

"THEY WOULD HAVE A LAW OF THEIR OWN": THE DISCOURSE ON SMUGGLING  
AT THE OLD BAILEY, 1736-1814

by

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This thesis examines the cases of 136 men tried for smuggling offenses at London's central criminal court during the long eighteenth century. Before the 1770s, the government portrayed smuggling as a crime against the nation, but after this time, the discourse changed significantly. At a time when smugglers actually were consorting with the enemy, the language of nationalism virtually disappeared from their trials and was replaced by the portrayal of smuggling as a crime of assault against revenue officers. The accounts of smugglers themselves also reveal a shift in emphasis. During the first part of the eighteenth century, smugglers referred to their trade in terms of tradition, and they were surprised to find themselves awaiting execution for such a commonplace activity. But after the 1770s, their language changes, too. Smugglers are increasingly reported to define smuggled goods as their private property and to suggest that revenue officers are in the wrong for seizing what is not theirs by right. This thesis argues that the changes in the discourse reveal both the revolutionary potential of smuggling and the ways authorities sought to change the conversation from one of national import to one of personal assault.



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AT THE OLD BAILEY, 1736-1814

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## TABLE OF CONTENTS

Acknowledgements.....	iii
Table of Contents.....	iv
Introduction: Smuggling in Eighteenth-Century England.....	1
Chapter One: A Brief Historiography of Smuggling.....	26
Chapter Two: The State’s Case, 1736–1753.....	52
Chapter Three: The State’s Case, 1784–1814.....	72
Chapter Four: Smugglers’ Speech and Its Implications.....	93
Conclusion: Smuggling a Class Act?.....	117
Bibliography.....	125
Appendix.....	131

## Introduction

### “I Have Bought an Anker Now and Then”: Smuggling in Eighteenth-Century England

In 1767, John Wesley, a notorious opponent of smugglers whose Methodism helped reform the morality of the West Country, published a tract in London entitled *A Word to a Smuggler*.<sup>1</sup> He specifically requested that the publication be given away, not sold. In this piece, Wesley railed against the evils of smuggling. He argued that smuggling was worse than pickpocketing and highway robbery because it was theft from England's kind, fatherly king, George III. Further, smugglers, by denying the king his revenues, forced him to raise taxes, thereby taking money from every honest, law-abiding, tax-paying Englishman. In addition, the devilish business corrupted men's souls to think that the activity they were engaged in, blatant theft in Wesley's opinion, was no sin at all but perhaps only good business. To those who acknowledged the illegality of the action, but argued that they could otherwise not afford goods that they needed, Wesley exhorted, "If you could not live without it, you ought to die, rather than steal. For death is a less evil than sin."<sup>2</sup> In spite of Wesley's energetic pleas, many men and women in England chose to live with their brandy, gin, tea, and tobacco, rather than to die, or live, without them. A surprising number of people participated in what they called the "free

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<sup>1</sup> According to historian Neville Williams, Wesley hated smuggling so much that he abstained altogether from drinking tea, as he could not be sure it wasn't smuggled. Neville Williams, *Contraband Cargoes: Seven Centuries of Smuggling* (1959; repr., North Haven, CT: Shoestring Press, 1961), 123–124.

<sup>2</sup> John Wesley, *A word to a smuggler. This Tract is not to be sold, but given away* (London, 1783?), 7. Eighteenth Century Collections Online. Gale. EAST CAROLINA UNIV. 25 Mar. 2010 <<http://find.galegroup.com.jproxy.lib.ecu.edu/ecco/infomark.do?&contentSet=ECCOArticles&type=multipage&tabID=T001&prodId=ECCO&docId=CW121114051&source=gale&userGroupName=gree96177&version=1.0&docLevel=FASCIMILE>>

trade” by procuring and running goods, financing smuggling voyages, purchasing significant quantities of goods for resale, or simply buying an anker or two at harvest time.<sup>3</sup>

Smugglers did not need to read John Wesley’s pamphlet to recognize that their own interests were opposed to those of the national government. During a period in which many historians argue for a rise in nationalism, the burgeoning smuggling industry was inherently anti-nationalistic.<sup>4</sup> Smugglers made their living at the expense of the national coffers. Historians estimate that in 1733 smugglers controlled at least one-third of all of England’s trade with France and Holland.<sup>5</sup> Ten years later, more than two-thirds of the tea consumed in England had been smuggled, and approximately half of the population was in some way involved in the illicit business, either as smugglers or as consumers of smuggled goods.<sup>6</sup> The situation did not soon improve for the government. By the 1770s, taxes had not been paid on nearly 70 percent of the tea in England.<sup>7</sup> The government lost considerable revenue as a result of smugglers’ activities. Accordingly, the authorities created an increasingly large and sophisticated customs and revenue service to combat the smugglers. This force came into frequent and occasionally violent contact

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<sup>3</sup> An anker is the unit of measure smugglers commonly applied to alcohol. An anker is variously reported as between seven and ten gallons. Smugglers often transported alcohol in half-anker barrels that were easier for men to carry.

<sup>4</sup> For example, Linda Colley’s *Britons: Forging the Nation*, argues that a new and strong British national identity formed between 1707 and 1837 as men and women from the diverse cultures of the British Isles unified in opposition to Catholic France. They may not have been able to define “British,” outside of a majority identification with Protestantism, but they could say that they were NOT French (which they associated with superstition and absolutism). Colley contends that this identification precipitated a rising tide of British nationalism. Her thesis has been hotly debated since its publication in the early 1990s; see, for example, Linda Colley, *Britons: Forging the Nation 1707–1837* (New Haven & London: Yale University Press, 1992); Gerald Newman, “Nationalism Revisited,” *Journal of British Studies* 35, no. 1 (1996): 188–127; and Laurence Brockliss and David Eastwood, eds., *A union of multiple identities: the British Isles c. 1750–c. 1850* (Manchester: Manchester University Press, 1997).

<sup>5</sup> G.D. Ramsay, “The Smugglers’ Trade: A Neglected Aspect of English Commercial Development,” *Transactions of the Royal Historical Society, Fifth Series*, 2 (1952), 135.

<sup>6</sup> David Phillipson, *Smuggling: A History 1700–1970* (Newton Abbot, UK: David & Charles, 1973), 16. 51.

<sup>7</sup> Gavin Daly, “English Smugglers, the Channel, and the Napoleonic Wars, 1800–1814,” *Journal of British Studies* 46 (January 2007): 35.

with the free traders, and on more than one occasion mobs intent upon rescuing seized goods confronted the revenue men.

The popular appeal of smuggling was troubling to authorities; some smugglers stood trial not in the county in which the offense was committed, most commonly Cornwall, Devon, Sussex, Suffolk, or Norfolk, but at the Old Bailey in London because juries in the coastal counties proved unreliable in returning convictions.<sup>8</sup> This study examines the 136 smuggling trials reported in the Old Bailey *Proceedings* during the years 1736 to 1814.<sup>9</sup> The vast majority of the smugglers were tried as tax offenders under the Smuggling Act of 1746, although four cases escalated into murder, two failure-to-surrender cases were filed under “miscellaneous,” one case appeared as “misdemeanor,” an incident in which smugglers broke into a custom house to reclaim seized goods fell under “theft,” and an assault on an officer was tried as “breaking the peace.”<sup>10</sup>

Most smuggling trials held at the Old Bailey took place during two periods: 1736 to 1753 and 1784 to 1814. The Old Bailey court heard only six smuggling trials between 1754 and 1783.

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<sup>8</sup> *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 17 July 2009), July 1791, trial of John Cooper (t17910720-41).

<sup>9</sup> The year 1736 represents the first smuggling trial held at the Old Bailey, and 1814 was the date of the last smuggling trial before the end of the Napoleonic Wars. The trials vary in length and detail of testimony, so not all trials will be specifically quoted in the following pages.

<sup>10</sup> Murder cases included *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 17 July 2009), June 1736, trial of George Watson (t17360610-54), *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 17 July 2009), January 1748, trial of Benjamin Tapner, John Cobby, John Hammond, Richard Mills, Richard Mills [the younger], William Jackson, and William Carter (t17480116-1), *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 17 July 2009), May 1776, trial of Joseph Blann, Benjamin Harley, and Thomas Henman (t17760522-32), *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 17 July 2009), September 1776, trial of Robert Harley and Edward George (t17760911-42); miscellaneous (non-surrender) *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 10 January 2010), February 1750, trial of John Carbold (t17500228-22) and *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 17 July 2009), June 1753, trial of Thomas Collingham (t17530607-39); misdemeanor *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 17 July 2009), July 1806, trial of William Bastin and Robert Prescott (t18060702-69); theft *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 17 July 2009), April 1749, trial of Thomas Kingsmill, William Fairall, Richard Perin, Thomas Lillewhite, and Richard Glover (t17490405-36); breaking the peace *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 17 July 2009), April 1801, trial of Edward Bawden (t18010415-22).

The Old Bailey accounts of smuggling trials during these periods reveal distinct ways in which the central authority sought to shape the discourse on smuggling. During the first period (1736–1753), covered in chapter two, smugglers were portrayed as threats to national order and as enemies to the nation’s revenue and security. By 1784, Britain had experienced the sting of a successful colonial revolt based largely on tax protests; during the second period (1784–1814), the smuggling trials at the Old Bailey show evidence of the government’s reluctance to frame smuggling as a crime of national consequence. As discussed in chapter three, the *Proceedings* portray smugglers tried between 1784 and 1814 as thugs committing personal assaults on the king’s revenue officers. Chapter four introduces smugglers’ speech to the analysis and examines the ways in which smugglers described their trade and defended their position using claims to both tradition and property rights. This chapter relies primarily on the Ordinary of Newgate’s *Account* for the 1736 to 1753 period and the description of smugglers’ speech in the Old Bailey *Proceedings* for the period 1784 to 1814.<sup>11</sup> These sources show that smugglers generally did not think of smuggling as a crime; in fact, many were surprised to find themselves in Newgate Prison’s condemned cells awaiting execution for such a commonplace activity. After 1784, the *Proceedings* reveal smugglers defending their activity in terms of property rights and liberty.

This study argues that after the American Revolution, the discourse on smuggling shifted. In the earlier period, smugglers generally claimed that smuggling was a legitimate activity based on traditional practice, whereas the authorities argued that it was detrimental to the national welfare and borderline treasonous. By the 1780s, smugglers aggressively defended their trade in terms of property rights; the authorities, now cognizant of the revolutionary potential of

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<sup>11</sup> After 1753, the Ordinary’s *Account* did not include interviews with condemned smugglers, and the publication ceased production in the 1760s. On the other hand, accounts of smugglers’ words reported in the Old Bailey *Proceedings* increased in detail for the second period, so this source proved more useful than in the earlier period.

smuggling, sought to turn the discourse on this dangerous topic from one of allegiance to the British nation to one of personal violence. The potential revolutionary power of smuggling lay in its questioning of the government's right to taxation and in its ability to unite members of traditionally disparate classes in recognition of a common economic interest, an interest that was in opposition to that of the government.

Smuggling was a diverse activity. It involved many people, occurred in numerous places, moved an assortment of goods, and was carried on by a variety of means. Smugglers were creative in their efforts to maximize their profit and minimize their risk of capture. Different types of goods required different methods, and various regions developed their own smuggling practices based on factors like geography and culture. Smugglers in the south and east carried on a brisk and clandestine trade with merchants in Holland and France, frequently through the Channel Islands. Smugglers in western and northern counties took advantage of their proximity to Ireland, Scotland, and the Isle of Man to move goods easily and manipulate import and export regulations. Those goods varied, but smugglers in most areas favored tobacco, tea, and alcohol (primarily brandy and gin). They also moved luxury items like lace, silk, and linen, as well as more common place ones like soap. Smugglers' methods of acquiring, moving, and distributing goods were as varied as their cargoes. Some smugglers were merchants who avoided paying duty on otherwise legitimate cargoes by bribing customs officials and manipulating paperwork. Others altered goods during the landing process.

The subjects of this study were not wily merchants who committed frauds with their pens or greased the palms of select officials. Rather, these smugglers often came from more humble backgrounds. They were mariners and laborers who supplemented their otherwise meager incomes with the proceeds of the free trade. They occasionally financed their own voyages, but

often borrowed money to purchase cargoes and ships. They procured goods in well-known smuggling ports such as St. Peter Port in Guernsey, Flushing in Zeeland (a province of the Netherlands), and Roscoff in France. The smugglers moved these goods to England in cutters, luggers, and open boats; many of these vessels had been modified to increase speed and to accommodate secret compartments in case of capture. Landing the goods was the most vulnerable point in the smugglers' voyage, especially as the eighteenth century progressed and customs and excise officials became more numerous and better equipped. It was at this point that smugglers ran the greatest risk of capture. If the goods were landed successfully, they were distributed to various individuals or taken to a population center where they were sold to retailers. The smugglers' activities not only deprived the treasury of a considerable amount of revenue (in a 1736 petition to Parliament, tea dealers estimated that duty had not been paid on nearly half the tea consumed in England), but they also indicated a serious lack of governmental control in the coastal regions, where confrontations between smugglers and officials often turned violent.<sup>12</sup> To understand the significance of the struggle to shape the discourse about smuggling, it is necessary to first explore the nature of smuggling in England during the eighteenth and early nineteenth centuries.

In spite of the legal risks, many men (and more than a few women) engaged in smuggling during the eighteenth and early nineteenth centuries. The obvious reason for the proliferation of the free trade was that it was very profitable: A single illegal cargo could be worth £2,000 to £10,000 at a time when the average working man made £20 to £25 a year.<sup>13</sup> It was so profitable,

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<sup>12</sup> Henry N. Shore, *Smuggling Days and Smuggling Ways* (1892; repr., Wakefield, UK: EP Publishing, 1972), 14.

<sup>13</sup> Mary Waugh, *Smuggling in Devon and Cornwall 1700–1850* (Newbury, Berkshire: Countryside Books, 1991), 24.

in fact, that smugglers could afford to lose several cargoes a year.<sup>14</sup> They could also afford to bribe their pursuers, and they occasionally worked out deals with less zealous excise and customs officials to let the government men make a seizure every so often in exchange for the officials' regular indifference. The profit achieved by smugglers fluctuated throughout the period and was largely dependent on the duty assessed on the product being smuggled. For example, when the tax on wine was high, it caused fair traders to raise their prices to accommodate the duty and still make a profit, which increased demand for lower priced smuggled wine. Historian Glanville J. Davies reports, "A hogshead of claret in 1709 cost £22.0.6. of which £17.2.2. was duty. Brandy duties exceeded £75 per tun in 1720, while rum imposts were 4/6 a gallon in 1755. Duties on French wine rose from £48 per tun in 1735 to £90 by 1782."<sup>15</sup> Duties this high allowed smugglers to charge significantly lower prices and still make hefty profits. On the other hand, when the duty on a product was reduced, demand for the smuggled product decreased. Hoh-Cheung Mui and Lorna H. Mui, in their study of the illegal tea trade, explain how this process worked. In 1766, London wholesalers agreed not to bid up the auction price of tea, and one year later the government removed the excise charge on the most popular kinds of tea for a period of five years to assess the effect on the revenue. The Muis report the result, "For the first time in the century, London wholesalers could contemplate underselling tax-free European tea; a difference of about 6*d.* between European and London prices would hardly cover the costs of transportation. The fate of smuggling was now at stake, a matter of no little consequence to those dealers engaged in it."<sup>16</sup> The smugglers soon breathed easy again, as speculators restored the

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<sup>14</sup> According to Henry Shore, smugglers could turn a profit even if they lost two out of every three cargoes. Shore, *Smuggling Days and Smuggling Ways*, 53.

<sup>15</sup> Glanville J. Davies, "Incentive Payments and the Sale of Smuggled Goods in Dorset in the Eighteenth Century," *Southern History* 14 (1992): 30.

<sup>16</sup> Hoh-Cheung and Lorna H. Mui, "Smuggling and the British Tea Trade before 1784," *American Historical Review* 74, no. 1 (1968): 54.

illegal tea market by increasing the price of legal tea.<sup>17</sup> There were several efforts during the eighteenth century to combat smuggling by lowering taxes, and although these efforts were often successful, they did not last long. The British were at war for sixty-one years during the eighteenth century and for sixty of the ninety years represented by this study. These wars were expensive, and the government felt it had to raise taxes to pay for them; thus it traded an increase in smuggling and coastal violence for the revenue generated by high duties on tea, tobacco, and alcohol.<sup>18</sup>

In addition to profit, and money was undoubtedly the prime motivating factor for most smugglers, culture and political leanings also played a role in an individual's decision to participate in the free trade. In some maritime counties, smuggling was part of the cultural tradition. For example, drinking alcohol was an important part of marking or celebrating occasions in Cornwall. When a local farmer brought in his harvest, it was customary for him to treat the men who helped him in the endeavor to a large supper and, often, an evening of drinking. When Cornish farmer Edward Bawden was brought to trial for breaking the peace and wounding an excise man, his friends testified on his behalf that he was following this Cornish custom and provided him with an alibi. In court, several of them also admitted that they purchased run goods.<sup>19</sup> Tax collector William Lenyan explained, "I have bought an anker against harvest, or against a feast."<sup>20</sup> When prompted with the question, "You never dealt in spirits, tea, or tobacco, I suppose?" laborer Thomas Blewitt responded, "I have bought an anker now and

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<sup>17</sup> Ibid., 55.

<sup>18</sup> The 1784 Commutation Act reduced the duty on tea from 119 to 12.5 percent, effectively destroying the tea smuggling industry. See Hoh Cheung and Lorna H. Mui, "William Pitt and the Enforcement of the Commutation Act, 1784–1788," *English Historical Review* 76, no. 300 (1961): 447 and "The Commutation Act and the Tea Trade in Britain 1784–1793," *Economic History Review* 16, no. 2 (1963): 234–253.

<sup>19</sup> "Run goods" is another term for smuggled goods.

<sup>20</sup> *Old Bailey Proceedings Online*, April 1801, Edward Bawden (t18010415-22).

then.”<sup>21</sup> Their nonchalant answers, offered freely and directly, indicate that purchasing smuggled goods was a common practice in Cornwall and not something that these men were too concerned to hide. Their candor certainly did not hurt their friend; Edward Bawden was found not guilty.

Smuggling might also be a family tradition, as was the case for the Warnes of Burley in Dorset and the Carters of Prussia Cove in Cornwall.<sup>22</sup> The Warne family consisted of brothers John and Peter and sister Lovey. Lovey transported smuggled silk under her dress from the ship to her home. After a close call with an amorous revenue man, she focused her efforts on signaling smugglers from a hill near her home. She rode along the hilltop wearing a red cloak when there were revenue men in the area.<sup>23</sup> The Carters were involved in two of the most famous episodes in the history of smuggling: They fortified their cliff-side home and fired ordnance on a revenue cruiser in the cove below, and on another occasion they broke into a customs house and recovered only their own seized goods, leaving goods seized from other smugglers untouched. Francis Carter had eight sons and two daughters. Most were at least incidentally involved in the smuggling trade, but four sons, John, Francis, Henry, and Charles, were active smugglers who owned and operated several purpose-built smuggling vessels.<sup>24</sup>

Several historians have researched smugglers’ ships, which were frequently modified to accommodate smugglers’ needs for speed, cargo room, and, occasionally, hidden compartments. In “The Smugglers’ Shipbuilder: The Customers, Trades and Vessels of a Mevagissey Shipyard, 1799–1816,” Helen Doe examines the Chancery case, business ledger, and disbursement books of James Dunn and James Henna, partners in a shipyard in Mevagissey, Cornwall, to discuss the

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<sup>21</sup> Ibid.

<sup>22</sup> Richard Platt, *Smuggling in the British Isles: A History* (Stroud, UK: Tempus Publishing, Ltd., 2007), 177–179, 195–196.

<sup>23</sup> Ibid., 195.

<sup>24</sup> Charles George Harper, *The Smugglers: Picturesque Chapters in the Story of an Ancient Craft* (London: Chapman and Hall, Ltd., 1909), 169–172.

shipbuilding practices of small yards as well as the construction of vessels used for smuggling. She argues that ship design was dynamic during this period. Doe contends that Dunn and Henna's ships were not of the unstable and boxlike type that sought to take advantage of the method for calculating port dues that dominated commercial ship design until the 1840s; this was largely because customers in the smuggling trade had no intention of paying port dues.<sup>25</sup> Dunn and Henna built ships and boats for three kinds of customers: fishermen, coastal traders, and smugglers. Smugglers, who made up most of their customers, were interested in two types of vessels: ones to cross the Channel and ones to land cargoes. Those of the first type needed to be fast, with hulls designed for both speed and the capacity to carry between 400 and 800 ankers of spirits.<sup>26</sup> In addition, they had to be able to carry a lot of sail and be sturdy enough to beach on occasion. They were from 50 to 250 tons and carried up to eight guns and 1,000 yards of sail on the main.<sup>27</sup> Vessels of the second type were indistinguishable from the average small working boats of a coastal community; these boats were normally rowed out to the larger vessels where they picked up cargoes directly or trolled for sunken cargo. When seized for smuggling, most vessels were broken up to prevent them from being purchased by another smuggler and returned to service.

In *King's Cutters and Smugglers, 1700–1855*, E. Keble Chatterton discusses smuggling in England and the efforts of the Revenue Service and Preventive Waterguard to stop the contraband trade. Compared to other accounts of smuggling, Chatterton spends a significant amount of time on the vessels that played an important role in the success or failure of these adversaries. He concludes that the smugglers were remarkable seamen, perhaps the best fore and

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<sup>25</sup> Helen Doe, "The Smugglers' Shipbuilder: The Customers, Trades and Vessels of a Mevagissey Shipyard, 1799–1816" *The Mariner's Mirror* 92, no. 4 (2006): 427–428.

<sup>26</sup> *Ibid.*, 433.

<sup>27</sup> *Ibid.*, 435.

aft sailors in England, and that they showed considerable skill in maneuvering their cutters, yawls, luggers, and open boats to evade the Revenue Service. Revenue men employed cruisers (used to refer to both sloops and cutters) to catch smugglers. These vessels featured a single mast with a mainsail and a square topsail in addition to two headsails.<sup>28</sup> The largest cruisers at the end of the eighteenth century averaged 190 tons and thirty-man crews.<sup>29</sup> The Revenue cruisers were remarkable for the number of boats that they carried, which could be as many as five.<sup>30</sup>

Most smuggling vessels were smaller than the Revenue cruisers (with the notable exception of the 250-ton *Ranger* that carried 100 men and 22 guns), but carried more men. For example, the *Swift* was 100 tons but carried 50 men and 16 guns.<sup>31</sup> There was some confusion at the time over the difference between cutters and sloops, a distinction of importance as a cutter was subject to forfeiture if its master did not carry a license, whereas a sloop was not. According to Chatterton, in addition to typically carrying more sail, nautical authorities stated that cutters were characterized by a running bowsprit (that is, it could be extended or retracted inboard). This feature was so ubiquitous on smuggling vessels that it became illegal and grounds for seizure.<sup>32</sup> On the other hand, the attorney and solicitor-general in 1822 claimed the difference between the two was one of hull structure: A cutter was clinker-built and a sloop carvel.<sup>33</sup> Most smuggling craft seem to have had sweeps in addition to their sails, as they needed both to be able to beach on occasion and to have every means possible to evade capture. Around 1815, with the end of the Napoleonic Wars and the availability of the navy for revenue duty, smugglers shifted their

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<sup>28</sup> E. Keble Chatterton, *King's Cutters and Smugglers, 1700–1855* (London: George Allen & Co., 1912), 27–29.

<sup>29</sup> *Ibid.*, 111–114.

<sup>30</sup> *Ibid.*, 124–125.

<sup>31</sup> *Ibid.*, 103, 110.

<sup>32</sup> *Ibid.*, 120–122.

<sup>33</sup> *Ibid.*, 122–123.

tactics from force and numbers to stealth.<sup>34</sup> Smuggling vessels of this period frequently featured concealed storage spaces for contraband, including removable ceiling planking, false bulkheads and bottoms, and false bows.<sup>35</sup> In addition to these larger vessels, smugglers employed many smaller work boats that met ships as they anchored offshore and transferred goods to the beach.<sup>36</sup>

Smugglers required upfront financing to purchase goods on the continent for resale in England. There were two main ways to accomplish this goal: spreading the risk among small local investors and working with distant, wealthy partners. Small investors were most frequently involved in smuggling operations based in Devon and Cornwall.<sup>37</sup> Cornwall was especially remote and lacked the exorbitantly wealthy landholders and access to the lucrative London market enjoyed by counties in the southeast. These factors made smuggling more of a local business in Cornwall than it was elsewhere, and many of the locals participated in both the risk and the reward. John Cornish, in his introduction to the autobiography of smuggler Harry Carter, writes, “In West Cornwall, . . . the farmers, the merchants, and, it is rumoured, the local magistrates, used to find the money with which the business was carried on, investing small sums in each voyage.”<sup>38</sup> Entire coastal communities might invest in smuggling ventures and even jointly own or sponsor purpose-built smuggling vessels. Henry Shore, Baron Teignmouth, asserts, “In those days there was scarcely a fishing village—along the south coast, at any rate—which did not own a vessel, often several, whose sole and peculiar employment was the importation of contraband articles for the use of the adjacent populace.”<sup>39</sup>

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<sup>34</sup> Ibid., 195.

<sup>35</sup> Ibid., 239–256.

<sup>36</sup> Ibid., 46.

<sup>37</sup> Platt, *Smuggling in the British Isles*, 89.

<sup>38</sup> John Cornish, “Introduction,” in Harry Carter, *The Autobiography of a Cornish Smuggler*, 2nd ed. (London: Gibbings & Co., 1900), xv.

<sup>39</sup> Shore, *Smuggling Days and Smuggling Ways*, 17.

Some historians associate wealthy, non-local investors with the violence of the large smuggling gangs in the south east. For example, Platt contends, “Kentish smuggling was on a scale that demanded large amounts of capital. Such sums were often raised not locally but at some distant point, usually London.”<sup>40</sup> With such large sums involved, investors were more likely to resort to violence to protect their material interest. Furthermore, Platt points out that by involving distant investors rather than members of the local population, smugglers often lost the support of the community.<sup>41</sup> The Muis argue that a change from local to large-scale urban financing took place after the Seven Years’ War and led to the growth and professionalization of the smuggling trade. They assert, “By developing more efficient means of transportation, by taking advantage of international facilities for capital and credit, and by invading established channels of legal distribution, the illicit trader was able to engross a large share of the marketplace.”<sup>42</sup> That may have been the case in the southeast, where the financial behemoth of London influenced much economic development, but in the southwest another financing option took shape.

Once a smuggler had established a relationship of mutual trust with dealers on the continent or in the Channel Islands, it appears that he could obtain credit to finance future endeavors. This system is made plain by a remarkable source: the records of “smugglers’ banker” Zephaniah Job. Job was active in Polperro, a Cornish fishing village, during the late eighteenth and early nineteenth centuries, and he kept careful records of his dealings, both legal and illegal. Genealogical researcher Frank H. Perrycoste discovered his books in the 1920s; Perrycoste examined Job’s moldering ledgers and recorded his findings in a book he finished just

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<sup>40</sup> Platt, *Smuggling in the British Isles*, 84.

<sup>41</sup> *Ibid.*

<sup>42</sup> Mui, “Smuggling and the British Tea Trade,” 45.

before his death in 1930. According to Job's accounts, merchants in Guernsey extended several months' credit to Polperro smugglers. During that time, the smugglers sold the undutied goods and repaid their creditors through Job. Perrycoste remarks of his subject, "He was actually the Guernsey traders' banker rather than the smugglers' banker."<sup>43</sup> The way in which creditors collected these debts is somewhat murky. Perrycoste notes that some small consignments of coins were sent to the Channel Islands with smugglers, but these may have been used for other purposes and were certainly not enough to discharge entire debts. At times, Guernsey merchants or their representatives traveled to Polperro, where they collected money in person. Perrycoste surmises, however, that most of the debt was remitted to agents in London and then transferred to the accounts of the creditors.<sup>44</sup> This suggests that a complex financial web upheld much of the smuggling trade.

After the financing was arranged, the master smuggler and the master of the vessel coordinated a time and place for the "run" to occur. Henry Shore quotes a smuggler's trial testimony that illustrates how the process worked in the middle of the eighteenth century. The smuggler explained:

The master smugglers contract for the goods either abroad, or with the master of a cutter that fetches them, for a quantity of teas . . . and brandies, and the master of the cutter fixes a time and place where he designs to land, and seldom or never fails, being pretty punctual as to the time, if the weather permits. As the master smugglers cannot fetch all the goods themselves, so they hire men whom they call "riders," and they allow each man half a guinea a journey, and bear all expenses of eating and drinking and horse and allowances of a dollop of tea, which is forty pound weight, being half of a bag, the profit of which dollop, even of the most ordinary sort, is worth more than a guinea . . . ; and

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<sup>43</sup> Frank H. Perrycoste, *Gleanings from the Record Book of Zephaniah Job*, 2<sup>nd</sup> ed. (Polperro, UK: Polperro Heritage Press, 2007), 188. It is astounding to consider the amount of money passing through this single accounting office in a small Cornish fishing village. Perrycoste reports that between 1778 and 1799 the smugglers paid their Guernsey creditors a total of £131,363, an average of £5,971 per year (p. 192). These numbers represent the wholesale costs to the smugglers; their true profits are unknown, but were likely substantial. The temptation for laborers, who might make £20 a year, to supplement their wages with profits from smuggling is understandable (p. 176).

<sup>44</sup> *Ibid.*, 197.

they always make one journey, sometimes two, and sometimes three in a week, which is indeed such a temptation that very few people in the country can withstand, and which has been the cause of so many turning.<sup>45</sup>

Planning a smuggling run was a complex affair that required the cooperation of a significant number of individuals. The master smugglers, it would seem, rarely had trouble recruiting local men to transport the goods from the ship to the arranged hiding place and then to their final destination.

After the plans had been laid, the master of the smuggling vessel, who was occasionally also the master smuggler, crossed the Channel to procure his cargo. The destination was most frequently the Channel Islands, the French coast, or one of the Dutch provinces. Before 1767, much of the illegal trade en route to Cornwall and Devon passed through the Channel Islands, especially Guernsey. The Channel Islands had a unique status among English (and later British) territories. Under Edward III (r. 1327–1377), the Channel Islands were granted neutrality in recognition of the terrible price they paid during England’s medieval wars with France. This privilege allowed the Islands to continue commercial relations with both England and France while the two were at war.<sup>46</sup> Henry VI (r. 1422–1461, 1470–1471) confirmed and extended the Channel Islands’ unique situation. His charter specifically exempted the Islands from customs duties in return for their loyalty.<sup>47</sup> These orders remained in effect until William III revoked the neutral status in 1689. During the seventeenth and eighteenth centuries the illegal trade thrived in the Islands. Parliament attempted to curtail smuggling activities through legislation in 1709, 1717, 1720, and 1722, but it sought Guernsey’s approval of the measures before they could take effect. Not surprisingly, the States of Guernsey unanimously rejected all reform efforts. Britain

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<sup>45</sup> Shore, *Smuggling Days and Smuggling Ways*, 52–53.

<sup>46</sup> Jonathan Duncan, *The History of Guernsey* (London: Longman, Brown, Green, and Longmans, 1841), 223–225.

