution and also ‘to conceal their own legally dubious attitudes or actions’.<sup>10</sup> Many victims of theft, and sometimes others less directly affected by it, *did* go to considerable lengths to pursue and prosecute thieves. Yet people, including victims, did not always respond to thefts (or suspicions of theft) in the ways that authorities would have liked. They might simply decide to ignore petty thefts in particular, or to choose informal, extra-legal methods of dealing with offenders. Some who assisted in the investigation of thefts did so unwillingly and out of self-interest, rather than to uphold ‘the community’ or ‘the law’. Further, boundaries between ‘criminals’ and ‘communities’ frequently become blurred, as people became involved in buying and consuming stolen property, but it is usually difficult to know whether they did so knowingly or innocently or somewhere in between, setting aside doubts and supposed obligations to verify the legitimate provenance of purchases. This article sets out to explore such ambiguities.

What follows is based primarily on the records of two courts in the border county of Denbighshire in north-eastern Wales: Great Sessions (equivalent in jurisdiction and procedure to English Assizes) and the county Quarter Sessions, between 1660 and 1730. Indictment levels, averaging 4.2 per annum at Great Sessions and just 2.4 per annum at Quarter Sessions during the period, were low in comparison to many English counties (particularly in the south-east). Annual rates of indicted theft can be roughly estimated at 1.8 per 10,000 population during the later seventeenth century, whereas in Restoration Essex, for example, indictment rates ran at about 3.7 per 10,000.<sup>11</sup> However, the archives of both courts are rich in the depositional materials that are central to this analysis; three-quarters of Great Sessions indictments and two-thirds of Quarter Sessions indictments are accompanied by surviving pre-trial depositions and examinations.<sup>12</sup>

It is worth re-emphasizing at the outset the point that, in the absence of an organized police force, legal officials took a very limited role in investigating thefts. Virtually all policing and detection of theft was a matter of private initiative and as such highly discretionary and frequently limited in its capacity.<sup>13</sup> That, indeed, makes the resourcefulness and commitment of many early modern ‘amateur’ detectives all the more impressive. Despite the limitations of early modern detection (especially over longer distances), comparison with modern criminological research indicates much that is familiar, especially in terms of the importance of ‘legwork’ and local co-operation. Today *and* in the seventeenth century, the investigation of theft has often relied on capturing offenders at the scene or shortly afterwards, and on searches, confessions and witness identification.<sup>14</sup>

Under these conditions, the importance of ‘private’ initiative and collective co-operation in the policing and prosecution of theft has been stressed by historians. Sometimes this emphasis creates an image of a near-paranoid, oppressively watchful society: ‘Montgomeryshire’s [eighteenth-century] criminal records leave an abiding impression of a remarkably inquisitive community, with eyes constantly peeping over hedges and with noses sneaking round neighbours’ doors’.<sup>15</sup> And the records do indeed tend to leave this impression. But, as records of prosecutions, that should not be altogether surprising. As Herrup comments, ‘All of these documents, of course, detail successful rather than unsuccessful detections.’<sup>16</sup> And contemporaries and historians have shared a strong conviction that many detections would have been *unsuccessful*, and that the vast majority of thefts never came to the attention of authorities.<sup>17</sup>

To be sure, it is not at all easy to uncover decisions *not* to pursue or prosecute thieves, or to understand just why investigations failed. Certainly, we can never measure the frequency of ‘failures’, or reconstruct them as clearly as ‘successes’. Diaries, as Peter King has shown, are a fruitful source; but diarists belonged to an affluent and educated minority.<sup>18</sup> However, if we interrogate the legal records more closely, they *do* have a good deal to say about actions that did not match up to ideals of vigilance and communal responsibility. Firstly, I examine immediate responses to the discovery or suspicion of theft, paying careful attention to the fleeting traces of decisions *not* to prosecute or investigate thefts. I also explore the complexities of the processes of decision-making that led to arrests, and of the ways in which individuals became involved in investigations, suggesting that a more nuanced understanding of what *was* recorded may give us insights – however shadowy – into what was *not*. In the second part of the article, I investigate the circumstances surrounding the disposal of stolen goods. Only some of those on the receiving end were criminally dishonest; others were ordinary mortals faced with tempting bargains or gifts. Yet, whether they were aware of it or not, they were participating in a ‘world of stolen goods’ that tends to undermine easy separation of the lawless and the law-abiding, which has direct parallels (or descendants) in modern society.

I shall draw extensively on the theories of criminologists in the course of the discussion. The use of ‘social theory’ by historians is by now hardly a radical departure; nonetheless, it seems worth elaborating on precisely what types of research I am using, in what ways and to what ends. The focus is on research that uses interviews, participant observation and questionnaires, highlighting the gaps and biases in official records and, moreover, the ambiguities in our attitudes towards ‘crime’ and ‘the law’: ‘the utterly confusing normality with which the criminal enterprise can sometimes be clothed’.<sup>19</sup> Historians of early modern crime cannot interview their subjects; they are inevitably highly dependent on the ‘official’ sources. But they can nonetheless read those sources with the criminologists’ findings in mind, with a closer eye for what is left unsaid.

## II

In December 1717, Thomas Davies, a petty chapman of Wrexham, made a complaint to a magistrate. He had, according to his deposition, been selling his wares at Wrexham market and, after selling a small item to Roger Rogers, a smith of Treuddyn (Flintshire), he noticed that several items on his ‘standing’ (stall) had gone missing. He caught and searched Rogers and found the items on him. Davies then attempted to take Rogers

to a constable, but was obstructed by a group led by Thomas Parry, a bodicemaker of Wrexham, who exclaimed, ‘Damn you, what business have you with that man loose him or I will make you loose him.’ Despite being informed of the theft, Parry seized the chapman and held onto him, allowing Rogers to escape. And later, when Davies remonstrated with Parry for his actions, Parry said: ‘God damn you, are you a constable, what business had you with [Rogers] I will beat you to pieces’ – and he was true to his word, beating Davies in a ‘barbarous manner’.<sup>20</sup> This case is extraordinary but nonetheless intriguing. It would, no doubt, be easier to interpret if it were a case of ‘local’ men ganging up on an officious ‘outsider’ to protect one of their own. Perhaps, instead, it was related to *occupational* identities and interests, tensions between settled, skilled craftsmen and peripatetic (and sometimes disreputable) petty traders.<sup>21</sup> Ultimately, it is likely that localized, personal relationships and reputations would prove essential to understanding the case: was Thomas Davies regarded as an untrustworthy troublemaker?

