

Crime and punishment through time



CRIME AND PUNISHMENT THROUGH TIME http://www.thehistorychannel.co.uk/classroom/gcse/crime_punishment1.htm A. Crime and punishment in the Ancient World The focus in this section is entirely on Ancient Rome, both as a Republic and as an Empire.

Rome began as a settlement around the River Tiber but by 200 BC had gained control of most of Italy. By 100 BC Roman territory had been extended to include parts of Spain, France, Greece, Turkey and Tunisia. One hundred years later, at the time of the birth of Christ, the Republic had become an empire and the Mediterranean was a Roman lake. The Empire reached its greatest extent in the reign of the Emperor Trajan who died in AD 117 (see the maps for a fuller understanding of Roman geography). The Roman Empire controlled much of Europe for over four hundred years and the Eastern Mediterranean for much longer.

Government Under the Republic which dates from the expulsion of the monarchy in 510 BC, Rome was ruled by elected magistrates (consuls), who were advised by the Senate, the states permanent executive. Legislation was passed by Peoples Assemblies but these were directed by the Senate. Under the Empire, which dates from the reign of Augustus (31 BC to AD 14), a single Emperor made the decisions with the advice of the Senate, civil service and army.

The Assemblies faded away. The Provinces were ruled by governors who were appointed by the Emperor. Law i) Introduction From the 12 Tables of 451 BC to the million words of the Emperor Justinians Codex of AD 528-534, Roman Law evolved over a thousand year period. Accordingly it is virtually

impossible to generalize about procedure and practice. Books and articles that do (and this is no exception), do so on the understanding that different practices not only occurred at different times, but that they also overlapped and ran parallel – that is to say, two entirely different procedures might be operating during the same period of history. It is also the case that we are limited in what we know by our (lack of) sources, which means we are not always altogether clear about early procedures and why changes came about. Many of our sources are much later and we have to extrapolate backwards, as it were, to try to reconstruct earlier practice.

Two things, however, are very striking about Roman Law and distinguish it from previous legal systems. One was the fact that it was derived from reason and experience rather than religion (as for instance, the Ten Commandments had been) and the second was the fact that it revolved around the letter of the law and depended upon strict adherence to definitions and prescribed forms. It is customary to divide the evolution of Roman Law into four periods: a. The Early Republic – This was a period of relatively primitive law which was exercised by citizens only – in effect the male head of the family.

b. The Late Republic – This was the formative period in which an independent legal profession took shape. The expansion of Rome's commerce and territory led to commercial transactions (sale, lease, partnership) which meant the law had to be opened up to foreigners – something usually referred to as the *ius gentium* or law of nations. c. The Classical Period – The first 300 years AD. In this period the Emperors dictated

the content of laws and influenced precedent by their rulings. d. The Post Classical Period – from Constantine (AD 307-337) to Justinian (AD 527-565).

Opportunities for lawyers to make an independent contribution to legal development disappeared as legal cases and decisions were no longer collected – i. e. precedent was not added to. Possibly the biggest confusion arises when we discuss civil and criminal law. Today we make a very clear distinction between civil law (a private prosecution dealing with, say, libel or trespass) and criminal law (prosecution by the state for breaking a law, be it fraud, assault or homicide). The problem with Ancient Rome is that initially the Romans did not make such a distinction, and when they did much of what we would describe as criminal law (eg theft) was considered by them to be civil – a private matter of vengeance and retribution. There was progression from private revenge to a system whereby the government took public responsibility for offences and it is true to say that during the Empire the government intervened more and more; however, this progression was never complete.

ii) Who made the laws Roman Law set out not only what were considered to be crimes but what the suitable punishments were. The Laws were made by the upper classes but were written down so that ordinary citizens might know them. Hence the 12 Tables of 451 BC were inscribed on stone tablets and set up in the forum. Obviously the law had to adapt to changing circumstances and the consuls would occasionally issue laws; however, what is surprising about Roman Law is how little legislation there was. Indeed rather than being derived from legislation, Roman Law largely evolved from

the practices of jurisdiction. Thus, much of Roman Law was built up by precedent.

That is to say, cases were recorded and when a similar case came up later, the magistrate(s) involved would look back to the other case(s) and base his/their judgment(s) on what had gone before. From 366 BC a new magistrate, the Praetor, administered the Law and these magistrates built up the records of actual cases. There were eight of these by the imperial era and many went on to become provincial governors. Later in the reigns of the Emperors Hadrian (AD 117-138), and Marcus Aurelius (AD 161-180) much of this case law was collected and summarized in the form of a codification by Salvius Julianus and his pupil Gaius. Thereafter there were regular codifications, culminating in the great law codes of Theodosius (AD 438) and Justinian (AD 528-534). So in summary what were the sources of Roman Law

- a.

Enactments of the popular assemblies in the Republic (ie legislation proper) - later in the imperial age senatorial decisions and imperial letters and decrees took the place of enactments.

- b. Past judgments/precedents.

- c. Praetors Edicts - these were statements of what kind of trials and procedures would be allowed based on the study of the above.
- d.

Commentaries of legal advisors who studied both of the above. As we have noted Julianus and others completed and systematized these. Little was added thereafter.

- iii) What were the Procedures Here we have to try and make the difficult distinction between civil and criminal cases bearing in mind the fact that the former predominated for much of the Republic and

into the Empire, whereas the latter only became important during the imperial period. a.

Civil Procedure Basically the procedure was in two parts - a private individual would bring a case before a magistrate who could either reject it or establish its nature. If there could be no immediate settlement and he considered it to be a worthy case he could appoint a private citizen to be a judge who would then hear the case and make a judgement (some cases were tried before several judges). In the classical period the Praetor could make the second stage more flexible in procedure. It appears that there was no appeal in the Republic (though this is a matter of some historical dispute); this developed in the principate (Empire) to a higher court, or to the Emperor himself.

Later in the Empire the extraordinary procedure did away with the two stages and everything was heard and decided upon in one go by imperial officials. b. Criminal Procedure To try a crime against the state too serious to be tried by a magistrate alone, there were two different forms - trial before the Assembly and trial before the quaestio (tribunal of inquiry). In both cases the magistrate acted as prosecutor and president. In the first procedure there would be some reference to an assembly (either to hear its advice or follow its judgment); in the second, the magistrate decided the verdict and sentence. Later in the Republic the second procedure evolved.