<sup>47</sup> *Ibid.*, 227.

finally established a customs house on Guernsey in 1767. As a result, much of the smuggling trade moved to the French town of Roscoff. The French encouraged this trade by making the town a free port the same year.<sup>48</sup> Nevertheless, Guernsey was still an important hub of the illegal exchange and it remained so until Parliament extended its anti-smuggling crusade to the island in 1805.<sup>49</sup>

The Channel Islands were one of the smugglers' favorite destinations, but free traders also frequently traveled to France and Holland. These two countries were heavily involved in trading with China and quickly became major players in the European tea trade. French and Dutch merchants were among the first European traders to deal in Chinese tea and possessed several economic advantages over rival British merchants. The Muis explain, "The European companies were unencumbered with import taxes, had larger ships than the British and, more significantly, 'comparatively low freight and other charges,' as the directors of the English company admitted."<sup>50</sup> Smugglers also obtained goods from the Far East by dealing with mariners on East India Company vessels. The traffic, which often occurred when homeward-bound East Indiamen met offshore with smuggling vessels, was primarily in tea and textiles. H. V. Bowen asserts, "Most damage [was] inflicted during homeward voyages when vessels were laden with tea, textiles, and an infinite variety of private luxury goods. The Company was almost resigned to this situation, and an assumption of some degree of cargo and shipping loss had long been built into its calculations of profit."<sup>51</sup>

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<sup>48</sup> Ibid., 229, 234, 237.

<sup>49</sup> Ibid., 250.

<sup>50</sup> Mui, "Smuggling and the British Tea Trade," 47.

<sup>51</sup> H. V. Bowen, "'So Alarming an Evil': Smuggling, Pilfering and the English East India Company, 1750–1810," *International Journal of Maritime History* 14 (2002): 6.

English smugglers had always conducted business on the French coast, but their trips became even more frequent after the Channel Islands were brought under the control of British customs in the early nineteenth century. When the smugglers were shut out of the Islands, Napoleon saw an opportunity to increase his access to British gold and information while at the same time damaging British revenue and morale. Gavin Daly writes, “Between 1810 and 1814, the Napoleonic state officially sanctioned and supported the smugglers, using them as a weapon of war against Britain and to boost domestic French industry.”<sup>52</sup> Napoleon opened two ports specifically for the free trade, first at Gravelines and later at Dunkirk. Though he encouraged the smugglers’ presence, Napoleon also made sure that he controlled the trade: The emperor authorized seventy French merchants to trade with the smugglers, and English free traders took advantage of Napoleon’s hospitality. Daly reports, “So great were their numbers, and the potential security risk they posed to the French state, that they were housed in a specially constructed compound near the fort of Saint-Philippe in the port of Gravelines.”<sup>53</sup> The smugglers purchased the expected cargoes of spirits and luxuries, but what they used to procure these goods was especially troubling to the British government. Daly asserts, “The mischief of the English smugglers was indeed great: they brought across gold guineas, escaped French prisoners, newspapers, and the occasional spy; and returned to England laden with gin, brandy, and silks.”<sup>54</sup> Their willingness to trade with the enemy during time of war, and to barter with goods particularly injurious to their nation’s cause, brings into question the reality of the perceived swell of British nationalism during this period. Daly contends, “In plying their traditional clandestine trade during a period of international conflict, English smugglers subverted not only national borders but also national identities, interacting on a commercial and social level with the

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<sup>52</sup> Gavin Daly, “Napoleon and the ‘City of Smugglers,’ 1810–1814,” *Historical Journal* 50 (2007):335.

<sup>53</sup> Daly, “English Smugglers,” 39.

<sup>54</sup> Daly, “City of Smugglers,” 334.

officially hated ‘other.’”<sup>55</sup> Interestingly, as will be explored in chapter three, prosecutors at the Old Bailey court did not use arguments of consorting with the enemy against smugglers standing trial during the late eighteenth and early nineteenth centuries.

The violence of the conflict between smugglers and preventive officers also greatly concerned London authorities. After smugglers loaded their illicit cargo, they faced the greatest challenge of the whole endeavor: a successful landing. Preventive officers scoured both the seas and the coasts in search of free traders, and confrontation with their quarry often resulted in bloodshed. Smugglers and preventive men met in various types of encounters: battles on the sea, fisticuffs on the coast, riots in towns, and even battles between smugglers’ fortifications on the cliffs and revenue men aboard their cruisers.

Conflicts between smugglers and revenue men (or navy sailors when they were on smuggling duty) occasionally occurred on the water, either on the open sea or as the smugglers approached the coast. Harry Carter was a member of the infamous smuggling Carter family. He and his brothers plied their trade between the Channel Islands and Cornwall and along the southwestern coast of England at the end of the eighteenth century. Harry was the owner and master of several smuggling vessels. In 1787, he was delivering a cargo to Cawsand, Cornwall, when he received word from the shore that it was a “clear coast.” Carter anchored his lugger in anticipation of the smaller boats arriving from the beach to carry the goods to shore. As he was opening his hatches to unload, someone asked, “Do you know these is two man-o’war’s boats?”<sup>56</sup> He did not. By the time Carter cut the anchor cable and tried to sail off it was too late. He recalled, “They immediately cutt off the mizzen sheet, and with a musket-shot shot off the

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<sup>55</sup> Daly, “English Smugglers,” 32.

<sup>56</sup> Carter, *Autobiography*, 19.

trysal tack and boarded us over the stern.”<sup>57</sup> While Carter stood to fight, his men dropped their weapons and went below. The sailors surrounded Carter and attacked him with their swords. Assuming he was dead, the navy men left him prostrate on the deck to round up the rest of the crew. Having gained control of the lugger, the commanding officer reexamined Carter. Carter wrote, “The commanding officer gave orders for a lantern and candle to be brought, so they took up one of my legs, as I was lying upon my belly; he let it go, and it fell as dead down on the deck. He likewise put his hand up under my clothes, between my shirt and my skin, and then examined my head, and so concluded, saying, ‘The man is so warm now as he was two hours back, but his head is all to atoms.’”<sup>58</sup> Soon after, the men were distracted when one of their boats began drifting on the tide; Carter slipped into the water, confident that he would swim to safety. Unfortunately, he miscalculated the gravity of his injuries and found himself unable to stay afloat. He only survived by grabbing one of the ship’s cables and inching along until he could wade to the beach. When he reached land he was unable to walk more than a few paces without collapsing, but his brother, Charles, and the rest of the landing party saw him and came to his aid. Carter recorded his injuries, “The bone of my nose cut right in two, nothing but a bit of skin holding it, and two very large cuts in my head, that two or three pieces of my skull worked out afterwards.”<sup>59</sup> It took him more than three months to recover. In this instance, the forces of law and order got the better of the smugglers, but the clashes between the two sides did not always turn out that way.

Revenue officers often called the military for assistance, both on shore and on the water. Dragoons most frequently handled confrontations on shore, whereas the navy assisted with

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<sup>57</sup> Ibid. Carter wrote his memoir using spelling that conformed to the phonetics of his Cornish dialect. His original spelling is retained.

<sup>58</sup> Ibid., 20–21.

<sup>59</sup> Ibid., 25.

altercations at sea. One battle involved revenue men, sailors, and smugglers and occurred both in the bay and on shore. Known as the “Battle of Mudeford,” this incident illustrates both the scale of the conflict and the difficult odds the revenue men faced when trying to apprehend smugglers in sympathetic communities. The local population not only purchased and hid contraband merchandise, but at times also aggressively defended both the smugglers and their goods.

In 1784, smugglers at Mudeford beach, Christchurch, Dorset, were unloading a large shipment of undutied goods from the Channel Islands. In the midst of this activity, which involved a large number of men and horses, a navy sloop made its way into the harbor. Immediately comprehending what was going on, sailors from HMS *Orestes* started toward the beach in longboats. At the same time, one of the smugglers ran to the local inn, the Haven House, to enlist the help of its patrons in salvaging the smuggling luggers’ lines and rigging while others prodded the ponies, with their cartloads of contraband, farther inland. William Allen, master of the *Orestes*, ordered the smugglers to surrender; they met his request with a barrage of shot. Allen was mortally wounded and the sailors and revenue men exchanged fire—the revenue men from their boats and the smugglers from entrenched positions on the shore. After several hours of fighting, which moved from the beach into town, the revenue men captured the smugglers’ vessels but suffered heavy casualties. To add insult to injury, most of the smugglers escaped, and they saved their entire cargo. Eventually, three men were arrested and one found guilty of the murder of William Allen. He was executed and his body hung in chains in view of the Haven House inn.<sup>60</sup> The Battle of Mudeford illustrates the degree of popular support the smugglers enjoyed and the lengths some coastal populations were willing to go to protect the free trade.

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<sup>60</sup> Platt, *Smuggling in the British Isles*, 50–51. See also Geoffrey Morely, *Smuggling in Hampshire and Dorset, 1700–1850* (Newbury, UK: Countryside Books, 1983), 75–78.

Some smugglers even erected fortifications to protect their trade. One unique incident occurred at the King of Prussia's Cove in Cornwall when revenue officers attempted to seize the goods of smuggler John Carter, brother of the aforementioned Harry Carter. John Carter's house was located on the cliff at the convergence of three coves. Next to his house, he erected a "little battery . . . on the point between Bessie's and the 'King's' Cove."<sup>61</sup> Carter armed his battery with several small cannon, which he fired on the *Fairy* revenue sloop when it followed one of his vessels into the cove. The *Fairy* withdrew; but the next morning, a group of soldiers greeted the smugglers with a hail of musket fire. The Carters and their associates retreated to the house, but the soldiers did not pursue them.<sup>62</sup> Cornish historian A. K. Hamilton Jenkin assigns the event little real importance. He asserts, "This act, though it marks an epoch in the history of Cornish smuggling, was in reality purely one of bravado, little damage being done, either by the guns of the smugglers or by the return fire which was opened upon the latter from the decks of the ship-of-war."<sup>63</sup> Nevertheless, that smugglers could pay for such armament and could erect this kind of fortress without fear of recrimination indicates the lack of central control in the coastal regions and suggests that the authorities' apprehension over disorder in the countryside was legitimate.

Historian James Sharpe argues that the state was increasingly concerned with maintaining order during the early modern period, and that this concern was voiced through the expansion of the law. He insists, "Understanding crime in early modern England is impossible unless the objectives of the state . . . are taken into account. Above all, the crucial importance of fear of disorder . . . must be reiterated."<sup>64</sup> By the mid-eighteenth century, Sharpe saw a decline in worry over order in spite of the common perception of a rising crime rate. He contends, "Disorder and

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<sup>61</sup> A. K. Hamilton Jenkin, *Cornwall and Its People* (London: David and Charles, 1945), 21.

<sup>62</sup> Harper, *Picturesque Chapters*, 170–171.

<sup>63</sup> Jenkin, *Cornwall and Its People*, 21.

<sup>64</sup> J. A. Sharpe, *Crime in Early Modern England 1550–1750* (London: Longman, 1984), 170.

division were still present, but they were less menacing than they had been in, say, the 1630s, and, above all, they were *perceived* as being less menacing by contemporaries.”<sup>65</sup> According to Sharpe, fears of disorder returned in the early nineteenth century. He writes, “This anxiety expressed itself not only in fear of crime, but also in fears of revolutionary upheaval. Crime was conflated with political conflict, criminals with revolutionaries: at the same time as crime levels seemed to have been rising, the ruling groups were confronted with the traumas of Peterloo, Swing, and Chartism.”<sup>66</sup>

Sharpe’s analysis of the association between crime and revolution suggests an interesting explanation for the shift in the discourse on smuggling on display at the Old Bailey during the 1780s, 1790s, and early 1800s. Evidence of the state’s fear is the omission of any discussion of smuggling as a potentially subversive activity, which was common in smuggling trials in the 1740s and 1750s. Smuggling and tax protest were central to the escalation of colonial discontent that led to the American Revolution, and the state wanted no part of allowing the discourse about smuggling to take a turn for the revolutionary. Whereas smuggling trials before the 1780s often featured charges of promoting disorder, robbing the king of revenue, and terrorizing the countryside, smugglers at the end of the century were frequently charged with assaulting officers. This shift makes the offense of smuggling seem more personal and small scale; smuggling is no longer a threat to the king and the nation, but rather to the bodies of individual revenue officers. The effort to control discourse is akin to trying to keep a genie in a bottle. Words give expression to ideas, ideas that may be shared by many in some nebulous form in the recesses of the mind; but once articulated, these ideas give sympathetic listeners something to grab hold of and build on. After an idea has been thus circulated and spread, it takes on a life of

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<sup>65</sup> *Ibid.*, 184–185. Sharpe’s italics.

<sup>66</sup> *Ibid.*, 186.

its own; it is very difficult indeed to force the genie back into the bottle. Critical theorist Michel Foucault describes the need to control the potential of discourse, “In every society the production of discourse is at once controlled, selected, organised and redistributed according to a certain number of procedures, whose role is to avert its powers and its dangers, to cope with chance events, to evade its ponderous, awesome materiality.”<sup>67</sup>

Although several historians emphasize the anti-nationalistic, transnational nature of smuggling during this period, contemporary government prosecutors ceased appealing to national interest in an effort to convict smugglers at the Old Bailey.<sup>68</sup> At the same time, smugglers increasingly began to articulate their resistance to revenue officers in terms of property rights and claimed that they would rather die than relinquish their goods. Clearly, smuggling meant more to these men than simply turning a profit; defending smuggled goods became an assertion of their rights as members of a civil society. Significantly, the rights the smugglers were claiming were different from the traditional assertions of the customary rights of Englishmen that were long held dear by a people who jealously guarded their sense of independence. The violation of customary rights by those in power, such as through enclosure, occasionally resulted in riot or even rebellion; but the government was familiar with this kind of protest and knew how to handle it. After all, rebels acting in defense of customary rights sought a return to the traditional order, not the creation of a new one. During a period in which politicians, political philosophers, and the newly politicized public sphere struggled to define the rights of man and the proper role of government, the smugglers’ vigorous defense of smuggled goods as

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<sup>67</sup> Michel Foucault, “The Discourse on Language,” in *The Archaeology of Knowledge*, trans. A. M. Sheridan Smith (New York: Pantheon Books, 1972), 216.

<sup>68</sup> See especially Alan Karras, *Smuggling: Contraband and Corruption in World History* (New York: Rowman and Littlefield, 2010) and Daly, “English Smugglers,” and “City of Smugglers.”

private property suggests an inclination toward a Lockean concept of rights that had recently buttressed a successful revolution.

Some historians, most notably Cal Winslow, place smugglers on the frontline of class warfare alongside poachers, food rioters, and hedge breakers. Winslow argues that “the protection of smuggling was in part defence of the local economy, as against the development of commercial capitalism. . . . The resistance of the plebeian smugglers to attempts to suppress their trade, therefore, was also an aspect of the class struggle of the eighteenth century.”<sup>69</sup> But smuggling was a decidedly capitalistic venture; smugglers were known as “free traders” who profited from the government’s traditional practice of manipulating prices by heavily taxing imports. In addition, the people who bought smuggled goods were more concerned with getting a good deal than with supporting the local economy: When the government lowered taxes on tea with the Commutation Act of 1784, smuggling dropped precipitously. Furthermore, although Winslow rightly points out that lower-class smugglers paid the price when the government decided to crackdown on the contraband trade, smuggling involved people from many different social classes. As discussed previously, wealthy elites were instrumental in providing the upfront money needed to procure a cargo. Rather than acting as an instigation to class warfare, then, when viewed from this angle smuggling appears to have provided a common interest for members of disparate classes. Laborers and gentlemen alike saw that their own interests were best served in cooperation against the interest of the government. By converting class interest to common interest, smuggling united people who together could, under the right conditions, work to affect significant change, both economic and political. Smuggling damaged government

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<sup>69</sup> Cal Winslow, “Sussex Smugglers,” in *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow (New York: Pantheon Books, 1975), 150.

revenues; caused disorder in the countryside; united lower, upper, and middling classes in common interest; and provided a platform for laborers to assert property rights based on new ideas of the contract between government and the people. This was a dangerous activity, indeed. By controlling the discourse emanating from smuggling trials at the Old Bailey, the state sought to depoliticize smuggling and avert its revolutionary potential. Nevertheless, the smugglers' defiant speech comes through in witness testimony and the publication of the Ordinary of Newgate's accounts. An examination of the Old Bailey smuggling cases can be a valuable means of illuminating the struggle between the government and the people as the emerging discourse of individual rights transformed subjects into citizens.

## Chapter One

### “Little Serious Research on Smuggling Has Been Done”: A Brief Historiography of Smuggling

When approaching a historiography of smuggling, the most striking feature is the scarcity of academic studies of such a significant economic and social activity. In his 1984 survey on crime in England, James Sharpe characterized smuggling as one of the most organized and widespread criminal activities in England during the early modern period and throughout the eighteenth century. Nevertheless, he states, “So far, however, little serious research on smuggling has been done.”<sup>1</sup> Twelve years later, in one of the most comprehensive treatments of smuggling in England, Paul Muskett observed that the situation had not improved. Muskett suggests that one of the reasons for the lack of scholarly assessments of smuggling may be related to contemporary sources’ portrayal of smuggling as a back and forth, action-packed battle between daring outlaws and courageous officers. He muses, “Even the most austere analyst can be tempted from the path of virtue by the tales of intrigue and the clash of arms provided by the contraband trade.”<sup>2</sup> Historian Alan Karras, whose *Smuggling: Contraband and Corruption in World History* was published in 2010 after years of preparation, asserts that a paucity of source material makes smuggling a difficult subject to examine in depth. He contends, “Contraband commerce, by its very nature, is a subject that resides in the historical shadows. . . . Most smugglers, like other kinds of criminals, did not keep meticulous records of their illegal activities.” He further reports that the records that do exist are dispersed in archives, libraries,

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<sup>1</sup> Sharpe, *Crime in Early Modern England*, 105.

<sup>2</sup> Paul Muskett, “English Smuggling in the Eighteenth Century” (Ph.D. diss., Open University, 1996), 1–2. His dissertation was not published but factors prominently in later historians’ work on smuggling and will be treated at length in this discussion.

and record offices around the world.<sup>3</sup> In spite of these difficulties, some historians have endeavored to tackle the problem of smuggling and bring the activities of smugglers out of the shadows and under the spotlight of historical investigation. Although many early treatments of smuggling were anecdotal, tending to focus on description rather than analysis, research over the past fifty years, and especially the last decade, has shown that studies of smugglers and smuggling can make a significant contribution to understanding the growing pains experienced by both the authorities and the people as they negotiated the emergence of a strong, centralized state in a capitalist, global economy.<sup>4</sup>

Smuggling studies of the late nineteenth and early twentieth centuries focused on fact-finding and rescuing historical smugglers from romantic characterization by fiction writers. Henry Shore, who spent eight years as an inspecting officer of the Coastguard in England and Scotland, published *Smuggling Days and Smuggling Ways* in 1892. He laments, “While of smuggling *fiction*, evolved chiefly from the fertile brains of the writers, we have an ample supply, there is a dearth of *facts*, and these are not always easy of access to the seeker after truth.”<sup>5</sup> Shore’s goal was to “gather up the most interesting facts” about smuggling in the eighteenth century, a period he several times referred to as the “good old times.”<sup>6</sup> He seems to view the smugglers and the maritime culture of which they were apart with a detached curiosity, at some times fond and at other times reprobative. Shore describes smuggling as characterized by “utter lawlessness” and smugglers as those who “would show their teeth in an unmistakably suggestive way.” On the other hand, he claims, “the modern smuggler can only be regarded as a

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<sup>3</sup> Karras, *Smuggling: Contraband and Corruption*, vii.

<sup>4</sup> By using the analogy to growing pains, I do not intend to suggest that I espouse a determinist vision of history in which the infantile past leads haltingly but steadily to the sophisticated and advanced present. Rather, it seems an apt description of the awkward and often painful movement toward what has become, for better and worse, the modern state.

<sup>5</sup> Shore, *Smuggling Days and Smuggling Ways*, v–vi. Italics in original.

<sup>6</sup> *Ibid.*, 11, 12.

contemptible cheat when measured by the heroic standard of other days.”<sup>7</sup> Shore’s most frequently cited contribution to the study of smuggling is his division of smuggling into two periods: the free trade period and the scientific period. The free trade period dates from the shadowy beginnings of smuggling (which Shore describes as “a very remote age”) until the end of the Napoleonic Wars in 1815. During the free trade days, Shore claims that the smugglers operated with “a freedom from interruption which must have excited the envy of later generations.” The scientific period, which commenced around 1816, features the growth of the preventive services and the need for smugglers to develop ever more ingenious methods of evading law enforcement.<sup>8</sup> Most of Shore’s work consists of stories of smugglers and their battles with customs and excise officers, and it ends with his assertion that it was only when the government reduced taxes on commodities that the lucrative trade was destroyed.<sup>9</sup>

Another of the early smuggling historians arrives at a similarly mixed opinion of his subjects. Charles George Harper wrote *The Smugglers: Picturesque Chapters in the Story of an Ancient Craft* in 1909 “with no other ulterior object than that of entertainment”; he adds, however, “But if these pages also serve to show with what little wisdom we are, and generally have been, governed, they may not be without their uses. England . . . is what she is by sheer force of dogged middle-class character, and in spite of her statesmen and lawgivers.”<sup>10</sup> Entertainment indeed. He describes the smugglers as “reckless” and “criminals of the most ferocious type,” but argues that they were “the products of bad government, the creatures brought into existence by a vicious system that took its origin in the coming of William the

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<sup>7</sup> Ibid., 11, 12, 18.

<sup>8</sup> Ibid., 13.

<sup>9</sup> Ibid., 286.

<sup>10</sup> Harper, *The Smugglers: Picturesque Chapters*, v–vi.

Third, the ‘Deliverer,’ as history, tongue in cheek, styles him.”<sup>11</sup> Harper reports that in his day, the reduction of taxes brought about a change in the way the English populace viewed smugglers. Where they had been romantic heroes, they were increasingly seen as the enemies of fair trade.<sup>12</sup> Nevertheless, Harper argues that the smuggler played a significant role in the eighteenth century:

In that highly organised condition of so-styled civilisation which produces wars and race-hatreds and hostile tariffs and swollen taxation, the smuggler becomes an important person, a hateful figure to governments, but not infrequently a beneficent being to the ill-provided—in all nations the most numerous class—to whom he brought, at a reasonable price, and with much daring and personal risk, those comforts which, when they had paid toll to the Chancellor of the Exchequer, were all but unattainable.<sup>13</sup>

Harper likely would have found that his view of smugglers had much in common with the class-conscious free trader of 1970s social historians, but his work predates the Marxist history movement by nearly fifty years.

In 1912, E. Keble Chatterton remarked, “If we exclude fiction, the amount of literature which has been published on smuggling is exceedingly small.”<sup>14</sup> It seems he may have been unaware of the work done by Harper, Shore, and others. Chatterton seeks, like his predecessors, to make the public aware of the facts of smuggling by focusing on the work of the preventive service in combating “the notorious and dangerous bands of smugglers which at one time were a terrible menace to the trade and welfare of our nation.”<sup>15</sup> Of interest to maritime historians and archaeologists, Chatterton spends a significant amount of time studying the vessels of both revenue men and smugglers. His collected stories are sprinkled with interesting discussions of the structure and rigging of the various vessels. Although Chatterton does contribute to the body

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<sup>11</sup> Ibid., 3–4.

<sup>12</sup> Ibid., 8.

<sup>13</sup> Ibid., 1–2.

<sup>14</sup> Chatterton, *King's Cutters and Smugglers*, 9–10.

<sup>15</sup> Ibid., 1.

of factual knowledge about the smuggling trade, especially in regards to vessels, his purpose is still primarily entertainment. He promises, “In much the same way as a spectator looks on at a fine sporting contest between two able foes, we shall watch the clashing exploits of the King’s men and the smugglers. Sometimes the one side wins, sometimes the other, but nearly always there is a splendidly exciting tussle before either party can claim victory.”<sup>16</sup>

The 1950s witnessed a resurgence of interest in smuggling and the first significant efforts to understand the commercial effect of the illicit trade. G. D. Ramsay’s 1951 paper “The Smugglers’ Trade: A Neglected Aspect of English Commercial Development” locates the origin of modern smuggling in the second half of the sixteenth century and argues that the smuggler had a significant effect on the development of the English economy, central administration, and constitution.<sup>17</sup> His investigation into the origins of smuggling finds that customs posts were often purchased by wealthy families as a sinecure in which most of the actual work was assigned to poorly paid staffers.<sup>18</sup> During the Tudor and early Stuart period, the right to collect customs duties at specific ports was farmed out, or leased, with the hope that individuals would be motivated to diligence by the prospect of personal profit.<sup>19</sup> Ramsay credits the smugglers with “some share” of English foreign trade in the first half of the twentieth century and sought to estimate the amount of revenue the British government lost to the free traders in the eighteenth century. Ramsay asserted that the smugglers’ share of commerce with France and Holland was about one third the amount of legal trade, and that most of the tea drunk in the 1770s had not

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<sup>16</sup> Ibid., 5–6.

<sup>17</sup> Ramsay, “The Smugglers’ Trade,” 137, 157. Ramsay’s paper was read on 10 November, 1951.

<sup>18</sup> Ibid., 133, 138–139.

<sup>19</sup> Ibid., 147.

paid duty.<sup>20</sup> This brief foray into quantifying the amount of revenue captured by the smugglers was Ramsay's primary contribution to subsequent studies of smuggling.

In 1959, Neville Williams published *Contraband Cargoes: Seven Centuries of Smuggling* to fill the need for a general history of smuggling intended for a popular audience.<sup>21</sup> Williams chronicled the free trade from 1272, when Edward I established Customs laws that made smuggling profitable, to 1958. During the middle ages, smuggling primarily consisted of the illegal export of wool to the continent. For two hundred years, duties remained relatively stable, and so did smuggling, but during the 1550s, Henry VIII's heirs reformed the tax code, resulting in higher duties and an increase in smuggling. After this period, "smugglers would account for at least half of English overseas trade."<sup>22</sup> During Elizabeth's reign, smuggling continued to increase with the customs duties; the significance of the problem and its potential threat to state authority did not escape the attention of Elizabeth's ministers. Williams remarks, "The law ranked smuggling and concealments of customs as major crimes against the State; these offences, along with high treason, murder and rape, were always excluded from general pardons." Still, a smuggler rarely met with severe punishment and was seen by the common Englishman as "an honest thief, whose exploits were applauded, envied and imitated."<sup>23</sup>

Williams chronicles the rise of smuggling during the seventeenth and eighteenth centuries as heavy port duties and the new excise tax made cheating the revenue even more lucrative. Increasingly professionalized smugglers began to traffic more in imports, especially tobacco, brandy, tea, and silks, as global trade increased. In 1680, the Crown financed customs cutters to chase the smugglers' brigs, luggers, and hoys as they plied their cross-channel trade

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<sup>20</sup> Ibid., 131, 135.

<sup>21</sup> Williams, *Contraband Cargoes*, xii.

<sup>22</sup> Ibid., 28.

<sup>23</sup> Ibid., 62.

with such entrepots as Guernsey. The government was especially shocked by the results of a 1698 report from the Committee on Trade detailing the amount of smuggling carried on with the enemy during the recent war with France.<sup>24</sup> During what Williams terms “the heyday of illicit trade” (1713–1775), tea smuggling came to prominence, and beach landings became common place.<sup>25</sup> In spite of laws introduced in 1718, 1733, 1746, and 1784 that increased the penalties for smuggling and gave the revenue officers greater flexibility in charging smugglers (for example, hovering and assembling became crimes), smuggling continued to be rampant.<sup>26</sup> A significant decrease on the tea tax in 1784 struck a blow to smugglers, and reform of the tobacco duties soon made that commodity less attractive as well.<sup>27</sup> Unfortunately for William Pitt, his innovative tax policies were reversed when war with France broke out, and smuggling surged.<sup>28</sup>

Williams takes the story of smuggling through the nineteenth century shift to free trade, which ultimately killed the heyday of smuggling, to the year before his book was published, when diamonds and drugs dominated illicit cargoes.<sup>29</sup> He concludes that smuggling will always be a problem because of the enormous profits to be made by dealing in prohibited goods. Further, he asserts history has shown that as law enforcement becomes increasingly efficient and diligent, smugglers become more cunning and violent.<sup>30</sup> Writing during the space race of the late 1950s, Williams warns that interplanetary smuggling may be a significant problem on the not-too-distant horizon.<sup>31</sup> Williams’s work is well researched and compellingly written; unfortunately, he does not cite the multitude of primary sources he employs. He does, however,

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<sup>24</sup> *Ibid.*, 63–92.

<sup>25</sup> *Ibid.*, 93.

<sup>26</sup> *Ibid.*, 93–122.

<sup>27</sup> *Ibid.*, 156–159.

<sup>28</sup> *Ibid.*, 161–175.

<sup>29</sup> *Ibid.*, xi, 247, 286.

<sup>30</sup> *Ibid.*, 286.

<sup>31</sup> *Ibid.*

provide a three-page “Note on Authorities” in which he discusses his primary and secondary source work.<sup>32</sup> The lack of citation reduces the book’s utility for scholars; nevertheless, *Contraband Cargoes* provides an excellent overview of smuggling, especially during the long eighteenth century, and can be a useful jumping off point for subsequent scholars to undertake more in-depth research.

In 1958, quantifying the smuggling trade was again the subject of a scholarly study when W. A. Cole built upon Ramsay’s initial effort to put a value on the amount of smuggling conducted during the eighteenth century. Using surviving records of the annual “quantity and sale value of all tea sold by the East India Company” as well as the “statistics of the quantities retained for home consumption and the average sale price of each kind of tea” and other excise records, Cole tries to improve upon Ramsay’s contention that “it is of course impossible to do much more than guess the proportion of English foreign trade that eluded the customs net.”<sup>33</sup> Cole argues that if smuggling was as widespread as it appears to have been, and if a reliable estimate of the amount of revenue diverted by the contraband trade was as impossible to calculate as previous scholars believed, then it was “difficult to escape the conclusion that, for the purpose of measuring the level and trends of eighteenth-century foreign trade, the official statistics—at any rate of imports and re-exports—[were] virtually useless.”<sup>34</sup> Cole suggests that the amount of revenue lost by the consumption of untaxed tea could be estimated by examining the effect of fluctuating prices (due to raising or lowering taxes) on the demand for legal tea. He explains, “If we can trace the effect of price changes on demand for legally imported tea we should be in a much better position to judge how far the increase in consumption after 1745 and

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<sup>32</sup> Ibid., 287–289.

<sup>33</sup> W. A. Cole, “Trends in Eighteenth-Century Smuggling” *Economic History Review* 10 (1958): 397; Ramsay, “The Smugglers’ Trade,” 134.

