

THE NOTTINGHAMSHIRE JUSTICES AND THE SOCIAL ORDER 1604 -1652

By

Dr. Martyn Bennett

The English Civil War wrecked the process of keeping order in the English shires. It came at the end of a period of increased pressure on the various organs of local government, and at a time when the county administrations were trying to cope with a series of internal and external shocks. The country had been at intermittent war with Scotland in 1639 and

1640, and the subsequent musters of the local militias had resulted in widespread damage to Church and private property. In the midlands there had also been riots, gaol breaking and the levelling of enclosures. Moreover, there was, at the same time, growing resistance to the payment of taxes levied by Charles I. This centred on Ship Money and later, as the war progressed, refusal to pay the "Coat and Conduct" money used to finance the army fighting the Scots.

Seventeenth Century county government was a complex web; a network of officials whose responsibilities clashed and conflicted. The Shreivalty, the Lieutenancy and the Commission of the Peace each, in theory, had a set of basic responsibilities, all of which had been the duties of the High Sheriff, until the thirteenth century. The central group dealt with in this essay, the commission of the peace, the J. P. s, held Quarter, special and privy sessions at which breaches of order were dealt with. Capital crimes; felonies, treason and grand theft were referred by sessions to the bi-annual assizes, held by circuit Judges. The lieutenancy; the lord lieutenant and his deputies, were basically responsible for the militia - the Trained Bands. The shreivalty; the high and under sheriffs dealt with the rest, mainly financial matters and ceremonial duties at the quarter sessions and assizes, as well as the rounding up of suspects with the posse committatus. But this was very much a theoretical divide. The creation of the lieutenancy in the sixteenth century still left the matter of funding the militia in the hands of the J. P. s; a state of affairs which existed until 1608. The further extension of the lieutenancy powers which endowed them with the rights to the collection of arms from recusants, interfered with the clear cut collection of recusancy fines; the responsibility of the J. P. s. Changes and innovations under the early Stuarts did not serve to clarify the distinctions between the arms of county government. Judges of Assize were given the power to attempt to standardise the activities of the J. P. s in their circuit and this was deeply resented. Moreover, the aim of reducing the role Parliament played in government, meant that alternative sources of funding the Crown and government had to be found, to circumvent the need for Parliament. Parliament, which tightened the purse-strings when it perceived the threat to its position attempted to force the monarchy into abjuring extra-parliamentary taxes by presenting the Petition of Right. Even though Charles reluctantly accepted the petition, he had no intention of abiding by its strictures. From 1629 until 1640 he did not call a parliament. All of this had a great effect on the provinces. As early as 1626, Charles had attempted to gain money through a 'Free Gift' after dissolving Parliament. The returns were poor. In the north and east Midlands, Rutland's J. P. s reported a good response, but in Leicestershire and Derbyshire people called out for a parliament (2). In the latter shire only £111 was collected and of this small sum J. P. s, who had responsibility for collection, had contributed £911 (3). Nottinghamshire justices could only forward £70 and the county expressed a disinclination to hand over any money until a parliament was called (4). The magistrates in Rutland were aware of the fact that they appeared out of step and desired that they not be used as an example to others. They were right to be concerned about their role as collectors - after all, it was generally accepted that the high sheriff looked after taxes - for by the end of the year the commissioners of the peace had also become commissioners for the forced loan, established in light of the failure of the 'free gift'.

For the Nottinghamshire J. P. s, the collection of the forced loan did not present the great problems it did elsewhere. By August 1627 they could report a shortfall of only £27 (5). This was fortuitous for the J. P. s; not only were they responsible for collection, but if they had been put to

difficulties then they would have had to clear up the mess at quarter sessions. This was the lot of the Leicestershire justices who faced widespread dissent and default. Cases of default were usually brought before the J.P.s but these were normally minor matters involving technicalities, or genuine cases of hardship and inability to pay; not direct opposition. Such matters were usually cleared up at privy sessions wherever possible.