In quaestiones perpetuae the magistrate acted more like our own judge, asking occasional questions but leaving procedure to the prosecutor and accused. Thus the procedure became adversarial and the verdict was determined by a jury. However, it must be emphasised that the jury system

was not typical of Roman procedure, despite many textbook claims to the contrary.

As with civil suits these procedures could be abolished in trials *extraordinaria*, the latter fully superceding all other procedures in the later Empire. The right of appeal here too developed under the principate (ie the Empire). iv) What types of crime were therelf we look at the Twelve Tables from 451 BC we see that the focus is mainly on debt, the family [see Document A in Sources], property and ownership, building regulations and crimes against the state as well as specifics such as whether or not Senators could fart in public (they could not). We have noted that practically all law was civil at first – for instance, homicide or theft were matters for private revenge. However, the oldest laws did involve the intervention of the state as the avenger of offences against its own security or against public order. These involved treason, desertion from the army, public corruption, riots and rebellion. Later the state came to show an interest in the prosecution of theft, robbery with violence, damage to property, assault, affronts to dignity, threats, deceit, violation of sepulchres, throwing things in the street – anything that affected public interest.

Indeed special courts were set up for extortion, poisoning, embezzlement, violence as well as courts martial. Moreover the state also became involved in matters strictly private (for instance, wills) and matters of morality (for instance, adultery). Adultery is an interesting case as it had never been a civil matter because a husband did not need grounds for divorce in Rome. However, it was later considered unacceptable behaviour by the State and therefore became subject to prosecution [see Document B in Sources].

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v) What sorts of punishment were there? Punishments tended to be severe though would vary according to a person's status (they could, for instance, be commuted for a money payment if the defendant was wealthy). Indeed as much litigation was civil, if the two parties could agree on a level of compensation and the magistrate could be persuaded there may well have been a wide variety of outcomes. Punishments were also severe because prison was not an alternative. Imprisonment was usually short-term - either as a coercive measure against disobedience (we will let you out when you agree to obey etc) or for convicted criminals awaiting execution. The Roman conception of penalty laid more stress on its vindictive and deterrent nature than the correction of the delinquent. In any event communities could not afford the expense of incarceration. The death penalty was widespread and used for, among other things, homicide, arson, libel, false witness, public corruption, use of spells, attending seditious meetings, treason, and certain types of theft and fraud. The types of execution included burning (for arson), suspension (crucifixion) for using magic on crops, decapitation, being thrown from the Tarpeian Rock - a high place in Rome (for bearing false witness) and execution by wild beasts (a form of public entertainment!).

Being sent to gladiatorial training school was as good as a death sentence as well. Slightly less final were forced labour (in mines or on public works), enslavement (being sold into slavery - or selling off members of your family - was one way of paying off debt!), flogging and, as already indicated, financial penalties. An alternative to the death penalty was loss of citizenship, loss of property and banishment.

Whereas this might not seem so bad to us, in a society where status meant so much, its removal was a considerable humiliation, a form of living death. Thus revenge [see Document C in Sources], recompense and the assertion of civic authority were the main themes of Roman practice. vi) Was Roman Law fair? The simple answer to this is, in a word, no. Clear distinctions were made between Romans and non-Romans, between men and women, between freedmen and slaves - and even among citizens there were important distinctions - not just between patricians (the upper classes, known as *honestiores* from 117 AD) and plebs or *humiliores* (the rest), but within the patrician body itself between senators, knights and *decuriones* (local councillors) - and in the course of the Imperial Age this discrimination increased, not least because citizenship was extended to all free inhabitants of the Empire in AD 212 thus removing the Roman/non-Roman distinction [see Document B in Sources].

The laws were made by the upper classes, and applied by them since they also held all the top jobs in the civil service and army. Accordingly wealthy male citizens were not punished as severely as the *humiliores*, though the latter did have the right of appeal - not so foreigners, women and slaves who had no redress at all. Indeed slaves could be legitimately tortured, non-Romans flogged and women belonged either to their fathers or husbands and had little say in their treatment. Not only were people treated unequally, but the chances of a fair trial were not guaranteed. Court cases were expensive but a wealthy man could afford to go ahead and hire expensive lawyers; money payments could commute sentences and the magistrates could be influenced by bribery and corruption.

Practical problems prevented the law from operating equally too - there were insufficient magistrates of quality to ensure that all got equal and fair treatment, and insufficient inclination on the part of many magistrates to do the job properly at all [see Document D in Sources] - they were, after all, not trained for the job. On the other hand, the idea that all Roman citizens were equal before the law was an important principle ; the fact that two parties could be represented by experts and argue their case was important too, as was the account taken of the motive of the accused. Was his crime premeditated Was it an impulsive act Had the accused been wronged Was he drunk Was he of sound mind And the accused was always assumed to be innocent until proved guilty.

Moreover, because the same set of laws applied across the Empire, complicated matters concerning inheritance, marriage or injury could all be settled by a known, respected, common set of laws. vii) Was Roman Law effective This is really impossible to answer though it should be pointed out that the Romans ruled a colossal Empire for hundreds of years without a proper police force. Indeed the Pax Romana became a byword for law and order. On the other hand contemporaries often complained of the high level of crime [see Documents E and F in Sources] and during periods of disruption at the top of government, such as during the third century, the legal system often broke down. The Roman Provinces i) Introduction The Roman Empire stretched 3000 miles from southern Scotland to the deserts of southern Egypt and was divided into different provinces, each ruled by a Governor assisted by a small staff and backed up by army garrisons.

The Romans did not pursue many of the goals we today associate with political power by the state, they were only really concerned with taxation and internal order - although Roman officials, did encourage the spread of Roman culture - the Latin language, the building of public baths, amphitheatres, the staging of Roman games etc. What is striking about the Empire is its stability - to the third century at least. This stability was achieved without much bureaucratic apparatus.

The key was cooperation with the local ruling class, in particular through a network of towns (linked by straight roads!), which either predated Roman occupation or developed from army camps and were planned and well ordered. ii) The Law In the provinces the administration of the law was one of the prime roles of the governor [see Document G in Sources] and only he had the right to impose capital sentences. Justice was administered in two ways: a. The assize tour - the governor made an annual tour of designated towns. b. Local civic magistrates would deal with the administration of routine justice, could hear private cases (with the governors permission) and could pass their own laws. Indeed the Governor had to be careful to take account of local laws and customs and adapt Roman practice accordingly.