<sup>34</sup> Cole, “Trends in Eighteenth-Century Smuggling,” 395.

again after 1784 may reasonably be attributed to a decline in smuggling, and how far it was simply due to changes in the price of tea.”<sup>35</sup> Cole found that, unsurprisingly, demand for legal tea increased significantly immediately following tax reductions in 1745 and 1784 and during the years 1768 to 1772, when the excise duty was temporarily lifted on black and single teas. He also found that when duties increased, as they did by 66 percent between 1730 and 1735, demand for legal tea decreased.<sup>36</sup> Using the assertion in the 1783 government report on smuggling that smuggled tea sold for between half and two-thirds the price of legal tea, and taking into consideration that smugglers favored the cheaper black tea for its heavier excise duty and durability in transport, Cole concludes that in the early 1780s, the amount of undutied tea sold was between four and six million pounds (weight) per year. This figure was smaller than the East India Company feared, but larger than the amount estimated by William Pitt’s advisors.<sup>37</sup> According to the 1783 report’s estimate for the price of smuggled tea in relationship to the legal price, and considering that tea represented 20 percent to 25 percent of smuggled goods, Cole calculates that during the American Revolution “£2 or £3 million worth of goods may have been smuggled into Britain each year” at a time when total legal imports were around £12 million per year. Cole concludes, “Clearly, therefore, fluctuations in smuggling must have had a significant influence on the trends in legal trade.”<sup>38</sup>

Ten years after Cole published his article, Hoh-cheung and Lorna Mui wrote “Smuggling and the British Tea Trade before 1784” in which they argue that after the Seven Years’ War, “a radical change took place in the extent and structure of the illicit trade that in turn significantly

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<sup>35</sup> Ibid., 397.

<sup>36</sup> Ibid., 400–401.

<sup>37</sup> Ibid., 405.

<sup>38</sup> Ibid., 409.

modified the legal or fair trade.”<sup>39</sup> According to the Muis, as mentioned above, before the war, small-scale local men dominated the smuggling trade, whereas after the war wealthy, internationally connected merchants rose to prominence. The Muis describe small-scale smuggling as characterized by small vessels, small shipments, unarmed smugglers who usually traded in offshore islands or with large ships anchored offshore, and a local distribution. Although some tea was taken to London (or, presumably, other urban centers) “there [was] little evidence of an extensive network of distribution.”<sup>40</sup> Later studies, including this one, come to a different conclusion about the nature of smuggling during this period.<sup>41</sup> When, during the 1750s and 1760s, the French and the Dutch increased their trade with China, making larger amounts and varieties of tea available to English smugglers, the previously existing balance between illegal and legal imports shifted in favor of the smugglers, leading to a price war that made tea accessible to more people and increased the smugglers’ distribution network. This situation led to the suspension of the one shilling excise duty on tea, which allowed fair traders to compete, and even threaten, free traders.<sup>42</sup>

After the reimposition of the duty in 1772, dominance in the smuggling trade shifted to major figures known as “engrossers.” These men were based in London, Edinburgh, or Glasgow and increased their profits by “transporting goods in well-armed vessels, by mobilizing large capital resources, by sharing risk of loss through insurance, and by taking advantage of the facilities of international finance.” Most significantly, they utilized “established legal channels of trade to distribute tax-free tea.”<sup>43</sup> Far from condemning the activities of the engrossers, the Muis praise their business practices as “innovations promoting the international and domestic trade of

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<sup>39</sup> Mui, “Smuggling and the British Tea Trade,” 45.

<sup>40</sup> *Ibid.*, 49–50.

<sup>41</sup> See especially Muskett, “English Smuggling.”

<sup>42</sup> Mui, “Smuggling and the British Tea Trade,” 53–54.

<sup>43</sup> *Ibid.*, 59, 61.

the kingdom, which, in turn, contributed to the growth of the British economy in the latter part of the eighteenth century.”<sup>44</sup>

In 1975, the Muis and W. A. Cole engaged in their own historiographical mini debate in consecutive articles in *Economic History Review*. In “‘Trends in Eighteenth-Century Smuggling’ Reconsidered,” the Muis criticize Cole’s methodology and question his findings. They write, “We seriously doubt whether he has in fact succeeded in establishing the ‘precise extent . . . or order of magnitude’ of smuggling for that century even in the quantity of tea smuggled.”<sup>45</sup> They claim that Cole’s trust in the accuracy of the eighteenth-century figures for the price of legal tea and its consumption is misplaced. Using their own corrected figures, they reran Cole’s calculations and came up with smuggling totals that suggest a decline in smuggling in the years before the Commutation Act of 1784; the Muis found these results conflicted with tea company records and contemporary estimates and declare the results “manifestly incorrect.”<sup>46</sup> They assert, “The conceptual framework for Prof. Cole’s analysis may be theoretically perfect but empirically difficult, if not impossible, to apply” and conclude that it would be impossible to arrive at any precise quantitative calculation of the significance of eighteenth-century smuggling.<sup>47</sup>

In the article immediately following the Muis’, Cole responds to their critique with “The Arithmetic of Eighteenth-Century Smuggling.” He first reminds readers that, contrary to the Muis presentation of his article, he never claimed to have arrived at precise figures for smuggling. In fact, he stated several times in his original article that his efforts were to arrive at a reasonable estimate of the amount of illicit trade; their “precise extent” quotation was taken out

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<sup>44</sup> Ibid., 73.

<sup>45</sup> Mui, “‘Trends in Eighteenth-Century Smuggling’ Reconsidered,” *Economic History Review* 28 (1975): 28.

<sup>46</sup> Ibid., 40.

<sup>47</sup> Ibid., 28, 43.

of context.<sup>48</sup> After reviewing the Muis' criticisms, Cole found that he may have been off on a few of his estimated figures, but that corrected numbers still did not affect his general conclusion that "smuggling probably declined by at least two million pounds annually" between the early 1740s and the early 1760s.<sup>49</sup> He also admits a "serious oversight" in his failure to account for the inclusion of exports in excise deliveries after 1784, which did affect the overall estimate. Nevertheless, Cole contends that the revised amounts still fell within his original margin of error. Furthermore, taking into consideration that the amount of non-English European tea imports did not decline until several years after the Commutation Act suggested that it may have taken a few years before smugglers really felt the blow of the reduced tea duty, Cole concludes that his original estimates of four to six million pounds may have been closer to the truth, even if originally based upon incorrect excise figures.<sup>50</sup>

The same year that Cole and the Muis debated the quantity of smuggled goods and their value, Cal Winslow published an article that took studies of smuggling in a new direction. Winslow's work, "Sussex Smugglers," is part of a collection of essays that galvanized the study of crime, criminals, and the law in eighteenth-century England. *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* is a collaboration by a group of scholars from the University of Warwick's Centre for the Study of Social History. Many of the authors were associated with the Marxist movement in history; they focused on the plebeian members of society and their exploitation by the elite classes, especially through the development of capitalism and the concurrent growing significance of private property. The essays in *Albion's Fatal Tree* focus on how the elites used the law to protect their property and the ways in which

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<sup>48</sup> Cole, "The Arithmetic of Eighteenth-Century Smuggling," *Economic History Review* 28 (1975): 44; Cole, "Trends in Eighteenth-Century Smuggling," 395.

<sup>49</sup> Cole, "The Arithmetic of Eighteenth-Century Smuggling," 47.

<sup>50</sup> *Ibid.*, 48.

they influenced Parliament to codify new laws that curtailed traditions of common law and common rights. Through their individual researches, the contributors found themselves returning to the idea of “social crime.” They explain:

It is rather easy, when taking a superficial view of eighteenth-century evidence, to propose two distinct kinds of offence and offenders. There are “good” criminals, who are premature revolutionaries or reformers, forerunners of popular movements—all kinds of rioters, smugglers, poachers, primitive rebels in industry. This appears as “social crime.” And there then are those who commit crime without qualifications: thieves, robbers, highwaymen, forgers, arsonists, and murderers. . . . This book became more weighted towards “social crime” than we had intended. But we should say that in our researches into legal archives and into the actual offences and offenders it became less possible to sustain any tidy notion of a distinction between these two kinds of crime.<sup>51</sup>

As the entire collection changed the way historians approach the study of crime in the eighteenth century, Winslow’s essay forces subsequent researchers to address the question of smuggling’s relationship to “the people” and its qualification as a class activity.

Winslow’s assertion that smuggling was a form of social crime was new, although it should not have been surprising. The ways in which past authors approached the topic, some siding with the revenue officers, others with the smugglers, and others trying to mediate between the two, indicate that this was an issue that defied simple categorization. Winslow focuses his study on the smugglers and the violence that accompanied the smuggling trade in Sussex and Kent during the 1740s.<sup>52</sup> He agrees with the Muis that small dealers dominated smuggling in the 1740s, but asserts that it was quickly developing into a much bigger business. He also agrees with their assessment of the commercial side of smuggling, but remarks upon their dissociation of the money from the violence on the ground.<sup>53</sup> Winslow argues that smuggling was a class activity, and that the violence that attended the trade was a product of smugglers’ resistance to the insidious spread of capitalism in the countryside. Winslow explains his position:

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<sup>51</sup> “Preface,” *Albion’s Fatal Tree*, 13–14.

<sup>52</sup> Winslow, “Sussex Smugglers,” 121.

<sup>53</sup> *Ibid.*, 126, 154.

The protection of smuggling [by the local population in the Weald] was in part a defence of the local economy, as against the development of commercial capitalism. For the poor it was even more. Often smuggling meant the difference between a bare subsistence and worse. For a few, it was an escape from everything which defined the life of the rural labourer or village artisan. The resistance of the plebeian smugglers to attempts to suppress their trade, therefore, was also an aspect of the class struggle of the eighteenth century.<sup>54</sup>

Winslow's summary of his conceptualization of smuggling illustrates several of the difficulties in studying this particular crime and in arriving at a definitive conclusion of smuggling as social crime or deviant crime, as class resistance or terror. The violence attendant with smuggling may have been in defense of the local economy, but seems to have had little to do with opposing capitalism. Smuggling was, in fact, a very capitalist activity; can capitalism oppose capitalism? Winslow also raises the question of the motivation of smugglers. Certainly they wanted to make money, but does a poor man's desperation necessarily equate to class-conscious activity? Further, the association of smuggling with plebes is problematic. It was often men from the lower classes who suffered for smuggling; they were the ones who transported the goods and were also the ones who were prosecuted (Winslow might substitute "persecuted"). Nevertheless, smuggling was an interclass activity that involved men of all social classes: Frequently elites sponsored smuggling ventures, large merchant houses on the continent provided smugglers' with their illegal cargoes, and respectable grocers and tavern keepers in both London and the countryside purchased and sold smuggled goods. Winslow's article serves an important role in the historiography of smuggling by bringing it out of the realm of narrative and economic history and into the burgeoning field of social history. Most subsequent scholarly investigations of smuggling, including this thesis, engage Winslow's argument and, by exploring the questions that it raises, expand historians' understanding of smuggling and what it may have meant to eighteenth-century English society.

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<sup>54</sup> Ibid., 150.

In his 1984 survey of crime in England, James Sharpe addressed the pitfalls of the validity of “social crime” as an analytical tool. He identifies several problems with the concept: the fact that any crime “*could* be portrayed as ‘social,’” the dominance of left-leaning historians in the development of social crime as an interpretive category, and the difficulty of defining any type of crime as the sole prerogative of the working classes.<sup>55</sup> Of smuggling in particular Sharpe writes, “Smuggling, for example, was often organized by and on behalf of people of property, and it is difficult to see anything very hostile to capitalism in the large smuggling networks of the mid-eighteenth century, or to interpret them as forms of social protest.”<sup>56</sup> Although he sees value in studies like Winslow’s, he cautions against simplification. Sharpe asserts, “It is possible to trace shifts in the official or semi-official perceptions of the criminal in the period, although again the problem needs rather more subtle handling than the straightforward ‘rise of the capitalist state’ approach might suggest.”<sup>57</sup>

Frank McLynn also criticizes the categorization of smuggling as a social crime in *Crime and Punishment in Eighteenth-Century England*. McLynn visualizes authorities’ efforts to combat smuggling as “an ever widening net being thrown out from London to ensnare the initiators of contraband.” The first smugglers caught in this net were those in the counties closest to the metropolis, namely Sussex, Kent, and Suffolk, followed by more remote counties until, in the 1770s, revenue cutters were a common sight off the coasts of Devon and Cornwall.<sup>58</sup> McLynn discusses smuggling by region and by commodity, and also details the corruption in the

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<sup>55</sup> Sharpe, *Crime in Early Modern England 1550–1750*, 140.

<sup>56</sup> *Ibid.*, 140–141.

<sup>57</sup> J. A. Sharpe, *Crime in Early Modern England 1550–1750*, 2nd ed. (London and New York, 1984, 2<sup>nd</sup> ed. 1999), 136.

<sup>58</sup> Frank McLynn, *Crime and Punishment in Eighteenth-Century England* (Oxford: Oxford University Press, 1991), 173–174.

customs service and the rivalry between customs, excise, army, and navy officers in the war with the smugglers. On the topic of smuggling as a social crime McLynn writes:

The social importance of smuggling largely hinges on whether the activities of the smugglers can be construed as “social crime”—a struggle against the encroachments of capitalism by “primitive rebels” determined to assert local autonomy against central government, and to uphold the prescriptive rights hallowed by custom and tradition against the might of the market. . . . Unless we allow sociological relativism to have the last word, it must be recognized that there are distinct problems in recognizing smuggling as “social crime.”<sup>59</sup>

McLynn supports this conclusion with assertions that smuggling was not anti-capitalistic, that it involved members of the elite class, and that its practitioners frequently diversified into other types of crime. Indeed, McLynn suggests, “The ease with which smugglers were able to diversify into other felonies argues against their status as primitive rebels and makes them appear more as professional criminals.”<sup>60</sup>

McLynn also deals briefly with the popularly held belief that smuggling was often associated with Jacobitism during the first half of the eighteenth century. He claims, “Historians have generally been very quick to assert that manifestations of popular Jacobitism by the criminal classes must always have been spurious, but there is much evidence that the relationship was more ‘organic’ than has usually been supposed.”<sup>61</sup> The scope of McLynn’s book did not allow him to elaborate on the smuggling/Jacobite connection, but that issue had been addressed at length two years earlier.

In 1989, Paul Monod looked at smuggling not as a social crime indicating class consciousness among the laboring people, but rather as a potentially subversive interclass activity with political as well as economic implications. He argues that smuggling and Jacobitism

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<sup>59</sup> Ibid., 196.

<sup>60</sup> Ibid., 196–197.

<sup>61</sup> Ibid., 176–177.

often went hand in hand in the coastal areas of southeast England. Monod defines Jacobitism as “both the idea and the expression of support for the claims of the exiled Stuarts.”<sup>62</sup> The Jacobite movement originated in 1688 when a group of influential English aristocrats invited the Dutch Protestant William of Orange and his wife, Mary Stuart, to take the throne of England from her father, the Catholic James Stuart. The timing was significant because James’s son, James Francis Edward, had recently been born, ensuring a Catholic succession. The Stuarts fled to the continent in the face of William’s invasion, and he was able to take control of the country relatively quickly.<sup>63</sup> James’s supporters, however, did not disappear as quickly as their namesake. The Jacobites (from the Latin, *Jacobus*, for James) formed a significant threat to the new Protestant monarchy; in fact, the Jacobites rose in open rebellion twice, in 1715 and in 1745.

Monod argues that disaffected Jacobites found allies in the smugglers in their effort to undermine the Protestant government. He writes, “Jacobitism was a crucial component in the emergence of an organized network of contraband trade in southeast England. This ‘big business’ was, to a large extent, based on Jacobite connections—not only on paternalist landowners but also on merchants across the Channel and in the City.”<sup>64</sup> He contends that Jacobite landowners allowed smugglers to operate in their territory and that, in accordance with the tradition of paternalism, they exerted their influence to keep those caught or accused out of trouble.<sup>65</sup> Monod explains, “Jacobites condemned customs houses, excise officers, and the standing army as the tools of a corrupt and tyrannical ministry; smugglers hated them for more practical reasons. Thus the bonds of paternalism were reinforced by shared political

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<sup>62</sup> Paul Monod, *Jacobitism and the English People 1688–1788* (Cambridge: Cambridge University Press, 1989), 7.

<sup>63</sup> Robert Bucholz and Newton Key, *Early Modern England 1485–1714* (Malden, MA: Blackwell Publishing, 2004), 288–296.

<sup>64</sup> Paul Monod, “Dangerous Merchandise: Smuggling, Jacobitism, and Commercial Culture in Southeast England, 1690–1760,” *Journal of British Studies* 30, no. 2 (1991): 154.

<sup>65</sup> *Ibid.*, 155–158.

perceptions.”<sup>66</sup> Collusion with smugglers afforded disaffected Jacobites the opportunity to clandestinely attack the British government, and though the mariner or husbandman who turned to smuggling may not have independently held Jacobite beliefs, he could be convinced to see the advantage in adopting their political ideology in order to gain the cooperation of such high-placed allies.

In 1996, Paul Muskett produced a monograph-length scholarly study of smuggling in England for his doctoral thesis with Open University. He focuses on violence as an integral part of smuggling and returns to the question of smuggling’s validity as a social crime. In contrast to Winslow, Muskett expands his regional focus to include East Anglia, Sussex, Kent, and western counties like Cornwall and endeavored to examine the “whole picture” of smuggling, including the suppliers and purchasers. Muskett claims that “broadening the geographical and chronological scope of investigation will provide a basis for a less impressionistic assessment of changes and continuities.”<sup>67</sup>

Like McLynn, Muskett is critical of the “smuggling as social crime” approach that Winslow advocates. He rightly points out that any activity’s definition as social crime is predicated upon ascertaining the opinion of the local community on that activity, and yet Winslow’s sources for confirming community approval of smuggling were letters written by the Duke of Richmond and Sir Cecil Bishop. Muskett asserts, “Extending the scope of enquiry, and regarding elite responses as a legitimate field of study in their own right, will be a step towards a more securely based assessment of eighteenth-century norms and mores.”<sup>68</sup> He offers biting criticism of Marxist historians, arguing that they essentially make the same mistake they accused

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<sup>66</sup> Ibid., 159.

<sup>67</sup> Muskett, “English Smuggling,” i–iv, 12.

<sup>68</sup> Ibid., 20.

previous historians of: emphasizing one group of historical actors without consideration of another. Muskett concludes his foreword, “‘History from below’ is more about the interests of historians who concentrate on the ruled, instead of the rulers. Since the two cannot be disentangled, it is perhaps better to make use of the evidence we have, rather than regretting that which we do not.”<sup>69</sup>

Muskett seeks to reconstruct the network of connections in the contraband trade that enabled goods to be dispersed from producers to traders to smugglers to sellers and finally to consumers. Major smuggling depots included ports in the Netherlands, France, and Scandinavia, as well as English territories removed from the control of the central government, namely the Channel Islands and the Isle of Man. He argues that smuggling “needs to be located within an international market” and exposes the weakness in the Muis’ assertion of smuggling as a small-scale trade.<sup>70</sup>

Muskett also examines the eighteenth-century preventive services and finds an organization rife with corruption. Many offices were purchased or assigned as favors in the patronage system. In addition, customs and excise officers were not above conspiring with smugglers for a share of the profits or simply taking bribes. Also common was the practice of “collusive seizure” in which smugglers and officers made a deal that allowed the smugglers to keep a majority of a cargo while also providing officers with “seized” contraband goods, giving the impression that they were doing their jobs and also ensuring them of a cut of the value of the seized goods.<sup>71</sup> Muskett asserts that customs and excise officers had to coexist with smugglers in the coastal communities, which often saw no harm in smuggling, and so it should not be

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<sup>69</sup> Ibid., vi.

<sup>70</sup> Ibid., 25, 118, 232.

<sup>71</sup> Ibid., 126–137.

surprising to discover that some revenue men found it more expeditious to work with the smugglers than against them.<sup>72</sup>

Muskett also examines the problem of violence in the smuggling trade. He disagrees with McLynn's contention that the Sussex smugglers were atypical in their violence, and argues, rather, that "'purposive violence' was practically an occupational requirement for the smugglers," and that the Hawkhurst gang was only atypical in the degree of the violence they committed.<sup>73</sup> Part of the difficulty in analyzing smuggling is in the diversity of its participants and operation. In some instances it seems the local population supported the smugglers, whereas in others they appear to have been cowed into silent acquiescence through threats of harm to their persons or property. Some smugglers sought to avoid violence through collusive seizures or simply by leaving the scene of conflict, whereas others aggressively pursued officers, seized goods, and dared the authorities to stop them. Muskett summarily addresses this issue:

It is essential to reiterate some of the realities of smuggling. Intimidation might be a calculated means of deterring the revenue officers from interference, or it could stem from a vicious nature, it might even be an aspect of class war. Smugglers can be seen as protectors of their own financial interests, defenders of the local economy against metropolitan capitalists, or as both victims and villains trapped in a cycle of feuds and vendettas. Not all violence is mindless, but neither should the rationale for terror obscure the brutality of its execution, or the fact that some of its perpetrators were sadistic drunks. Even if some of the smugglers' actions might be interpreted [sic] as rebellion against a stratified society and repressive authority, it is doubtful whether their half-hung or half-drowned victims would have shown any sympathy for their attackers' problems of social adjustment.<sup>74</sup>

Muskett concludes that smuggling was a violent business that involved people of all social classes. At times it exhibited some features of social crime, including community support, the rejection of authority, and the restriction of occupational possibilities. On the other hand, smugglers were largely motivated by personal gain; Muskett writes, "Smugglers intent on

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<sup>72</sup> Ibid., 157.

<sup>73</sup> Ibid., 204.

<sup>74</sup> Ibid., 276.

redressing imbalances in society, or defending their local economies against the incursions of central capitalists are difficult to identify within the networks of acquisition and accumulation which sustained the contraband trade.”<sup>75</sup>

The past decade has seen an increase in scholarly interest in smuggling as well as a diversification of the kinds of studies produced. A couple of new works reflect traditional approaches. Richard Platt’s *Smuggling in the British Isles: A History* is broad and reminiscent of earlier narrative works; nevertheless, it is an exhaustive treatment that seeks to tell the story of smugglers rather than the preventive services by leaning heavily on folktales, traditional yarns, and recollections of the oldest village inhabitants. This book is a good general introduction to smuggling, as is Platt’s website.<sup>76</sup> Neil Holmes’s *The Lawless Coast: Smuggling, Anarchy and Murder in North Norfolk in the 1780s* is also narrative in style and describes smugglers as courageous, unscrupulous, lawless, vicious, ruthless, cruel, violent, unprincipled, and completely motivated by greed. Customs and excise officers do not fare much better; they are characterized as “self-seeking, avaricious opportunists.”<sup>77</sup> Holmes conducted a significant amount of archival research, and his book provides an interesting view of smuggling in Norfolk. It is also representative of the trend of writing local or regional smuggling histories that emerged in the late 1970s and has continued since.<sup>78</sup>

Smuggling has also captured the attention of scholars outside the field of history. In “The Archaeology of Smuggling and the Falmouth King’s Pipe,” Sam Willis issues a call to study smuggling in an archaeological context. He uses the Falmouth Pipe, where revenue men burned

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<sup>75</sup> Ibid., 443–444.

<sup>76</sup> Platt, *Smuggling in the British Isles*; his website is <http://www.smuggling.co.uk/>.

<sup>77</sup> Neil Holmes, *The Lawless Coast: Smuggling, Anarchy and Murder in North Norfolk in the 1780s* (Dereham, UK: Larks Press, 2008), 20.

<sup>78</sup> Please see the bibliography for further examples.

contraband tobacco, as his primary focus and argues that the authorities chose its location to make it most visible from the sea, where the smugglers would see it. He contends that there is much to be gained by studying the relationship between smugglers and the landscape and by examining the ways in which both smugglers and preventive men used the landscape to their advantage. Willis's insistence on the significance of such a study is intriguing, and may yet transform the way in which scholars approach the history of smuggling specifically and the history of crime in general.<sup>79</sup>

Historians are also approaching smuggling from new angles to produce studies that illuminate different aspects of this complex business. H. V. Bowen published two articles on smuggling and the East India Company. Bowen's first article, "'So Alarming an Evil': Smuggling, Pilfering and the English East India Company, 1750–1810," discusses the common practice of East India Company crews conducting a thriving illicit trade in the London docks upon their return from the East. The crews sold goods to smugglers, who then distributed the goods through the well-worn London distribution networks. Bowen identifies four ways in which the EIC tried to curtail the contraband business: They lobbied for reduced duties on Asian imports, improved their method of transferring goods, cooperated with the Royal Navy and the customs service, and finally constructed enclosed wet docks to keep the smugglers at a distance.<sup>80</sup>

In his second article, "Privilege and Profit: Commanders of East Indiamen as Private Traders, Entrepreneurs and Smugglers, 1760–1813," Bowen examines the private trade conducted by commanders of East India Company ships. He describes the commanders as

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<sup>79</sup> Sam Willis, "The Archaeology of Smuggling and the Falmouth King's Pipe," *Journal of Maritime Archaeology* 4 (2009): 51–65.

<sup>80</sup> Bowen, "'So Alarming an Evil,'" 4–6.

“linchpins” in the East India Company’s trading system and argues that their individual endeavors had a profound effect on the movement and variety of goods exchanged between East and West. He explains, “Private trade conducted by those who served on East Indiamen established an important commercial channel between East and West and . . . commanders acted as significant agents of integration within the developing international economy of the late eighteenth century.”<sup>81</sup> Part of the private trade involved smuggling. East Indiamen on their way out of English waters often stopped to rendezvous with smuggling boats in the Channel where they took on additional cargo that included brandy, firearms, or other prohibited goods. East Indiamen were also met by smuggling boats on their return trip; commanders, officers, and sailors sold part of their private cargoes, often consisting of tea and textiles, to the smugglers who then took on the risks associated with landing and distributing illicit goods.<sup>82</sup> Although not directly related to the current study, Bowen’s work is illustrative of the new directions scholars are exploring with regards to English smuggling and the increasing realization that smuggling was an international, even global, activity.

Gavin Daly has pioneered another interesting direction in the historiography of smuggling. In his 2007 articles “English Smugglers, the Channel, and the Napoleonic Wars, 1800–1814” and “Napoleon and the ‘City of Smugglers,’ 1810–1814,” Daly argues that the Channel was a permeable barrier between the two combatants that allowed English smugglers to pursue private profit at the expense of national interest. He claims, “In plying their traditional clandestine trade during a period of international conflict, English smugglers subverted not only national borders but also national identities, interacting on a commercial and social level with the

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<sup>81</sup> H. V. Bowen, “Privilege and Profit: Commanders of East Indiamen as Private Traders, Entrepreneurs and Smugglers, 1760–1813,” *International Journal of Maritime History* 19 (December, 2007): 49, 50.

<sup>82</sup> *Ibid.*, 63–64, 76.

officially hated ‘other.’”<sup>83</sup> According to Daly, smuggling was an activity that involved people of diverse classes and nations in the common pursuit of personal profit.<sup>84</sup> In exchange for French goods such as brandy, gin, and textiles, English smugglers provided the French with gold guineas, English newspapers, and even escaped French prisoners.<sup>85</sup> Napoleon encouraged English smugglers, especially those paying with gold, by opening the ports of Dunkirk in 1810 and Gravelines in 1811.<sup>86</sup> Daly writes that Napoleon used the smugglers “as a weapon of war against Britain and to boost domestic French industry.”<sup>87</sup> Daly goes on to describe the smuggling bases, the exchanged goods, and the players involved. He concludes, “For the English smugglers . . . the Channel between 1810 and 1814 was as much a place for illicit Anglo-French cooperation and exchange as it was for adversarial relations; a place for profit and entrepreneurial activity as it was for war.”<sup>88</sup>

The most recent publication on smuggling continues the trend of portraying smuggling as an international activity. In 2010, Alan Karras published *Smuggling: Contraband and Corruption in World History* and, by his title, makes clear his position that smuggling must be studied within its global context. Karras argues that “change over time” approaches to smuggling are largely ineffective because smuggling retained similar characteristics in various times and places. He also claims that it is impossible to quantify the amount of goods (or the value of those goods) that was smuggled and that smugglers were rarely violent, only resorting to violence as a last resort, and that the worst punishment they suffered was imprisonment.<sup>89</sup> This may have been true for the smugglers on whom he focused, those in the Caribbean Islands, China, and French

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<sup>83</sup> Daly, “English Smugglers,” 32.

<sup>84</sup> Daly, “City of Smugglers,” 333.

<sup>85</sup> Daly, “English Smugglers,” 31, 32.

<sup>86</sup> *Ibid.*, 34.

<sup>87</sup> Daly, “City of Smugglers,” 335.

<sup>88</sup> *Ibid.*, 352.

<sup>89</sup> Karras, *Smuggling: Contraband and Corruption*, 2–18.

Indochina, but British smugglers certainly suffered worse fates than imprisonment and did not seem hesitant to use violence as a first response. Karras also discusses the political economy of smuggling and asserts that smuggling studies can be used to analyze the relationship between the state and consumers.<sup>90</sup> He writes that the difficulty of procuring goods in the colonies, as well as government protectionist policies, led to smuggling.<sup>91</sup> Karras claims that by hurting the state, smugglers were actually hurting themselves: “The net effect of this was that illicit trade effectively denied the state revenue, not just to which it was *legally entitled* but also which it *needed* in order to protect the property of everyone who lived under its rule, including the smugglers and their customers.”<sup>92</sup> Karras concludes that smuggling without rebellion was a kind of negotiation with the state. He explains:

Government knew that by passing laws that did not provoke open rebellion it could claim to represent the will of its population, therefore achieving a kind of legitimacy. At the same time, the population understood that by simply failing to obey the laws, without entering into open rebellion (especially after 1776), it could achieve a degree of autonomy that might not otherwise be possible.<sup>93</sup>

Karras’s identification of the connection between smuggling and rebellion, and the significance of the year 1776, is important to the current study. Although Karras does not focus on Britain, the assertion that the government was wary of smugglers’ potential to turn into revolutionaries certainly applies to the way in which the Old Bailey, as the judicial arm of the British state, dealt with smugglers in the second half of the eighteenth century.

The previous discussion shows the difficulties in studying smuggling: Smugglers do not fit neatly into categories of good and evil, proponents or opponents of capitalism, patrician or

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<sup>90</sup> Ibid., 49.

<sup>91</sup> Ibid., 57–59. Again, this assertion illustrates Karras’s bias toward smuggling in colonial regions, which he did not address at the beginning of the book. His book’s title claims to encompass world history, yet he does not devote any significant attention to the smuggling meccas of England, France, or the American colonies/United States.

<sup>92</sup> Ibid., 65. Italics Karras’s.

<sup>93</sup> Ibid., 132, 110.

plebeian, or local, national, or international actors. Furthermore, smuggling does not lend itself to studies based solely on race, class, or gender. A study of smuggling must address the ways in which these traditional lines were blurred in an effort to promote a more accurate understanding of smuggling in all its complexity. This project will analyze the ways in which smuggling was portrayed in London by three parties: the Old Bailey court, the smugglers, and outside observers.

## Chapter Two

### **“A Struggle between the Government and This Banditti”: The State’s Case, 1736–1753**

The Old Bailey court, as the primary London representative of the state’s judicial arm, played a significant role in shaping the discourse of smuggling in the eighteenth and early nineteenth centuries. The discourse of smuggling was part of a larger discourse of power in which the state sought to maintain its advantage over individual British subjects. By determining the way in which smuggling was prosecuted in the court, the state tried to establish control over public interpretation and understanding of the contraband trade. Foucault suggests that “the exercise of power consists in guiding the possibility of conduct and putting in order the possible outcome. . . . To govern, in this sense, is to structure the possible field of actions of others.”<sup>1</sup> In this regard, through the Old Bailey court the state tried to influence the way smuggling was interpreted, and thereby control the possible actions of smugglers; most significantly, the court changed the way in which it prosecuted smuggling toward the end of the eighteenth century. This effort reduced smugglings’ revolutionary potential (as exemplified by events leading to the American Revolution) by changing the discussion of smuggling from a problem of national import to one of personal assault.