Rather more commonly, there were other less extreme but nonetheless less than ‘ideal’ responses. Minor thefts might simply be ignored or dealt with informally.<sup>22</sup> Randle Robinson had employed Ann Tew for the hay harvest in 1729; a few days after she left, his wife found that some clothes were missing and suspected Ann. However, ‘these things being of a small value’, they did not bother to pursue her – until it was discovered later that more valuable clothing stored in the house had also been taken.<sup>23</sup> After burgling the house of Humffrey John Evans in 1688 and being caught, John Jones confessed that he had also stolen a number of goods from a house in Yale. He had been pursued and caught by the owner of the goods, who had simply taken them back and allowed John to go free.<sup>24</sup> Robert Jones of Llangernyw was prosecuted for sheep theft in 1719; in the examinations concerning the sheep, it emerged that he had also been suspected of stealing a hive of bees from a neighbour, Gabriel Lloyd. Gabriel explained, however, that he had already dealt with this transgression himself: he had wormed a confession out of Robert and made him pay eight shillings ‘in satisfaction’ for the hive.<sup>25</sup>

In each of these cases, decisions not to take legal action (or any action at all) over a theft surface in the records almost incidentally in the course of investigations into further, often more serious, offending. Moreover, since ‘compounding’ for a felony (accepting compensation from the thief in return for not prosecuting) was itself an offence, it was an activity that was not likely to be publicized, and witnesses’ pious accounts of resisting ‘bribery’ by suspects need to be understood in this context.<sup>26</sup> Compounding was rarely prosecuted, but historians suspect that it was a common practice; it has been suggested moreover that in Wales it had an

enduring popularity associated with traditions of native Welsh law, with its emphasis on restorative rather than punitive justice.<sup>27</sup> We cannot know how common it was for victims to decide that it was not worth pursuing a thief, or to prefer restitution and compensation to the trouble of using the law, but it does seem probable that the relative scarcity of references in court records to such decisions is highly unrepresentative.

There were all too many reasons *not* to turn to the law. Both the investigation and the prosecution of a case in court were time-consuming, expensive and inconvenient, and compensation for prosecutors and witnesses was only gradually introduced in the eighteenth century.<sup>28</sup> In much of Denbighshire (as elsewhere in Wales) settlement patterns were highly dispersed; for this scattered population access to a magistrate would often have been less than easy.<sup>29</sup> And it should be noted that throughout Wales there was an additional potential barrier for many: the problem of negotiating a foreign language – English – in the legal system. This was not perhaps so serious at the stage of pre-trial hearings, or in Quarter Sessions: most magistrates were bilingual during the period being studied. But at Great Sessions few judges were Welsh-speaking, and business was primarily conducted in English with the use of (not always satisfactory) interpreters.<sup>30</sup>

Closer to home, some victims decided not to act out of fear of reprisals or of arousing local disapproval.<sup>31</sup> ‘Neighbourliness’ did not necessarily propel victims towards the strict application of the law – often quite the opposite. Settling disputes informally, including those involving property misdemeanours, was encouraged in order to avoid the potentially disruptive effects, the ill-feeling and conflict, of confrontational court cases. Much could depend on the local standing and perceived motives of both accuser and accused. If the accused were of previous good character and/or had stolen out of desperation, exposure without mercy to the shame of a trial and public punishment – including possible death – was unlikely to receive unconditional approval. Turning to the courts could create more problems than it solved.<sup>32</sup>

And, if decisions not to use the law to deal with suspected thieves are rarely recorded, it is also worth examining more closely the more extensive records of those suspicions that *were* acted upon. Not all cases that reached a magistrate went to court, even though in theory magistrates had to send for trial all suspected felonies reported to them. Indeed, at Quarter Sessions in Denbighshire, only just over half of the theft cases that produced surviving depositions were prosecuted by indictment, suggesting, as elsewhere, extensive use of informal arbitration before magistrates in dealing even with felonious thefts, especially non-capital petty larceny.<sup>33</sup> In some of the cases that were not formally prosecuted, the evidence seems

inconclusive or ambiguous.<sup>34</sup> Others arose in the context of gleaning corn or gathering dead wood, sometimes suggesting some contention over the extent of customary entitlements.<sup>35</sup> A few accusations may have amounted to little more than prejudice against strangers.<sup>36</sup> Others, meanwhile, seem to hint at underlying conflicts between neighbours, for example where the accused claimed they had bought the items in question from the accuser.<sup>37</sup> But, overall, it is difficult to perceive any consistent differences between those cases that were indicted and those that were not.<sup>38</sup> Nonetheless, the extent of the latter does underscore King's argument that not only did victims often prefer informal settlements, magistrates too exercised considerable discretion, and this was not merely a feature of the later eighteenth century onwards.

## III

Moreover, we need to consider more carefully the dynamics of investigations, beginning with the ways in which suspicion is generated in the first place. Criminologists studying police methods have argued that 'stereotypical cues that make individuals or groups "suspicious" are the partial or total basis for law enforcement decisions by police officers, non-police agencies and ordinary citizens alike'.<sup>39</sup> Those 'cues' may be stereotyped, but they are also complex: some relate to personal history and some to demeanour and attitude towards investigators; others are 'situational', such as being observed in certain areas or associating with certain people or displaying 'incongruity' in terms of place and behaviour. Further, research on 'policing by the public' stresses that observing is only the starting point in a *process*. 'People must also notice the event and define it as being an example of disorder. And then they must decide what to do about it and what to say about it to whom.' There is a sequence of events and decisions, which are affected by social factors including perceptions of the seriousness of the event, and these can be redefined in the light of new information.<sup>40</sup>

Such decision-making – and information-gathering – processes can equally be discerned in early modern cases. Strangers and members of local communities alike could come under suspicion of theft, although there were differing emphases between the two groups in the 'cues' for its generation. In the case of local residents, decisions were made in the light of shared knowledge about individuals, including reputation and past history,<sup>41</sup> or their income and hence appropriate standard of living. Coming suddenly into money (as Cynthia Herrup has shown), even before a theft had been discovered, could arouse sufficient suspicion to initiate enquiries.<sup>42</sup> Alice, the wife of Henry Smith, suspected her maidservant

Katherine ferch Lewis of theft in the spring of 1676. Katherine had entered the Smith household's service a few months earlier 'without having of much money then', but at Wrexham fair in March, 'shee clothd herselfe, with severall new wearing cloths'. She claimed that her brother had given her some money, but he denied it when asked by a neighbour. Next, Alice searched Katherine's possessions where she found a black cloth which closely resembled one in which Alice's previous maid, Gwenne Edwards, had kept her savings – more than £2 in cash – and had left with the Smiths, locked in a box for safe-keeping, when she moved on to another post. Katherine finally confessed that she had broken into the box, taken the money and spent it on the clothes which had initially aroused her mistress's suspicions.<sup>43</sup>

Meanwhile, the circumstances surrounding suspicions of 'outsiders' were rather different: the immediate behaviour and 'body language' of strangers (especially at unusual hours) were usually the primary subject of scrutiny. For example, in August 1660, Elisabeth Jones of Allington (Gresford parish) was returning home after taking her husband's breakfast to the field where he was working when she saw a man near her house, 'whoe when he had spied this examine went to ye dich side pretending to doe his bisnesse; and had cast the goods yt he had into the hedge'. She hastened home, 'misdownpting some thing might be a misse': the house had been broken into, and she raised the alarm, leading to the man's capture.<sup>44</sup>