Conflicts between local and Roman Law were referred to the Emperor who often found in favour of local practice. With regard to the first point, the governor could condemn defendants on the spot (a procedure often used to clear out the jails) though he could institute a full-scale court hearing. He might take advice but ultimately the decision was his alone; there was no jury system - and he had widespread discretion over punishment.

Roman citizens could of course appeal to Rome but non-citizens could not. As in Rome the governor would adapt the trial according to the social status of the litigants - indeed the cases of lower class people would probably not even be heard - and in the course of trials the governor was required to attach greater weight to the status and wealth of witnesses [see Document H in Sources]. Similarly low status defendants were dealt harsher punishments - crucifixion or being fed to the lions - higher status defendants were rarely executed. They were usually deported but local dignitaries could not be deported without the Emperors approval. The cruelty of the public executions acted as a ritual demonstration of the power of the state and a deterrent to wrong doers. Local courts possessed legitimate jurisdiction in civil cases over their own subjects unless they involved Roman citizens. Although the spread of Roman citizenship and thus Roman Law, especially among the upper classes, did lead to a diminution in local courts jurisdiction, it did offer locals a rational method of adjudication in disputes and thereby an ordered framework for the organization of their routine material, commercial and social existence.

To sum up, Roman government maintained internal peace and provided a regular system of adjudication through a process of cooperation with the local elites. The legal system also reinforced privilege within the existing social order. Indeed the local elites came to have a vested interest in the entire system of Roman rule. iii) Was Roman Rule fair The Romans did provide internal peace and protection against foreign invasion; and peace brought prosperity.

As we have indicated the local elites were usually left in place and had their authority reinforced. Indeed although the Roman governors possessed great power in theory, in practice this was not matched by equivalent bureaucratic resources. Consequently the local authorities maintained a wide-ranging control over their affairs. The longevity of the Empire and the infrequency of major revolts are testimony to the stability of Roman rule and must to some extent demonstrate that the Romans handled the local population in a reasonable manner – though with the proviso that their principal concern was the cultivation of local dignitaries. Class, status and rank, as in Rome, was everything [see Document H in Sources]. Case Study – Roman Britain)

Introduction There were exceptions to what has been stated above, most notably during the Roman conquest of Britain where the insensitive handling of the Iceni tribe led to a major revolt under Queen Boudicca. Clearly this was due to the ineptitude of the Romans on the ground, but it may have had just as much to do with the fact that Boudicca was a woman, and as such deemed unworthy of her rightful inheritance – though technically it was her daughters inheritance[see Document I in Sources].

ii) Boudicca's Revolt The Roman conquest of Britain began in AD 43 and the Emperor Claudius organized south-east Britain as a province. Aulus Plautius (43-47) extended occupation to the Severn and the Wash. Client kings and local allies were left in control of their own lands but colonies of soldiers and ex-soldiers were established at strategic points. One such was at Colchester (Camulodunum) in the kingdom of the Iceni (see the map). Prasutagus, the king of the Iceni, died in AD 60 and left his kingdom jointly to the Emperor

and his daughters in the hope that this would maintain the partnership he had enjoyed as a client king with the Romans.

However, this was not to be: his will was not only ignored, but, according to the historian Tacitus, his queen, Boudicca, was flogged, his daughters raped, and the tribal chiefs had their farms confiscated. Needless to say this led to a full-scale rising by the Iceni. Boudicca captured and sacked Colchester, London and St. Albans (and all the Roman inhabitants were massacred). Eventually the governor, Suetonius Paulinus, who had been in the West, caught up with her and finally defeated her army in a blood bath somewhere in the Midlands.

Tacitus tells us that Boudicca avoided capture by taking poison. Although this was a victory, the Romans had learnt a valuable lesson and after a decent interval, Paulinus was replaced by a more benign governor who was able to achieve such a satisfactory settlement that the South never rose again. Subsequently the population was Romanized and came to enjoy a long period of peace and prosperity [see Document J in Sources]. The Legacy of Roman Law

After the western half of the Roman Empire collapsed in the fifth century, the principles of Roman Law lived on as they passed into the codes of the new barbarian kingdoms, the Roman Church, and the revived Roman Empire of 800. Later Roman Law was rediscovered in the twelfth century and continued to have influence throughout Europe right up to the present day. In particular it has provided the basic principles for the legal systems in France, Italy and Scotland; and although English law developed differently, here too some important Roman principles survive: ???

Defendants must know the charges against them ??? Both accuser and

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defendant must come to court ??? Defendants must have the chance to give evidence in their own defence.

Above all what the Romans demonstrated is that you could discover underlying principles from the details of particular cases - in short they gave us legal principles. B. Crime and punishment in the Middle Ages Before c. AD 500 Roman Emperors had accepted responsibility for law and order. After the fall of the Roman Empire, this responsibility was shrugged off by the rulers of the early Middle Ages (c. 500-1100). Crime control became the concern of the local community until the later Middle Ages (c.

1100-1500), when monarchs resumed responsibility for punishment.

Throughout the Middle Ages there were few changes in the kinds of crimes committed. Violence against persons was unusual. Most crimes were against property - money, food and personal belongings of little value (since most people owned little). The period saw greater changes in punishment.

In the early Middle Ages criminals were made to pay compensation to their victims - the wergeld (blood price). After c. 1100 execution, physical punishment and fines became common. Prisons were not used to punish criminals but only to hold them while awaiting trial. The fall of the Roman Empire After c. 400 the Roman Empire in the West was overrun by barbarians and England was invaded by Angles, Saxons and Jutes from north Germany. The biggest casualty was Roman law, which was the same throughout the Empire. By c.

700 several different kingdoms had emerged in England, all with their own legal systems. Justice became the responsibility of the local community, and <https://assignbuster.com/crime-and-punishment-through-time/>

of the victims family in particular, in contrast to Rome where it was the responsibility of the Emperor. Anglo-Saxon crime prevention, trial and punishment 400-1100 Before the Anglo-Saxon kingdoms appeared there was little that could be called a system of law and order. The basic unit among the Germanic tribes was the family and loyalty to it was a basic instinct.