To understand how the state shaped the discourse about smuggling, it is useful to examine the development of legal statutes pertaining to smuggling. Authorities sought to combat the smugglers with increasingly harsh criminal legislation. The first smugglers to gain significant attention from the authorities were known as “owlers” who smuggled wool out of England beginning in the Middle Ages. Edward I (r. 1272–1307) placed a high export duty on wool,

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<sup>1</sup> Michel Foucault, “The Subject and Power,” *Critical Inquiry* 8 (Summer, 1982): 789–790. This particular definition refers to the eighteenth century, a period of “governmentality.”

which was doubled twenty years later. During the reign of Edward III (r. 1327–1377), in an effort to establish a weaving industry in England, further duties were placed on wool exports, and at times such exports were forbidden. During the Tudor period, the growth of the state administration coincided with an increase in the complexity and range of the tax code; unsurprisingly, the increase in taxes brought an increase in smuggling. The state saw smuggling as a significant threat, and placed it in the same category with murder, rape, and treason.<sup>2</sup>

Regulations in the wool industry fluctuated throughout the years until export was again forbidden in the middle of the seventeenth century and made a capital felony in 1662.<sup>3</sup> The continued defiance of this law led Parliament to pass the Act Against Owling in 1698. This act reduced the penalties for the men engaged in moving the wool, but increased the fines and created the Riding Service in an effort to catch, or at least deter, the men financing owling operations. Perhaps a good idea in theory, the Riding Service was hopelessly ineffective, largely because only 17 surveyors and 299 officers had been appointed for the whole of England.<sup>4</sup> This act also called for one fifth-rate ship, two sixth rates, and four armed sloops to patrol the coast from Ramsgate to Portsmouth, a distance of approximately 150 miles, “from time to time.”<sup>5</sup>

The history of the laws against smuggling is interesting because it does not quite follow the pattern of legislation establishing brutal punishments for property offenses. Parliament passed multiple acts in the eighteenth century that became known as the Bloody Acts or the Bloody Code. In 1688, there were approximately 50 capital offenses on the books; by 1820, there were more than 200.<sup>6</sup> These laws significantly increased the number of capital offenses to

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<sup>2</sup> Williams, *Contraband Cargoes*, 28.

<sup>3</sup> Harper, *The Smugglers: Picturesque Chapters*, 12–14.

<sup>4</sup> *Ibid.*, 17–18; Waugh, *Smuggling in Devon and Cornwall*, 191.

<sup>5</sup> Chatterton, *King's Cutters and Smugglers*, 22.

<sup>6</sup> Douglas Hay, “Property, Authority and the Criminal Law,” in *Albion's Fatal Tree*, 18.

include not only crimes such as piracy, murder, and highway robbery, but also forgery, poaching, hedge-breaking, and coin-clipping. Smuggling joined the ranks of the capital offenses in 1746, but not before smuggling legislation went through several non-capital incarnations, few of which were successful in curbing the illicit trade.

In 1717, Parliament passed a Smuggling Act that threatened smugglers with transportation unless they paid their fines or pled. A year later, Parliament passed the Hovering Act, making it illegal for ships under fifty tons and carrying suspicious cargo to “hover” within six miles of the coast. Ship owners prosecuted under this law could find their vessels seized by the Crown. In 1721, another Smuggling Act was passed that called for transportation for convicted smugglers and outlawed boats with more than four oars.<sup>7</sup> Fifteen years later, as smugglers continued to operate and became increasingly bold, Parliament passed a third Smuggling Act. This legislation increased fines for bribing customs officials and made violent confrontation with the authorities a capital offense. In addition, Parliament passed an Act of Indemnity for smugglers. This act stated that any smuggler, even one already convicted, would be released if he provided information against his accomplices. It also offered to pay informers £50 for each person convicted under their information (with a minimum of two named persons) and paid £50 for anyone injured while aiding in the arrest of a smuggler. Further, anyone caught within this limits of the Hovering Act was sentenced to physical punishments such as whipping and hard labor.<sup>8</sup>

In 1746, the seemingly inevitable occurred, and smuggling finally became a capital offense. The terms of this act acknowledged the difficulty of prosecuting a crime that was often

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<sup>7</sup> Waugh, *Smuggling in Devon and Cornwall*, 191.

<sup>8</sup> *Ibid.*; Henry Atton and Henry Hurst Holland, *The King's Customs* (1908, reprint, New York: Augustus M. Kelley, 1967), 1:212–213.

committed with the approval, if not participation, of entire communities. Not only was the act of running goods punishable by death, but so was assembling with the intent to run goods and assisting smugglers. Furthermore, entire counties were held responsible for the actions of smugglers within their borders. If seized goods were recaptured from the authorities, the county was fined £200. Fines of £40 and £100 were levied for wounded and murdered officers, respectively.<sup>9</sup> The increasingly harsh penalties did little to abate smuggling and actually may have contributed to an increase in violence. Part of the 1746 act called for the names of suspected smugglers to be published in the *London Gazette*. After forty days, if the accused smuggler had not turned himself in to authorities, a £500 bounty was placed on his head. The terms of this law made smugglers even more desperate. There was now no difference in penalty between assembling to smuggle and killing an excise officer, which induced many free traders to avoid capture at all costs. The law also resulted in increased violence against potential informants. After the explosion of violence during the 1740s, the authorities eliminated many of the largest and most brutal smuggling gangs.<sup>10</sup>

Nevertheless, smuggling continued to thrive throughout the eighteenth century, and in 1782 Parliament passed the Act of Oblivion. This legislation, enacted at a time of intermittent warfare, acknowledged the government's need for skilled mariners and stout men by offering full pardon for any man willing to join the service. The period's class prejudice was obvious in the clause that allowed a smuggler to claim pardon by offering substitutes to serve in his place. Two substitutes offered to military service erased up to £500 in fines, and four substitutes bought

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<sup>9</sup> Waugh, *Smuggling in Devon and Cornwall*, 191–192; Atton and Holland, *King's Customs*, 214–216.

<sup>10</sup> Platt, *Smuggling in the British Isles*, 129.

indemnity from any smuggling offense other than murdering one of the king's officers. Richard Platt reports that poor men advertised their service as substitutes in local newspapers.<sup>11</sup>

Most Englishmen, especially Londoners, encountered the smuggling statutes through the *Old Bailey Proceedings*, also known as the Old Bailey "Sessions Paper." These accounts of the criminal trials that took place at London's Old Bailey courthouse were first published in 1674 and were issued after each of the eight court sessions held each year.<sup>12</sup> The recent availability of the *Proceedings* online has increased scholarly interest in and use of this source. Accordingly, Robert Shoemaker wrote an article examining the utility of these trial accounts for investigating crime and justice in eighteenth-century London. The *Proceedings* were intended to both entertain and inform their middle- and upper-class audience, although they were also accessible to members of the lower class who may have purchased or borrowed copies or heard the accounts read aloud in the streets or in one of the many pubs and coffeehouses.<sup>13</sup> The account the *Proceedings* presented was often affected by decisions made by the shorthand writer, who determined which testimony was included intact, which was summarized, and which was entirely omitted.<sup>14</sup> In this regard, Shoemaker makes several important observations: The trials of serious crime tended to be reported in greater detail than those involving less sensational crimes; accounts of acquittals were significantly shorter than accounts of convictions; and the evidence of the defense was often summarized or omitted completely. On the last point Shoemaker contends, "By disproportionately omitting evidence of the defense, convictions were made to

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<sup>11</sup> *Ibid.*, 132–133.

<sup>12</sup> Robert Shoemaker, "The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London," *Journal of British Studies* 47 (July 2008): 559; Simon Devereaux, "From Sessions to Newspaper? Criminal Trial Reporting, the nature of Crime, and the London Press, 1770–1800," *London Journal* 32 (March 2007): 1.

<sup>13</sup> Shoemaker, "Old Bailey Proceedings," 563, 565, 575; Simon Devereaux, "The Fall of the Sessions Paper; The Criminal Trial and the Popular Press in Late Eighteenth-Century London," *Criminal Justice History* 18 (2003): 76.

<sup>14</sup> Shoemaker, "Old Bailey Proceedings," 566.

appear more justified than they had appeared in the courtroom. . . . Defense testimony was particularly likely to be omitted when the defendant acted defiantly and treated the court with contempt.”<sup>15</sup> The deliberate omission of defense testimony is unfortunate for historians because it silenced the voices of the accused and made the *Proceedings* less valuable in understanding crime from the perpetrators’ perspective; this is especially significant in discussions of social crime. On the other hand, silencing the defense speaks loudly of the *Proceeding’s* concern with dousing the spread of potentially inflammatory ideas and presenting a one-sided argument in favor of the state. Shoemaker further contends that the *Proceedings* often omitted legal arguments from publication. He writes, “The Proceedings represented justice as unproblematic, implying that the verdicts resulted directly from the evidence and were unaffected by legal arguments and technicalities; thus, they minimized any doubt that might be cast on trial outcomes.”<sup>16</sup>

Shoemaker argues that an important change in the *Proceedings* occurred in the 1770s when John Wilkes expressed concern that the publication was inaccurate and inadequate. The court took Wilkes’s complaint seriously and determined that the *Proceedings* would be authenticated in the name of the court recorder and would contain an accurate account of every trial, whether resulting in acquittal or conviction.<sup>17</sup> Simon Devereaux discusses this change in his articles “The Fall of the Sessions Paper: The Criminal Trial and the Popular press in Late Eighteenth-Century London” and “From Sessions to Newspaper? Criminal Trial Reporting, the Nature of Crime, and the London Press, 1770-1800.” In his first article, Devereaux describes the effect of official interference in the publication of the *Proceedings*, which had previously been a

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<sup>15</sup> Ibid., 567, 569.

<sup>16</sup> Ibid., 572.

<sup>17</sup> Ibid., 560–561.

privately held, profit-seeking business venture. According to Devereaux, the *Proceedings* fulfilled two important roles: It promoted the idea of public justice, in which the law appeared to be legitimate in the eyes of the people, and it helped officials make decisions about which felons would be pardoned and which would be led to the gallows.<sup>18</sup> After the American Revolution, the *Proceedings* became even more essential to the pardon process, as more and more felons were capitally convicted. To cope with the growing number of cases, the city officials needed the publisher of the *Proceedings* to produce an account that was both more complete (meaning much longer and more detailed) and timely. In addition, the city required 320 copies of the *Proceedings* for its own use.<sup>19</sup> Devereaux asserts that, despite some reported inaccuracies, “after 1775 city authorities clearly intended that it should be more accurate both in fact and in reputation.”<sup>20</sup> The new requirements reduced the public appeal of the *Proceedings* so that “by the end of the century, it was being produced almost entirely with administrative purposes in mind.”<sup>21</sup>

Nevertheless, the decline in the popularity of the *Proceedings* was not only due to its increased length and level of detail. In his second article, Devereaux argues that the *Proceedings*’ reduced popularity after the reforms of the 1770s reflected “a significant change in the tastes and preferences of the London reading public itself . . . [which] was tied to changing perceptions of the nature, scale and persistence of serious criminality in the metropolis.”<sup>22</sup> He observes a shift in the London reading public’s perception of crime from the view that criminals “were people who once had been more or less like those who read about them” to “the notion of an irredeemable

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<sup>18</sup> Devereaux, “The Fall of the Sessions Paper,” 59. For more on public justice and the Old Bailey, see Simon Devereaux, “The City and the Sessions Paper: ‘Public Justice’ in London, 1770–1800,” *Journal of British Studies* 35 (1996): 466–503.

<sup>19</sup> *Ibid.*, 59, 62.

<sup>20</sup> *Ibid.*, 62.

<sup>21</sup> *Ibid.*, 65

<sup>22</sup> Devereaux, “From Sessions to Newspaper?” 2.

criminal type.”<sup>23</sup> This change resulted in declining public interest in the *Proceedings* and an increased interest in sensational accounts, published in newspapers or in collections of criminal biographies like the *Newgate Calendar*, of particularly violent or otherwise interesting crimes.<sup>24</sup>

In spite of its shortcomings, the *Proceedings* remains an important source for historians of crime and justice in eighteenth-century London. John Langbein, “the leading authority on Old Bailey trial reporting” according to Shoemaker, confirms the accuracy of what was included in the *Proceedings* and criticizes the publication primarily for what was omitted.<sup>25</sup> Shoemaker claims his own view is “less sanguine,” but similarly finds fault with the amount of material omitted. He writes, “By their choice of what was included and what was left out, as well as by occasional distortions in what was reported, the *Proceedings* presented a partial account of crime and criminal justice to their readers.”<sup>26</sup> Indeed, no source is perfect. On the other hand, recent scholarship on the development of the *Proceedings* actually increases their value as an indicator of what officials wanted the public to see of the activity going on in the Old Bailey. In regards to smuggling, the ways in which smugglers were prosecuted, as well as what is missing from the published accounts of their trials, provides insight into how the authorities’ view of this crime and these criminals changed over the long eighteenth century.

The courts found it difficult to prosecute smugglers for the simple reason that it was hard to catch them in the act and harder still, if officers were fortunate enough to come upon a smuggler with his goods, to capture him. The prosecutor in the 1747 case of Edmund Henley

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<sup>23</sup> Ibid., 12.

<sup>24</sup> Ibid., 19. Devereaux compiled a table of Old Bailey trials also covered in London newspapers and found smuggling trials reported very infrequently. Devereaux’s table was based on samples taken every five years from 1770 to 1800; accounts of smuggling trials were printed in newspapers once in 1785, twice in 1790, and once in 1800. Appendix p. 19–21.

<sup>25</sup> Shoemaker, “The Old Bailey Proceedings,” 560.

<sup>26</sup> Ibid.

explained the dilemma, “The Legislature finding . . . that it was almost impossible to detect them in the Act of running Goods, because they were collected together in such formidable Banditties, that no body could detect them to the Satisfaction of a Jury; therefore the Legislature thought fit to take a Method for preventing this Practice, by anticipating, if I may so say, that Offence.”<sup>27</sup> Accordingly, Parliament passed several laws that made offenses associated with (or “anticipating”) smuggling illegal and subject to capital punishment. These offenses included armed assembly of three or more men near the coast, failure of a suspected smuggler to surrender himself after his name was published, and assault of an officer or his representative during the execution of his duties. Interestingly, not a single man was tried for “smuggling.”

The offenses for which smugglers were tried changed throughout the long eighteenth century. Until the 1780s, the courts most frequently charged suspected smugglers with armed assembly, carrying illegal goods, and non-surrender, although smugglers who killed an officer during an altercation were tried for murder. Authorities charged smugglers with non-surrender to increase their conviction rate in smuggling cases. Part of the 1746 statute that made smuggling a capital offense, the non-surrender charge simplified the prosecution’s task by making it unnecessary for them even to prove that the accused man was involved in the contraband trade. According to the 1746 statute, a man could be accused of smuggling before a justice of the peace, who passed his name on to one of the king’s secretaries of state. After the accused’s name was brought up in the king’s Privy Council, he was commanded to surrender by order of the king or his Privy Council. The accused man’s name was published in the London newspapers, and then he had forty days to report to his local authorities. Clearly, this system was problematic for men who lived in the coastal counties and were unlikely to take the London papers or have the

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<sup>27</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 14 July 2009), February 1747, trial of Edmund Henley (t17470225-19).

ability to read them were they so inclined. In consideration of this issue, the statute further ordered that the accused's name be communicated to the sheriff of the county in which the offense was committed. Within fourteen days of publication in the London papers, the sheriff was required to read the accused's name and the alleged offense aloud at the two closest market towns to the site of the offense between the hours of ten in the morning and two in the afternoon on a market day. The intention was for as many locals as possible to hear the charge and inform the accused if he was not at the market to hear it himself. The charge was then posted in a public place.<sup>28</sup> This system of spreading information is interesting in that it illustrates the transitory nature of the eighteenth century as a period in which illiteracy was by no means uncommon. The fastest way to transmit information was by word of mouth, and of the nine men tried under this part of the statute none of them claimed they did not hear they were advertised.<sup>29</sup> Advertising smugglers was more than just a utilitarian activity of the state; it also marginalized individual smugglers by identifying them as deviant and created the impression that participation in the contraband trade did not go unnoticed.<sup>30</sup>

During the first three quarters of the eighteenth century, the majority of smuggling cases came before the Old Bailey between 1746 and 1753. During this period, the court described smuggling as defiant of the king's laws and as a danger to the nation. Of 136 Old Bailey cases examined in this study, only 10 were tried between 1754 and 1784. In the 1780s, the court shifted

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<sup>28</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 14 July 2009), July 1747, trial of John Cook (t17470715-1).

<sup>29</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org)), April 1748, trial of William Rowland (t17480420-24); July 1748, trial of Robert Cunningham (t17480706-37); February 1749, trial of Benjamin Watts (t17490222-20); April 1749, trial of Richard Mapesden (t17490405-52); February 1750, John Carbold (t17500228-22); April 1751, trial of John Baker (t17510417-37); July 1751, trial of Thomas Catchpole (t17510703-34); October 1751, trial of John Harvey (t17511016-30); June 1753, Thomas Collingham the younger (t17530607-39). Of these nine, five were executed: William Rowland, Benjamin Watts, John Carbold, Thomas Catchpole, and Thomas Collingham the younger.

<sup>30</sup> This idea came out of conversations with Timothy Jenks.

from an emphasis on illegal assembly, which was a capital offense, to assault and obstruction of officers, which was punished by imprisonment. During this second period, although the court wondered aloud whether the law or the smugglers were stronger, it presented the struggle as between smugglers and preventive men rather than between smugglers and the nation.<sup>31</sup>

In 1747, Edmund Henley stood trial at the Old Bailey for assembling in Kent with a group of more than twenty men. They were armed with firearms, sticks, and clubs with the intention to smuggle 4,000 pounds of tea. The council for the king alleged that the smugglers acted “to the Terror of the King’s Subjects, to the Hindrance of his Majesty’s Officers of the Customs . . . to the Diminution of the Revenue . . . [and] against his Majesty’s Peace, his Crown and Dignity.”<sup>32</sup> A second council continued to address the jury:

Gentlemen, you all very well know the Necessity of publick Prosecutions of this Kind. ‘tis a Practice of such a Nature that the Consequences of it are so extensive and obvious, that there is hardly any Ocsion [sic] to mention them: it tends in the first Place to the Prejudice of the Fair-Trader . . . that trades fairly and honestly, must be a Sufferer by this Practice. . . . In the next Place, it immediately tends to the Diminution of the Revenue, and that Diminution does not effect the Crown merely, but it effects the Subjects of Great Britain, because . . . if any Diminution is made upon [the duties], the Legislator must lay new Duties upon the Publick, and it will effect every Man that is to contribute to them. Besides, this Gang of Smugglers are grown to that Pass, that they are too big for the Law itself; every body knows what Riots, and Tumults, and open Violence in Contempt of the Laws of the Country, and indeed setting the civil Magistrate at Defiance; therefore Practices of this Kind call upon those entrusted with the Government of the Nation, to look closely into them, and, if possible, put a Stop to the Consequences that result from them.<sup>33</sup>

Here the council articulated the three-headed argument against the smugglers: Their actions hurt the fair traders, they damaged the national revenue, and they defied the law and the king it

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<sup>31</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 12 January 2010), July 1786, trial of John Martin, Walter Cross, James Bell, John Williams, William Bell, William Stone, and Benjamin Savory (t17860719-98).

<sup>32</sup> *Old Bailey Proceedings*, February 1747, Edmund Henley (t17470225-19).

<sup>33</sup> *Ibid.*

represented. After a flurry of character witnesses for both the Crown and the defense, and in spite of the prosecution's warning of "the Danger of these Kind of Practices," Henley was acquitted.<sup>34</sup>

The king's councilors specifically described smugglers as defying (in addition to breaking) the law in the trials of Thomas Fuller (1747), Peter Ticknor and James Hodges (1747), and Samuel Chilvers and Robert Scott (1748). In Fuller's trial the king's councilor claimed Fuller was from Hawkhurst in Kent, "a Place famous in the News-Papers for great Riots, great Disorders, committed by a Gang of Smugglers, and the Prisoner is one enlisted in that Gang, whose Business, together with the rest, is putting the Laws in defiance."<sup>35</sup> This barrister made clear that defying the king's laws was not a byproduct of smuggling, it was the object of the offense. The prosecutor in Chilvers and Scott's trial argued that smugglers acted "in defiance and contempt of the King and his laws, to the evil example of all others, [and] against the peace of the King."<sup>36</sup> The councilor in Ticknor and Hodges's trial was even more explicit. He first explained that, in case any juryman might be sympathetic toward the defendants, the smugglers had forced the government to make the offense capital through their blatant disregard for law and order. This councilor asserted that smugglers were, in fact, rebels. He argued, "It is not barely defrauding a little, but 'tis carried on by a kind of rebellion in defiance of the Magistrate . . . there is no magistrate, or officer where they reign (if I may so say) can put any laws in execution against them. . . . For 'tis now a struggle between the government and this banditti, which shall get the better."<sup>37</sup>

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<sup>34</sup> Ibid.

<sup>35</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 14 July 2009), October 1747, trial of Thomas Fuller (t17471014-4).

<sup>36</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 17 July 2009), January 1748, trial of Samuel Chilvers and Robert Scott (t17480115-28).

<sup>37</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 14 July 2009), Dec 1747, trial of Peter Ticknor and James Hodges (t17471209-52).

The 1747 trials of John Cook and Richard Ashcroft, both of whom were convicted and executed, laid another charge against the smugglers: disorder. According to the king's councilors in these cases, smuggling was made a capital crime because it attacked the English Constitution as well as the "general Peace of the Kingdom." The armed bands of smugglers roamed the coastal communities "to the Terror of many of the Inhabitants of the Country."<sup>38</sup> The opening statement in John Cook's trial specified that he was a member of the Hawkhurst Gang, which had "made themselves pretty famous, by the Terror they have spread in the Country."<sup>39</sup>

Indeed, this first period of smuggling trials at the Old Bailey, 1737 to 1753, was dominated by members of the great smuggling gangs, primarily the Hawkhurst Gang in Kent and Sussex and the Hadleigh Gang along the Norfolk/Suffolk border. Of the eighty men charged at the Old Bailey during these years, seventy-one were associated with these gangs.<sup>40</sup> The gangs ran rampant through the coastal counties with little resistance from the law or the local population. The barrister in the trial of Thomas Puryour, a member of the Hawkhurst Gang, explained the grim situation to the court:

'Tis now known to every body, that this Practice of Smuggling has increased to the Degree that 'tis not carried on clandestinely and secretly, but it is carried on in the Face of Day, and in Defiance of Law and Justice. There are notorious Gangs on the Sea-Coasts, that publickly ride armed and disciplined in Troops, and that set the Officers of the Revenue at Defiance; often take and imprison them, and carry on their desperate Attempts, breaking through Laws, without any Fear or Terror from the Justice of the Nation.<sup>41</sup>

Some historians argue that the audacious brutality of the Hawkhurst Gang in particular gave supporters of smuggling cause to reconsider their position on the issue of the free trade and

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<sup>38</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 14 July 2009), June 1747, trial of Richard Ashcroft (t17470604-13).

<sup>39</sup> *Old Bailey Proceedings Online*, July 1747 John Cook (t17470715-1).

<sup>40</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 14–19 July 2009).

<sup>41</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 15 July 2009), September 1747, trial of Thomas Puryour (t17470909-36).

convinced the authorities that they must make a more concerted effort to quash the renegades in the coastal counties.<sup>42</sup>

Throughout the 1740s the Hawkhurst Gang operated unchecked along the Sussex and Kent coasts; three incidents drew national attention to their activities and eventually led to their destruction. The following account draws primarily from the work of historians, as only the murder trial of Benjamin Tapner, John Cobby, John Hammond, Richard Mills the younger, Richard Mills the elder, William Jackson, and William Carter appears in the *Old Bailey Proceedings*.<sup>43</sup> Far from the picture of mutual cooperation between the smugglers and the local populace that appears in many accounts, the Hawkhurst Gang commanded community support through threat of violence. E. Keble Chatterton reports, “[They] were a terror to whatever law-abiding citizens existed in the counties of Kent and Sussex. They feared neither Custom officers nor soldiery, they respected neither God nor man, and in the course of attaining their aims they stopped at no atrocity nor brooked any interference from anyone.”<sup>44</sup> Charles Harper adds, “None could take legal action against them without going hourly in personal danger, or in fear of house, crops, wheat-stacks, hay-ricks, or stock being burnt or otherwise injured.”<sup>45</sup> Finally, the inhabitants of the village of Goudhurst had had enough. They banded together to form a militia under the leadership of a young ex-soldier named Sturt and composed a paper expressing their anger at the gang’s terrorism and their determination to thwart further impositions. Unsurprisingly, the audacity of the “Goudhurst Band of Militia” incensed the Hawkhurst Gang, and they captured one of the militia members and tortured him for more information. Afterward,

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<sup>42</sup> See, for example, Platt, *Smuggling in the British Isles*, 149, 162–163 and McLynn, *Crime and Punishment in Eighteenth-Century England*, 185–189.

<sup>43</sup> *Old Bailey Proceedings Online*, January 1748, Benjamin Tapner, John Cobby, John Hammond, Richard Mills the younger, Richard Mills the elder, William Jackson, and William Carter (t17480116-1).

<sup>44</sup> Chatterton, *King’s Cutters and Smugglers*, 83.

<sup>45</sup> Harper, *The Smugglers: Picturesque Chapters*, 42.

they released him to take a message to Sturt that the gang would come to Goudhurst at a specified date and time, “attack the place, murder every one in it, and then burn it to the ground.”<sup>46</sup> The militia took full advantage of the advance notice and peppered the Hawkhurst Gang with musket shot when they arrived, punctually, for their appointment.<sup>47</sup> George Kingsmill, brother of gang leader Thomas Kingsmill, was shot and killed, as were at least two others. After suffering further casualties, the gang broke ranks and fled. The militia captured a few prisoners whom they handed over to the authorities for execution.<sup>48</sup> It appears the spirit of independence that inclined many Englishmen on the coast to engage in smuggling also led them to turn against smugglers whose violence became intolerable. Smugglers could count on community support only when the relationship was mutually beneficial.

In spite of this setback, the Hawkhurst Gang continued to operate with impunity on the Sussex and Kent coasts. In October 1747, gang members broke into the customs house at Poole after Poole’s revenue cutter captured a cargo consisting of thirty-nine casks of rum and brandy, two tons of tea, and a small bag of coffee. The smugglers retrieved all but five pounds of tea and rode triumphantly through the town of Fordingbridge the next morning. Among the townspeople who gathered to watch the smugglers pass was Daniel Chater, a shoemaker. Smuggler John Diamond recognized Chater as a man he had worked with on a harvest. Diamond greeted him with a handshake and threw him a bag of tea from his personal share.<sup>49</sup>

This encounter proved unlucky for all involved. The customs officers were furious at losing such a lucrative seizure (a portion of the value of which they could expect as part of their

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<sup>46</sup> Ibid., 43.

<sup>47</sup> Amusingly, Harper comments that this punctuality was “a piece of very bad policy on their part, by which they would appear to have been fools as well as rogues,” 43.

<sup>48</sup> Harper, *Picturesque Chapters*, 43–44.

<sup>49</sup> Ibid., 49; Chatterton, *King’s Cutters and Smugglers*, 84–85.

salary) and were likely humiliated at the violation of their own warehouse. Word spread, whether by other observers or through the uncensored words of Chater himself, that Daniel Chater the shoemaker knew one of the smugglers. Diamond was arrested in nearby Chichester, and Chater was impressed upon to identify Diamond to the local justice of the peace as the man who gave him smuggled tea. In return for a reward, Chater agreed to turn informer.<sup>50</sup>

The customs officers knew that smugglers often dealt harshly with informers, whom they hated above all others, even the revenue men. Accordingly, the collector of customs at Southampton sent William Galley, one of his officers, to accompany Chater to Chichester. In February 1748, the two men began their journey and stopped to rest at the White Hart Inn in Rowland's Castle. The landlady there happened to be the mother of two smugglers and guessed that Chater and Galley were on a mission that would be detrimental to the free traders' interests. She kept them drinking until two smugglers, William Jackson and William Carter, could be summoned to take stock of the situation. The smugglers encouraged the two men to consume round after round until they were so drunk that they divulged the nature of their journey. Having secured confirmation of their initial suspicions, the smugglers allowed Chater and Galley to go upstairs to bed. They did not rest long, however, before they awoke to Jackson "brutally digging his spurs on their foreheads and then thrashing them with a horse-whip."<sup>51</sup>

While Chater and Galley slept, the smugglers, who had been joined by others of the gang, held a brief conference about how best to proceed. The smugglers rejected a suggestion to kidnap the men and take them to France because they feared that the men would find their way back and testify after all. They decided that the only viable option to save Diamond, and likely the rest of

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<sup>50</sup> Harper, *The Smugglers: Picturesque Chapters*, 49–50; Chatterton, *King's Cutters and Smugglers*, 85–87.

<sup>51</sup> Chatterton, *King's Cutters and Smugglers*, 88.

the gang, was to murder the two men sleeping upstairs. Jackson and Carter allegedly yelled, “Hang the dogs, for they came here to hang us!”<sup>52</sup>

After assaulting them while they were in their beds, the smugglers forced Chater and Galley outside and tied them both to the same horse. Chatterton describes the torture they endured, “They were next whipped as they went along, over the face, eyes, and shoulder, till the poor victims were unable to bear it any longer, and at last fell together, with their hands tied underneath the horse, heads downwards. In this position the horse struck the head of one or the other with his feet at every step.”<sup>53</sup> The smugglers continued to beat their captives all the way to the Red Lion Inn in Rake. At the Red Lion they stashed Galley in the outhouse and roused the innkeeper to serve them drinks. Initially they brought Chater in with them, but they soon left him in another nearby outhouse. Flush with liquor, the smugglers determined Galley was dead and so buried him by lantern light in Harting Combe. When his body was unearthed eight months later Galley’s hands were raised over his eyes, indicating he was likely buried alive.<sup>54</sup>

Chater remained alive, and the smugglers left him at Rake for several days while they considered the best course of action and returned home intermittently to allay their neighbors’ suspicions. After rejecting the suggestion that they all shoot Chater as too merciful, the smugglers resolved to throw him down a well. Before this was accomplished, however, one member of the gang attacked Chater, shouting, “Down on your knees and go to prayers, for with this knife I will be your butcher.”<sup>55</sup> This same smuggler slashed at Chater’s face with his knife, slicing his nose to the bone and nearly gouging out his eyes. Afterward the smugglers took Chater to Harris’s Well, tied a rope around his neck, and threw him over the side. Finding he was

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<sup>52</sup> Harper, *The Smugglers: Picturesque Chapters*, 53–54.

<sup>53</sup> Chatterton, *King’s Cutters and Smugglers*, 88.