But even in the case of strangers the processes of generating suspicion and gathering information could be more complex than this. Thomas David earned himself some close attention at an alehouse in Llanhychan, in April 1718. Thinking him a 'poor honest traveller', the owners had given him overnight lodging, and in the morning he left 'as he pretended' to go to Flint to see his mother. However, he returned that night with a pocketful of silver and gold coins. Having heard reports that two houses in the neighbourhood had been broken into that afternoon, the landlady 'began to suspect, that this might be ye man yt did it'. Then the men who had been making enquiries about the break-in arrived, having been told that someone matching a description of a man seen near the scene was in the alehouse (perhaps the landlady herself sent word). On seeing Thomas, 'one of them said, This is he'. Only then was Thomas seized and searched.<sup>45</sup> Again, we can see the process of detective decision-making at work, building on initial suspicions to reach the point of accusation and entry into the criminal justice system. But this necessarily implies that alternative possibilities existed at every stage: the records we have show only sequences in which active detection *confirmed* suspicions, leading to arrests and prosecutions. It was possible to reject suspicions as



unfounded, and equally to conclude that there was insufficient evidence to act, or to decide that it was not 'serious' enough to take the trouble.

Further, investigations could be started, actively pursued and yet subsequently *fail*. Again, we can know little about these cases, yet even successful cases can offer insights into the problems victims had to overcome. Effective detection relied on collective action as much as individual initiative; it was crucial for a victim of theft to be able to recruit assistance far beyond the sparse ranks of law officials. But it should not be assumed that this was a straightforward matter. Many detectives relied first and foremost on their own associates, their kin, neighbours and colleagues, and no doubt many of these gave assistance willingly out of friendship, neighbourliness and, indeed, beliefs in the sanctity of private property and the law. However, the reasons for such participation cannot always be viewed in this light. Servants, for example, were extensively involved in many investigations, often taking much of the initiative themselves. And, while such activity may have been at least partly motivated by loyalty and duty, the consequences for a servant of charges of negligence (or worse) need to be considered.<sup>46</sup> In 1711, Elizabeth Williams's master demanded that she should pay for a missing pewter pan that had been 'under her care & charge'. When Mary Edwards caught a woman taking a pan from Mary's master's house, she confronted the thief publicly 'because she knew her master would question nobody but her [i.e. Mary] for it'.<sup>47</sup>

Besides, local connections were not always enough: the assistance of strangers was often needed. Lewis Humphreys went in pursuit of Edward Hughes for the suspected theft of some flaxen cloth, from Llanrwst in the far west of the county, to Wrexham on the south-eastern border. Here Lewis turned to an innkeeper, Edward Jones, for assistance, which was, he said, 'readily' given.<sup>48</sup> Such aid was not necessarily given from public-spirited motives, however. An innkeeper might well have pressing personal reasons to involve himself when a theft occurred on his premises, as David Joshua, a Cardiganshire publican, recognized in the late eighteenth century. On the day of a local fair, his establishment was used by a number of people to store their cloaks and coats. But during the day a cloak worth three guineas and some other items were stolen. Fearing that 'his character ... must of course suffer', he went promptly to the nearest magistrate for a search warrant.<sup>49</sup> David was unusually explicit about his motives, but we might infer similar concerns amongst others who assisted in investigating thefts that took place at their establishments; for example, when a customer's cloth (left in the parlour while she enjoyed a drink with friends) was stolen from Mary ferch Humphrey's alehouse at Ruthin in January 1671, it was one of Mary's son's apprentices who took the decisive actions leading to its recovery and an arrest.<sup>50</sup>

In many cases, key participants in investigations had become involved because they had purchased stolen goods or animals, and it can be suggested that they too were concerned as much with preserving their own 'character' as with the rights and wrongs of the case. Among the men who pursued Thomas Lloyd for the theft of a hat and shoes was the husband of the woman who had purchased the shoes from him. Dorothy Lewis bought stolen cloth from Mary Lloyd, and after being challenged by the proper owner, helped to find and identify the suspect, 'laying hould upon' Mary herself.<sup>51</sup> And it is possible to go further: some detectives were unwilling participants, coerced into assisting by the threat of legal action after they had purchased stolen property.

This appears only in cases of livestock theft, perhaps reflecting the particular difficulties involved in investigating such cases. Thefts of horses, sheep and cattle constituted a substantial proportion of prosecutions: taken together, at Denbighshire Great Sessions between 1660 and 1730, about 34 per cent of all theft indictments. Even at Quarter Sessions, about 15 per cent of theft indictments were for sheep theft. Livestock could cover considerable distances, crossing county boundaries, as they were driven across the countryside to markets and fairs, and could pass through several hands, so obtaining the co-operation of strangers was essential. Richard Francis of Dinhinlle Uchaf (Ruabon parish) lost a horse in May 1699, and 'after much inquiry' he learnt that a horse matching its description had been sold at Llanfyllin fair (Montgomeryshire) by Owen Richard of Llanuwchllyn (Merionethshire). Francis tracked down Owen Richard, who said that he had bought the horse from a man 'who went by the name of David William' and had sold it on to a Montgomeryshire man. Francis then consulted a Montgomeryshire JP, who advised him 'to take his remedy at law' against Owen Richard. Francis trudged back to Merionethshire to find another JP, who summoned Owen to be examined and agreed to send him to a Denbighshire JP to arrange his court appearance. Instead, a few weeks later, Owen came to Francis with a warrant to apprehend 'suspected persons' (perhaps the magistrates had agreed not to commit him in return for his active co-operation). They subsequently interviewed a suspect whom Owen identified as the man who had sold him the horse.<sup>52</sup>

On 12 January 1676, two Wrexham butchers, Richard Jones and Richard Benjamin, bought a total of 30 sheep from two brothers, William and Robert Thomas. But on 19 January, Piers Phillips, the proper owner of the sheep, arrived and threatened to prosecute both Jones and Benjamin. The butchers obtained a warrant and began a search, including unsuccessful enquiries in Cheshire, before Richard Jones's son and servant caught up with the brothers in Shrewsbury on 24 January.<sup>53</sup> The two

butchers, like Owen Richard, had been forced to go to considerable lengths to free themselves from possible prosecution – and that the threat was made implies that they would not have helped voluntarily.