The late twenties and then the 1630s changed the established pattern. The King continuously searched for finance and a variety of methods were resurrected from the past. The lieutenancy was given the power to collect fines, known as distraint of knighthood, from those eligible by virtue of their wealth for knighthood at the coronation but had refused to accept. Fines were extracted from those whose lands had encroached upon the Royal Forests. However the tax that was to become so notorious did not emerge from deep dusty books of precedent. Ship Money was a coastal defence extraordinary tax, levied in wartime on coastal counties to provide naval protection. Charles turned it into a seemingly permanent tax and extended its collection to inland counties, claiming that there was a dangerous war on the continent and that pirates were raiding Cornwall and carrying off his subjects. Both claims were founded in truth. Europe was still convulsed by the religious wars, although Britain had remained largely aloof, despite Charles' sister, Elizabeth, being at the very centre of the immediate causes - the acceptance of the crown of Bohemia by her husband and Elector Palatine in 1618. Pirates were raiding the Cornish coast and people were being abducted and sold into slavery. Ship Money had a clear set of precedents to govern its application. In short it was the responsibility of the high sheriffs to gather the tax. Thus, the J.P.s avoided their onerous role as collectors, but they still had to deal with the problems of default.

As a result, their role in taxation was to change. As stated earlier, they normally attempted to sort out disputes at privy sessions without resort to the power of the law. Enquiries were conducted and if possible the disputants were brought to agreement. The whole matter was ideally sorted out within the community at large. In effect, this was the role of the J.P.s in microcosm. Much of the time, the justices were called upon to enforce social rules; rules governing sexual conduct and procreativity, rules concerning property and rules regarding due respect for social rank. Breaches of these rules resulted in offences ranging from insulting officers of the crown to major disruptions of the peace like riots, breaking and entering and mass trespass as well as the various forms of theft. In morality cases, Nottinghamshire justices could be harsh. Over the county border in Leicestershire, bastardy cases usually ended up with the putative fathers being made to pay maintenance to the mother and child. The couple could also be made to stand in church before the congregation of their parish and acknowledge the sin of having offended the community, by breaking the social "rules". Yet the Nottinghamshire J.P.s often supplemented this with a display of patriarchal guilt transference by having the mother stripped and whipped in public, in her parish. Thus, the woman's body, which they had denied rights over to the woman and her lover, was made public property.

Instances of widescale disruption of order were dealt with at quarter or special sessions. At least 222 instances of riot were dealt with at Nottinghamshire sessions between 1604 and 1642. There were a further 109 cases of affray involving more than two people during the same period. Although the Midland Revolt of 1607 had met with little response in

Nottinghamshire (there were only five riots that year), other outside influences did result in upsurges in the numbers of social order problems experienced by the county. Between 1619 and 1623 when there were harvest difficulties, the number of riots went up to 43. In the previous five years there had only been 18. Whilst there may have only been minor problems with the harvests as a whole, Nottinghamshire J.P.s perceived a crisis in the county in 1622 and regulated the grain markets. In 1623 they attempted to encourage the consumption of peas and beans as a substitute for wheat and barley. County farmers resisted; preferring to feed such crops to sheep rather than to the poor. Corn engrossers - those hoarding stocks awaiting an increase in price - were brought to sessions in increasing numbers and the numbers of maltsters and alehouses were restricted.

By 1629 these fears were repeated, and controls again imposed. But, during this and the following years, the numbers of riots rose only slowly and slightly. In both 1630 and 1631, there were ten riots; whilst in 1633 there was only one, at a time when the harvest failure of the previous year should have been biting. This is somewhat misleading, the county was not wholly quiet. Ten cases of mass affray were presented at sessions and it is possible that the justices were accepting as affray that might normally have been considered a riot, thus presenting the county as being peaceful. In both of these periods of harvest problems, 1619 - 1623 and 1629 - 1633, J.P.s showed both sides of their duties. On the one hand they sought to alleviate distress by regulating the markets, whilst coming down hard on any persons involved in breaches of public sector order. We shall probably never fully know how the increased incidence of rioting related to the harvest problems at the beginning of the 1620s, as the causes of the riots remain shrouded. It remains possible that the higher number of such cases simply reflects that justices were aware of the potential for an increase in the number of riots and showed this through their willingness to see even minor cases brought to court. The community role had to be pushed aside in the 1630s and Ship Money was largely to blame. In Nottinghamshire, as elsewhere, there was little mooted opposition in the early years of the tax's imposition. The county nobility did attempt to claim exemption because the drafting error in the original writ had resulted in them not being referred to (6). In 1636 there were problems with Gervaise Markham who disputed the levy of £50 made upon him by the High Sheriff, Sir John Byron. Markham claimed that Lord Chaworth and Sir Gervaise Clifton were only paying £35 on much larger estates. Byron informed the Privy Council that, as well as his estates, Markham had an income of £4000 per annum. The Earl of Newcastle, the lord lieutenant, and the current high sheriff of Yorkshire (where Markham had lands) both supported Byron, suggesting that Markham was a skinflint who refused to recognise two bastard children, in order to avoid paying towards their upkeep (7).