<sup>54</sup> *Ibid.*, 88–89; Harper, *The Smugglers: Picturesque Chapters*, 54–55

<sup>55</sup> Harper, *The Smugglers: Picturesque Chapters*, 57.

strangling too slowly for their comfort, the smugglers let go of the rope and allowed Chater to plunge to the bottom of the well. Incredibly, he survived the fall and his moans could be heard drifting out of the shaft. In order to finally silence their victim, the smugglers resorted to throwing heavy stones and gate posts down the well until there was silence.<sup>56</sup>

Chater and Galley were soon missed and assumed murdered, and the government offered a reward of £500 for information leading to the arrest of the perpetrators. Months passed before an anonymous letter led to the discovery of Galley's body. A subsequent letter implicated the smuggler William Steel, who promptly turned evidence against his comrades and divulged the entire story.<sup>57</sup> The Duke of Richmond soon became involved and made it his personal mission to see the murderers pay for their crimes and to eradicate smuggling from Sussex. Cal Winslow asserted that the duke's interest in the case likely resulted from a general concern for order as well as a personal mortification that these crimes were planned on his property—on his paternalistic watch, so to speak. Winslow argues, "All this must have constituted a threat to his power and prestige in the area. More important, with rank and deference seriously challenged in the county, and with the lesser gentry often openly intimidated by the smugglers, the Duke of Richmond may well have been reminded of his customary duties and responsibilities as the principal landowner."<sup>58</sup>

Smuggling was bad enough when it hurt the king's revenue, but it was worse when it threatened the social underpinnings of paternalism and deference that upheld eighteenth-century English society; in these two significant ways, smugglers posed a serious threat to national security. The Duke of Richmond's entrance into the war against the smugglers demonstrated the

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<sup>56</sup> Ibid., 58–59.

<sup>57</sup> Ibid., 60–61.

<sup>58</sup> Winslow, "Sussex Smugglers," 140.

central authorities' recognition that they had to step in to redefine the smuggler as the enemy. In the Old Bailey murder trial of seven members of the Hawkhurst Gang, Mr. Banks, the king's counsel, opened the indictment with a summary of the government's position on the danger smuggling posed to the nation that serves well as a conclusion to our discussion of the Hawkhurst Gang and the first period of smugglers' trials at the Old Bailey:

I cannot here omit taking Notice of the unhappy Cause of this fatal Effect, now under your Consideration. Every one here present, will in his own Thoughts anticipate my Words; and knows, I mean Smuggling. Smuggling is not only highly injurious to Trade, a Violation of the Laws, and the Disturber of the Peace and Quiet of all the Maritime Counties in the Kingdom; But it is a Nursery of all Sorts of Vice and Wickedness; a Temptation to commit Offences at the first unthought of; an Incouragement to perpetrate the blackest of Crimes without Provocation or Remorse; and is in general productive of Cruelty, Robbery, and Murder. . . . Every expedient of Lenity and Mercy was at first made use of, to reclaim this abandoned set of Men. His Majesty by repeated Proclamations of Pardon, invited them to their Duty and to their own Safety. But instead of laying hold of so Gracious an Offer, they have set the Laws at Defiance, have made the execution of Justice dangerous in the Hands of Magistracy, and have become almost a Terror to Government itself.<sup>59</sup>

Not only did smugglers deny the government revenue, creating a domino effect that forced everyone to pay more taxes, but they also challenged state authority in the coastal counties and exposed a weakness in the state's ability to enforce the law. For these reasons, in the 1740s and early 1750s, the state sought to portray smuggling as a serious crime against the British nation; smugglers were men "who do what they can to the prejudice of their country."<sup>60</sup> During this period smugglers were tried on the capital charges of armed assembly, carrying or assisting others carrying smuggled goods, and not surrendering after being advertised as a smuggler. After a lull of about thirty years, during which only ten men were tried for smuggling offenses at the Old Bailey, smugglers returned to London's chief criminal court; however, they were no longer

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<sup>59</sup> *Old Bailey Proceedings*, January 1748, Benjamin Tapner, John Cobby, John Hammond, Richard Mills the younger, Richard Mills the elder, William Jackson, and William Carter (t17480116-1).

<sup>60</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 14 July 2009), May 1748, trial of James Watling (t17480526-27).

portrayed as menacing threats to national peace and security, but rather as thugs committing personal assaults on the king's officers.

## Chapter Three

### **“Affording Protection to the Revenue Officers”: The State’s Case, 1784–1814**

At this point, it would be instructive to discuss briefly why smugglers from Kent, Suffolk, Cornwall, and Sussex were tried at London’s Old Bailey at all. Smuggling trials normally took place at the quarter sessions held in the counties; however, authorities soon realized that it was difficult to win a conviction in coastal communities where the juries were composed of men likely to be smugglers’ customers, collaborators, or relatives. The 1746 statute was arguably the most significant piece of legislation that pertained to smuggling. In addition to making smuggling a capital offense and outlining the acts that could be prosecuted as smuggling, it also allowed smugglers to be accused and tried in counties other than the one in which they committed the alleged offense: essentially allowing for a change of venue. The prosecution in Thomas Puryour’s 1747 trial explained, “By this Act of Parliament, there is Provision made, in the Vth Section of it, That Offences of this Kind against the publick Revenue, shall not be, like other Offences of Common Law, necessarily tryed in the County where they were committed, as ill Consequences may attend it; and the Legislature has enacted, That all these Offences should be tried in any County.”<sup>1</sup> Forty-five years later, smugglers from distant counties were still tried at the Old Bailey to avoid the same “ill consequences” mentioned in 1747. The barrister in John Cooper’s 1791 trial argued, “This offense was committed in Sussex, but it is tried here . . . many offenses committed and prosecuted in those counties where smuggling was carried on, it was found over and over again, that prosecutions instituted, properly supported by the most

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<sup>1</sup> *Old Bailey Proceedings Online*, September 1747, Thomas Puryour (t17470909-36).

indubitable testimony, yet there was unaccountable partiality, and conviction was almost impossible.”<sup>2</sup>

The problem confronting the authorities, well illustrated by their resort to trying smugglers at the Old Bailey, was twofold: Members of coastal communities were either afraid or unwilling to convict smugglers. The prosecutor in Cornishman William Strick’s 1800 trial went to great pains to make the jury understand the necessity of the change of venue and, at the same time, described the two disparate reasons for this step:

[When the act was passed in 1746] justice was not to be expected upon the spot, that so many persons were concerned in transactions of this nature, that it could not be hoped upon the spot to find a Jury who would do justice; not perhaps because they might not be disposed to do it, but probably because they would not dare to do it; for Gentlemen, it is a melancholy reflection, that in those counties upon the coast, where transactions of this kind take place, there are so many persons who are in the habit of setting themselves above the law in certain instances, that they are very apt to set themselves above the law in all.

Here, while discussing the establishment of the act, the prosecutor emphasized the terrorized community, afraid of repercussions should they convict a local smuggler. Then the prosecutor discussed the case against Strick and returned to the problem of obtaining justice in the counties:

You will easily imagine, Gentlemen, that in a country where such a transaction can be carried on, where all the people of the country sit quiet and suffer men to conduct themselves in such a lawless manner, that justices [sic] is not to be had; the men who are resident upon the spot, whether from their habits of life, whether from their connexions with these people, or whether from the fear they have of them, you will perceive they did not dare to stir to assist the officers against those persons who were thus acting in open defiance of the law.<sup>3</sup>

The focus here is on explaining why the officers did not receive assistance from the local population when they were struggling with the smugglers. The prosecutor admitted that, although fear might yet play a role in the locals’ reluctance, it was just as likely that they were

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<sup>2</sup> *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 17 July 2009), July 1791, trial of John Cooper (t17910720-41).

<sup>3</sup> *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 18 July 2009), May 1800, trial of William Strick (t18000528-6).

either involved in smuggling themselves or did not view smuggling as a crime and so refused to aid the preventive men.

The prosecutor's comments in the Strick case reflected the pattern that emerged in prosecutions during the 1780s and later: Communities were more frequently the smugglers' willing accomplices than their terrorized victims.<sup>4</sup> By the 1780s, the large organized smuggling gangs were a thing of the past; however, smuggling remained a widespread and violent business. In addition, smugglers brazenly traded with France during periods of war, an action clearly in violation of British national interests. Nevertheless, in the 1780s to 1800s, smugglers tried at the Old Bailey were frequently charged with assaulting officers, punishable by imprisonment, rather than assembling or transporting smuggled goods, punishable by death. There were likely several reasons for this change. First, the Bloody Code that significantly increased the number of capital offenses in the first part of the eighteenth century was falling out of favor, and the draconian punishments it advocated were undermined by judges and juries who found offenders guilty of lesser offenses in anticipation of official changes to the laws.<sup>5</sup> Second, the 1746 statute eliminated its primary target, the smuggling gangs of the 1740s, and the state may have found the death penalty to be an extreme punishment for a revenue offense. Third, it is possible that the state found smugglers more threatening in the revolutionary environment of the last quarter of the eighteenth century. More cognizant than ever of the limits of their authority and the danger of tax rebellions after the American Revolution, the central court at the Old Bailey portrayed smugglers not as dangers to national security, but rather as ruffians assaulting individual revenue

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<sup>4</sup> See, for example, the Old Bailey trials of John Snell, September 1788 (t17880910-138); Edward Trough, October 1788 (t17881022-77); William England, December 1788 (t17881210-93); Joseph Smith, December 1788 (t17881210-95); Anthony Balless, June 1791 (t17910608-41); John Longmead, October 1795 (t17951028-49); Edward Bawden, April 1801 (t18010415-22); John George, April 1805 (t18050424-38); William Bastin, July 1806 (t18060702-69); and James Mansfield, October 1811 (t18111030-50).

<sup>5</sup> J. M. Beattie, "The Pattern of Crime in England 1660-1800," *Past and Present* 62 (February 1974): 85.

officers. This change suggests an effort to diminish smuggling's revolutionary political implications. As we will see in chapter four, the way in which smugglers defended their activities may have played a significant role in this shift.

The Bloody Code was the official response to the impression of many men and women in eighteenth-century England that they were living in an especially criminal age. The increasingly crowded streets of London were, indeed, home to swarms of thieves, swindlers, pickpockets, and prostitutes. Notorious highwaymen plied their trade on the busy, but derelict, roads leading to and from the metropolis. Crime was widespread in the countryside, as well, as sheep stealers, horse thieves, poachers, and, of course, smugglers took advantage of the weakness of law enforcement. In addition, general disorder in the form of sporadic rioting and chronic public drunkenness contributed to the feeling of the upper classes that society was spiraling out of control. In his 1754 pamphlet, *Observations on the Defects of the Poor Law*, Thomas Alcock expressed the common view that a lack of social control was precipitating the increase in crime. He wrote, "You may hang or transport or cut off a number of felons at this sitting, but like Hydra's heads, there will be more spring up by the next, and ever will do so, as long as idle vagrants, who continually furnish a fresh supply, are suffered to go as they do, unmolested."<sup>6</sup> The official response to the perceived increase in the crime rate was the institution of the bloodiest criminal code in modern history. These laws exponentially increased the number of capital offenses on the English books: A sentence of death could be handed down not only for crimes such as murder and highway robbery, but also, as we have seen, for smuggling, forgery, poaching, hedge-breaking, and coin-clipping.

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<sup>6</sup> Quoted in McLynn, *Crime and Punishment in Eighteenth Century*, 249.

Most of the Bloody Code was repealed in the second quarter of the nineteenth century, but historians have found that reform actually came much earlier, in the last quarter of the eighteenth century, by way of judges' and juries' reluctance to use the capital powers given to them. Peter King examines judicial reform as it was conducted "on the ground" in the assizes and quarter sessions. He found that "some of the key changes in judicial policies . . . were not determined primarily by parliamentary legislation or by central government. Rather it was the informal practices, and not infrequently the decisive reforms, adopted by court judges, juries, local magistrates and other local decision-makers that played the most important role in the interactions which shaped these areas of criminal justice policy."<sup>7</sup> A significant aspect of this independent judicial reform was the rarity of death sentences in comparison to the number of cases in which they could have been pronounced. King comments, "Circuit judges changed the meaning of the capital code by drastically reducing the proportion of convicts whom they left to hang – a process, which effectively repealed the capital parts of some of the statutes well before parliament actually changed the statutory law."<sup>8</sup> He notes the same changes in practice, if not yet in law, at the Old Bailey. The number of executions at Tyburn was at its peak in the mid-1780s, but executions dropped off from that point forward. Simon Devereaux writes that the reduced number of executions "foreshadowed the definitive retreat forty years later, first in the practice, and then in the actual letter, of England's by then infamous 'Bloody Code.'"<sup>9</sup>

Significantly, King also identifies a change in judicial attitudes toward assault. Whereas for most of the eighteenth century the courts had viewed assault as a personal dispute, by the end of the eighteenth century it was increasingly seen as a problem for society in general. King

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<sup>7</sup> Peter King, *Crime and Law in England 1750–1840: Remaking Justice from the Margins* (Cambridge: Cambridge University Press, 2006), 4.

<sup>8</sup> *Ibid.*, 6–7. Odd comma placement occurs in original.

<sup>9</sup> Simon Devereaux, "Recasting the Theatre of Execution: The Abolition of the Tyburn Ritual," *Past and Present* 202 (February 2009): 171–172.

writes, “Assault was increasingly criminalized in the late-eighteenth century. Indictment for assault was turned from what had been mainly a civil process, resolved by compensation and/or a fine, into a criminal trial which usually, although by no means always, ended in imprisonment.”<sup>10</sup> King found that the period between 1775 and 1792 saw a sharp increase in proportion of those convicted of assault who were imprisoned and a corresponding decrease in the number of those receiving fines.<sup>11</sup> The increase in assault prosecutions also appears in Old Bailey smuggling cases. Whereas the majority of smugglers tried at the Old Bailey before 1787 had been charged with the capital offenses of armed assembly or carrying illicit goods, between 1787 and 1814, forty-nine out of sixty-four smuggling cases at the Old Bailey featured assault and/or obstruction as the main charges.<sup>12</sup> Before 1787, only John Morell, tried in 1742, faced a primary charge of assault in a smuggling case.<sup>13</sup>

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<sup>10</sup> King, *Crime and Law*, 232, 4 (quote).

<sup>11</sup> *Ibid.*, 235.

<sup>12</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org)), July 1787–February 1814, trials of Richard Hayden (t17871024-67); John Mackey (t17880109-47); John Bishop (t17880227-106); Joseph Knight (t17880227-109); Thomas Burgess, Thomas Francis, and John Francis (t17880227-110); George Vincent (t17880227-110); John Gomery (t17880910-137); John Snell, Richard Rowe, and Oliver Ruthey (t17880910-138); Edward Trough (t17881022-77); William England (t17881210-93); John Old (t17881210-94); Joseph Smith (t17881210-95); James Payne (t17890225-104); Henry Lawrence (t17890225-105); James Williams (t17890603-95); Thomas May (t17891028-93); Francis Anderson and John Anderson (t17900707-51); Edward Andrewes (t17900915-111) and (t17900915-112); Robert Breeze and John Hart (t17901208-32); John Cull (t17901208-53); James Cain (t17910216-42); Henry Salisbury (t17910413-68); Anthony Balless and Stephen Edwards (t17910608-41); Daniel Wild (t17910608-42); John Cooper (t17910720-41); Robert Norris (t17920215-50); Joseph Hicks (t17920523-89); Richard Rideout (t17920523-90); Luke Coats (t17930529-19); John Hawkey (t17940115-45); William Brown (t17940716-47); Michael Mitchell (t17940917-7); David Williams (t17941208-56); John Longmead (t17951028-49); William Seal (t17960511-4); Richard Waddle (t17961130-41); William Brown (t17970215-41); Robert Kingsmore (t17970426-2); George Hart (t17980418-78) and (t17980418-79); Robert Hicks (t17981024-56); John Heals, Peter Avery, and John Chapman (t17990109-30); Edward-Samuel Barnard (t17990220-55); William Barrett, Robert Mark, William Foster, William Searle, and Thomas Ventin (t17991030-89); William Blatchford (t18000115-89); William Strick (t18000528-6); Edward Bawden (t18010415-22); Richard Harnell (t18010415-38) and (t18010415-39); John Hawke (t18011202-79); John George (t18050424-38); William Row and George Row (t18050424-136); Christopher Pollard (t18050710-90); William Bastin and Robert Prescott (t18060702-69); Jeremiah Abel (t18070114-66); William Butcher and James Jeal (t18070218-24) and (t18070218-85); James Peppiet (t18091206-83); James Mansfield (t18111030-50); Jacob Denny (t18130217-47); James Blanch and John Brennan (t18140216-25); and Jeremiah Maxted and Thomas Gilbert (t18140420-76).

<sup>13</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 18 January 2010), September 1742, trial of John Morell (t17420909-45).

It appears that the changes in the way the state prosecuted smugglers during this turbulent period in the history of crime and punishment fits with historians' observations of the increases in assault prosecutions and the growing distaste for the death penalty. Indeed, the structure of the 1746 law against smuggling provided prosecutors, judges, and juries with a considerable opportunity to exercise discretion when determining how to charge and convict smugglers. It was divided into four sections: armed assembly of three or more with the purpose of smuggling or rescuing smuggled goods; aiding and assisting smugglers; going disguised; and resisting or obstructing officers, whether armed or not. In 1779, the fourth part of the statute, obstructing officers, was reduced to a misdemeanor that was normally tried in quarter sessions and resulted in corporal punishment.<sup>14</sup> By 1786, however, forcibly resisting an officer was again tried as a capital offense, and in 1784 firing on a customs vessel (and, assumedly, an excise vessel) after it had identified itself became a felony without the benefit of clergy.<sup>15</sup> The variety of particular offenses under the umbrella of smuggling, as well as the fluctuating possible punishments for each, afford us the opportunity to examine how authorities sought to portray smugglers by the ways in which they employed the statutes.

Parliament enacted laws against smuggling to protect the monarch's revenue, and that concern remained in evidence during the 1780s. Indeed, the solicitor general opened the 1784

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<sup>14</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 18 July 2009), September 1784, trial of William Hutchinson, Thomas Lewis, and Daniel Wilkinson (t17840915-2).

<sup>15</sup> *Old Bailey Proceedings Online*, July 1786, John Martin, Walter Cross, James Bell, John Williams, William Bell, William Stone, and Benjamin Savory (t17860719-98). By this period, "benefit of clergy" had nothing to do with ecclesiastical orders. Originally an acknowledgement of the privilege of clergy to be tried for some offenses in ecclesiastical court, benefit of clergy became a loophole for the literate (or semi-literate) condemned to escape execution by reciting the "neck verse," Psalm 51. In the middle ages, when benefit of clergy originated, the idea was that only the clergy were literate, but increasing lay literacy and the apparent leniency of the administrators of the reading test made benefit of clergy, in the words of James Sharpe, a "nonsense." As he points out, this is especially apparent when the right to claim benefit of clergy was extended to women in 1623, a time when the ordination of women was not even on the horizon. Peter Linebaugh, *London Hanged: Crime and Civil Society in the Eighteenth Century* (Cambridge: Cambridge University Press, 1992), 53; Sharpe, *Crime in Early Modern England*, 67.

case of William Hutchinson, Thomas Lewis, and Daniel Wilkinson with the dramatic assertion that prosecutions against smugglers were necessary “to suppress a practice, which, if not suppressed, will put an end absolutely to the fair trade of this country.”<sup>16</sup> The prosecutors in William Inch’s 1785 case concurred. They called smuggling “a very heinous offence, against the laws for the protection of the revenue of this country; an offence which the wisdom of the legislature has thought fit to make capital.”<sup>17</sup> They further argued the importance of prosecuting smugglers to deter other potential offenders against the king’s purse, “All I can say is, that if the prisoner is guilty, he is undoubtedly a very proper object of justice; and unless these prosecutions are carried on with effect, wheresoever there is a fair and proper example, it will be impossible the revenue of this country should much longer escape destruction.”<sup>18</sup>

Although the protection of the state’s revenue remained a top priority, there was a subtle shift in the way smuggling was portrayed in regards to its effect on national security. Instead of arguing that laws against smuggling were necessary for national self-preservation, prosecutors emphasized the importance of strict enforcement to the safety of revenue officers. It is likely that the growing number of violent conflicts between smugglers and revenue officers was at least partially attributable to the increasing presence of these officers in the coastal counties. For example, between 1763 and 1783 the number of customs vessels, each crewed by fourteen to thirty men, patrolling the coast increased from twenty-two to forty-two.<sup>19</sup> When one considers the miles of coastline these forty-two boats were to patrol, it is clear that the odds vastly favored the smugglers. In George Cossans’s 1785 case, the prosecutor argued, “The reasons that induced

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<sup>16</sup> *Old Bailey Proceedings Online*, September 1784, William Hutchinson, Thomas Lewis, and Daniel Wilkinson (t17840915-2).

<sup>17</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 20 January 2010), February 1785, trial of William Inch (t17850223-29).

<sup>18</sup> *Ibid.*

<sup>19</sup> William J. Ashworth, *Customs and Excise: Trade, Production, and Consumption in England, 1640–1845* (Oxford: Oxford University Press, 2003), 186.

the legislature more strictly to enforce the laws against persons committing the crimes attributed to the prisoner at the bar, if ever they did exist, exist in their full force now. . . . Several officers of the Customs and Excise, and their assistants, have been wounded, maimed, and some of them killed in the execution of their office, to the utter subversion of all civil authority.”<sup>20</sup> He specifically tied assault on officers to civil disorder, but not to disobedience against the king. In Benjamin Spice’s 1785 case, the attorney general claimed that Spice was prosecuted “to save the lives of persons of his own description, and hereafter to protect the lives of his Majesty’s officers.” The barrister warned, “If the law will not protect the officer, nothing but illwill, and everlasting battles must ensue, between the officers of the revenue, and those that are concerned in defrauding it.”<sup>21</sup>

The attorney general opened George Vincent’s 1788 case with an explanation of how he decided whether to pursue a capital conviction against a smuggler. He wrote:

Gentlemen, it is an object with me, as your servant, whenever an opportunity happens, to discriminate, as far as I in my closet can, between the different degrees of atrocity of each offence; and the rule (whether right or wrong, is the best which my judgment enables me to perform) is this, that where murder is committed, or the circumstances are such, that it is by God’s providence only, that murder does not happen; in such a case, I shall think it my duty to bring the aggressors before you; in other cases, where there may be much disregard to the laws, but at the same time, where there is not that extreme degree of disregard to the lives of fellow subjects,; in such cases I endeavour to aim at as much moderation as is in my power. Gentlemen, I need not state to you the absolute necessity there is of affording protection to the revenue officers, few as they are in number, in comparison of those by whom they are frequently attacked.<sup>22</sup>

It is interesting that, in spite of this concern for the lives of officers, smugglers charged with assaulting revenue men were punished with imprisonment, whereas those armed and assembled with the intent to smuggle goods faced execution. Of the cases in which the prosecutor opened

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<sup>20</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 20 January 2010), May 1785, trial of George Cossans (t17850511-79).

<sup>21</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 20 January 2010), December 1785, trial of Benjamin Spice (t17851214-88).

<sup>22</sup> *Old Bailey Proceedings Online*, September 1788, George Vincent (t17880910-126).

with a statement affirming the need to protect officers as a primary motive for an aggressive prosecution, only one, that of John Cooper (1791), was for an assault charge. In the other cases, the primary charge was armed assembly. In the vast majority of cases in which assault was the primary charge, the recorder did not find it necessary to report the opening statement. Rather, the case begins with “The indictment opened by Mr. \_\_\_\_\_, and the case by Mr. \_\_\_\_\_” to be immediately followed by the testimony of the first witness.<sup>23</sup> This omission makes it more difficult to judge the court’s emphasis in the assault prosecutions.

A close examination of an excerpt from Mr. Fielding’s opening statement in John Cooper’s 1791 assault case illustrates the way the court sought to portray smuggling as well as the assumptions about the justness of England’s legal system that it encouraged jurors (and the readers of the *Proceedings*) to adopt.<sup>24</sup> Fielding began, “When I look at Gentlemen of your appearance, I am convinced it cannot be necessary to enlarge on the necessity there is of executing those laws which are made for the preservation of the people concerned in the collection of the revenue.” The tone here is pandering and appeals to the paternalistic tradition. The men on the Old Bailey jury were property owners and more than likely belonged to the upper-middle class. Fielding subtly drew a distinction between men of their appearance and men of Cooper’s appearance, who was a servant and dressed in “a black round frock and a round hat,” clothing that was associated with the working class.<sup>25</sup> Fielding appealed to the gentlemen of the jury’s paternalistic responsibility to protect those in service below them in the social order, in this case, the revenue men. He continued, “Indeed, at this time of day, wherever we turn our eyes,

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<sup>23</sup> See, for example, *Old Bailey Proceedings Online*, December 1788, John Old (t117881210-94).

<sup>24</sup> Although only referred to by his last name in the *Proceedings*, this is most likely William Fielding, son of novelist, barrister, and founder of the Bow Street Runners Henry Fielding. For more on eighteenth-century barristers, see David Lemming, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (Oxford: Oxford University Press, 2000).

<sup>25</sup> "frock, n.3" *The Oxford English Dictionary*. 2nd ed. 1989. *OED Online*. Oxford University Press. 25 March 2010 <<http://dictionary.oed.com/cgi/entry/00181778>>.

and attend to that information we receive daily, we have great reason to be content with the happy constitution and government of this country, and with the administration of its laws, as that administration takes place in this country.” Fielding was likely referring to the upheaval of the French Revolution, which many in England’s ruling class probably followed with a mixture of fear and fascination. Only six days earlier, the people of France had celebrated the second anniversary of the storming of the Bastille; and just one month before Cooper’s trial, King Louis XV and his family had been captured as they tried to escape Paris. During this period, England’s ruling class had great reason to encourage British subjects to be content with its happy constitution and government.

Interestingly, Fielding concluded, “But, Gentlemen, there could be no support of the constitution, there could be no support of the government, if, after the establishment of taxes, which we all know are necessary to be imposed, when those taxes are imposed, there must be people employed to collect them, and that those officers require protection.”<sup>26</sup> When an allusion is made to something “we all know,” it suggests that, in fact, we all do not know it and may in actuality have a range of diverse opinions on the matter. Taxation is a fact of civil society; however, the specific *what* and *how much* of taxation are other matters. Judging by the prolific amount of smuggling among all classes of people during this period, it is unlikely everyone in England agreed that tea, tobacco, and alcohol should be tagged with such high duties. In all the Old Bailey smuggling cases, the legitimacy of the high taxes placed on these items was never questioned. One thing that many jury members, and possibly the population in general, could agree on was that revenue officers should be protected. This was rather safe territory for prosecutors, and it was a haven to which they retreated repeatedly during the tense period

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<sup>26</sup> *Old Bailey Proceedings Online* (www.oldbaileyonline.org, 20 July 2009), July 1791, trial of John Cooper (t17910920-41).

following the American Revolution that saw revolution in France, a successful slave rebellion in St. Domingue (Haiti), and the rise of Napoleon. Even in cases in which the charges were identical to the aggressive prosecutions of the 1740s and 1750s, in which the king's counsel emphasized smuggling's threat to the nation, barristers of the 1780s, 1790s, 1800s, and 1810s focused on the need to protect revenue officers. This focus suggests a desire to shape the official discourse about smuggling to downplay its revolutionary potential.

The court's silence on smuggling as an antinationalistic activity is made more obvious by its definition as such in other publications. In 1780, Anthony Merry published a brief tract in London entitled *Methods to Prevent Smuggling in Great Britain*. Among his suggestions were removing the stipulation that smuggling vessels could only be seized within two miles of the English coast; forcing merchants dealing in foreign spirits to obtain a license, as was required in the spice trade; disallowing the practice of reporting goods "contents unknown"; and increasing bounties on smugglers and their boats. Among his thirteen points, Merry inserted three statements that were not suggestions to prevent smuggling but rather issues that he found especially troubling. First among these was his observation that "there are continually cutters from Flushing and Dunkirk and other French ports, who supply our outward bound ships and coasting vessels with spirits, teas, and all sorts of merchandize, to the very great loss of the nation and to the enriching our enemies."<sup>27</sup> By this time, France had recognized the United States of America and was at war with Britain. In addition to fighting the French and its own rebellious colonies, Britain was engaged with the Dutch in the Fourth Anglo-Dutch War. The Dutch and the French were English smugglers' two primary trading partners, and to continue conducting

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<sup>27</sup> Anthony Merry, *Methods to Prevent Smuggling in Great Britain* (London?, s.n., 1780?), Early English Books Online, Columbia University Library, 25 March 2010  
[http://eebo.chadwyck.com.jproxy.lib.ecu.edu/search/full\\_rec?SOURCE=var\\_spell.cfg&ACTION=SINGLE&ID=99897117&ECCO=N&FILE=../session/1269536712\\_5104&SEARCHSCREEN=CITATIONS&DISPLAY=AUTHOR&SUBSET=1&ENTRIES=1&HIGHLIGHT\\_KEYWORD=default](http://eebo.chadwyck.com.jproxy.lib.ecu.edu/search/full_rec?SOURCE=var_spell.cfg&ACTION=SINGLE&ID=99897117&ECCO=N&FILE=../session/1269536712_5104&SEARCHSCREEN=CITATIONS&DISPLAY=AUTHOR&SUBSET=1&ENTRIES=1&HIGHLIGHT_KEYWORD=default).

business with them during time of war was, as Merry pointed out, not only injurious to the national revenue, but also beneficial to the coffers of the French and Dutch governments, which could then use that money to fund military operations against Britain. Smuggling during wartime was tantamount to treason, and yet the Old Bailey courts, even in their most strenuous efforts to convince juries to convict smugglers, did not make this connection.

John Wesley made his argument against the smugglers in very paternalistic terms in his 1783 pamphlet *A Word to a Smuggler*. Wesley attacked the honesty of smugglers, a trait that many in coastal communities had no problem attributing to free traders, by comparing them to highwaymen and pickpockets. He argued that smuggling was, in fact, worse because it robbed the king, who was a father figure as well as God's appointed ruler, of his rightful revenue. Wesley chided, "It is worse still, far worse, to rob a good father, one who sincerely loves us, and is at that very time doing all he can, to provide for us, and to make us happy. Now this is exactly the present case. King George is the father of all his subjects. . . . He shews his love to them on all occasions: and is continually doing all that is in his power, to make his subjects happy."<sup>28</sup> According to Wesley, a crime against the king was a crime against God and the nation. He would accept no excuse for smuggling and asserted that it was "better to die, than to live by thieving."<sup>29</sup>

By asserting their own economic priorities, smugglers actively promoted their personal interests at the expense of national interests, a situation decried by the writer Thomas Pierson. In his 1786 poem "The Smuggler" he first described the free trader as lawless, unscrupulous, and violent:

Bound by no laws the smuggler lives,  
For wounds he feels some blows he gives,

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<sup>28</sup> John Wesley, *A word to a smuggler*, 2.

<sup>29</sup> *Ibid.*, 7.