Such threats had to be taken seriously, as is suggested by two anxious petitions received by the bench at Denbighshire Quarter Sessions in July 1665. Richard Jones and William Morris, who had been indicted for sheep theft in Montgomeryshire after buying stolen sheep from two men who were now being held in Denbighshire, requested that the two men be sent to appear at Montgomeryshire Quarter Sessions to ‘free’ Jones and Morris from prosecution.<sup>54</sup> Failure to produce the alleged vendor of stolen beasts, or at least witnesses to the purchase, could have serious consequences. Hugh ap William John Morgan, a butcher of Llanrwst, was accused of stealing 117 sheep belonging to Robert ap William of Wrexham in 1675. Hugh claimed to have bought the sheep in question from Ellis Evans, a husbandman of Llanddeiniolen (Caernarvonshire). He had sold some at Chester to two butchers, William Selsby and William Hale, using the money from the sale to buy more sheep in Caernarvonshire; these he had sent to Warrington in Cheshire. He was apparently an experienced and long-established dealer, and many of his transactions were confirmed by witnesses. But there is no sign of any Ellis Evans, and Hugh was convicted of the theft, although there was no evidence placing him anywhere near the scene of the crime; in such cases, there rarely was.<sup>55</sup>

To be sure, it was not unusual for someone accused of theft to claim in vague terms that they had come by stolen property in good faith.<sup>56</sup> In contrast, Hugh ap William John Morgan offered a precise identification and details of his transactions; we should not assume that because Ellis Evans was not found, he did not exist. Nonetheless, there were no witnesses to Hugh’s purchase, in contrast to his sale to the butchers Selsby and Hale, which had taken place publicly in Chester (with a city alderman, no less, as a witness).<sup>57</sup> Denbighshire juries did not respond sympathetically to claims of innocence under these circumstances. They tended to particular severity in convicting suspected sheep and cattle thieves, and may have largely ignored the theoretically strict distinctions between principals and receivers in these cases.<sup>58</sup> Although only a very few convicted sheep- or cattle-stealers (those who could not claim benefit of clergy) were hanged,<sup>59</sup> such jury decisions *were* sending out strong warnings to those who dealt in sheep or cattle. The consequences of a conviction in terms of damage to reputation should not be underestimated; indeed, Roger Wells suggests that among those engaged in the livestock trade the need to maintain a good reputation in business may have had a more powerful restraining influence than the law.<sup>60</sup>

The decisions of men such as Owen Richard or Richard Jones and Richard Benjamin to co-operate in investigations had a great deal to do with self-protection. Further, it can be argued that even the majority of buyers who were not thus coerced (as far as we can tell from the record, anyway) were often primarily concerned to free themselves from possible suspicion and damage to reputation, and perhaps even that self-interest was a considerably more powerful motive than social obligation. Certainly, if theft victims could not recruit assistance, willing or unwilling, public-spirited or self-interested, they had little chance of finding either lost possessions or thief; and if they could not rely on ideals of community, property or law, neither should historians.

## IV

So far, I have concentrated on situations where suspicions were clearly aroused, whatever the response or subsequent motives for investigating (or not investigating) thefts might be. However, depositions equally shed light, as has already been suggested by accounts of sales and purchases in cases of livestock theft, on the 'market in stolen goods', where there might be no suspicions at all. In the modern context, this is the subject of sustained criminological study.<sup>61</sup> 'Stolen goods markets not only support the thieves themselves, they also provide illegal gain for a whole stratum of people supplying "criminal services", and of course, for consumers'.<sup>62</sup> Recently, attention has also been drawn to the importance of the early modern 'world of stolen goods' in the particular context of women's crime: 'our definition of "criminality" must surely be redefined ... to include female participation in the various ... networks of exchange and interaction which provided the backdrop to prosecutions for property crime'.<sup>63</sup> Moreover, this is not only an issue for women's crime, even if men's networks were somewhat different to those of women.

Some of the participants in exchanges of stolen property in early modern Denbighshire were undoubtedly unaware of it; others knew it very well; few admitted to such knowledge. At the very least it may be wondered how often suspicions were conveniently set aside; far from carefully enquiring into the background of a vendor and goods offered for sale, many buyers seem to have been easily satisfied as long as the explanations given were superficially plausible.<sup>64</sup> A common story, for example, was that the goods had come from deceased relatives (and contemporary wills are indeed full of bequests of clothes and domestic goods).<sup>65</sup> David Jones of Llanddeiniolen in Caernarvonshire arrived at an Abergele inn in the evening of 11 December 1691 and, after taking lodgings for the night, opened a pack of clothes on the table which included woollen and flannel

cloth, a blanket and an apron. He told those present that they had belonged to his dead mother whose funeral he had just attended 'and asked if any would buy the said goods, he being weary in carrying of them'. The company made no discernible effort to check the story of a stranger (only the innkeeper seems even to have known his name) who was selling goods in a highly informal manner, and he had no difficulty in selling the items before news arrived that they had been stolen from a woman a few miles away.<sup>66</sup>

Both men and women stole, sold and bought stolen domestic goods; nonetheless, women were far more prominent in this category of theft than in any other.<sup>67</sup> Men who bought stolen goods (knowingly or otherwise) tended to be clearly identifiable as craftsmen or merchants, often dealing in quite specialized types of manufactured goods. They were often anxious to establish their reputable credentials and to deny any criminal culpability. For example, Edward Vose, a Wrexham glazier, who had bought stolen lead on a number of occasions from Daniel Lloyd, stated that he had only bought the lead during the daytime, that it 'was always weighed openly' in a Wrexham shop and that Daniel had told him that he kept a 'victualling house' in Llanarmon-yn-Iâl where he received the lead as payment for food for the workmen at 'the Mint'.<sup>68</sup> Women, meanwhile, were far more prominent in the less formal trading networks of secondhand domestic goods, reflecting their particular forms of participation in the early modern economy. Apart from household purchases, they participated extensively in small-scale pawnbroking and in running the alehouses in which much of this informal trading took place, often within the 'economy of makeshifts' that was essential for the survival of many poorer households.<sup>69</sup>

This was no minor category of theft. Domestic goods, cloth and clothing appeared in about 40 per cent of theft indictments (clothing alone in at least a quarter). And, as Garthine Walker comments, 'The mundane aspect of the pattern of female targets for theft should not ... be interpreted in terms of lack of bravado or initiative'.<sup>70</sup> That the theft of clothing, domestic goods and cloth was in the main mundane does not mean it was insignificant, and that it was rooted in the 'domestic' world of women does not mean that it was inevitably amateurish. Female thieves and buyers – and indeed investigators – were involved in what they knew, the networks with which they were familiar.