By 1637, however, there was resistance of a more problematic form. Thirteen people appeared before the quarter sessions, charged with default. The J.P.s attempted to make some changes to the allotments made by the high sheriff. The latter was not likely to have been much put out by this. The problem of non-payment as he saw it was one of inability, not unwillingness. But, by May 1638, as a result of the Hampden case, refractoriness had increased. Seven of the twelve judges, drawn from the Court of Common Pleas, the King's Bench and the Court of Exchequer Chamber, found against John Hampden's claim that the King had had time to call Parliament after the initial issue of Ship Money writs, and thus the normal channels of taxation could have been brought into use. However, the fact

that five judges had dissented was seen as a moral victory for opponents of the tax (8). Twenty six people appeared at Nottinghamshire sessions that year of tax related charges. Of these, five cases related to local levies or lewms: but the rest were ship money cases (9). In 1639, forty people appeared before the J.P.s on charges of default, this time only a couple related to local lewms. Newark corporation refused to hand over any money to the high sheriff and claimed that there had been an exodus of major property owners and poor trade which made it impossible to collect the tax. The Sheriff, Lord Chaworth tried to get the Privy Council to agree to his adjusting the county burden, but he only received instructions to spread Newark's unpaid sum around the county as a whole. This was no help to Chaworth who was already being taunted by the county gentry, who locked their gates and challenged him to take distress if he dare (10). Throughout 1640, Chaworth's successor, John Agard, found himself similarly defied, but the justices problems eased off, as less people were hauled before the courts. This was only a temporary decline, the numbers rose again in 1641 and 1642. It seemed clear to observers that society was in danger of falling into some disorder. The high numbers of taxation cases brought to quarter sessions, had made it impossible for the J.P.s to deal with such cases in the normal manner. The opportunity to arrange conciliation was no longer there. Instead, the most distant weapon of the law was implemented; the distraint of property.

As a background to the latter, incidents of tax default were widespread instances of social disorder. In the years 1639 and 1640 England was at war with Scotland. The soldiers mustered for the march to the North smashed enclosures near Uttoxeter in Staffordshire, shot the Earl of Huntingdon's tame white deer at Ashby de la Zouch in Leicestershire, and went on a rioting spree in Derby, where they broke open the gaol. Although Nottinghamshire was generally quiet, awareness of these problems was felt amongst the county justices. Only seventeen riots occurred 1639 - 1640, yet both 1640 and 1641 saw two special sessions convened specifically to deal with riots and this had not happened since the 1620s, with their much higher incidence of rioting. The problem was escalating by 1642, when no less than ten of the seventeen rioting cases occurred, or were at least brought to court.

The need to be vigilant, expressed in the J.P.s' readiness to hold special sessions, seemed to have been borne out. But was society really in a perilous state, just before the war? Rioting was a fairly common phenomena and only 1642, the year when the government of the country was thrown into disorder, showed any remarkable incidence of rioting in Nottinghamshire. Even then this may have been an exaggerated figure given that the justices were on the lookout for trouble. Riots in Nottinghamshire, during the first half of the century, sprang from many causes; football and a variety of lewd games often ended in violence. Trespass and the attempt at rescue of people arrested by sheriffs and constables also led to rioting and affray. The types of people involved were also as varied as the causes. There were men like Charles Cartwright an impoverished gentleman, of Mansfield. He was embroiled in a riotous trespass during 1624 and died in 1651 possessed of only £65 - 12 - 0 in property and money (11). Another case involved Austin or Augustine Bryan, a barber from Mansfield, who, with his wife and four others, was involved in a riotous trespass in 1629 for which they were all fined sixpence in 1630. Bryan died in 1658 possessed of £75 worth of property and cash, only ten pounds of which was tied up in the tools of his trade (12). William Hall, a yeoman of Mansfield and a substantial landholder there, left £683 - 14 - 5d. in property and cash, only £195 - 9 - 0d. of which was tied up in farming equipment. Hall had

been involved in a riotous affray in 1628, along with his wife Anna and eleven others. They were all brought to sessions at Nottingham, on 14 July 1628 and again on 6 October, when Anna was fined 12d. and once more on 5 October 1629, when William and three others were also fined 12d. (13).