Sculks, flies, swears false, or robs for gain . . .  
Above all right, beneath a man,  
Scarce worth a groat steal all he can.<sup>30</sup>

Pierson then leveled the more serious charges of murder and treason:

His country's foe, a rebel sound,  
Who owns no king, is vilely bound  
To thrive on murder, theft malign,  
By smuggling cambricks, teas, and gin.<sup>31</sup>

While many a smuggler would likely have taken offense at being labeled a murderer, and some probably would have felt slighted at the word “thief,” the smuggler’s thoughts about being called a “rebel” may have been more complicated. Pierson then warned others against following a similar path by describing the smuggler’s fate:

His end is poverty and fears,  
No length of time his want repairs,  
But, felon-like, in prison lies,  
Consum'd with lice, in rags he dies.<sup>32</sup>

In his short poem, Pierson described the smuggler as a dangerous criminal who led a life of fear, violence, and betrayal, and then died alone and imprisoned. Pierson’s characterization had little basis in reality. Although some smugglers certainly were criminal characters (one thinks of the leaders of the Hawkhurst Gang), most smugglers were integrated members of their communities. They were butchers, husbandmen, and shoemakers, men with families and friends. They were also highly unlikely to die in jail, although a few did. Smugglers were most frequently acquitted, sentenced to short prison terms, or hanged.<sup>33</sup> Interestingly, it was at his execution that a

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<sup>30</sup> Thomas Pierson, “The Smuggler,” in *Miscellanies on various subjects, containing a tragedy, founded in a fact which happen'd upon Good Friday*. . . . (Stockton: Printed for Author, 1786), 236.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> See Appendix 1.

smuggler's friends enter the historical record: It was they who collected his body from the gallows to ensure it received a decent burial.<sup>34</sup>

The state-appointed committee to investigate smuggling specifically described smugglers as a threat to national interests in its report published in 1784. Among other topics, the committee's report covered illicit trade in spirits, tobacco, tea, and soap, as well as illegal breweries and distilleries. It found that smuggling had "increased in a very alarming degree" since the end of the late war and that, if smuggling could be prevented, the amount of excise revenue collected would more than triple.<sup>35</sup> Significantly, the committee stated that the nation was not only harmed by losing the revenue on the sale of undutied goods, it was also hemorrhaging specie as the smugglers paid for their goods in coin. The committee asserted, "It well deserves remark, that the national interests suffer most essentially in many points of view, exclusive of the great loss of Revenue—this immense trade being supported almost solely by the export of the bullion and specie of the kingdom, or by bills of exchange, and not by any interchange of manufactures."<sup>36</sup>

The movement of specie from England to France was a significant aspect of the illicit trade, and one that Napoleon encouraged in the early nineteenth century. Historian Gavin Daly argues that gold guineas were the most important item of the illicit cross-Channel trade. When fears about the gold supply in London were high, Parliament passed the Bank Restriction Act in

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<sup>34</sup>See, for example, *Old Bailey Proceedings* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 22 January 2010), *Ordinary of Newgate's Account*, 11 May 1748 (OA17480511) and 17 March 1749 (OA17490317).

<sup>35</sup> Great Britain, Parliament, House of Commons, *First report from the Committee, appointed to enquire into the illicit practices used in defrauding the revenue. (24th December, 1783.)* (London, 1784), 6. Eighteenth Century Collections Online. Gale. EAST CAROLINA UNIV. 25 Mar. 2010 <<http://find.galegroup.com.jproxy.lib.ecu.edu/ecco/infomark.do?&contentSet=ECCOArticles&type=multipage&tabID=T001&prodId=ECCO&docId=CW107751002&source=gale&userGroupName=gree96177&version=1.0&docLevel=FASCIMILE>>. Hereafter referred to as 1784 Report. It is unclear whether the committee is referring to the American Revolution (1776–1783) or the Fourth Anglo-Dutch War (1780–1784).

<sup>36</sup> *Ibid.*, 7.

1797, prohibiting gold from leaving the country through export; the government instead imported gold and silver from other countries to fund continental wars. The value of gold increased, while at the same time the value of the British pound decreased. This led British merchants to both pay their foreign debts in gold and to speculate in gold. Napoleon, ever suspicious of credit markets and paper money, thought he could bring down the British economy by encouraging the illegal export of British gold and, in the meantime, bolster his own treasury. Daly argues, “This was the primary purpose of the English smuggling bases.”<sup>37</sup>

The committee also asserted that smugglers’ disregard for the law and national interest created an atmosphere of anarchy that was injurious to the legitimacy of the central government. The report stated, “Enormities of such violence and extent amount to a partial state of anarchy and rebellion; and have a tendency to weaken and impair every idea of a regular government, and all due submission to the laws of the land.”<sup>38</sup> Indeed, Daly’s findings suggest they had reason to worry. He contends that smugglers’ national loyalties were weakened by their proximity to France and the frequent commercial contact they had with people from other nations. He writes, “[Kent and Sussex], like the French departments they directly faced across the Channel, were frontier regions in the war with France, especially during the Napoleonic invasion scare of 1803–5. Yet their very proximity to France also meant that the coastal inhabitants—especially fishermen, sailors and traders—traditionally interacted with the French in diverse social and economic contexts, including smuggling.”<sup>39</sup> Daly also highlights another way in which smugglers acted contrary to national interests: They smuggled French prisoners of war,

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<sup>37</sup> Daly, “City of Smugglers,” 337–339.

<sup>38</sup> *1784 Report*, 7.

<sup>39</sup> Daly, “City of Smugglers,” 341.

newspapers, and correspondence.<sup>40</sup> Daly concludes, “Smugglers were part of a local criminal subculture that defied the English state and a cross-Channel contraband community linked by common economic interests and family and personal ties. Contraband networks persisted across the Channel through periods of both peace and war, operating outside the context of whether those on the other side of the frontier were designated in official discourse as friend or foe.”<sup>41</sup>

According to these contemporary authors, English smugglers were enemies of their country, and it would seem that appealing to nationalism would have been an effective strategy in a period in which some historians have identified a burgeoning sense of patriotism and national identity.<sup>42</sup> Yet prosecutors at the Old Bailey employed none of this rhetoric in their efforts to convince juries to convict accused smugglers. It is admittedly difficult to interpret silence to mean one thing or the other, but just because silence is ambiguous does not mean it is meaningless. The unacceptable alternative would be to ignore all together silence in the historical record and present a skewed picture of the period under study. Furthermore, interpreting silence inevitably opens an issue for debate, and it is through that debate that we improve our understanding of that moment in history.

So the question remains: Why did the Old Bailey prosecutors choose not to appeal to jurors’ nationalism to win smuggling convictions and instead ask them to find smugglers guilty on charges of personal assault? The court’s decisions essentially downgraded the charge as well as the potential punishment. Historian Alan Karras, in his study of global smuggling, suggests an explanation that at first glance appears paradoxical. He argues, “Government knew that by

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<sup>40</sup> Ibid., 346, 347.

<sup>41</sup> Daly, “English Smugglers,” 45.

<sup>42</sup> See, for example, Colley, *Britons*; J. E. Cookson, *The British Armed Nation 1793–1815* (Oxford: Clarendon Press, 1997); and Timothy Jenks, *Naval Engagements: Patriotism, Cultural Politics, and the Royal Navy 1793–1815* (Oxford: Oxford University Press, 2006).

passing laws that did not provoke open rebellion it could claim to represent the will of its population, therefore achieving a kind of legitimacy. At the same time, the population understood that by simply failing to obey the laws, without entering into open rebellion (especially after 1776), it could achieve a degree of autonomy that might not otherwise be possible.”<sup>43</sup> In the tense years immediately following the previously unthinkable events of 1776, the British government was particularly keen to maintain the delicate balancing act of legitimacy.

During the age of revolution, the authorities sought to avoid the public response that might result from an aggressive prosecution of smugglers. For an example of the kind of rhetoric inspired by government’s all-out assault on smuggling they needed only to look to the 1740s. In 1749, during the height of the government’s bloody campaign against the smuggling gangs, an anonymous author who styled himself “an enemy to all oppression, whether by tyranny, or law” penned the twenty-seven page tract “A free apology in behalf of the smugglers, so far as their case affects the constitution.” He argued that the smugglers targeted by the government were illiterate laborers trying to make as much money as they could with their limited skill set and social opportunity. Smuggling was profitable because the general population wanted to purchase their discounted goods, and he saw only two ways to effectively combat smuggling. He wrote, “There is no such Thing as preventing Smuggling, but by reducing the Duties upon the Commodities smuggled; unless you could hope to root out that avaricious and greedy Propensity in Mankind after *exorbitant Gain*, and likewise could prevail on the World to *despise the Contraband* as well as the *Smuggler*. . . People detest the *Smuggler*, but have a very great Liking to the *Cheapness* of his contraband Commodity.”<sup>44</sup>

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<sup>43</sup> Karras, *Smuggling: Contraband and Corruption*, 110.

<sup>44</sup> *A free apology in behalf of the smugglers, so far as their case affects the constitution. By an enemy to all oppression, whether by tyranny, or law* (London, 1749), 26, 22. Eighteenth Century Collections Online, Gale, East

The author further asserted that his concern was not that the government opposed smuggling, which was natural, but rather that it reacted so violently against the smugglers. He wrote, “I do not set myself up for an Apologist for *Smuggling*, but an Apologist for the present *State and Condition* of the *Smuggler*; and *that* only so far as I apprehend the *Manner* of pursuing him, may prove dangerous to the Constitution of my Country.”<sup>45</sup> Death was a severe punishment for a property crime, although it was, as discussed above, by no means uncommon during the eighteenth century. Smuggling can be defined a property crime if one considers the king’s revenue to be his property. Even so, the “enemy to all oppression” contended, “In fact, were the Case to be put and fairly argued, whether a Legislature can, in the natural Equity of Things, enact a Law for punishing any one with Death for purchasing Goods with his own Money, even tho’ prohibited, I believe it might admit of some Doubts.”<sup>46</sup> Here he suggested that, because smugglers purchased goods with their own money, they may be considered the property of the smugglers; English common law had a strong tradition of supporting individuals in the pursuit and defense of their own property. The author goes into greater detail on this point in his version of the last dying speech of a smuggler. He wrote:

I PRAY you take Warning of my untimely End, to which I am *legally* brought for having purchased *Dutch* and *French* Commodities with my own ready Money, and selling them again; in the defending of which, my Property, I have frequently hazarded my own Life, and taken away the Lives of others, whom, in the Violence of my Rage and Revenge, I have mangled in a most barbarous and shocking Manner; for which I most humbly ask Pardon of both God and Man. . . . I cannot help saying, I think it very hard that one should be more vilify’d, more cry’d out upon, for a single Act of Cruelty on one Man, than another that shall act it on Millions.<sup>47</sup>

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Carolina University, 7 June 2009

<http://find.galegroup.com/ecco/infomark.do?&contentSet=ECCOArticles&type=multipages&tabID=T001&prodlid=ECCO&docId=CW3304129009&source=gale&userGroupName=gree96177&version=1.0&docLevel=FASCIMILE>. All italics in the original in this and subsequent quotes from this source.

<sup>45</sup> Ibid., 7.

<sup>46</sup> Ibid., 18.

<sup>47</sup> Ibid., 11–12.

He goes on to describe the suffering of the British nation at the hands of state administrators and concluded, “Yet, have we not seen the Authors of her Miseries reaping Honours instead of Punishment? which verifies the Poet’s Words, with which I chuse to take my Leave of you and the World: *For little Villains must submit to Fate, That great ones may enjoy the World in State.*”<sup>48</sup>

The author argued that using the military to crush the smugglers, who, in fact, had not committed a crime of violence until confronted, set a dangerous precedent. He warned:

Violence will beget Violence; Rancour, Rancour; a kind of Civil War will be established: The Military Power will insensibly gain Ground: Instead of entertaining any formidable Ideas of a Standing Army, so much dreaded by our Ancestors, it will grow familiar to us, nay, be cherish’d as useful and necessary for our Protection against ourselves. And pray in the End, who will answer, that the same Arms that destro’d *Smuggling*, may not be wickedly employed to destroy our *Liberties*?<sup>49</sup>

He further suggested that the government needed to take into account popular support of smuggling if it truly purported to be working in the best interest of the British people. He wrote, “Such Laws as require an armed Force to put them in Execution are unnatural, and have more the Air of arbitrary Edicts than the voluntary Acts of a free People.”<sup>50</sup> In language familiar to students of American history, the author claimed that the current British penal laws were “destructive of Liberty,” and argued, “I will suppose the Constitution superior to any Act of Parliament whatever; and that, whether we see a King or a Parliament breaking in upon it, they are equally to be resisted.”<sup>51</sup> This inflammatory rhetoric was published, anonymously of course, during one of the brief periods of peace in the eighteenth century. It was exactly the thing the

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<sup>48</sup> Ibid.

<sup>49</sup> Ibid., 23.

<sup>50</sup> Ibid., 9.

<sup>51</sup> Ibid., 7, 8.

British state wanted to avoid after remarkably similar discourse fueled the successful American Revolution and toppled the monarchy in France.<sup>52</sup>

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<sup>52</sup> On the role of contraband commerce in bringing about the American Revolution see John W. Tyler, *Smugglers & Patriots: Boston Merchants and the Advent of the American Revolution* (Boston: Northeastern University Press, 1986), and Thomas M. Truxes, *Defying Empire: Trading with the Enemy in Colonial New York* (New Haven and London: Yale University Press, 2008);

## Chapter Four

### **“They Would Sooner Lose Their Lives than Their Property”: Smugglers’ Speech and Its Implications**

Recovering the voices of the lower classes is a notorious and oft-lamented difficulty for social and cultural historians. Most plebeians were illiterate, and very few first-hand accounts of their lives survived the ravages of fire, mold, and neglect that attended the passing years. One place to which historians have turned in an effort to reconstruct plebeian identity is court records. As discussed in the preceding chapters, the Old Bailey *Proceedings* are a valuable, though not ideal, source of the activities of criminals of all classes. Significantly, the publisher and shorthand writer often failed to record the details of the defense testimony; on the other hand, the smugglers’ voices are clear in the words attributed to them by witnesses. These voices develop a familiar cadence as one reads the trials that lends them a degree of authenticity. The smugglers’ words were reported by preventive men (who lived as members of the communities they patrolled), informers, fellow smugglers turned evidence, and local witnesses. Their accuracy in small details may have been haggled over in court, but the general ideas and pattern of speech they represented was never questioned. The smugglers’ speech as presented in the Old Bailey *Proceedings* and the *Ordinary of Newgate’s Account* personalizes the smugglers, retrieving their individuality and agency from the anonymity of history; it reveals the cultural differences between London and the counties, supporting Keith Wrighton’s idea of the two concepts of order; and it betrays the ubiquitous undercurrent of revolutionary potential in a society in which

plebeian identity was bound up with a tradition of defending *customary* rights that were more frequently resembling *individual* rights.<sup>1</sup>

The *Ordinary of Newgate's Account* (hereafter the Ordinary's *Account*) is a unique source of details about the lives of criminals awaiting execution at Tyburn. As the chaplain of Newgate Prison, the Ordinary counseled the condemned and helped them prepare their souls for the afterlife. To supplement his income, he recorded his interviews with prisoners and sold them at three to six pence apiece. Published after nearly every hanging day between 1676 and the late 1760s, the Ordinary's *Account* reported the last days of more than 2,500 men and women.<sup>2</sup> Described as the "sister publication" of the *Proceedings*, the Ordinary's *Account* followed a similar trajectory of popularity and decline. Both publications began as serials in the 1670s and both gained credibility when they were "published by authority of the City of London" in the late 1670s and early 1680s. In addition, they were published by the same printer, followed the same format, and were often purchased as a set.<sup>3</sup> Like the *Proceedings*, the *Account* found the apex of its popularity near the midpoint of the eighteenth century. Whereas the *Proceedings* remained relatively popular into the 1770s, the *Account* experienced a steeper decline and went out of regular publication in the 1760s. Andrea McKenzie found that the *Account* fell out of popular favor for a similar reason that Simon Devereaux identified in his analysis of the *Proceedings*: a significant shift in public perception about criminality. McKenzie argues that the Ordinary's *Account* appealed to an older "conception of the criminal as 'Everyman,' a universal metaphor for sin connecting the malefactor on the gallows to a larger moral universe encompassing both

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<sup>1</sup> Keith Wrightson, "Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-Century England," in *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries*, ed. John Brewer and John Styles (New Brunswick, NJ: Rutgers University Press, 1980): 21–46.

<sup>2</sup> Clive Emsley, Tim Hitchcock and Robert Shoemaker, "The Ordinary of Newgate's Accounts," *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 1 April 2010); Andrea McKenzie, "From True Confessions to True Reporting? The Decline and Fall of the Ordinary's Account," *London Journal* 30, no. 1 (2005): 56.

<sup>3</sup> McKenzie, "True Confessions," 55–56.

rich and poor.”<sup>4</sup> As Devereaux illustrates in his article on the decline of the *Proceedings*, this notion was changing throughout the eighteenth century, and by the 1770s the public was “more concerned with environmental and class-specific factors in the creation of the criminal.”<sup>5</sup>

Like the *Proceedings*, scholars contend that the Ordinary’s *Account* can be trusted to be reasonably accurate. After spending years examining the Ordinary’s *Account*, Peter Linebaugh found that “the biographies supplied information that could be corroborated from other, more familiar historical sources, such as parish and apprenticeship records, and that the historian may therefore be justified in relying upon the short biographies printed in the *Account* as records of the truth.”<sup>6</sup> Furthermore, much information contained in the *Account*, and corroborated by Linebaugh, could only have come from the prisoners. This fact led several leading historians of eighteenth-century crime to claim that the *Account* “provide[s] a unique insight into the minds of eighteenth-century criminals.”<sup>7</sup> For the purposes of this study, the Ordinary’s *Account* provides an intriguing glimpse into the lives of thirty-four smugglers executed before 1753. Of these, thirty-two stood trial at the Old Bailey and had their cases published in the *Proceedings*. Significantly, McKenzie asserts, the Ordinary’s *Account* fills in some of the gaps in the trial accounts. She argues, “Often it is the omissions and the silences in the *Proceedings* which offer tantalizing glimpses of breaches in this culture of deference, or what one scholar has termed the ‘public transcript’: the normative discourse purporting to legitimate and to normalize power differentials between dominant and subordinate groups.”<sup>8</sup>

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<sup>4</sup> Ibid., 56.

<sup>5</sup> Devereaux, “From Sessions to Newspaper”; quote from McKenzie, “True Confession,” 61.

<sup>6</sup> Peter Linebaugh, *London Hanged*, xix–xx.

<sup>7</sup> Emsley, Hitchcock and Shoemaker, “The Ordinary of Newgate’s Accounts.”

<sup>8</sup> McKenzie, “True Confession,” 58.

The Ordinary's *Account* provides general information about convicted criminals that was included sporadically or not at all in the *Proceedings*, such as the age, birthplace, and occupation of the condemned. From the Ordinary we learn that smuggling was overwhelmingly a younger man's trade: out of thirty smugglers whose ages were reported, twenty-four were in their twenties and thirties. The physicality required to unload and carry heavy tubs, sometimes over several miles in the middle of the night, makes this an unsurprising discovery. Further, the Ordinary records the various occupations a given smuggler followed throughout his life. The most common occupation was husbandry, but the *Account* also shows former apprentice and journeyman shoemakers, butchers, bakers, and carpenters who left their trades to smuggle full time. The Ordinary frequently lamented the ignorance of the men and women who found themselves under his care at Newgate; he specifically identified eleven smugglers as illiterate.<sup>9</sup>

Although this general information is useful, especially to a study of the demography of smuggling, what is more pertinent to the current study is the way smugglers in the Ordinary's *Account* talked about smuggling. Many smugglers asserted that they turned to smuggling because it was more profitable than their previous occupation. Thomas Puryour, convicted in 1747, claimed that he followed his father's trade of husbandry until he became acquainted with a group of smugglers who convinced him that he was in the wrong business. Puryour admitted he "got a very good Livelyhood by it" and explained he "earned it at an easier Rate, than in the Calling in which he was bred up."<sup>10</sup> Samuel Chilvers, executed in 1748, claimed "he was led by

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<sup>9</sup> *Old Bailey Proceedings* (www.oldbaileyonline.org, 17 January 2010), *Ordinary of Newgate's Account*, 29 July 1747 (OA17470729); 21 December 1747 (OA17471221); 22 June 1748 (OA17480622); 17 March 1749 (OA17490317); 4 August 1749 (OA17490804); 26 March 1750 (OA17500326); 31 December 1750 (OA17501231); 29 July 1751 (OA17510729); 13 July 1752 (OA17520713).

<sup>10</sup> *Old Bailey Proceedings* (www.oldbaileyonline.org, 17 January 2010), *Ordinary of Newgate's Account*, 16 November 1747 (OA17471116).

Promises of great Gains for little, and that not hard Labour.”<sup>11</sup> Richard Perrin asserted he was forced into smuggling by an injury that prevented him from continuing as a carpenter. He told the Ordinary that he “was looked upon as a good Work-man, and had pretty Business, till, the Use of his right Hand, being in a great measure taken away by being subject to the Palsey, he thought proper to leave that Trade and to take to smuggling.” Perrin was a trusted figure who was largely employed traveling to the continent to buy goods for himself and on behalf of other smugglers. It was his great misfortune that he purchased the cargo that was rescued from the Poole Custom House.<sup>12</sup>

Uriah Creed’s story is slightly different and provides additional insight into how the smuggling network operated. Creed was a laborer in husbandry and “being a stout young Man, he labored very hard for little Wages, and began now to be tired of that way of Life, which thinking to change, he applied himself to a Brother of his, who countenanced him in this way of thinking, and advised him to come up to Town to him.” He went to live as a hostler with his brother in London, who owned an inn that functioned as a way station for smuggled goods. Creed reported, “When they had any Goods to bring to Town, there they were generally first lodged, and from thence sent out to their Customers in Parcels.” The smugglers tried to recruit Creed, but he was happy with his job and resisted their overtures. Creed’s participation in the contraband trade began when he broke a horse for one of the smugglers and was charged with delivering it to its owner in Kent. The smuggler insisted Creed use the horse to help them on one of their runs, to “try how the Horse would behave in the Smuggling Business.” After his return, Creed was employed delivering smuggled goods to their owners, such as grocers or chandlers,

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<sup>11</sup> *Old Bailey Proceedings* (www.oldbaileyonline.org, 17 January 2010), *Ordinary of Newgate’s Account*, 18 March 1748 (OA17480318).

<sup>12</sup> *Old Bailey Proceedings* (www.oldbaileyonline.org, 17 January 2010), *Ordinary of Newgate’s Account*, 26 April 1749 (OA17490426).

and soon became his brother's official "rider." After only two trips Creed was informed against, but decided it was safer to continue smuggling than to try to gain legal employment for fear of being discovered. He also found he needed the money to support his wife and children. After some years passed, an established, but at that point retired, smuggler loaned Creed money to begin purchasing and trading smuggled goods on his own account. He continued to ride for other smugglers as well as conducting his own trade, and it was while he was acting for a smuggler named Gingles that customs officers recognized him. After a second information was lodged against him, he failed to surrender when his name was advertised, so he became an outlaw. Striving to maintain his freedom, Creed left "the smuggling Countries" and moved to Essex with his wife and two children. After some time, however, a posse discovered him. Upon his capture, Creed remarked, "Gentlemen, you need not be in a Hurry about me, I was just coming to you. I found you had made a dead Set of me, and twas no Purpose to endeavour to secret myself now, or to make any Resistance. Here I am, do what you please with me. I may look upon myself from this Day as a dead Man."<sup>13</sup> On Friday morning, August 4, 1749, Creed was executed.

Creed's story is interesting in that it illuminates one smuggler's individual experience, but it also expands upon ideas articulated in several smugglers' accounts. In Creed, we witness the frustration of working hard at manual labor that is not rewarded with economic security, as well as the freedom of a young, single man to move to the city in search of employment. His story also illustrates how smuggled goods moved from the coast to the city and then to the stalls of shopkeepers; the number of people involved in this process indicates just how extensive the smuggling network was in the eighteenth century. Furthermore, we see how a person could "fall into" smuggling, and how difficult it was for Creed to leave the lucrative trade when he was

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<sup>13</sup> *Old Bailey Proceedings, Ordinary of Newgate's Account*, 4 August 1749 (OA17490804).

responsible for supporting his family. By allowing the smugglers to speak for themselves and recording their words, the Ordinary of Newgate made it easier for the reading public to relate to them. Although this connection was supposed to warn readers how easy it was for ordinary people to commit heinous crimes, it is not unreasonable to think that it may, in fact, have turned men condemned for offenses like smuggling into sympathetic figures rather than deviant negative examples.

Many smugglers awaiting execution maintained that they never thought they would actually hang for smuggling. Richard Ashcroft claimed that when he accepted a ride from a group of smugglers, “He knew indeed . . . that they were about illicit Business, but had not the least Notion of an Act, or Proclamation, which might touch or affect him for being in such Company.”<sup>14</sup> Mariner Robert Scott maintained, “He was ignorant of, and did not in the least suspect the ill Consequences of it [smuggling]; though now he finds, to his great Grief, that his Life must pay for it, which he might very willingly part with, but the Thoughts of leaving behind him a Wife, and two poor helpless Orphans, occasions great Uneasiness in his Breast.”<sup>15</sup> William Rowland, a fifty-seven-year-old butcher of good reputation dealt occasionally in smuggled goods for his own and his friends’ use. He lamented, “Had he ever thought that such would have been the Consequence of it, as he now to his Grief and Cost does experience, he would rather have subsisted all the Days of his Life on Bread and Water, than have been that Way concerned.”<sup>16</sup>

Many people seem to have thought that smugglers would receive transportation at worst. A friend recorded John Cook’s assertion, “But (he spoke it with Tears) his Master and Mistress have deserted him; notwithstanding they always assured him . . . that there was no doubt of his

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<sup>14</sup> *Old Bailey Proceedings, Ordinary of Newgate’s Account*, 29 July 1747 (OA17470729).

<sup>15</sup> *Old Bailey Proceedings, Ordinary of Newgate’s Account*, 18 March 1748 (OA17480318).

<sup>16</sup> *Old Bailey Proceedings, Ordinary of Newgate’s Account*, 11 May 1748 (OA17480511).

being saved for Transportation at worst, upon which his Master assured him he would soon have him again, as it was easy for him to prevent his being Transported.”<sup>17</sup> James Sundiland was taken up several times for smuggling, but was released upon petition of his neighbors. Unfortunately, Sundiland appears to have been a good neighbor when sober, but troublesome and violent when drunk. According to the Ordinary, this led his neighbors to identify him as the man who took two tubs of brandy from an excise man. Surprisingly, the neighbors were upset at his capital sentence. The Ordinary reported, “He would ride about the Town of Westram, intimidating People with Threats and Menaces, so that it is imagined indeed they wished to get rid of him, so as he might have been transported, but did not desire nor wish him to be hanged, as appeared by Endeavours made, since his conviction, to get him off for Transportation.”<sup>18</sup>

More dangerously for the state, several smugglers argued that they did not expect to be punished because they did not feel they had done anything wrong. Thomas Puryour told the Ordinary, “somewhat surlily,” that “little did he think, when about that Business, that ever he should be hanged for it, as it was so common a Practice, and a Thing so publickly done.”<sup>19</sup> The Ordinary claimed Thomas Kingsmill “would own nothing of himself, and was scarce to be persuaded that he had done any thing amiss by following the bad Practices of Smugling.”<sup>20</sup> The Ordinary had similar difficulty with William Fairall, executed with Kingsmill, who would “not own against himself any one thing that he had done amiss, for which his Life should be at Stake.”<sup>21</sup> Charles Gawen resolutely remarked, “If being a Smuggler deserves Death, he said he had his Due.”<sup>22</sup> John Jarney summarized what was likely the position of many smugglers. The

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<sup>17</sup> *Old Bailey Proceedings, Ordinary of Newgate’s Account*, 29 July 1747 (OA17470729).

<sup>18</sup> *Old Bailey Proceedings, Ordinary of Newgate’s Account*, 26 March 1750 (OA17500326).

<sup>19</sup> *Old Bailey Proceedings, Ordinary of Newgate’s Account*, 16 November 1747 (OA17471116).

<sup>20</sup> *Old Bailey Proceedings, Ordinary of Newgate’s Account*, 26 April 1749 (OA17490426).

<sup>21</sup> *Ibid.*

<sup>22</sup> *Old Bailey Proceedings, Ordinary of Newgate’s Account*, 26 March 1750 (OA17500326).

Ordinary recorded his statement, “As Smuggling was for many years unmolested, and the general Practice of his Neighbours, he ventured among them, and got Money by it, as his Neighbours did. He says it was so commonly practiced all over the Country, that he looked upon the bare Act of Smuggling as a Calling, which a Man might exercise himself in without Danger of Life, as well as any other Business.”<sup>23</sup>

Jarney’s claim that smuggling was seen as a legitimate occupation in many counties supports Keith Wrightson’s notion of two concepts of order. Wrightson opens his influential 1980 article, “Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-Century England,” with an account of two watchmen coming upon a group of men drinking at an alehouse after midnight. When the watchmen reminded the merrymakers that it was against the law to drink after nine o’clock, they replied, “Wee know there is such an Acte but weele not obey it, for weele drinke as long as wee please.”<sup>24</sup> Wrightson uses this incident to illustrate his contention that there was a significant difference between the official order codified into law and supported by the government and the ruling elite and the looser concept of order based on custom and tradition that operated in the countryside among the lower classes. The drinkers’ response to the representatives of the law was not unlike the position taken by smugglers: they were fully aware that their activities were officially illegal, and yet, as John Jarney explained to the Ordinary, in the coastal counties smuggling was seen as a legitimate occupation and the people there would persist in smuggling as long as they pleased.

Wrightson’s argument consists of three primary parts: the elite concept of order, the plebeian concept of order, and the local officials tasked with mediating between the two. The

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<sup>23</sup> *Old Bailey Proceedings, Ordinary of Newgate’s Account*, 23 October 1751 (OA17511023).

<sup>24</sup> Wrightson, “Two Concepts of Order,” 21.

elite concept of order, Wrightson writes, “was at once an ideal arrangement of human institutions, a pattern of authority and an ultimate scheme of values. It projected a stable and harmonious ideal of human affairs which eliminated the possibility of rebellion, of social conflict, of the sins which might stimulate a stern deity to chastise his disordered people with his judgments of dearth, pestilence and war.”<sup>25</sup> On the other hand, plebeian order “meant little more than conformity to a fairly malleable local custom which was considerably more flexible than statute law. The Maintenance of order meant less the enforcement of impersonal regulations than the restraint of conflict among known individuals in a specific local context.”<sup>26</sup> Significantly, Wrightson continues, “It concentrated above all on the dual task of resolving the more poisonous kinds of dissension, while at the same time avoiding if possible the nuisances and expenses which might endanger the precarious livelihood and marginal surplus of a predominantly peasant population.”<sup>27</sup> So on the national level, order meant individual conformity to an overarching standard of behavior based on Protestant Christian principles and a firm belief in hierarchy; at the local level order meant avoiding potentially disruptive conflict while promoting community interests. For the most part, smuggling fit within the bounds of local order (when it did not, as evidenced by the Goudhurst militia case, the community turned on the smugglers). It served local interests by providing viable employment for young men who were better able to support their families by supplementing their incomes smuggling than if they toiled only as laborers. The ability of men to support their families was of great concern in villages because it was the responsibility of the local parish to maintain destitute women and children if a man failed in his duty. In addition, smugglers provided high-quality goods at affordable prices that were enjoyed by many villagers. In these ways, smuggling was good for the local communities. Wrightson

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<sup>25</sup> Ibid., 22.