But the contexts in which they disposed of stolen goods are much less clearly defined than in 'male' shop-based trading. Exchanges involving women buyers are often described too briefly in the records to enable any distinction between purchases for personal use and those for commercial re-sale; even at the time the distinctions may not always have been very

clear.<sup>71</sup> The sisters Elizabeth and Katherine Jones, who were suspected of (but not indicted for) receiving stolen goods from Lowry ferch Ellis, may well have been dealers or pawnbrokers since they bought items from Lowry on more than one occasion: two chamberpots, two plates, a basin, two porringers (small bowls) and a number of candles.<sup>72</sup> The size of a sale is not necessarily a guide, however; pawning could clearly involve very small quantities of low-value items. Elizabeth Dolben confessed to pawning a piece of stolen cloth with Ellen Jones for 18 pence; Mary Williams stole and pawned a shift for 15 pence.<sup>73</sup>

Outside the livestock trade at least, it seems that privately buying stolen property carried few risks. It was in practice difficult to prosecute receivers, and while references to the selling and buying of stolen goods were common, prosecutions for receiving were uncommon and convictions extremely rare.<sup>74</sup> Usually those accused strongly denied it, and the courts nearly always accepted their denials. Margaret Edwards, confessing to having stolen a sheet, said that she took it to Ursula Fowler in Wrexham, and that this was not the first time Ursula had knowingly received stolen goods from her – paying not in money but in drink. (Only the theft of the sheet was prosecuted in court.) However, Ursula categorically denied the allegation and implied that it was motivated by malice. Margaret was convicted and whipped; the grand jury dismissed the case against Ursula. Similarly, Rebecca Wood of Wrexham denied Jane Locker's allegation that she knowingly received two stolen sheets from Jane in payment for a debt. Rebecca was bound over to appear in court, but she was never indicted, while Jane was convicted.<sup>75</sup>

How should we view these claims of innocence? In several of the cases outlined, the accused thieves were adamant that the recipients had been well aware that the goods were stolen, even that they had encouraged them to steal and were habitual receivers. It is conceivable that the accused might lie from malice or in the hope of more lenient treatment as informers. But receivers were not very likely to admit anything when denial was clearly an effective defence strategy against the mere word of a confessed thief. In this respect, the outcomes of these cases may be contrasted with the much less forgiving reactions of juries in livestock theft prosecutions. Significantly, though, these are all cases where the primary suspect had been captured, so there was no need to use irresponsible buyers to set examples. And perhaps 'examples' were perceived as more necessary in sheep and cattle theft: while the economic importance of the livestock trade was highly visible, trade and exchange in secondhand domestic goods was informal, diffuse and localized. As a result, attitudes towards the latter kind of activity were more ambiguous.

This strongly resembles the modern ‘hidden economy’: the part-time, on-the-side, ‘fallen-off-the-back-of-a-lorry’ trading in cheap and frequently pilfered or ‘fiddled’ goods in which many ostensibly law-abiding people participate, at various levels, with varying frequency. Informal activity in the hidden economy, it is argued, ‘operates as a socially supportive community supplying otherwise unobtainable resources’; it also exposes ‘our conflicting sense of honesty and dishonesty’.<sup>76</sup> Participants often know that they are breaking rules but find justifications, large and small: social injustice and need; everyone is at it anyway; nobody else wanted it. Lines are drawn that do not coincide with legal boundaries: fiddling employers or stealing from big businesses is acceptable; robbing friends is not.<sup>77</sup> In the early modern context, such attitudes are echoed by the alleged words of Elizabeth Hughes, accused of receiving a stolen duck from two youths: there was ‘noe harme in takeing soe small a thing from a person of soe plentifull an estate as Mr Whyte for he would not misse it’.<sup>78</sup> That is a rarely recorded view; it might have been a widely shared one, but the ‘theatre of authority’ of the magistrate’s parlour or the law court hardly encouraged its expression.<sup>79</sup> Elizabeth denied both the words and any knowledge of where the duck had come from, but for once denial was ineffective; she was convicted along with the two boys. (We might wonder if this unusual result had anything to do with her reported comment.)

Additionally, it has been argued that the *social* rewards of hidden-economy trading are at least as important as the economic ones, and this seems equally valid for the early modern circulation of stolen goods and food.<sup>80</sup> For another ‘world’ that emerges from depositions is one of reciprocal favours, of gifts and bribes and the communal sharing of illicitly obtained resources. Again, we should not look for clear distinctions: William ap William stole blankets and small quantities of grain from his master Sir John Wynn of Watstay (Ruabon parish) over a period of time during the 1660s; he sold the blankets but gave away much of the corn. Some oats went to Elizabeth, the wife of Thomas Parry to be fed to her mare ‘which she had promised to lend [William] to go to Flintshire’. One Christmas, William gave some wheat to Thomas John Howell’s daughter out ‘of good will’, and on another occasion he gave a sieve of wheat to Thomas John Howell himself. Much of the corn that William pilfered had been taken from a store-room located on Thomas’s property: were these particular ‘gifts’ in fact bribes?<sup>81</sup> Priscilla Jones, a maidservant confessing in 1727 to stealing grain from her master, Robert Conway, a gentleman of Ruthin, was explicit about bribery: she said that she gave John Edwards a measure of stolen malt in return for ‘concealing another quantity’ of malt and wheat. She also gave John Edwards’s wife some malt ‘against her lying in’, for which she was promised a hat as a gift in return. On other

occasions, in return for her illicit presents of grain and occasionally other foodstuffs, she received from various people a pair of stockings; sixpence; a shilling and an old shift; a promise of some old petticoats; and offers to make or mend clothing for her. Less tangible, but perhaps no less important to her, William Edwards 'used frequently to return [his wife's] thanks'.<sup>82</sup>

In 1726, another servant, Jane Griffiths, confessed that she gave 'sweet milk' stolen from her master to Elinor Roberts (whom she accused of encouraging her to steal) on a number of occasions, including the previous Whitsuntide when Jane had provided about four quarts 'for ye use of morrice dancers' who had been entertaining at Elinor's alehouse.<sup>83</sup> And links between stolen goods and conviviality often appear. Edward Jones and John Hughes confessed that they took the duck that they stole on Shrove Tuesday 1665 to the house of Elizabeth Hughes in Ruthin, 'where it was roasted & eaten' by seven people. Another merry party apparently took place at Benjamin Price's alehouse after Thomas Jones brought him a goose, stolen from Thomas's master. The goose ended up in some pies, one of which was played for as a prize in a card game. The rest were eaten by Jones and Price 'at severall tymes'.<sup>84</sup>

Natalie Zemon Davis has, in her vivid account of gift-giving practices in sixteenth-century France, pointed to the importance of gifts of food amongst neighbours in communities with limited financial resources, creating chains of mutual connections, partly voluntary and partly obligatory, partly about friendship and partly about maintaining status.<sup>85</sup> Gift-exchange in early modern societies was undoubtedly as important as, and related to, credit and borrowing networks, in building and maintaining alliances and support networks.<sup>86</sup> But for those with few material resources and little 'social' credit, gaining entry to those networks cannot have been easy. It seems no accident that young people, especially servants, have frequently appeared in these exchanges.<sup>87</sup> Ulinka Rublack has similarly noted that German maidservants often stole to establish 'reciprocal friendships': food to eat with friends, money to buy gifts for lovers.<sup>88</sup> Stealing in order to give was one route, though a risky one, for the poor, the young and servants, from the margins into participation in the mutual support networks of a community.

But it was not exclusively the preserve of the very poor; it could also be a way for rather more affluent (if still not rich) people to maintain 'face' with their neighbours, even to improve their local standing. In both seventeenth-century Sussex and late-eighteenth-century Yorkshire, for example, cases are noted in which the meat from stolen sheep was redistributed to employees, relatives or local communities, consumed in feasts at public celebrations.<sup>89</sup> This needs far more investigation, but this



perspective may give us fresh insights into those cases where persistent thieves of ‘middling’ status were tolerated for many years in their neighbourhoods. It may be explained in terms of local influence – the power to intimidate victims, who were reluctant to invoke the law against ‘popular’ members of the community – but that ought to beg some questions about how such people could sustain their popularity and influence at all. Why did they not rapidly lose their good ‘reputation’ and with it the protection of neighbours’ approval? One possible answer is that they used some of their ill-gotten gains to sustain their position in those all-important local networks of reciprocal favours, gifts, rewards and alliances.