At first the punishment of criminals was therefore left to the victim or his family. Hence the blood-feud - the right and responsibility of a family to take revenge on any family that had wronged them. By the 600s, with the division of England into seven kingdoms and the coming of Christianity, stable government was restored and less violent procedures were established. The early Saxon kings tried to replace revenge and the blood-feud with payments made by the accused to the wronged person or his family - the wergeld as compensation for death and the botgeld for injury. A society which regarded people as unequal naturally drew up a tariff of charges for different classes of victim - you could murder a peasant for a sixth of the price of a noble. The botgeld also varied according to the extent of the damage. Every bodily part had its value, from 50 shillings for an eye or a foot to sixpence for a toe nail. Saxon priorities were not necessarily ours.

To break both collar bones cost 12 shillings, but you could sever a penis for half the price! (1 Saxon shilling = 5 modern pence] Co-existence of Anglo-Saxon and Norman law After the Norman Conquest of 1066, William I brought both change and continuity to Englands legal system. Justice in the localities continued unchanged, with an emphasis on the local communitys participation. William inherited from his Saxon predecessors shires (which he renamed counties) and shire courts, which met twice a year and were run by <https://assignbuster.com/crime-and-punishment-through-time/>

sheriffs (royal officials originally called shire-reeves, one in charge of each shire). He also inherited hundreds, which were smaller subdivisions of shires, with a court attended by all free men that met every month. Forms of proof were oath-helpers or compurgators (people who knew the accused and would take an oath that he was innocent) and trial by ordeal (usually fire or water - if the accused survived, God was judging him innocent) [See Source A]. William had no wish to alter these institutions - law had been enforced by the local community and continued to be. The main changes were that the Normans wanted legal proceedings to be conducted in their own language (French) and they introduced ferocious new forest laws (to defend the Royal Forests where the king hunted). They also brought to England trial by combat - a warlike way of settling disputes within a legal and religious framework, since God was supposed to decide the result of battles.

Since the weapons were swords, lances or staves with iron heads, priests, women and the elderly were allowed to appoint champions to fight on their behalf. In each village the Normans also established manor courts (courts baron), run by the Norman knights among whom William the Conqueror parcelled out his English conquest. (The old Saxon ruling class was wiped out, leaving about 20, 000 Norman landlords holding down 1, 500, 000 Anglo-Saxons.) Legal changes in the later Middle Ages
In the early 1100s there was a civil war in England, which led to a breakdown of law and order.

Henry II (1154-1189) inherited the task of restoring the legal system and fused together the English and Norman traditions. This was the basis of the English common law - a legal system applicable to the whole country which has continued to grow and develop to this day. People increasingly believed

that serious and violent crimes like murder, robbery and rape were no longer merely the concern of the victims but were crimes against society as a whole. The king as leader of society was therefore responsible for punishing them.

Previously, there was an idea of the Kings Peace, which surrounded the monarch wherever he went and extended to the Kings Highway. Henry II decided that any crimes were an insult to the Kings Peace and extended it to the whole kingdom. The system of wergeld (emphasising compensation of the victim) was replaced by the punishment of death and mutilation (stressing the power of the king). But there was a continuity link with the old blood-feud concept - victims were often authorised to inflict the punishment themselves (as in some Third-World countries today). This resulted by the later Middle Ages in courts of law at three different levels. For the most important cases Henry II established the system of travelling judges (justices in eyre).

It was hard for cases to be brought to the king, who was always on the move - it could be years before they were settled. The new royal judges were sent round the county towns twice a year to judge serious crimes and quarrels in the areas where they had occurred. To help them Henry fashioned the jury system, a deliberate attempt to keep the community involved in law enforcement. A group of local men (twelve - in imitation of Christs disciples) were selected to tell the judges on oath what crimes had been committed in the area and whom they suspected [see Source B]. In 1215 the Church abolished trial by ordeal.

Trial by combat survived until the 1300s but was rarely used - a new way of establishing the truth had to be found. So the duties of juries were extended to deciding the guilt or innocence of the accused, as they do to this day. To handle lesser crimes for which the royal judges had no time, monarchs began to appoint local gentry (smaller noble landowners) to the office of Justice of the Peace (JP). By the 1300s three or four of these in each county were meeting four times a year (hence Quarter Sessions) - a century later there were about 20 per county.

Their advantage to the king was that they were unpaid and had good knowledge of the local community. In the 1400s the JPs took over many of the functions of the old Saxon shire and hundred courts, which faded from the legal scene. At the lowest level were the manor courts, introduced by the Norman Conquest and held (approximately monthly) by all landowners. They involved most of the local community, many villagers being officials of the court and the village freeholders (who owned their own land) being the jury. Punishment was usually fines.

To shame criminals before their neighbours and give a warning to everyone else, they were sometimes put in the stocks (like the monk and his woman in the 14th-century picture - monks were supposed to do without sex). Manor courts dealt with petty crimes, social nuisances (like swearing at people or making too much noise at night) and work obligations on the manor - serious crimes were handed on to higher courts. The legend of Robin Hood
Laws are pointless if they cannot be enforced and courts are useless if their judgements are treated with contempt. The greatest threat to law and order in the Middle Ages was not the common people but the nobles. Their private
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armies of tenants and retainers (who served them for the favours they could bestow) made them powerful enough to get their way by force.

Above all, powerful local lords could corrupt the legal system and twist it to their own purposes. This problem is highlighted by the ancient story of the medieval outlaw who robbed the rich to give to the poor. Robin Hood is an honest man whose only remedy against the injustice of the courts in Nottingham is to defy them, suffer outlawry (forfeiting the laws protection for his life and property) and take refuge in the forest. The Sheriff of Nottingham is a corrupt royal official who abuses his powers. Guy of Gisborne is an overmighty subject whose power is used to defeat justice rather than defend it.

The popularity of the legend owes much to its idealised picture of Robins campaign against corruption in high places. But the real Hood (if there was one) was probably just a thug [see Source C]. C.

Crime and punishment in Early Modern Britain
The growth of towns and population
England & Wales 1500 2million 1550 3million 1600 4. 4million
1650 6million England, Wales and Scotland 1700 6. 5million 1750 7million
1800 10million
Population fluctuates like a barometer in response to living conditions.

By 1500 that of Britain was recovering from the disaster of the Black Death in the 14th century. It soared in the late 16th and early 17th centuries (by about 1% annually) and average life expectancy rose to 42, probably because more people were marrying and doing so younger. But after 1650 bubonic plague, typhus and smallpox reduced life expectancy to under 30

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and slowed population growth until the mid 18th century, when it took off again. Throughout most of the period Britains population was overwhelmingly rural ??? only three towns had populations over 10, 000 - London, Norwich and Bristol ??? nearly 90% lived in villages or small market towns ??? over 90% worked in agriculture or allied trades and crafts But as harvests improved after 1700 and world-wide trade expanded, Britain prospered and ports and cities flourished.