<sup>26</sup> Ibid., 24.

<sup>27</sup> Ibid., 24.

summarizes, “What really mattered was maintenance of specific, local, personal relationships, not conformity to impersonal law.”<sup>28</sup>

Nevertheless, the government did not always feel that what was good for the counties was in its own best interests. Wrightson writes, “The vital area became that of enforcement, for the degree of law enforcement was the factor which could determine whether central regulation and local customary practice were to enjoy a precarious co-existence or to come into disruptive conflict.”<sup>29</sup> At the nexus between national and local concepts of order stood the law enforcement officers: in Wrightson’s study this position is occupied by constables and jurymen, and in this study it is filled by the officers of the customs and excise. Wrightson describes their position, “Ensnared at the point where national legislative prescription and local customary norms intersected were the wretched village officers, the much tried, sorely abused, essential work-horses of seventeenth-century local administration.”<sup>30</sup> These men were placed in a very difficult position: they lived in and were members of the local community and yet their jobs depended on them enforcing a concept of order that frequently clashed with local customs and mores. Wrightson confirms, “The efficient constable or jurymen [or preventive officer] in the eyes of the law would be very likely to turn every tongue, if not every hand, against himself.”<sup>31</sup>

The government recognized the precarious position of its preventive officers and sought to remedy the situation by refusing to assign customs officers to duty in or near their birthplaces or places of recent residence.<sup>32</sup> As the eighteenth century progressed, however, enforcement of this regulation became lax. Its utility was debatable anyway because of the distinct advantage of

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<sup>28</sup> Ibid., 25.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid., 21–22.

<sup>31</sup> Ibid., 29.

<sup>32</sup> Atton and Holland, *King’s Customs*, vol. 1, 179.

local knowledge in navigating coastal waters and discovering hiding places and transport routes in the local landscape, not to mention the information available to a member of the community that might not be available to an outsider.

The line between preventive men and smugglers was easily blurred. They lived in the same communities, worked in the same coastal towns, and drank in the same alehouses. Interestingly, they were both dependent upon the smuggling trade for their livelihoods. The strict division the authorities tried to create between smugglers and preventive officers was frequently ignored in the coastal counties; indeed, some smugglers had close relatives in the preventive service and others had been in the service themselves. Cornishman William Strick, executed for smuggling in 1800, had a brother who was boatswain of a revenue cutter based at Helford in the port of Coverack.<sup>33</sup> John Old found smuggling more profitable than manning a revenue cutter. In 1787, an excise boat captured a smuggling cutter coming into the harbor at Falmouth in Cornwall. The officers boarded the vessel and found ten or twelve silent men sitting on casks of brandy. When the excise boat's captain, Daniel Stewart, cut the cutter's rigging ropes to lower its sails, one of the smugglers, John Old, thrust his head between the officer's legs and threw him overboard. A melee ensued after which the excise men seized twenty ankers of brandy. In his testimony at the Old Bailey, Peter Whitford, seaman aboard the excise cutter *British King*, claimed that he was sure Old was the man who toppled Captain Stewart because he had known Old for ten years when Old sailed with him in the customs service.<sup>34</sup>

In consideration of these examples, it is not too surprising that smugglers and preventive officers occasionally interacted socially. On the other hand, the two forces at times engaged in

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<sup>33</sup> *Old Bailey Proceedings Online*, May 1800, William Strick (t18000528-6).

<sup>34</sup> *Old Bailey Proceedings Online*, December 1788, John Old (t17881210-94).

bloody, violent conflict that sometimes resulted in death and severe injury. Nevertheless, the Old Bailey *Proceedings* show that smugglers and officers could be found drinking together and were even friends. Immediately following an attempted seizure that instigated a riot in a Sussex town in 1788, John Netherton, who served aboard the revenue cutter *Eagle*, and smuggler Anthony Balless shared a pint of porter at the Black Bull. The two were known to drink “in a friendly manner.”<sup>35</sup> Excise officer Thomas Kingsford, Jr., had a drink with smuggler Joseph Hicks months after Hicks was part of a group that savagely beat his father.<sup>36</sup>

Smugglers and officers also occasionally discussed their affrays afterward. In 1793, excise officer William Knapman attempted to seize five horses laden with smuggled goods. The smugglers chased the officers and recovered the horses. John Hawkey found Knapman in a ditch, put a pistol to his head, and threatened to “blow [his] brains out, or something to that purpose.” When Knapman begged for his life, Hawkey put his pistol away, beat him with a bludgeon, and finally let him go. Five or six months later Knapman and Hawkey “were talking the business over.” Hawkey told him he was lucky because the smugglers intended to put the officers on their ship and take them to Guernsey.<sup>37</sup> That smugglers felt an affinity to local officers with whom they socialized is evidenced in Edward-Samuel Barnard’s 1799 trial. On the night of December 21, 1798, excise officer William Mitchell and three others ambushed a group of smugglers on a road near Helston, Cornwall. The smugglers lashed out with large sticks, beating Mitchell so severely he thought he might lose sight in one eye. When Mitchell complained to Barnard, who lived on the same street in Helston, of his hard treatment, Barnard replied that “he was very sorry for it, and begged we would let him go; and he said, if he had known they were Helston officers,

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<sup>35</sup> *Old Bailey Proceedings Online*, June 1791, Anthony Balless and Stephen Edwards (t17910608-41).

<sup>36</sup> *Old Bailey Proceedings Online*, May 1792, Joseph Hicks (t17900523-89).

<sup>37</sup> *Old Bailey Proceedings Online*, January 1794, John Hawkey (t17940115-45).

he would not have hurt them; but he thought they were Penryn officers, otherwise they should not have acted in the manner they did.”<sup>38</sup>

The situation in which officers and smugglers found themselves was difficult but not untenable. Wrightson found that constables frequently exercised discretion when considering which offenses to report and which to let go; this often led to complaints that they were negligent or corrupt. Similar accusations were made of the revenue service. While there certainly were corrupt officers, Wrightson argues that “there is a more positive logic in the studied negligence of some officers, which derived ultimately from the strains of their mediating position between their communities and the law.”<sup>39</sup> Between smugglers and revenue officers, this mediation took the form of partial seizures.

Partial seizures most frequently took place when the two sides appeared to be at an impasse. This occurred at Sennen in Cornwall when smugglers and sympathetic townspeople had the revenue officers, with their seizure of some tobacco and 300 ankers of spirits, trapped by the quay. Christopher Pollard was accused of trying to negotiate for part of the seizure. Excise officer William Parry remembered, “The whole conversation was wanting me to give up half the seizure . . . he said, live and let live, give and take, or words to that effect.” Pollard’s negotiation was unsuccessful and, after taking heavy musket fire, the officers secured their prize and left.<sup>40</sup> Although brutal violence is a recurring theme in the conflicts between smugglers and revenue officers, more often than not, both sides abided by the principle “live and let live.” Smugglers had obvious reasons to refrain from killing an officer, especially after the 1770s when most smugglers could expect to be charged with assault and sentenced to imprisonment, but officers,

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<sup>38</sup> *Old Bailey Proceedings Online*, February 1799, Edward-Samuel Barnard (t17990220-55).

<sup>39</sup> Wrightson, “Two Concepts of Order,” 31.

<sup>40</sup> *Old Bailey Proceedings Online*, July 1805, Christopher Pollard (t18050710-90).

too, showed restraint. In Barnard's case, officer William Mitchell testified, "Indeed, I had three loaded pistols about me, but I was loth to make use of them; if I had, I think, as we were so close, it must have taken the life of one of them."<sup>41</sup> Similarly, in Daniel Wild's 1791 case, customs officer William Peachey entreated his fellow officer, "I know them both perfectly well, we have taken one cask, and they have taken it back again, we can do nothing but fire; do not take away a man's life for a cask of gin, it is not worth while."<sup>42</sup>

The 1788 case of William England illustrates the way in which a partial seizure was negotiated. On Christmas morning 1786, a company of six marines and revenue officers, led by excise supervisor James Hiscot, found a cache of 200 tubs hidden in a Wiltshire thicket. As the officers moved the tubs toward the road they were confronted by a gang of thirty smugglers. A crowd gathered and surrounded the officers. One of the smugglers staved a barrel with his shoe and encouraged the soldiers to drink. They accepted his offer, and it is reasonable to assume they were not the only ones partaking of free liquor. Soon several wagons arrived, and the smugglers, aided by the "mob," formed a line and began loading the tubs onto their wagons. On his way home from church, farmer and butcher Richard Symonds encountered "a parcel of people got together; and great disputes; a quantity of people, men, women, and children." Concerned that the situation might get out of hand, Symonds, who knew men in both parties, asked Hiscot to explain the problem. Symonds recalled, "He said they could not agree concerning the tubs; and I asked him what agreement they wanted, and he said that he wanted forty tubs, and never no more should be said of the matter; that it should end there." Symonds then walked over to where the smugglers were assembled. He recounted their conversation, "Gentlemen, here will be rioting; there were a parcel of women; they were got very rude; and I said there certainly will be

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<sup>41</sup> *Old Bailey Proceedings*, February 1799, Edward-Samuel Barnard (t17990220-55).

<sup>42</sup> *Old Bailey Proceedings Online*, June 1791, Daniel Wild (t17910608-42).

mischief; you had better agree; you cannot blame the officers, they are in the king's business.” Symonds then reported that the three revenue officers agreed that if they were allowed to take forty tubs they would not report the incident. Although Hiscot complained that the smugglers offered only the “common liquor,” the officers borrowed a cart, loaded the tubs with the help of several smugglers, and left. The court was not appreciative of the officers' actions and described the negotiations as “treaty and capitulation.” In court, the prosecutor demanded of Hiscot, “So that you thought if you could not make a seizure according to your duty, the next best thing was to make a bargain with the smugglers?” Hiscot replied, “I did the best I could.”<sup>43</sup>

This incident is also instructive in that it illustrates the consequences for officers who reneged on their agreements with smugglers. Clearly, because England found himself at the Old Bailey, Hiscot informed against individuals he had agreed to protect. When the court asked him why only England had been apprehended, Hiscot replied that he had seen others, but he reported, “I knew I did not dare to touch them. . . . I hardly dared to look at them; I staid there at the hazard of my life. . . . I have met several of the them, but I knew I did not dare to meddle with them; I did not dare live in the place with any safety.” Hiscot left Wiltshire eight months after the incident, and England was acquitted.<sup>44</sup>

Hiscot did not describe the specific threats he received from the smugglers, but whatever was said (or done) it convinced him that it was time to leave town. The free traders were prodigious cursers and the court record is sprinkled with colorful examples of smugglers damning the officers' eyes, pistols, and limbs. Excise officer Thomas Brock was among a group of officers who confronted smugglers on an orchard lane in Kent. After the officers got the best

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<sup>43</sup> *Old Bailey Proceedings Online*, December 1788, William England (t17881210-93).

<sup>44</sup> *Ibid.*

of the initial struggle and began searching for more goods, the smugglers returned with reinforcements. Brock remembered one of them swearing, “D – n their eyes, they shall not have the tubs!”<sup>45</sup> Thomas Quick, an excise officer and mate of the revenue cutter *Resolution*, testified that when he approached a smuggling vessel a man aboard shouted, “D – n your eyes! fire, you b – g – rs, fire!”<sup>46</sup> John Felton, who was probably a local informant, was attacked by smugglers while assisting excise officers. He recalled, “They throwed stones and glass bottles at us all the way, and the gentleman Edwards came up with a cutlass, now, damn your eyes, says he, now will you shoot me? I said yes, unless he would keep off; he said, I will cut you down like a bullock you b – g – r.”<sup>47</sup>

In addition to showering officers with oaths and threats, the smugglers also defiantly challenged them to take aggressive action. Officer William Peachey recalled that, when he and his fellow officer threatened to fire on the smugglers, they replied, “Damn your pistols, we do not mind them!”<sup>48</sup> In Luke Coats’s 1793 case, excise officer Thomas Cass reported that the smugglers tried to goad the preventive men to violence. He testified, “They were continually saying, you come to fight, why don’t you fight? let us begin!”<sup>49</sup> Excise officer Thomas Hayward recalled a smuggler’s response to his warning that he would be forced to fire, “Damn your eyes and limbs, fire and be damned, we have fire arms as well as you!”<sup>50</sup> Occasionally, the smugglers’ challenges were even more audacious. Henry Pudsley, an excise officer, reported an incident in Sussex when smugglers trapped the officers in a barn. The smugglers surrounded the barn shouting oaths and trying intermittently to break down the door. Pudsley could see smuggler

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<sup>45</sup> *Old Bailey Proceedings Online*, December 1785, Benjamin Spice (t17851214-88).

<sup>46</sup> *Old Bailey Proceedings Online*, February 1788, John Bishop (t17880227-106).

<sup>47</sup> *Old Bailey Proceedings Online*, June 1791, Anthony Balless and Stephen Edwards (t17910608-41).

<sup>48</sup> *Old Bailey Proceedings Online*, June 1791, Daniel Wild (t17910608-42).

<sup>49</sup> *Old Bailey Proceedings Online*, May 1793, Luke Coats (t17930529-19).

<sup>50</sup> *Old Bailey Proceedings Online*, November 1796, Richard Waddle (t17961130-41).

Joseph Smith through a crack in the door. At Smith's trial Pudsley recounted, "The prisoner was so daring, he came and opened his mouth, and d – d me, and bade me fire into his mouth."<sup>51</sup>

The reports of the smugglers' language that we find in the Old Bailey certainly help round out the picture of smuggling in the eighteenth century. Suddenly, the story has a dialogue, and a colorful one at that! It is at some times frightening, at other times even amusing (the image of Joseph Smith, mouth agape, teeth perhaps not all accounted for, screaming for Pudsley to shoot him comes to mind). But after we insert the dialogue into the story we must delve deeper to consider what it means. Historian Andy Wood argues, "Languages of insult . . . lead us back to the acceptable bounds of deference and resistance."<sup>52</sup> Wood asserts that statements illustrating plebeian contempt for elite rulers, and by extension their laws, exposed the contentious relationship between deference and defiance in English society.<sup>53</sup> Members of the laboring class, and many, if not all, of the smugglers tried at the Old Bailey fell into this category, were expected to show deference to elites. The outward display did not necessarily reflect the plebeian's mind, however. Wood contends, "The public transcript of elite domination has the effect of continuously disconnecting how subordinates feel from how they act."<sup>54</sup> Indeed, when in the countryside on their own turf, smugglers dropped the veil of deference and aggressively defended their goods.

The oaths and threats directed toward the king's officers showed a lack of respect for the law and a disregard for customary deference, but the smugglers' language also revealed a deeper sense of property rights that was in opposition to the government's revenue laws. Foucault

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<sup>51</sup> *Old Bailey Proceedings Online*, December 1788, Joseph Smith (t17881210-95).

<sup>52</sup> Andy Wood, "Fear, hatred and the Hidden Injuries of Class in Early Modern England," *Journal of Social History* 39, no. 3 (2006): 805.

<sup>53</sup> *Ibid.*, 802.

<sup>54</sup> *Ibid.*, 810.

argues, “Discourse is not simply that which expresses struggles or systems of domination, but that for which, and by which, one struggles; it is the power which one is striving to seize.”<sup>55</sup> In their angry protests to revenue officers, smugglers articulated an alternative discourse in which smuggled goods were private property and defense of the goods was an assertion of rights. By redefining smuggling as a legitimate activity, smugglers cast the government in the role of the tyrant whose laws encroached on the liberty of his subjects. The smugglers most frequently couched their protests in terms of law and property rights. Use of this kind of insurrectionary language appears exclusively in the years during and after the American Revolution, suggesting if not quite an appropriation of revolutionary rhetoric at least a sense of common interest with the rebellious colonists. Wood argues that the men proliferating revolutionary ideology drew upon commoners’ traditional ideas of rights. He asserts:

To an increasingly paranoid ruling class in the 1790s, Paine’s *Rights of Man* seemed to be the cause of all trouble, a seditious book which inserted new and troubling ideas into the minds of ordinary people. But in custom we see that a notion of autonomous rights had long informed plebeian political culture. In a manner which could be uneven or contradictory, radicals built elements of their political platform and rhetoric from the long-existent plebeian language of custom and rights.<sup>56</sup>

If writers of revolutionary propaganda based their work on well-established ideas of common rights, commoners appropriated the pamphleteers’ language into their own protests in defense of those rights. This symbiotic relationship threatened to unite plebeians and educated middling folk in common cause against the government. Smugglers particularly drew on ideas of law and property to justify their participation in the contraband trade and their refusal to surrender goods to preventive officers.

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<sup>55</sup> Quoted in Andy Wood, “Fear, Hatred and the Hidden Injuries of Class,” 810.

<sup>56</sup> Andy Wood, “The Place of Custom in Plebeian Political Culture: England, 1550–1800,” *Social History* 22, no. 1 (1997): 58–59.

In December 1799, Thomas Walters and three other officers of the excise cutter *Eagle* landed in Wilcove, Cornwall, near Plymouth. Just before midnight, they heard horses coming along the turnpike road that led to Torpoint, which is separated from Plymouth by the mouth of the Tamar River. Walters ordered his men to spread out along the hedge and they soon observed twenty-five to thirty men with as many horses laden with ankers of spirits. Though outnumbered, the officers revealed themselves and ordered the smugglers to cut the kegs off the horses and leave them, as they were seized in the king's name. Surprisingly, the smugglers initially complied until a man rode up from the direction of Torpoint and berated them, "You ought to be d – d to suffer them to be taken by four men when you are so many!" He demanded the smugglers reload the horses and continue on their route. Galvanized by his bold speech, Walters recalled the smugglers "began to be very resolute, and said, we could not expect to have the whole and desired us to take half." This appears to have been a generous offer, considering the smugglers outnumbered the officers about seven to one. Nevertheless, Walters refused to compromise and "told them the hazard they were running in breaking the law and wresting them [the tubs] from us." He recalled their reply, "They d – d the law, and said they did not care any thing for the law, they would have a law of their own, or else another law, or to that purpose." The smugglers then became violent and, joined by the boatmen who had been waiting for them at the river, beat the officers and made off with the goods.<sup>57</sup> The smugglers not only defied the law, but recognized and articulated its subjective nature by claiming they would make their own law or maybe appropriate some other law. This kind of speech was incredibly threatening to authorities who needed members of the lower class to believe in the natural legitimacy of the oligarchical system.

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<sup>57</sup> *Old Bailey Proceedings Online*, January 1800, William Blatchford (t18000115-89).

Smugglers frequently accused revenue officers of robbing them of their private property when they attempted to seize contraband goods. In 1776, William Anchor recalled smugglers demanding of he and his fellow customs officers “What business we had there, b – t you, you are come to rob a man of his property?”<sup>58</sup> Excise officer William Williams testified that, when he attempted to make a seizure in 1788, the smugglers told him “they would have the goods; they did not belong to us.”<sup>59</sup> In 1794, excise supervisor David Llewyn and four other customs and excise officers met to exercise several search warrants in the Cornish town of Polperro. At the third house, they discovered approximately 200 casks hidden in the cellar. As they began removing the goods, a crowd of more than 100 people gathered, many of them armed. The mob surrounded the house and one townsman “went to the cellar door and shut the door . . . and said, he would be d – ned if we should move any of those goods from there.” When Llewyn insisted the people let him take the goods, he recalled the crowd asserted, “they would be d – d if they would, that they would sooner lose their lives than their property, and if we did not go about our business, that they would murder us, or words to that effect.”<sup>60</sup> Similarly, customs officer Richard Thomas reported Cornish smugglers’ claims that “the goods were their property, that they had ventured their lives for them already, and they would lose their lives before they would lose the goods.”<sup>61</sup> The assertion of property rights could extend beyond the goods themselves to the land on which the contraband trade took place. When excise officer Thomas Hiscot accused William England of running illegal goods, England replied, “I have a right to do what I please on my own ground.”<sup>62</sup> The frequency with which smugglers claimed they would rather lose their lives than their property suggests there was more behind their words than desire for personal

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<sup>58</sup> *Old Bailey Proceedings Online*, September 1776, Robert Harley and Edward George (t17760911-42).

<sup>59</sup> *Old Bailey Proceedings*, December 1788, William England (t17881210-93).

<sup>60</sup> *Old Bailey Proceedings Online*, October 1795, John Longmead (t17951028-49).

<sup>61</sup> *Old Bailey Proceedings Online*, May 1800, William Strick (t18000528-6).

<sup>62</sup> *Old Bailey Proceedings*, December 1788, William England, (t17881210-93).

profit. In “The Place of Custom in Plebeian Political Culture: England, 1550–1800,” Andy Wood argues that “in the course of customary disputes, the ‘ruled’ of early modern England developed a language of rights, distinct forms of organization, and a sense of their own and of their communities’ histories, all of which proved enabling forces in the plebeian political culture.”<sup>63</sup>

Although smuggling has not traditionally occupied the same ground as activities like gleaning and access to commons and forests in scholars’ discussions of customary rights, smugglers’ assertion that smuggling was considered a legitimate occupation in the coastal counties and the frequency with which entire communities rallied to protect contraband goods suggest it may warrant a place at least on the fringes of that argument. The “Enemy of Oppression,” who wrote the *Free Apology in Behalf of the Smugglers* in 1749, discussed in a previous chapter, may have articulated one of the key components to smugglers’ justification of their trade when he highlighted the fact that smugglers had paid for the goods they imported. The smugglers’ investment of money, time, and toil, as well as the willingness among the general public to purchase smuggled goods, supported the smugglers’ notion of legitimacy. Why indeed, in a nation espousing the virtues of the Lockean triad of life, liberty, and property, should men not defend their hard-earned assets? After all, had not the Englishmen living in America recently won their freedom from the increasingly rapacious British government over similar arguments? Wood asserts, “Beneath these defiant words lay distinct notions of rights. . . . These people were not engaged in the defence of a form of primitive communism. Instead, their laws supported a sense of property which differed significantly from that which increasingly underwrote elite notions of order and government.”<sup>64</sup>

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<sup>63</sup> Wood, “The Place of Custom,” 46.

<sup>64</sup> *Ibid.*, 53, 57.

Even more problematic for the government than the defiance of individual smugglers was the clear evidence that they enjoyed the support of many people who lived in the coastal communities. Indeed, excise officer John Mitchell informed the Old Bailey court in 1785 that “in such a place as that [Southampton, in this case], as soon as the officers go to seize goods, the country people do assemble.”<sup>65</sup> For example, customs officer Henry Smith testified about an incident in Kent, “I saw the mob assemble on the beach, I cannot tell what number they were. I sent after the soldiers directly, I went up on the beach, and told the mob to keep off, if they did not I would fire into them, they gave three huzzas and ran down to the boat, and began to take out the tubs.”<sup>66</sup> Excise officer William Parry recalled the beginning of a firefight between smugglers and officers in Sennen, Cornwall, “They came upon us in a large number, huzzaing.” He elaborated, “They walked away, and one of them said: d – n him who turns Judas, and walked up to the mob . . . they then said, one and all; they gave three cheers and fired one musquet, or something was fired, and by our officers orders, we returned the same and the cheers also, and so it continued, with heavy firing, with stones between, for ten minutes.”<sup>67</sup> A mob of more than 200 hundred people assembled in Kingston, Devon, to prevent a seizure and assault an informer.<sup>68</sup> The smugglers’ articulation of rights in opposition to official law could provide a dangerous ideological base for crowd activity. Wood summarizes, “Accordingly, elite fears grew over the course of the seventeenth and eighteenth centuries: in the defence of their rights, the lower orders were seen to foster a ‘custom of disobedience.’ . . . In the first place, customary rights were disliked because they appeared in the minds of society’s rulers to create a threatening sense of independence on the part of the lower classes; in the second place, such rights very often

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<sup>65</sup> *Old Bailey Proceedings Online*, May 1785, George Cossans (t17850511-79).

<sup>66</sup> *Old Bailey Proceedings Online*, October 1811, James Mansfield (t18111030-50).

<sup>67</sup> *Old Bailey Proceedings Online*, April 1805, John George (t18050424-38).

<sup>68</sup> *Old Bailey Proceedings Online*, June 1791, Anthony Balless and Stephen Edwards (t17910608-41).

stood in the way of the economic interests of the wealthy and powerful.”<sup>69</sup> By the end of the eighteenth century, it appears smugglers had transitioned from an appeal to custom to a language of property rights to defend their activities.

Through the record of their words in the Ordinary’s *Account* and the Old Bailey *Proceedings*, we see that the smugglers tried at the Old Bailey were overwhelmingly plebeian in origin, engaged in the contraband trade both because it offered them a better living than “the trade they were bred to” and because they did not consider it to be an illegitimate business; the smugglers expressed an alternative concept of order to that espoused and enforced by the governing elite. In addition, they enjoyed the support of many of their neighbors in the coastal counties. Did their defiant words and assertion of property rights matter? The government seemed to think so; the publishers of the *Proceedings* neglected to print the details of the defense in an overwhelming majority of the smugglers’ cases. In contrast to the dialogue format and verbatim testimony of the prosecution witnesses, the relative silence of “Mr. \_\_\_\_\_ pleaded the cause of the prisoners” is deafening.<sup>70</sup> Why such an effort to control the proliferation of smugglers’ words? Wood contends, “Successfully rebellious speech acts can *call* social identities into existence, providing a unifying political language that renders on-going social conflicts comprehensible within a larger framework and thereby *makes* class identities.”<sup>71</sup> And so we return, in the end, to contemplation of smuggling as a class activity.

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<sup>69</sup> Wood, “The Place of Custom,” 57.

<sup>70</sup> *Old Bailey Proceedings Online*, September 1788, John Snell, Richard Rowe, and Oliver Ruthey (t17880910-138).

<sup>71</sup> Andy Wood, *The 1549 Rebellions and the Making of Early Modern England* (Cambridge: Cambridge University Press, 2007), 133.

## Conclusion

### **“Class is Defined by Men as They Live Their Own History”: Smuggling a Class Act?**

This study argues that a significant shift took place in the discourse of smuggling at the Old Bailey in the last quarter of the eighteenth century. Chapter two outlined the ways in which the government prosecutors at the Old Bailey emphasized smugglers as a threat to the nation during the first three quarters of the eighteenth century. It discussed the development of statutes designed to curb smuggling, their expansion to include associated activities like hovering and assembling on the coast, and the increasingly harsh penalties for engaging in these activities. Throughout this period, smuggling was portrayed as a serious offence against the king, in defiance of his laws, and bordering on rebellion and treason.

Chapter three argued that, after a period during which few smuggling trials were held at the Old Bailey, smugglers again appear in numbers at the central criminal court, but they were most frequently charged with assaulting officers of the preventive force. The emphasis between 1784 and 1814 was on smugglers' violence against the bodies of law enforcement officers rather than their harm to the nation. It is contended that the sudden absence of discourse of national security during this period is significant, especially in light of such arguments being made by private authors at the same time. Additionally, smugglers were especially offensive to national interests during the wars with France, as they audaciously carried on an illegal trade that included carrying intelligence, gold, and even French prisoners to the continent. Even so, government prosecutors avoided appealing to nationalism in an effort to convince juries to return guilty verdicts against smugglers. This study posits that part of the reason for this change in the discourse was due to the role smuggling and tax protest had played in drawing the British government into disastrous conflict with its American colonies.

Chapter four filled in the dialogue with smugglers' words as transmitted by prosecution witnesses at the Old Bailey and the *Ordinary of Newgate's Account* and illustrated the sometimes complicated relationship between smugglers and preventive men, who frequently found themselves mediating between Keith Wrightson's two concepts of order. During the first part of the eighteenth century, smugglers frequently appealed to tradition and custom to explain their law breaking. The concept of custom continued throughout the century, as evidenced by the negotiations for partial seizures. But by the end of the period under study, smugglers employed a language of property rights that is suggestive of a nascent concept of individual rights at odds with the traditional social framework built on hierarchy and deference. This shift coincides with the ideological turmoil surrounding the American Revolution. As historians of the Old Bailey *Proceedings* have suggested, the government used the trial reports to promote its interpretation of the law and uphold its legitimacy. This study argues that by changing the discourse on smuggling from one national security to one of personal assault, the state, through the *Proceedings*, sought to dampen smuggling's revolutionary potential, as exemplified by smugglers' increasingly vociferous claims to a right to defend their property from the government. Part of what made smuggling so potentially dangerous was the way in which it could realign traditional class interests, but smuggling defies a simple class analysis.

Historians have struggled with whether to define smuggling as a class activity. E.P. Thompson defines class as a relationship between people who recognize their own common interest, often in opposition to the interests of others. The key to his definition is that class is relational; it occurs as an agreement of mutual interest between individuals. He writes:

The relationship must always be embodied in real people and in a real context. . . . Class happens when some men, as a result of common experiences (inherited or shared), feel and articulate the identity of their interests as between themselves, and as against other men whose interests are different from (and usually opposed to) theirs. The class

experience is largely determined by the productive relations into which men are born—or enter involuntarily.<sup>1</sup>

According to this notion, class is not a static, monolithic structure that can be plucked from its historical context and analyzed as part of a larger political or social agenda. Class belongs to the historical moment in which it occurred; it is an impermanent relationship. Class only exists when those in the relationship are aware of their common interest and act together to promote it, and it dissolves when consciousness of that commonality is lost, as a result of internal or external factors.

Thompson, often labeled a Marxist historian, is critical of other scholars who adopt the mantle of Marx and proceed to define class as a thing. By identifying class in this way, historians conduct the dance of scholarship backward—they first decide how past people must have acted, and then they commit their sources to support the preconceived action. In the case of class, they assume that all people with certain traits in common (often economic situation, labor conditions, and family background) will recognize that they are being exploited by the industrial capitalists and will act in concert to bring down private property and usher in a more egalitarian era. This is not always, or even often, the way class operated in history. Thompson asserts:

“It,” the working class, is assumed to have a real existence, which can be defined almost mathematically. . . . Once this is assumed it becomes possible to deduce the class-consciousness which “it” ought to have (but seldom does have) if “it” was properly aware of its own position and real interests. There is a cultural superstructure, through which this recognition dawns in inefficient ways. These cultural “lags” and distortions are a nuisance, so that it is easy to pass from this to some theory of substitution: the party, sect, or theorist, who disclose class-consciousness, not as it is, but as it ought to be.<sup>2</sup>

Thompson’s definition of class is much more fluid than the stereotypical Marxist structure. It is more subtle, more nuanced, and ultimately more applicable to historical reality. A relational

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<sup>1</sup> E.P. Thompson, *The Making of the English Working Class* in Dorothy Thompson, ed. *The Essential E.P. Thompson* (New York: The New Press, 2001), 3–4.

<sup>2</sup> *Ibid.*, 4.

concept of class better fits a multifaceted vision of human life. People had many interests and imagined themselves in many ways. Economic interests were certainly a primary motivator, but so were religious ideals and familial ties. Individuals' situations changed over time, and so their class consciousness waxed and waned with the conditions of the moment. According to this definition, class was a very human situation. Thompson concludes his thoughts, "Class is defined by men as they live their own history, and, in the end, this is its only definition."<sup>3</sup>

According to Thompson's relational definition, it is tempting to argue that smugglers forged a class relationship during the eighteenth and early nineteenth centuries. Many farmers, tradesmen, miners, and townspeople recognized that illegally importing goods was in their common interest at a time when taxes on certain items were outrageously high and demand for those items was nearly insatiable. These items consisted primarily of alcohol, tobacco, and tea obtained from contacts in the Channel Islands and on the French and Dutch coasts. Mariners used their exceptional seamanship skills and intimate knowledge of the English coast to acquire and land the cargo, while many townsmen and farmers assisted the landing and carried the goods to covert storage spaces inland. Occasionally, even the clergy participated in the free trade, turning a blind eye when contraband found its way into seldom used church towers or vestry rooms.