## v

In Melvyn Humphreys’s recent discussion of crime in eighteenth-century Montgomeryshire, based on similar records to those used in this article, a running theme is one of *ambivalence* in attitudes towards theft. Whilst ‘intense communal awareness’, as noted earlier, is highlighted, Humphreys also comments that ‘resentment and vigilance jostled uneasily with tolerance of the peccadilloes of neighbours, friends and relatives’. Pilfering was ‘an annoying fact of daily life’, perhaps even general; but at the same time ‘everyone was a potential victim and all viewed the craft with unease’. Even attitudes towards sheep stealing were ambiguous.<sup>90</sup>

I am certainly not suggesting that it is helpful to include theft (generally) in the category of ‘social crime’: the kind of contingent, equivocal, partial tolerance outlined here certainly does not amount to popular sanction based on ‘custom’ in opposition to ‘capitalism’, and only sometimes does it appear to be a matter of ‘the poor’ robbing ‘the rich’.<sup>91</sup> I have, rather, been concerned to question polarized images of responsible and vigilant members of communities who *police* the law pitted against the *lawbreakers*. The historiography dealing with early modern property crimes has tended to privilege actively law-enforcing responses to theft that led to indictments and trials – although such responses were surely atypical. Decisions to use informal sanctions, or even to do nothing, rather than invoke the full force of the law, represent a subject about which it may well never be possible to make confident generalizations because of the fragmentary records, but those fragments are too important to ignore.

There has, moreover, been all too little research on the redistribution of stolen property through ordinary, legitimate social and economic networks – and here, in fact, the evidence is far more plentiful. This is not an ‘underworld’ of ‘criminal networks’, professional fences and their ilk; it is the everyday world of ordinary, (mostly) law-abiding women and men. Garthine Walker has highlighted the gendered dimensions of this topic,

but it needs to be stressed that its significance is not confined to women's history. The ambiguous contexts of the circulation of stolen property may have significant implications for our understanding of both the activities of thieves and attitudes towards them (quite apart from providing evidence about *lawful* trading practices). We need to widen our horizons and heed Walker's call for some 'lateral thinking' in approaching this subject<sup>92</sup> – not just in relation to women's theft but in studying theft as a whole.

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## ENDNOTES

- 1 E. g. J. S. Cockburn, 'The nature and incidence of crime in England 1559–1625: a preliminary survey', in J. S. Cockburn ed., *Crime in England 1550–1800* (Princeton, 1977), 49–71; D. Hay, 'War, dearth and theft in the eighteenth century: the record of the English courts', *Past & Present* **95** (1982), 117–60; J. A. Sharpe, *Crime in seventeenth-century England: a county study* (Cambridge, 1983), ch. 7; P. Lawson, 'Property crime and hard times in England, 1559–1624', *Law and History Review* **4** (1986), 95–127; and J. M. Beattie, *Crime and the courts in England 1660–1800* (Princeton, 1986), chs. 4–5.
- 2 N. M. W. Powell, 'Crime and the community in Denbighshire during the 1590s: the evidence of the records of the Court of Great Sessions' in J. G. Jones ed., *Class, community and culture in Tudor Wales* (Cardiff, 1989), 261–94; M. Humphreys, *The crisis of community: Montgomeryshire 1680–1815* (Cardiff, 1996), ch. 9; D. W. Howell, *The rural poor in eighteenth-century Wales* (Cardiff, 2000), ch.10; and S. Howard, 'Crime, communities and authority in early modern Wales: Denbighshire, 1660–1730' (unpublished PhD thesis, University of Wales, 2003).
- 3 C. B. Herrup, *The common peace: participation and the criminal law in seventeenth-century England* (Cambridge, 1987), 72–85, and 'New shoes and mutton pies: investigative responses to theft in seventeenth-century East Sussex', *Historical Journal* **27** (1984), 811–30'; also J. Styles, 'An eighteenth-century magistrate as detective: Samuel Lister of Little Horton', *Bradford Antiquary*, n.s. **47** (1982), 98–117.
- 4 J. G. Rule, 'The manifold causes of rural crime: sheep-stealing in England, c. 1740–1840', in J. G. Rule ed., *Outside the law: studies in crime and order, 1650–1850* (Exeter, 1983), 102–29; R. A. E. Wells, 'Sheep-rustling in Yorkshire in the age of the industrial and agricultural revolutions', *Northern History* **20** (1984), 127–45; B. Lemire, 'The theft of clothes and popular consumerism in early modern England', *Journal of Social History* **24** (1990–1991), 255–76; P. Linebaugh, *The London hanged: crime and civil society in the eighteenth century* (London, 1991).
- 5 G. Walker, 'Women, theft and the world of stolen goods', in J. Kermode and G. Walker eds., *Women, crime and the courts in early modern England* (London, 1994),