The result was big changes in the town population, as Britain (or more accurately England) started to become urbanised ??? Londons population grew from 600, 000 in 1700 to 900, 000 in 1800 ??? after 1650 population in the towns grew much faster than in the countryside. All this had huge implications for crime. In both town and country more people were competing for limited resources - growth of population therefore led to rising food prices (before the 18th century the food supply probably did not keep up with demand). And, as labour was more plentiful, there were not enough jobs to absorb it - it became cheaper and wages fell. Poverty bred crimes against property. This problem was worst in the towns. Because their population was concentrated into a smaller space than in the countryside, towns provided more opportunities for crime and found it harder to control (people knew one another less well than in the country). Changing patterns of crime and punishment In the 16th century the biggest threat to law and order remained the nobles.

Their private armies of retainers gave them a capability for violence and their local influence meant they could twist the legal system to their own purposes. In the 17th century this changed, as nobles wielded their power in

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more civilised ways. By the 18th century crime was rising, especially in the growing towns, and the real threat was seen as coming from the common people. Because the masses had little property, they were viewed as a threat to those who had. And because there were a lot of them, and their behaviour was rowdy, the anarchy of the mob was feared as a menace to the political and social authority of the ruling class. This led to a significant increase in the status of the law which punished offenders.

In the 16th century powerful nobles found it so easy to pervert the law that it was seen as partisan and unfair. By the 18th century the rule of law was believed to be impartial, to guarantee the order and stability of society and to preserve it from anarchy. The punishments it prescribed consequently became more severe. Crime became more professional. An enterprising example was Jonathan Wild, who ran a lost property agency in London, for the sale back to their owners of goods whose theft he had planned.

He claimed to be a public benefactor, regularly handing over to justice a selection of his criminal associates. But the law caught up with him and he was hanged in 1725 as a receiver of stolen property. Vagrancy Vagabonds were people with no job and no fixed abode - the New Age Travellers of the early modern period. They were universally scapegoated as a threat to law and order. Everyone assumed they were lazy and criminal - an organised underworld of thieves who descended on villages to plunder honest people. Hence the ancient nursery rhyme. Hark, hark, the dogs do bark, The beggars are coming to town, Some in rags and some in tags And some in silken gowns. In fact they were mainly victims of the changes in the economy and society.

Prices were rising faster than wages and the growth of population meant there were more people than jobs. Enclosure caused many to lose their land, so people often had to leave home to look for work. But at first this was not understood. Parliament passed laws imposing savage punishment.

An Act of 1572 stated that vagabonds were to be whipped and then branded through the gristle of the right ear with an inch-thick hot iron. Eventually in 1598 Parliament accepted a distinction between sturdy beggars who could work but refused to and the impotent poor who were too old, young, disabled or ill. Each parish, under the supervision of the JPs, was made to accept responsibility for its own poor, who were forbidden to wander about. Those unable to work were given money (poor relief) from a poor rate levied on all inhabitants of the parish.

But able-bodied vagabonds were to be stripped naked from the middle upwards and shall be openly whipped until his or her body be bloody. They were then to be sent back to the parish of their birth and made to work in a house of correction. The Bloody Code of the Eighteenth century
The governments fear of anarchy was coupled with inadequate means of force.

As the standing army was tiny and there was no state-controlled national police force, it had to use the law to protect itself. Its only defence against crime was seen as savage punishment and the result was a rapid increase in the number of laws which imposed the death penalty (capital punishment) for minor offences. 1688 50 capital crimes 1800 200 capital crimes
Capital offences included stealing goods valued at over 25p from a shop, stealing from a shipwreck and impersonating a Chelsea Pensioner. Only one of the 97

hanged in 1785 was a murderer - the rest were executed for burglary and highway robbery. Many of those executed were children under fifteen. In 1801 a boy of thirteen was hanged for breaking into a house and stealing a spoon.

But these figures are deceptive. Between 1770 and 1830 only 7000 were executed out of 35,000 sentenced. By 1800 only one in three people sentenced to death was actually hanged. Though more capital offences existed in the 18th century, there were fewer executions than in the 17th. It seems the terrifying penalties were in place to deter and impress the masses. In practice they were often not inflicted - pardons were granted to make those in charge look human after all! Alternatively, juries would find the accused not guilty even though they clearly were.

By the early 19th century many thought the Bloody Code counter-productive. In London condemned prisoners were always taken to chapel on the Sunday morning before they were hanged. They sat round an empty coffin while a parson told them how wicked they were. Next day they were taken in open carts to Tyburn (now Marble Arch) where vast crowds gathered. It was like a Cup Final - a jolly day out known as Tyburn Fair.

There were refreshments and grandstand seats for a good view. Those condemned to die arrived sitting on their coffins, often dressed in shrouds ready for burial. There was no proper drop (to give instantaneous death) till late in the 18th century. Sometimes the victim was put on a cart which was then driven away, leaving him dangling. Or he was balanced on a ladder while the hangman placed a hood over his head and a noose round his neck.

The executioner then suddenly kicked the victim off the ladder and left him to strangle for anything up to 30 minutes. Relatives were allowed to get him down after a time and sometimes managed to revive him - if so he went free. Often a dramatic last-minute reprieve arrived, timed to create maximum impact and give a striking impression of the laws mercy. But the crowd might wreck the grandstand in disappointment! The bodies of executed criminals, especially highwaymen, often hung in chains to rot at the scene of their crimes. A gibbet used for this purpose still survives at Caxton on the Great North Road near Huntingdon. The alternative destination was the dissecting room (corpses for anatomy experiments were very scarce and a 1752 Act of Parliament said any executed criminal could be used). Other punishments were less usual. ??? Prison This was mainly for debtors and those awaiting trial.

Conditions were shocking - 25% of prisoners died each year from gaol fever. Half the prisons were privately owned, the proprietors running them for profit by charging prisoners for food and drink - even for release! ??? Stocks and pillory These made punishment good fun for other people, who jeered and threw stones, rotten fruit and dead cats. They were only for petty crime but often proved fatal. They were abolished in 1837. ??? Transportation This was for serious criminals who were not hanged.