The difficulty many scholars have with describing smuggling as a class activity is the participation of a variety of people who were members of disparate classes when viewed in the traditional sense. It is true that smuggling involved gentry landowners, bankers, tradesmen, and laborers, among others, but if we accept that "class is a relationship, and not a thing," then we

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<sup>3</sup> Ibid., 5.

must also consider that the class relationship may be forged in unexpected ways.<sup>4</sup> But we have not yet discussed the “other” that the smuggling class defined itself against, for if we are to do justice to Thompson’s discussion, we must consider that class relationships are formed in opposition. He writes, “We cannot have two distinct classes, each with an independent being, and then bring them into relationship with each other. We cannot have love without lovers, nor deference without squires and labourers.”<sup>5</sup> So if the smugglers are the labourers, who are the squires? This is where the definition of smuggling as a class relationship again gets sticky. There were several groups that profited when smuggling was curtailed: the fair traders, who did not deal in smuggled goods and were undersold by those who did; the government, which lost tax revenue when smugglers evaded taxes; and, according to some publications, the people who did not purchase smuggled goods, who were forced to pay higher duties to make up for the revenue the government lost on smuggled goods. The inclusion of the third group in this analysis is based on claims of those writing anti-smuggling propaganda; they may not, in fact belong here. It seems that the only times the government significantly lowered taxes was to discourage smuggling, and this was often the most effective way to combat the free trade. So if seen from this perspective, smuggling actually encouraged the government to lower taxes on items like brandy, gin, tea, and tobacco. When the taxes were lower, the profit margin for the smugglers was reduced and fewer men (and women) were tempted to engage in the illicit trade. So if we remove, or at least place in the background, the somewhat vague category of “some consumers” from the list of profiteers, we are left with fair traders and the government. Of these groups, smugglers were in competition with the fair traders, but it does not seem accurate to define their relationship as one of opposition in a class sense. It was the government that set the taxes and

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<sup>4</sup> Ibid., 4.

<sup>5</sup> Ibid., 3.

passed laws against smuggling, and it was the government's agents who came into conflict with smugglers at sea, on the coasts, in the fields, and on the roads. The government exerted economic, social, and political power (in the interests of a ruling class?) and against the interests of smugglers. But can we define a class relationship in opposition to the government?

It would seem that we would need a political faction to oppose a government rather than a class; economic interests must be politicized. In the traditional sense, this is achieved when the laboring class realizes that the existing political system is designed to promote the economic and social interests of the ruling bourgeois elite, interests that are opposed to those of the laboring class. But smuggling does not fit this scenario. How does smuggling, on the surface a commercial activity, become politicized? In *The Marketplace of Revolution: How Consumer Politics Shaped American Independence*, T. H. Breen suggests a model for how this transformation may take place. He argues that it was the politicization of commercial acts that finally unified the American colonists in opposition to Britain during the 1760s and 1770s. Although the colonists were members of different social classes and distinct cultural environments, they held in common their experience as consumers of the same kinds of British imports, and they operated under the same commercial regulations.<sup>6</sup> Perhaps unbeknownst to the British government, colonists had come to associate their freedom of choice in the marketplace with their rights as Englishmen and women. Breen asserts, "Efforts by the British Parliament that seemed to curtail participation were interpreted not only as an annoyance, but also as an attack on basic human rights."<sup>7</sup> When Parliament decided to raise taxes and pass new laws governing colonial trade, colonists along the entire Atlantic seaboard felt the same sting; they responded by

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<sup>6</sup> T. H. Breen, *The Marketplace of Revolution: How Consumer Politics Shaped American Independence* (Oxford: Oxford University Press, 2004), xiv–xvi.

<sup>7</sup> *Ibid.*, 151.

joining to effectively boycott British goods. Breen summarizes, “Whatever their differences, they were consumers in an empire that seemed determined to compromise their rights and liberties.”<sup>8</sup> Breen presents a way in which commercial activities become politicized through a perceived restriction of freedom in the marketplace and suggests that shared experience as frustrated consumers could unify members of disparate cultures and social classes. He also shows that American colonists were quick to associate commercial freedom with the larger discourse on rights and liberty; we see similar associations made by smugglers who insisted their property rights were violated when government agents attempted to seize run goods.

The concept of class in history is overburdened with the baggage of Marxism. Perhaps if we move away from an ossified vision of class to something more fluid, we can see how people created alliances that crossed traditional class boundaries. Smuggling was an activity that, like boycotts, unified people with common economic interests and had the potential to transform commercial interest into political activism. Perhaps smuggling is not a class activity, in the traditional sense, after all, but, more significant, it has the power to unite classes in political opposition to the government. In his study of the 1549 rebellions in England, Andy Wood asserts that Kett’s rebellion was particularly significant because it represented the last time the middling sort (during his period identified as yeomen farmers) identified with the lower classes in open opposition to the government.<sup>9</sup> Most commentators, both government and private, in eighteenth-century England knew that smuggling involved members of all classes, even if it was overwhelmingly those in the lower classes who stood trial for their participation in the contraband trade. Through the way in which the law was applied at the Old Bailey, as well as the

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<sup>8</sup> Ibid., xv.

<sup>9</sup> Wood, *The 1549 Rebellions*, 18. Wood credits Keith Wrightson with being one of the first historians to document this allegiant shift in Keith Wrightson, *English Society 1580–1680*, 2003 ed. (1982; repr., London: Routledge, 2004).

way cases were argued and published in the Old Bailey *Proceedings*, the government pushed back hard against smugglers before 1760; smugglers' activities were detrimental to the nation and were not infrequently punished with death. After 1780, the government prosecuted smugglers for assault and punished them with imprisonment. Although this shift can be seen as part of the general movement away from overly harsh sentencing, it is significant that the language of smugglers as threats to the nation is also missing from these later trials. This is especially interesting in light of Gavin Daly's findings of English smugglers' collaboration with the French during the Napoleonic Wars. The experience of the American Revolution showed that, as Breen suggests, members of disparate classes could unite behind common commercial interests to affect political change. It was just this alliance that the British authorities were trying to avoid by changing their approach to smuggling trials held at the Old Bailey.

This study has shown the utility of analyzing the language used in smugglers' trial records for exploring the shifting meaning of the free trade to participants and to the state. During the first part of the period, smugglers expressed their trade in terms of tradition and custom: everybody smuggled, everybody had always smuggled. The authorities emphasized smugglers as a threat to the nation by defrauding the revenue and defying the king's laws. Interestingly, when smugglers seem to become an even greater threat to national security through their trade with the enemy and by their increasingly revolutionary language, the government changed its characterization of smugglers from dangerous enemies of the state to violent rural thugs. The change in the discourse on smuggling reflected in the Old Bailey *Proceedings* after the 1770s suggests a significant redefinition of smuggling as an activity that had the potential to politicize the lower classes and the highlights the efforts of the authorities to prevent its realization.

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## Appendix: Smuggling Cases at the Old Bailey

1736–1814

Case	Offender	Date	Offense	Verdict	Sentence	Location
1	Watson, George (Yorkshire George)	1736-06-10	murder	guilty	death	St. Luke's Parish, Middlesex
2	Morell, John	1742-09-09	tax offenses (assault)	not guilty	NA	St. Paul, Shadwell, London
3	Gunel, George	1746-01-17	tax offenses (assembly)	guilty	transportation	Redhill, Surrey
3	Sayers, John	1746-01-17	tax offenses (assembly)	guilty	transportation	Redhill, Surrey
4	Henley, Edmund (Captain)	1747-02-25	tax offenses (assembly)	not guilty	NA	Northforeland, Kent
5	Kingly, Richard	1747-04-29	tax offenses (assembly)	not guilty	NA	Northforeland, Kent
6	Ashcroft, Richard	1747-06-04	tax offenses (assembly & carrying)	guilty	death	East Bourne, Sussex
7	Cook, John	1747-07-15	tax offenses (assembly)	guilty	death	Folkestone, Kent
8	Puryour, Thomas (Blacktooth)	1747-09-09	tax offenses (assembly)	guilty	death	Reculver, Kent
9	Lickner, Peter	1747-10-14	tax offenses (carrying)	not guilty	NA	Hawkhurst, Kent
10	Fuller, Thomas	1747-10-14	tax offenses (carrying)	guilty	death	Hawkhurst, Kent (Parish of Lyn [Lyd]?)
11	Harvey, John	1747-10-14	tax offenses (assembly)	guilty	transportation	Sheverton, Suffolk
12	Tickner, Peter (see Peter Lickner?)	1747-12-09	tax offenses (assembly)	guilty	transportation	Lidlight, Lid, Kent*
12	Hodges, James (Poison)	1747-12-09	tax offenses (assembly)	guilty	transportation	Lidlight, Lid, Kent
13	Austin, Samuel	1747-12-09	tax offenses (assembly & carrying)	guilty	death	Lid, Kent; lives in Hawkhurst
14	Chilvers, Samuel	1748-01-15	tax offenses (assembly)	guilty	death	Eastbridge, Suffolk (from Norfolk)
14	Scott, Robert	1748-01-15	tax offenses (assembly)	guilty	death	Eastbridge, Suffolk (from Norfolk)
15	Kemp, Thomas	1748-01-15	tax offenses (carrying)	not guilty	NA	Hawkhurst, Kent (Folkstone)
16	Tapner, Benjamin	1748-01-16	murder	guilty	death	Harting, Sussex

16	Cobby, John	1748-01-16	murder	guilty	death	Harting, Sussex
16	Hammond, John	1748-01-16	murder	guilty	death	Harting, Sussex
16	Mills, Richard (Jr.)	1748-01-16	murder	guilty	death	Harting, Sussex
16	Mills, Richard (Sr.)	1748-01-16	murder	guilty	death	Harting, Sussex
16	Jackson, William	1748-01-16	murder	guilty	death	Harting, Sussex
16	Carter, William	1748-01-16	murder	guilty	death	Harting, Sussex
17	Gray, Arthur	1748-04-20	tax offenses (assembly)	guilty	death	Lid, Kent; lives in Hawkhurst
18	Rowland, William	1748-04-20	tax offenses (assembly and non-surrender)	guilty	death	Benacre, Suffolk
19	Watling, James (Tom Tit)	1748-05-26	tax offenses (assembly)	guilty	death	Benacre, Suffolk
20	Custins, Samuel (Slip-gibbet)	1748-05-26	tax offenses (assembly)	not guilty	NA	Benacre, Suffolk (from Yarmouth, Norfolk)
21	Gray, William	1748-05-26	tax offenses (assembly)	guilty	transportation	Kingston, Surrey
22	Cunningham, Robert	1748-07-06	tax offenses (assembly and non-surrender)	not guilty	NA	Tiverton, Suffolk (from Wingfield, Suffolk)
23	Cunningham, Robert (same as above)	1748-09-07	tax offenses (assembly)	guilty	death	Horse, Norfolk (from Wingfield, Suffolk)
24	Salmon, Robert	1748-09-07	tax offenses (assembly); perverting justice (rescuing smuggler Jas. Holt from customs)	not guilty	NA	Benacre, Suffolk; Horse, Norfolk
24	Fox, William Denny	1748-09-07	tax offenses (assembly); perverting justice (rescuing smuggler Jas. Holt from customs)	not guilty	NA	Benacre, Suffolk; Horse, Norfolk
24	Jefferys, William	1748-09-07	tax offenses (assembly); perverting justice (rescuing smuggler Jas. Holt from customs)	guilty	death	Benacre, Suffolk; Horse, Norfolk
25	Chapman, Samuel (Bully)	1748-10-12	tax offenses	guilty	death	Horse, Norfolk

25	Goldsmith, Peter	1748-10-12	tax offenses	not guilty	NA	Horsey, Norfolk
26	Glover, Thomas	1748-10-12	tax offenses	not guilty	NA	St. Margaret's at Cliff, Kent
27	Rice, John	1748-10-12	tax offenses	not guilty	NA	Poole, Dorset (of Westburn, Suffolk)
28	Carter, Jacob	1748-10-12	tax offenses (assembly)	not guilty	NA	Benacre, Suffolk (from Benacre)
28	Riches, Richard	1748-10-12	tax offenses (assembly)	not guilty	NA	Benacre, Suffolk (from Rentham, Suffolk)
29	Fox, William Denny	1748-12-07	tax offenses (assembly)	not guilty	NA	Suffolk/Norfolk?
30	Watts, Benjamin (Rotten)	1749-02-22	tax offenses (non-surrender)	guilty	death	Benacre, Suffolk (from Saterly [Sotterley], Suffolk)
31	Streak, William	1749-04-05	tax offenses (carrying, obstructing)	not guilty	NA	near Eastbooth, Sussex (from Rodman, Sussex)
32	Mapesden, Richard	1749-04-05	tax offenses (non-surrender)	not guilty	NA	Reculver, Kent
33	Creed, Uriah	1749-07-05	tax offenses (assembly)	guilty	death	Reculver, Kent (from Hawkhurst)
34	Mapesden, Richard	1749-07-05	tax offenses (assembly)	guilty	death	Reculver, Kent
35	Smith, James	1749-10-11	tax offenses (assembly)	not guilty	NA	Horsey, Norfolk
36	Palmer, Thomas	1749-12-09	tax offenses (assembly)	guilty	transportation	Kent? (John Raise evidence)
36	Monday, James	1749-12-09	tax offenses (assembly)	guilty	transportation	Kent? (John Raise evidence)
36	Austine, Thomas	1749-12-09	tax offenses (assembly)	not guilty	NA	Kent? (John Raise evidence)
36	Shorey, John	1749-12-09	tax offenses (assembly)	not guilty	NA	Kent? (John Raise evidence)
37	Kingsmill, Thomas	1749-04-05	theft	guilty	death	Poole, Dorset
37	Fairall, William	1749-04-05	theft	guilty	death	Poole, Dorset
37	Lillewhite, Thomas	1749-04-05	theft	not guilty	NA	Poole, Dorset

37	Glover, Richard	1749-04-05	theft	guilty	mercy recommended	Poole, Dorset
37	Perin, Richard	1749-04-05	theft	guilty	death	Poole, Dorset
38	Carbold, John (Giffling Jack)	1740-02-28	misc. (non-surrender)	guilty	death	Benacre, Suffolk (from Great Yarmouth)
39	Sandiland, James	1750-02-28	tax offenses (assembly)	guilty	death	Lidd, Kent
40	Baldery, John	1750-04-25	tax offenses (carrying)	not guilty	NA	Benacre, Suffolk; Horsey, Norfolk
41	Parsons, Richard	1750-05-30	tax offenses (carrying)	not guilty	NA	Benacre, Suffolk; Horsey, Norfolk
42	Shepard, James	1750-07-11	tax offenses	not guilty	NA	Broomhill, Sussex
43	Watling, John	1750-12-05	tax offenses (carrying)	guilty	death	Horsey, Norfolk (from Budsdale, Suffolk)
44	Carbold, John (Cockeye)	1750-12-05	tax offenses	guilty	death	Horsey, Norfolk
45	Baker, John	1751-04-17	tax offenses (non-surrender)	not guilty	NA	Benacre, Suffolk (lived in Seymore, Suffolk)
46	Dixon, Edward	1751-07-03	tax offenses (carrying)	guilty	death	Benacre, Suffolk
47	Catchpole, Thomas	1751-07-03	tax offenses ( non-surrender)	guilty	death	Horsey, Norfolk
48	Jarney, John (Old York)	1751-09-11	tax offenses, perverting justice	guilty	death	Horsey/Benacre, Norfolk
48	Eager, Samuel	1751-09-11	tax offenses, perverting justice	guilty	death	Horsey/Benacre, Norfolk

49	Carbald, John	1751-09-11	tax offenses (carrying)	guilty	death	Thwaite, Suffolk
49	Brook, Edward	1751-09-11	tax offenses (carrying)	guilty	death	Thwaite, Suffolk
50	Doe, Francis	1751-10-16	tax offenses	not guilty	NA	Walton on the Maze, Essex
51	Martin, Robert (Tinkey)	1751-10-16	tax offenses	not guilty	NA	
52	Parsons, Richard (Brass)	1751-10-16	tax offenses	not guilty	NA	
53	Harvey, John	1751-10-16	tax offenses (non-surrender; smuggling)	not guilty	NA	
54	Otley, Thomas	1751-12-04	tax offenses	not guilty	NA	Suffolk
54	Reason, James	1751-12-04	tax offenses	not guilty	NA	Suffolk
55	Holt, James	1752-06-25	tax offenses (assembly)	guilty	death	Horsey, Norfolk
56	Arlington, James (The Young Papist)	1752-06-25	tax offenses (assembly)	not guilty	NA	Horsey, Norfolk
57	Collingham, Thomas (The Younger)	1753-06-07	misc (failure to surrender)	guilty	death	Suffolk (Holsworth, Benacre)
58	Hoskins, John	1766-10-22	tax offenses (resisting)	not guilty	NA	
58	Gold, Robert	1766-10-22	tax offenses (resisting)	not guilty	NA	
59	Mitchell, Samuel	1767-04-29	tax offenses (assisting, assembly)	not guilty	NA	Totney, Devon
60	Willis, Henry	1767-06-03	tax offenses (assembly)	not guilty	NA	
61	Butcher, Thomas	1772-12-09	tax offenses (obstructing; passing near navigable river)	guilty	transportation	Sussex, Chicester
62	Blann, Joseph (aka Bland)	1776-05-22	murder	not guilty	NA	Deptford, London
62	Harley, Benjamin	1776-05-22	murder	guilty	death/dissec	Deptford, London
62	Henman, Thomas	1776-05-22	murder	guilty	death/dissec	Deptford, London

63	Harley, Robert	1776-09-11	murder	guilty	death/dissec	Deptford, London
63	George, Edward	1776-09-11	murder	guilty	death/dissec	Deptford, London
64	Rose, Cornelius	1784-05-26	tax offenses	not guilty	NA	Portsmouth, Southampton
65	Shelley, John (aka Shirley, Shirlock)	1784-07-07	tax offenses (armed, assembly, carrying)	guilty	death/recommended	Apperton, London
66	Hutchinson, William	1784-09-15	tax offenses (assembly, assault)	not guilty	NA	Thornham, Norfolk
66	Lewis, Thomas	1784-09-15	tax offenses (assembly, assault)	not guilty	NA	Thornham, Norfolk
66	Wilkinson, Daniel (aka Conk, Crockey)	1784-09-15	tax offenses (assembly, assault)	not guilty	NA	Thornham, Norfolk
67	Inch, William	1785-02-23	tax offenses (assembly, assault, obstruction)	not guilty	NA	Ringmore Parish, Devon; from Corsham, Cornwall
68	Cossans, George (Teapot)	1785-05-11	tax offenses (assembly, assault)	not guilty	NA	Ringwood Parish, Southampton
69	Spice, Benjamin	1785-12-14	tax offenses (assembly, rescuing goods)	not guilty	NA	Maidstone, Kent
70	Gray, Thomas	1786-07-19	tax offenses (assembly, rescuing goods)	not guilty	NA	Stoke Damarell parish, Devon
71	Martin, John (Sheley)	1786-07-19	tax offenses (shooting at a customs lugger)	not guilty	NA	off Penzance, Cornwall
72	Williams, Joseph (Robert Webb?)	1787-07-11	tax offenses (assembly, assault, rescuing goods)	guilty	death (recommended)	Swanscomb Parish, Kent

73	Hayden, Richard	1787-10-04	tax offenses (obstructing, assault)	guilty (pleaded)	imprisonment (Newgate)	
74	Mackey, John	1788-01-09	tax offenses (assault)	not guilty	NA	London
75	Bishop, (Butler) John	1788-02-27	tax offenses (assembly, assisting, rescuing, assault)	guilty	death	Studland Bay, Dorset
76	Knight, Joseph	1788-02-27	tax offenses (assault, obstruction)	not guilty	NA	Roche, Cornwall
77	Burgess, Thomas	1788-02-27	tax offenses (assault, obstruction)	guilty	imprisonment (2yrs)	Starchfield, Kent
77	Francis, Thomas	1788-02-27	tax offenses (assault, obstruction)	guilty	imprisonment (2yrs)	Starchfield, Kent
77	Francis, John	1788-02-27	tax offenses (assault, obstruction)	guilty	imprisonment (2yrs)	Starchfield, Kent
78	Vincent, George (George Brandy)	1788-09-10	tax offenses (assembly, rescuing goods)	guilty	death	Studland Bay, Dorset (from Red Hill, Hampshire?)
79	Gomery, John	1788-09-10	tax offenses (obstructing, assault)	guilty	imprisonment (3 yrs)	Bidsted Parish, Kent
80	Snell, John	1788-09-10	tax offenses (obstructing)	guilty	imprisonment (3 yrs)	Kingston, Devon (Kingsand, twin town of Cawsand, though Kingsand in Devon until 1844 and Cawsand in Cornwall)
80	Rowe, Richard	1788-09-10	tax offenses (obstructing)	guilty	imprisonment (3 yrs)	Kingston, Devon (Kingsand, twin town of Cawsand, though Kingsand in Devon until 1844 and Cawsand in Cornwall)
80	Ruthey, Oliver	1788-09-10	tax offenses (obstructing)	guilty	imprisonment (3 yrs)	Kingston, Devon (Kingsand, twin town of Cawsand, though Kingsand in Devon until 1844 and Cawsand in Cornwall)
81	Trough, Edward	1788-10-22	tax offenses (assault, obstruction)	guilty/not guilty	imprisonment (3 yrs)	Kingsand, Devon

82	England, William	1788-12-10	tax offenses (assault, obstruction)	not guilty	NA	Aldborough, Wiltshire
83	Old, John	1788-12-10	tax offenses (assault, obstruction)	guilty	imprisonment (3 yrs)	Falmouth, Cornwall
84	Smith, Joseph (aka Edward Hunt)	1788-12-10	tax offenses (assault, obstruction)	guilty	imprisonment (6 mos)	Berwash Parish, Sussex
85	Payne, James	1789-02-25	tax offenses (assault, obstruction)	guilty	imprisonment (2yrs)	Peldon, Essex
86	Lawrence, Henry	1789-02-25	tax offenses (assault, obstruction)	not guilty	NA	NA
87	Williams, James	1789-06-03	tax offenses (assault, obstruction)	guilty	imprisonment (1 yr)	Penzance, Cornwall
88	May, Thomas	1789-10-28	tax offenses (assault, obstruction)	guilty	imprisonment (3 yrs)	Kingsand, Devon
89	Anderson, Francis	1790-07-07	tax offenses (assault)	guilty	imprisonment (3 yrs); security (5 yrs)	Rochester, Kent
89	Anderson, John	1790-07-07	tax offenses (assault)	guilty	imprisonment (3 yrs); security (5 yrs)	Rochester, Kent
90	Andrewes, Edward	1790-09-15	tax offenses (obstruction)	not guilty	NA	NA
91	Andrewes, Edward	1790-09-15	tax offenses (assault, obstruction)	guilty	hard labor (2 yrs on Thames)	Stoke Damarell parish, Devon
92	Breeze, Robert	1790-12-08	tax offenses (firing on customs cutter)	guilty	death (recommended)	Thornham, Norfolk
92	Hart, John	1790-12-08	tax offenses (firing on customs cutter)	guilty	death (recommended)	Thornham, Norfolk
93	Cull, John	1790-12-08	tax offense (assault, obstruction)	guilty	hard labor (2 yrs on Thames)	Minstead, Southampton

94	Cain, James	1791-02-16	tax offenses (assault, obstruction)	guilty	imprisoned (6 mos); security (6 mos)	Burwash Parish, Sussex
95	Salisbury, Henry	1791-04-13	tax offenses (assault, obstruction)	guilty	hard labor (2 yrs)	Stoke Damarell parish, Devon
96	Balless, Anthony	1791-06-08	tax offenses (assault, obstruction)	not guilty	NA	Kingsand, Devon
96	Edwards, Stephen (Strephon)	1791-06-08	tax offenses (assault, obstruction)	guilty	imprisonment (3 yrs)	Kingsand, Devon
97	Wild, Daniel	1791-06-08	tax offenses (assault, obstruction)	guilty	imprisonment (1 yr)	Tangmere Parish, Sussex
98	Cooper, John	1791-07-20	tax offenses (assault, obstruction)	guilty	imprisonment (1 yr)	Kirkford, Sussex
99	Norris, Robert	1792-02-15	tax offenses (assault, obstruction)	guilty	imprisonment (18 mos)	Cobham Parish, Kent
100	Hicks, Joseph	1792-05-23	tax offenses (assault)	guilty	imprisonment (3 yrs)	Stoke Damarell parish, Devon
101	Rideout, Richard	1792-05-23	tax offenses (obstruction)	guilty (pleaded)	imprisonment (20 days)	NA
102	Coats, Luke	1793-05-29	tax offenses (obstruction)	guilty	imprisonment (6 mos)	Helmley (Yorkshire?)
103	Hawkey, John	1794-01-15	tax offenses (obstruction)	not guilty	NA	Cornwall
104	Brown, William	1794-07-16	tax offenses (assault, obstruction)	not guilty	NA	St. Luke's Parish, Middlesex
105	Mitchell, Michael	1794-09-17	tax offenses (assault, obstruction)	guilty	imprisonment (2 yrs)	Huckford, Sussex
106	Williams, David	1794-12-08	tax offenses (assault, obstruction)	guilty (pleaded)	fined 1 shilling	Pembroke
107	Longmead, John	1795-10-28	tax offenses (assembly)	guilty	death (respited)	Polperro, Cornwall

108	Seal, William	1796-05-11	tax offenses (assault, obstruction)	guilty	imprisonment (2yrs)	Groombridge, Kent
109	Waddle, Richard	1796-11-30	tax offenses (assault, obstruction)	guilty	hard labour (2 yrs)	New Church, Kent
110	Brown, William	1797-02-15	tax offenses (assault, obstruction)	guilty	hard labour (1 yr)	London
111	Kingsmore, Robert	1797-04-26	tax offenses (assault, obstruction)	not guilty	NA	Battle, Sussex
112	Hart, George	1798-04-18	tax offenses (obstruction)	guilty	imprisonment (1 yr)	New Church, Kent
113	Hart, George	1798-04-18	tax offenses (obstruction)	guilty	imprisonment (18 mos)	Kennington, Kent
114	Hicks, Robert	1798-10-24	tax offenses (assault, obstruction)	not guilty	NA	
115	Heals, John	1799-01-09	tax offenses (assault, obstruction)	guilty	hard labour (3 yrs)	Broad Oak, Cornwall
115	Avery, Peter	1799-01-09	tax offenses (assault, obstruction)	guilty	hard labour (3 yrs)	Broad Oak, Cornwall
115	Chapman, John	1799-01-09	tax offenses (assault, obstruction)	guilty	hard labour (3 yrs)	Broad Oak, Cornwall
116	Barnard, Edward-Samuel	1799-02-20	tax offenses (assault)	guilty	hard labour (2 yrs)	Helston, Cornwall
117	Barrett, William	1799-10-30	tax offenses (obstruction, firing on officers' vessel)	guilty	hard labour (2 yrs)	Cornwall
117	Mark, Robert	1799-10-30	tax offenses (obstruction, firing on officers' vessel)	guilty	hard labour (2 yrs)	Cornwall
117	Foster, William	1799-10-30	tax offenses (obstruction, firing on officers' vessel)	guilty	hard labour (2 yrs)	Cornwall
117	Searle, William	1799-10-30	tax offenses (obstruction, firing on officers' vessel)	guilty	hard labour (2 yrs)	Cornwall

117	Ventin, Thomas	1799-10-30	tax offenses (obstruction, firing on officers' vessel)	guilty	hard labour (2 yrs)	Cornwall
118	Blatchford, William	1800-01-15	tax offenses (assault)	guilty	imprisonment (1 yr); fine 1 s	Wilcove, Cornwall (near Plymouth)
119	Strick, William	1800-05-28	tax offenses (assembly, rescuing goods)	guilty	death (recommended)	Coverack, Cornwall
120	Bawden, Edward	1801-04-15	breaking the peace, wounding	not guilty	NA	Withiam, Cornwall
121	Harnell, Richard (Little Dick)	1801-04-15	tax offenses (firing on excise cutter)	not guilty	NA	off coast of Sisewell, Suffolk
122	Harnell, Richard (Little Dick)	1801-04-15	tax offenses (obstruction)	guilty	hard labor (3 yrs)	Lowestoft Beach, Suffolk
123	Hawke, John	1801-12-02	tax offenses (assault, obstruction)	not guilty	NA	St. Olave, Suffolk
124	George, John	1805-04-24	tax offenses (assembly, rescuing goods)	guilty	death	Sennen, Cornwall
125	Row, William	1805-04-24	tax offenses (assault, obstruction)	guilty	imprisonment (2 yrs)	Luxulyan, Cornwall (south of Bodmin)
125	Row, George	1805-04-24	tax offenses (assault, obstruction)	guilty	imprisonment (18 mos)	Luxulyan, Cornwall (south of Bodmin)
126	Pollard, Christopher	1805-07-10	tax offenses (assault, obstruction)	not guilty	NA	Sennen, Cornwall
127	Bastin, William	1806-07-02	misdemeanor	guilty	imprisonment (2yrs)	East Buddley, Devon
128	Prescott, Robert	1806-07-02	misdemeanor	guilty	imprisonment (2yrs)	East Buddley, Devon
129	Abel, Jeremiah	1807-01-14	tax offenses (obstruction)	guilty (pleaded)	imprisonment (6 mos); fined 1 s	Caustin Parish, Norfolk

130	Butcher, William	1807-02-18	tax offenses (assembly)	not guilty	NA	NA
130	Jeal, James	1807-02-18	tax offenses (assembly)	not guilty	NA	NA
131	Butcher, William	1807-02-18	tax offenses (assault)	not guilty	NA	Kingsdown Parish, Kent
131	Jeal, James	1807-02-18	tax offenses (assault)	not guilty	NA	Kingsdown Parish, Kent
132	Peppiet, James	1809-12-06	tax offenses (assault)	guilty (pleaded)	imprisonment (3 mos)	St. James, Clerkenwell, London
133	Mansfield, James	1811-10-30	tax offenses (assault)	guilty	respited	Deal, Kent
134	Denny, Jacob	1813-02-17	tax offenses (sailing to France w/ intent to smuggle)	guilty	imprisonment (1 yr)	Dunkirk to Lands End, Cornwall, to Gravelines
135	Blanch, James	1814-02-16	theft	guilty	transportation	London
135	Brennan, John	1814-02-16	theft	guilty	transportation	London
136	Maxtead, Jeremiah	1814-04-20	tax offenses (shooting at a customs officer)	not guilty	NA	Dungeness, Kent
136	Gilbert, Thomas	1814-04-20	tax offenses (shooting at a customs officer)	not guilty	NA	Dungeness, Kent

\*Lid or Lidd refers to the town of Lydd, Kent