- 81–105; L. Mackay, 'Why they stole: women in the Old Bailey, 1779–1789', *Journal of Social History* 32 (1999), 623–39; G. Walker, *Crime, gender and social order in early modern England* (Cambridge, 2003), ch. 5.
- 6 See P. King, *Crime, justice and discretion in England, 1740–1820* (Oxford, 2000), which masterfully combines quantitative and qualitative approaches and legal, personal and printed sources.
- 7 E.g. M. Gaskill, *Crime and mentalities in early modern England* (Cambridge, 2000), which studies witchcraft, murder and coining; M. Jackson, *New-born child murder: women, illegitimacy and the courts in eighteenth-century England* (Manchester, 1996); S. Clark ed., *Languages of witchcraft: narrative, ideology and meaning in early modern culture* (Basingstoke, 2001); and Walker, *Crime, gender and social order*, chs. 2–4.
- 8 Gaskill, *Crime and mentalities*, ch. 6; N. Z. Davis, *Fiction in the archives: pardon tales and their tellers in sixteenth-century France* (Cambridge, 1988).
- 9 King, *Crime, justice and discretion*, 34.
- 10 Gaskill, *Crime and mentalities*, 183.
- 11 King, *Crime, justice and discretion*, 135. See Howard, 'Crime, communities and authority', 102–5, for more detailed statistics on Denbighshire theft prosecutions between 1660 and 1730; also Humphreys, *Crisis of community*, 233.
- 12 There are surviving depositions for approximately 200 Great Sessions and 90 Quarter Sessions cases (not all depositions, it should be noted, are accompanied by indictments). They vary in length, but the majority are sufficiently detailed for some analysis, often with several witnesses' accounts of their observations and actions. (Only about one-fifth of Quarter Sessions theft depositions and less than one-tenth of Great Sessions theft depositions consist of bare statements of the basic facts of the charge.) The Denbighshire Great Sessions records are remarkably rich, from the later sixteenth century onwards, but they are not unique in southern Britain. The Northern Circuit of the English Assizes, the Great Sessions in Cheshire (and several Welsh counties), many Quarter Sessions, and other jurisdictions, have left much of value: see Gaskill, *Crime and mentalities*, 22–3, 312–17. There are also the invaluable printed Old Bailey Sessions Proceedings (now available online: <http://www.oldbaileyonline.org>).
- 13 Herrup, *Common peace*, especially pp. 68–75, 85–91, and 'Investigative responses'; Styles, 'Eighteenth-century magistrate'; Beattie, *Crime and the courts*, ch. 2; King, *Crime, justice and discretion*, chs. 2–4; Howard, 'Crime, communities and authority', 105–15.
- 14 See M. McConville, A. Sanders and R. Leng, *The case for the prosecution* (London, 1991) 18–19; D. Steer, *Uncovering crime: the police role* (London, 1980), 73.
- 15 Humphreys, *Crisis of community*, 218; see also Howell, *Rural poor*, 209.
- 16 Herrup, *Common peace*, 67–8n.
- 17 See King, *Crime, justice and discretion*, 11–12, 132–4; Sharpe, *Crime in early modern England 1550–1750* (London, 1984), 44.
- 18 King, *Crime, justice and discretion*, 18–35.
- 19 J. Ditton, *Part-time crime: an ethnography of fiddling and pilferage* (London, 1977), 11.
- 20 National Library of Wales, Aberystwyth (hereafter NLW), Great Sessions gaol files (hereafter GS), 4/41/8 (examinations before Thomas Meredith, 13 December 1717; between 1705 and 1730 the Great Sessions files are in unnumbered bundles). Bills of indictment against Rogers for the theft and Parry for the assault were thrown out by the grand jury – suggesting either doubts about Davies's testimony or fear of Parry's wrath on the part of potential witnesses.
- 21 On petty chapmen, see M. Spufford, *The great reclothing of rural England: petty chapmen and their wares in the seventeenth century* (London, 1984).

- 22 The fullest discussion of this to date is King, *Crime, justice and discretion*, 22–35.
- 23 NLW GS 4/44/5 (examination of Randle Robinson, 6 August 1729).
- 24 NLW GS 4/33/8.23 (he was subsequently indicted for both thefts: 4/33/8.36–7).
- 25 NLW GS 4/42/4 (examinations before Edward Wynne, 14 September 1719; indictment for the sheep theft only).
- 26 E.g. NLW GS 4/41/6 (John Rowland, theft of money, 1716); 4/43/10 (John Parry, burglary, 1727); 4/44/2 (Thomas Williams, theft of cloth from dyehouse, 1728).
- 27 Only two people were indicted for compounding in Denbighshire between 1660 and 1730: NLW GS 4/42/1 (indictment against Richard Manning, who was also indicted for an assault on the officer arresting the suspected thief: 4/41/8); 4/43/2 (indictment of Rice Anwyl). See Beattie, *Crime and the courts*, 39–40; Sharpe, *Crime in early modern England*, 45–7; S. Hindle, *The state and social change, c. 1550–1640* (Basingstoke, 2000), 129–31; King, *Crime, justice and discretion*, 23–4; for Wales see Humphreys, *Crisis of community*, 222–3, and Powell, ‘Crime and the community’, 268–9.
- 28 Beattie, *Crime and the courts*, 41–8; King, *Crime, justice and discretion*, 30, 47–52.
- 29 On the dispersed settlement patterns of the region, see D. Sylvester, *The rural landscape of the Welsh borderland: a study in historical geography* (London, 1969); also see M. Griffith, ‘The emergence of the modern settlement pattern, 1450–1700’, in D. H. Owen ed., *Settlement and society in Wales* (Cardiff, 1989), 225–48.
- 30 Howard, ‘Crime, communities and authority’, 35–8; R. Suggett, ‘The Welsh language and the Court of Great Sessions’ and J. G. Jones, ‘The Welsh language in local government: justices of the peace and the courts of Quarter Sessions c. 1536–1800’, both in G. H. Jenkins ed., *The Welsh language before the industrial revolution* (Cardiff, 1997), 153–80, 181–206; G. Edwards, ‘The language of law courts in Wales: some historical queries’, *Cambrian Law Review* 6 (1975), 5–9.
- 31 E.g. King, *Crime, justice and discretion*, 31; Humphreys, *Crisis of community*, 223.
- 32 K. Wrightson, ‘Two concepts of order: justices, constables and jurymen in seventeenth-century England’, in J. Brewer and J. Styles eds., *An ungovernable people: the English and their law in the seventeenth and eighteenth centuries* (London, 1980), 21–46; M. Ingram, ‘Communities and courts: law and disorder in early-seventeenth-century Wiltshire’, in Cockburn ed., *Crime in England 1550–1800*, 110–34; King, *Crime, justice and discretion*, 31–5, 86–99; Hindle, *State and social change*, 106–13; Humphreys, *Crisis of community*, 222–5.
- 33 King (*Crime, justice and discretion*, 86–99) argues that historians have underestimated the flexibility exercised by magistrates in dealing with felony accusations. See also R. B. Shoemaker, *Prosecution and punishment: petty crime and the law in London and rural Middlesex, c. 1660–1725* (Cambridge, 1991), on the undoubtedly wide range of discretionary options available in prosecuting misdemeanours.
- 34 E.g. NLW Chirk Castle (hereafter CC), B18/a.45/1; B23/a.24; B50/a.27; B50/c. 20, 26.
- 35 E.g. NLW CC B39/b.41; B40/d.42. Another case that did not lead to indictment may also have been about disputed entitlements, but over tithes (the tithe-farmer was the accused): CC B37/d.45/1.
- 36 E.g. NLW CC Quarter Sessions files, B18/b.42; Denbighshire Record Office, Ruthin, (hereafter DRO), Quarter Sessions files, QSD/SR/59.33.
- 37 E.g. NLW CC B22/b.27/1; B23/d.40; see also DRO QSD/SR/56.63.
- 38 Weak evidence (as recorded) certainly did not always prevent prosecution (e.g. NLW CC B41/a.38; DRO QSD/SR/82.27, 39); conversely the evidence seems quite strong in a number of cases that were not prosecuted by indictment (e.g. NLW CC B25/a.18; B51/a.1; DRO QSD/SR/63.46-8).
- 39 McConville, Sanders and Leng, *Case for the prosecution*, 14, 26.