The basic idea was to get them out of the country to a godforsaken place like Australia, which started as a convict colony in 1788. They were usually freed after 10-20 years hard labour, but few got back to England. ??? Pressing to death Many refused to plead guilty or not guilty, so that their families would get their property and informers get nothing. Torturers spread-eagled them

and piled weights on their chest. A few held out till they died, which meant the family kept the property. If they were tried and convicted, their property went to the state.

??? Flogging The prisoner was usually stripped, tied to a cart and dragged through the streets during punishment. Eighteenth-century crimes against property Highway robbery The 18th century was the great age of the highwayman. Earlier, the roads were too poor to encourage travellers (travel comes from the old word travail meaning torture). Later, the new 19th-century police force soon stopped robbery on the highway. But the 18th century was perfect for highwaymen. Roads had improved, but not enough to allow coaches to accelerate and escape. Their method of operation was cunning.

They sat around in coaching inns looking out for travellers worth robbing. They then disguised themselves and waited under a tree on a lonely stretch of road. Hounslow Heath west of London was ideal, with plenty of woods to disappear into. Some travellers went armed – guards carried blunderbusses and passengers felt a journey was like going into battle. Highwaymen were usually hanged if caught. They disrupted communications between towns, threatened the Royal Mail and performed their crimes in broad daylight on the Kings Highway.

Their impertinence was unforgivable. But the cheek which the government disliked made them folk heroes to the people. ??? They were waving two fingers at authority – many eluded all attempts to catch them for years. Some advertised beforehand their intention of holding up a certain coach to

add to the fun. ??? They were the original drop-outs. They lived a wandering life, had no families, responsibility or jobs and paid no taxes! ??? They mixed violence with politeness in a way which appealed to 18th-century people.

Many were gentlemen who had fallen on hard times and were courteous and gallant to ladies - the knights of the road. A good example of a highwayman's promotion to celebrity status is Dick Turpin.

Born in 1706, son of a tavern keeper, he tried his hand at burglary but turned highwayman when the rest of his gang were caught. He went into partnership with Tom King in 1735 and terrorized travellers on the main road through Essex. His HQ was a cave in Epping Forest. Things began to go wrong when he shot Tom King instead of the constable arresting him. The ? 200 price on his head (about ? 10, 000 in today's money) made London too hot for him and he escaped to Yorkshire. He was arrested there as a horse thief called Palmer, but identified and hanged at York in 1739.

His 28lb fetters are still on show in his cell in the Castle Museum. After his death his exploits became more daring in the telling. The 19th century added to the story his horse Black Bess and her death from exhaustion, after his non-stop ride to York up the Great North Road to establish a fake alibi. His gallantry was exaggerated - in fact he once roasted a tavern keeper over a fire to make her reveal her savings. But there is plenty of contemporary evidence to confirm that highwaymen were treated like our footballers and rock musicians. Before his execution in 1724 Jack Shepherd received hundreds of visitors who paid 15p each to stare at him chained to the floor in the Condemned Cell (his gaoler made ? 200).

Dozens of plays and ballads were written about him - even the king requested a portrait. His journey to execution was like a triumphal procession - 200, 000 lined the street from Newgate to Tyburn, cheered and threw flowers, while tavern-keepers offered free pints. After the execution fans snatched his body as a souvenir (and to save it from dissection).

PoachingThe nobility and gentry were big landowners who reserved the fish and game in their parks for their own hunting. To challenge their rights was regarded as an attack on their property and the law supported them. But peasants tended to see deer, hares, pheasants, pigeons and fish as fair game, whoever's land they were on. The result was poaching by means of dogs, nets, guns or traps.

Gamekeepers watched out for poachers day and night, and set man traps and spring-guns for those who eluded them. Between 1750 and 1820 poachers convicted of using a firearm or wounding a gamekeeper were usually hanged and after 1816 they could be transported to Australia for 14 years. Poaching was for a mixture of need and greed. It was recognised at the time as partly the result of poverty.

Because of the 18th-century enclosure movement many small farmers lost their land and became labourers, with no food supply of their own. They saw poaching as a remedy to which they were entitled - it was a social crime, which most people did not regard as a crime at all. But some poachers were in it for profit, working with organised gangs and supplying food not for themselves but for the black market. **Smuggling**Governments now get most of their revenue from direct (income) tax. In the 18th century most taxes were indirect and were levied mainly on goods like tobacco, tea and brandy

imported from abroad. This meant big profits for those who could get them into the country without paying excise, as they could sell them cheaper than those who paid it. Smuggling became a huge industry and a national pastime. In coastal areas like Cornwall, Devon, Sussex and Kent everyone conspired to break the law - even the local parson and sometimes the magistrate.

Like poaching, smuggling was a social crime, which most people did not regard as a proper crime. As with the laws against cannabis now, many people thought import duties were stupid and deserved to be ignored. Small boats met the big ships from France about three miles out and brought the contraband ashore on remote beaches, where huge numbers of up to 1000 smugglers would gather at night to unload cargoes and take them inland. Men could earn over 50p for a nights work carrying kegs of brandy up from the beach to the hiding place - more than a farm labourer earned in a week.

250 customs and excise men were killed or beaten up between 1723 and 1733. It became so common that fines were standardised - ? 40 for a wounded excise man and ? 100 for a dead one. By the late 18th century smuggling was big business - three times as much tea was smuggled into England than was brought in legally.

But its days were numbered - in 1784 Prime Minister William Pitt slashed customs duties on tea from 119% to 12.5%. After further reductions in the early 19th century, smuggling was soon no longer worth the risk. Riot and political crime For much of the 18th century the government was fairly relaxed about popular protest.

Most of it had no upper class involvement or political motive. It was usually directed against high food prices - rioters took bread from the shops and then paid what they considered was a fair price. It was therefore less dangerous than protest in the 16th and 17th centuries.

But in the late 18th and early 19th centuries the government began to detect dangerous political content in popular disturbance and identified the target as itself. In 1792-3 the French king was first dethroned and then beheaded. Inspired by the French example, groups like the London Corresponding Society began to talk about republicanism, democracy and parliamentary reform in England.

The government became nervous about a revolution here and saw treason and sedition under every bed. It replied with repression rather than reform of the economic conditions which were causing discontent. ??? 1794 100, 000 people met in Copenhagen Fields to support LCS - the government replied with Treasonable Practices and Seditious Meetings Acts, which banned gatherings of more than 50 people without permission from a JP. ??? 1798 Mutiny in the British Fleet - the government replied with the Incitement to Mutiny Act ??? 1811-16 The Luddites were hand workers who responded to industrial innovation and powered weaving with sabotage, murder and machine-breaking - an anti-industrial protest with revolutionary overtones.

17 of them were hanged at York in 1817. ??? 816 Spa Fields Riot - a large mob met in London and broke into a gunsmiths shop. They then staged an unsuccessful attempt to seize the Tower. ??? 1817 5000 Blanketeers marched from Manchester to London with blankets on their backs, to protest

against the governments suspension of Habeas Corpus (which had guaranteed a speedy trial for those arrested). ??? 1817 An abortive rising at Pentrich in Derbyshire was set up by Oliver the Spy, a government agent whose job was to provoke plots so that conspirators could be detected and executed.

??? 1819 The Peterloo Massacre was the result of a mishandled public meeting in Manchester. 50, 000-60, 000 gathered peacefully to hear Orator Hunt speak on parliamentary reform. The magistrates panicked and sent incompetent amateur troops to arrest him and disperse the meeting. 11 members of the crowd were killed and 400 wounded.

The government was widely blamed but responded with the Six Acts, cracking down on public meetings and seditious literature. ??? 1820 The Cato Street Conspirators planned to assassinate the Cabinet at a dinner party. One of them informed and the leaders were executed. This at least proved that the governments fears were not fantasy. D. Industrial Britain c. 1820-c. 1900 Industrialization - the development of factory production - transformed British society.

It brought the prospect of limitless production and great wealth, and facilitated a dramatic increase in population and urbanization (town dwelling). Together with these changes there was a dramatic increase in crime and an equally dramatic change in punishment and policing. The Impact of Industrialization¹. Population For a wide variety of reasons - a milder climate, improved nutrition, better hygiene and greater prosperity - the population began to rise spectacularly in the 18th century and has not

stopped growing since. 1750 11 million 1800 16 million 1850 27 million 1900 42 million². Urbanization/Industrialization caused a dramatic migration from the countryside to the towns. Old patterns of community broke down as vast numbers gave up farming to work in the factories which were located near sources of power (water and coal).

Towns grew dramatically. In 1800 three quarters of the population lived in rural communities; by 1850 the urban population had overtaken country dwellers and by 1900 three quarters of the population lived in towns. 3.

An Increase in Crime/Figures for crime were not collected until 1805 and even then their reliability can be called into question. However, what is clear is that there was a considerable increase in crime between c. 1815 and c. 1840. Of course some of this can be accounted for by the population increase, but it appears that while the population increased by c. 70%, crime went up by c. 300%! Even if these statistics are faulty the pattern is clear.

What were the reasons for this dramatic increase? Greater wealth led to increasing opportunities but a key factor has to be urban dwelling. In the new towns a sense of community broke down, people were largely anonymous, slum housing proliferated and there was widespread unemployment and underemployment due to economic fluctuations. Squalid living conditions and hardship existed along side great wealth. The period after the end of the Napoleonic wars (1815ff) was particularly harsh with industry finding it difficult to adjust and thousands of ex-soldiers looking for work. Contemporaries believed that there was such a thing as a criminal class a rootless group of anonymous poor who inhabited the new industrial

city. Criminals were criminals because they were lazy and corrupt - they were people who chose a life of crime instead of working. Respectable society - the upper and middle classes - feared the industrial city and their fears were increased by sensational and lurid press stories of murder and violence. However, these fears were exaggerated; by far the bulk of crime was petty theft.

The government response in the past had been to create ever more crimes punishable by death. It has been estimated that by the early nineteenth century something like 223 crimes carried the death penalty. This was known as the Bloody Code. Some crimes were laughably specific - like damaging Westminster Bridge or impersonating a Chelsea Pensioner or blacking up at night. However, setting an example rather than vengeance was the main purpose of these penalties and increasing numbers were reprieved or transported

Changing Ideas About the Causes of Crime

By 1850 most of the Bloody Code had been swept away, execution was confined to murder and treason, and executions were few in number.

Prison sentences became the most common form of punishment and prisons themselves were turned from death traps into habitable institutions. At the same time police forces had been set up to prevent and detect crime. How had this come about? Clearly the reformers were important but they would have made little headway had not the attitudes of both the people and the government changed. People came to feel that the existing system was not working; the government came to see that it had a responsibility to intervene. Why were harsh penalties swept away at a time of rising crime? Because, as we have indicated, the system obviously was not working. Juries

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became unwilling to convict because they thought punishments were unfair and out of proportion to the crime. Thus property was not protected, criminals got off and others were not deterred.

The feeling grew that the punishment should match the crime and the feeling also grew that criminals could be reformed by the correct punishment; they might learn the error of their ways and be given a second chance to become useful citizens. (There was also a growing feeling that wretched living and working conditions were a root cause of crime and reformers recognized that something had to be done in these areas too.) Sir Samuel Romilly campaigned tirelessly against the Bloody Code and much of its abolition was undertaken by Sir Robert Peel who was Home Secretary 1822-7; 1828-30. He in turn was influenced by Jeremy Bentham who advocated practical enforceable laws so that society might be regulated more efficiently. Accordingly most capital crimes were abolished in the 1820s and 1830s.

The alternatives to the death penalty were transportation and imprisonment. Transportation, Prison and Prison Reform¹. Transportation From the middle of the 17th century until 1867 convicts were transported to the colonies.

In the 18th century many were sent to America but after US independence Australia became the main destination. Over 150, 000 (mainly men) were transported to Australia, the most famous being the Tolpuddle Martyrs who had been sentenced in 1834 for trying to form a trade union. Transportation was a good alternative to the death penalty when the crime was not too severe, it removed criminals from Britain and initially saved the cost of

imprisonment. At first conditions on the convict ships were dreadful and many died on the long journey but matters did improve. Once in Australia the convicts had to work for the settlers for 7 or 14 years, or life depending upon their sentence. However, between 1840 and 1867 transportation was wound up, largely as a result of pressure from the colonies themselves. From mid-century the discovery of gold and rising prosperity in Australia made transportation seem more like an opportunity than a punishment. In addition, the cost came to exceed that of imprisonment and in any case British rule over Australia was by now firmly established.