- 40 J. Shapland and J. Vagg, *Policing by the public* (London, 1988), 66.
- 41 E.g., NLW GS 4/32/1.48; 4/31/7.27; 4/44/3 (case of John Davies, July 1728).
- 42 Herrup, *Common peace*, 82.
- 43 NLW GS 4/30/2.19; see also 4/44.3 (case of John Bassett, examinations of 4 May 1728).
- 44 NLW GS 4/25/1.10.
- 45 NLW GS 4/42/1 (examinations before John Lloyd, 16 April 1718).
- 46 Howard, 'Crime, communities and authority', 240–2.
- 47 DRO QSD/SR/19.42–42A; SR/59.29.
- 48 NLW GS 4/33/4.17.
- 49 NLW GS 4/751/3.81.
- 50 NLW GS 4/28/3.78–81.
- 51 NLW GS 4/32/1.46–7; 4/27/1.69; also 4/29/6.38.
- 52 NLW GS 4/37/2.44.
- 53 NLW GS 4/30/1.52–5; also 4/42/4 (examination of Robert John Price, 14 September 1719).
- 54 NLW CC B21/c. 15–16.
- 55 NLW GS 4/30/1.57–8; also, e.g., 4/29/5.18; 4/33/8.25.
- 56 E.g. NLW GS 4/29/4.65; 4/36/3.19; 4/34/7.99; 4/43/2 (confession of Dorothy the wife of John Prichard, 13 October 1722).
- 57 NLW GS 4/30/1.57–8.
- 58 J. S. Cockburn, 'Early-modern assize records as historical evidence', *Journal of the Society of Archivists* 5 (1976–1977), 215–31 (at p. 222).
- 59 A rare Denbighshire example of a sheep thief being executed is Morris ap Robert, in 1682 refused clergy because he had been 'clergied' almost 20 years earlier: NLW GS 4/31/7.20. 'Benefit of clergy' was an important legal fiction used to save many convicted felons from the gallows during the early modern period: if they could 'read' a verse from the Bible (almost everyone passed this literacy test; it was probably rarely administered very strictly and some prisoners may have simply memorized the standard passage – the 'neck verse' – before trial) and it was their first offence they would be branded on the base of the thumb and released. See J. S. Cockburn, *Calendar of assize records: Introduction* (London, 1985), 118–21. (This contrasts strongly with the patterns in horse-theft cases, where, as elsewhere, conviction rates were low but convicts very likely to be executed.)
- 60 Wells, 'Sheep-rustling', 144.
- 61 E.g. Ditton, *Part-time crime*; S. Henry, *The hidden economy: the context and control of borderline crime* (Oxford, 1978); G. Mars, *Cheats at work: an anthropology of workplace crime* (London, 1982); M. Sutton, *Handling stolen goods and theft: a market reduction approach* (London, 1998); R. J. Stevenson, L. M. V. Forsythe and D. Weatherburn, 'The stolen goods market in New South Wales, Australia: an analysis of disposal avenues and tactics', *British Journal of Criminology* 41 (2001), 101–18.
- 62 Sutton, *Handling stolen goods*, xii.
- 63 Walker, 'World of stolen goods', 98. See also Mackay, 'Why they stole'.
- 64 See J. Styles, 'Clothing the north: the supply of non-elite clothing in the eighteenth-century north of England', *Textile History* 25 (1994), 139–66 (at pp. 150–1).
- 65 E.g. C. Shammis, *The pre-industrial consumer in England and America* (Oxford, 1990), 204–10; G. Morgan, 'Women's wills in west Wales, 1600–1750', *Transactions of the Honourable Society of Cymmrodorion* (1992), 95–114.
- 66 NLW GS 4/32/1.46–7, 4/34/6.54–6.
- 67 In thefts involving cloth, clothing and domestic goods, at Great Sessions the gender proportions of defendants were roughly equal (whereas women comprised just one

- quarter of all theft defendants in that court), and at Quarter Sessions women constituted about two-thirds of defendants on such charges (nearly one half of all theft defendants). See Walker, 'World of stolen goods', 87–8, and *Crime, gender and social order*, 162.
- 68 NLW GS 4/26/6.16.
- 69 See O. Hufton, *The poor of eighteenth-century France: 1750–1789* (Oxford, 1974); S. Mendelson and P. Crawford, *Women in early modern England* (Oxford, 1998), chs. 5–6; L. Davison, 'Spinsters were doing it for themselves: independence and the single woman in early-eighteenth-century rural Wales', in M. Roberts and W. Clarke eds., *Women and gender in early modern Wales* (Cardiff, 2000), 186–209; M. Roberts, 'Gender, work and socialisation in Wales, c. 1450–1850', in S. Betts ed., *Our daughters' land: past and present* (Cardiff, 1996), 15–54.
- 70 Walker, 'World of stolen goods', 97, 90.
- 71 E.g. NLW GS 4/27/1.69; 4/31/3.46–7; 4/26/6.17.
- 72 NLW GS 4/34/2.28, 35–8.
- 73 NLW GS 4/25/1.19; DRO QSD SR/64.63. See also NLW GS 4/37/4.29–30.
- 74 E.g. NLW GS 4/30/1.82; 4/36/4.58; 4/41/3 (examinations of Randle Williams and John Jones, 31 March 1716). Until 1691 receivers could not be prosecuted at all, and then only as accessories; even after they could be independently prosecuted it remained difficult to do so; see Beattie, *Crime and the courts*, 189–90.
- 75 NLW CC B25/d.29; GS 4/39/8 (examinations before Peter Ellice, 3 February 1709).
- 76 Henry, *Hidden economy*, ix–x. But see P. Harding and R. Jenkins, *The myth of the hidden economy* (Milton Keynes, 1989), for criticisms of the 'hidden economy' model.
- 77 Henry, *Hidden economy*, ch. 3.
- 78 NLW GS 4/26/3.33.
- 79 E. Muir and G. Ruggiero eds., *History from crime* (Baltimore, 1994), 'Introduction: the crime of history', ix.
- 80 For a particularly strong argument along these lines, see Henry, *Hidden economy*, ch. 5.
- 81 NLW GS 4/26/4.15.
- 82 DRO QSR/75/38.
- 83 DRO QSD/SR/70.27; SR/71.45.
- 84 NLW GS 4/26/3.33; CC B23/a.24.
- 85 N. Z. Davis, *The gift in sixteenth-century France* (Oxford, 2000), 56–7.
- 86 See Mackay, 'Why they stole', 630–3, on women's borrowing networks going wrong; also see C. Muldrew, *The economy of obligation: the culture of credit and social relations in early modern England* (Basingstoke, 1998), especially ch. 4.
- 87 It should also be noted that in the modern criminological literature, much 'hidden economy' activity is closely related to workplace crime: e.g. Ditton, *Part-time crime*; Mars, *Cheats at work*.
- 88 U. Rublack, *The crimes of women in early modern Germany* (Oxford, 1999), 103–4.
- 89 Herrup, *Common peace*, 123; Wells, 'Sheep-rustling', 133–5.
- 90 Humphreys, *Crisis of community*, 218, 219, 236.
- 91 Criminologists argue that 'fiddling' and the like, far from being a challenge to capitalist values, are their bastard offspring; see Mars, *Cheats at work*, 168; Ditton, *Part-time crime*, ch. 7; and Henry, *Hidden economy*.
- 92 Walker, 'World of stolen goods', 98.