2. Prison Before the 19th century prisons were dreadful places. All types of people were simply locked up together: men, women and children; murderers, debtors and lunatics. The prisons themselves were unhygienic – damp, overcrowded with no toilets or running water. Many died from disease. The prisons were privately run and payments to the gaoler could buy you better circumstances. However, if you had no money you could not pay the fee to leave even if you had served your sentence.

3. Prison Reform Already in the 18th century reformers had recognized that gaols were cruel, unfair, inefficient, even un-Christian. Indeed it was the work of John Howard, Sir George Paul and Elizabeth Fry that led Sir Robert Peel to pass the Gaols Act in 1823 to encourage gaols to be more secure, more healthy, to separate prisoners by category and gender, and to ensure that gaolers were paid by the state. However, in the short term there were insufficient prisons and an increased number of prison hulks (ships) were used, but these were rotten and unsanitary and had a 25% mortality rate. Accordingly between 1842 and 1877, 90 new prisons were built incorporating

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the Acts recommendations, though it was not until 1877 that prisons finally came fully under Home Office control. As far as the prisoners themselves were concerned, reform was limited. The belief that criminals could be made into useful citizens gave way to the idea that there was a criminal type, a lower form of species who could not be changed - this was actually reinforced by Charles Darwins seminal work *The Origins of Species* (1859).

Hence contemporaries believed prison should be for punishment, for deterrence and retribution. Ironically just as the crime rate was falling from the 1850s, the prison regime became much tougher - mainly due to some highly publicized crimes in the early 1860s which exaggerated the problem and generated disproportionate public concern. In the first half of the century the so-called Separate System kept prisoners apart.

But by the 1840s this had been taken to extremes and amounted to solitary confinement. This proved to be disastrous as prisoners suffered breakdowns or committed suicide. It gave way in the 1860s to the Silent System which consisted of hard labour, hard fare and a hard board i.

e. repetitive (and often pointless) work, monotonous food and a hard bed. This characterized the harsh system of Victorian Britain and lasted till the turn of the century. Juvenile Crime and Punishment The Industrial Revolution undermined family links and large numbers of orphaned and abandoned children turned to crime. When caught they were treated the same as adults; indeed children as young as seven could be sent to prison. Little progress was made in changing this situation in the Victorian era though Parkhurst Prison on the Isle of Wight which opened in 1838 did have a separate wing

for young offenders. In 1854 a Young Offenders Act set up special reform schools and in 1857 schools for young vagrants were also set up. However, real change did not occur until the twentieth century.

Women and Crime Current research suggests that female crime declined quite dramatically in the nineteenth century though that was not contemporary perception. Elizabeth Fry worked tirelessly to improve the women's lot and her work bore fruition with the separation of the sexes, female warders (1823) and the first women's prison - Brixton - which opened in 1853. Female crimes as such were treated quite harshly. A law of 1861 made the women seeking an abortion guilty of a crime as well as the abortionist, and prostitutes were considered the source of considerable evil. Remarkably prostitution itself was not illegal but associated crimes were (e.g. soliciting or running a brothel).

A woman's place was in the home in Victorian England and her place was to give respect to her father and husband and serve her family. Women who wished to be independent, it was thought, could only do so by a life of crime. Hence female criminals were considered to have abused their proper role as well as broken the law. However, as we have said, female crime was on the decline - as indeed was all crime after about 1850. Clearly improved policing had a lot to do with this. E. Crime and punishment in the 20th Century Wars, Recession, Prosperity The prosperity of Britain in the late Victorian era continued into the twentieth century.

However, despite victory in both world wars (1914-18 and 1939-45), Britain lost her great power status and her economy declined. Depression in the

1930s brought unemployment in some areas and recession in the 1980s did the same. As we have seen, crime fell 43% between 1860 and 1900.

Thereafter it was static or falling until the 1930s, though any real link between the slight rise and unemployment in the depressed areas has not really been established. Crime is usually committed by young people, and those laid off by the shipyards or textile mills tended to be older, law-abiding citizens. Despite the wartime spirit of pulling together to fight Hitler there seems to have been an increase in crime rates from about 1940, but the really dramatic increase has come from about 1960 at a time when the country as a whole has enjoyed growing prosperity. This means we have to look to causes other than poverty to explain what has happened.

The statistics do show that Britain since 1960 has clearly suffered what can only be termed a crime wave. Of course an increase in the statistics can be the result of the increased reporting of crime (insurance claims require this), the increased recording of crime (police used to ignore crimes involving less than ? 20 in value) and new types of crime, - but it is also due to a very real increase in actual crime as well. The Changing Nature of Criminal Activityi.

New CrimeThe Motor Car has spawned a whole host of laws; owners have to have a license, tax, insurance and in many cases an MOT certificate. They have to observe the speed limit, drive with due care and not drink and drive. Moreover, theft of cars and from cars represents about half of all thefts. The motor car accounts for a considerable part of the current crime statistics, and a substantial part of the increase. Other new crimes include computer crime, sexual and racial discrimination, illegal immigration and of course drug smuggling and drug dealing. ii. Not So New CrimesTax evasion and

fraud are certainly not new but credit card fraud is. Terrorism is also not new but the wave of IRA violence since 1969 is certainly on an altogether different scale than anything that has been seen before. Mugging is not new; it is just another word for robbery with violence, and football hooliganism certainly occurred in the previous century though not on the scale we have witnessed in modern times. All of this suggests that there are in fact a lot more different types of crime that can now be committed, that did not exist in the last century. This would account for some of the increase. Changes in Punishment¹. PrisonsAs the crime rate fell at the beginning of our period so too did the fear of crime. This meant that there was less pressure to impose such a harsh regime and more opportunity to try and reform the prisoner. From 1902 hard labour was abandoned and from the early 1920s prisoners were allowed to talk to each other, wear their own clothes and see more visitors. In addition, conditions gradually improved in terms of diet and comfort, and teachers were employed to give prisoners a better chance of finding work after release. In 1934 the first open prison was unaugurated in which prisoners were allowed to leave to go to work. This too was designed to prepare them for life back in the community. However, since the Second World War the prison population has increased enormously - from 20, 000 in 1950 to 60, 000 in the 1990s (20, 000 more than the prisons were designed for). Some of this can be explained by longer sentences, new crimes (e. g. drink driving) and numbers on remand (i. e. awai