Women were involved in several Nottinghamshire riots, especially in the Mansfield area, where there were proportionately more involved than in the lowland areas of the county. This may reflect the differing social structures in the upland and lowland regions, especially the seemingly enhanced social role of women in areas of partially shifting communities where, often due to agricultural conditions there was a greater dependence upon part-time and domestic industry (14). Widows like Mary Kitchen of Mansfield were involved in riotous trespass to preserve or claim property of common rights. Mary was involved in the same riot as Charles Cartwright. She left £32 - 8 - 3d. when she died; £3 - 2 - 6d of which was tied up with her small holding (15). These people were not landless vagrants or the masterless people feared by bastions of Stuart Society. Thus there was really a dichotomy of expectation and practise, the masterless people were not a feature of Nottinghamshire rioting. Instead it was gentry like Cartwright (8.1%), yeomen like Hall (23.8%), Husbandmen (12.3%), artisans like Bryan (11.9%) and employed labourers (29.6%) who comprised the main groups involved in the riots. In addition there were a varied collection of women, ranging from widows and spinsters (5.4%) to the wives of knights, gentlemen, yeomen, husbandmen, artisans and labourers. Excluding only the labourers and their wives, the vast majority of rioters were people with a fixed stake in Stuart society; they were not outsiders.

It is probably less surprising to find that tax avoidance was undertaken by similar social groups. Charles Cartwright of Mansfield was brought before the courts (16) as were several members of the Dand family from the same town. Women too were also brought to answer at sessions. The appearance of women for either rioting or any other offence for that matter was galling to at least one Nottinghamshire magistrate. William Moseley (a J.P. from April 1618 until the end of 1641) had rigid ideas regarding women in society. He assumed that if they were of the appropriate age, then they should be married and that 'All wives should be beaten... I say wilt thou not strike (your) wife then (she) gets her way.. no wife unforced obeys her husbands power' (17).

Moseley's view was not particularly unusual for the time. As we have already seen, the Nottinghamshire J.P.s treated "wayward" women with severity. In upland areas, attempts were made to reinforce the patriarchy and 'cucking' stools were generally more in evidence in such areas than elsewhere, as a response to the relatively 'freer' position of women. No doubt the Halls and Bryans were lucky that Moseley attended the Sessions at East Retford and occasionally Newark, but never the opening day at Nottingham, where Mansfield area cases were heard. Moseley would have been unlikely to let pass the flagrant breach of patriarchal rules represented by the participation of women in these riots. On the other hand, and more damning of the role of women, he would have simply accepted that they were under the supposed unquestioned influence of their husbands.

Despite this fairly small intrusion (for women only represented about ten per cent of rioters), the J.P.s were not unduly worried. Society was not in a state of collapse. Riots and tax evasion were undertaken by people who like them had a stake in society, not by those wishing to overthrow it. Hall and Cartwright, despite the latter's poor state, had a comfortable niche in society and they were unlikely to want great change. Riots and

tax evasion were about readjustment, not revolution. The crisis in the social order came from above, not from below.

When Charles I left London, and his Parliament behind, in January 1642, the constitutional framework of the country was rent in two from then on, government could not operate properly, although it was some five months before the final split came about. J.P.s in Nottinghamshire struggled to maintain a semblance of order. In the county, quarter sessions were held right through 1642 even though the King and Parliament were arming their supporters during the July sessions and there existed a state of war by the October sitting. Total attendance at sessions held in January and April was normal; ten turned up at January sessions - a low turn out as usual, because of weather conditions. April saw fourteen J.P.s participating. The July sessions were a different matter. By this time the King's Commissioners of Army were attempting to control the Trained Bands; some of these men were J.P.s. Only six justices turned up at the sessions. Three sat at Nottingham, two at Newark and two at East Retford, with John Wood Esq., as he usually did, participating at both Nottingham and Newark. In October, as the King's army and the army of Parliament under the Earl of Essex, sought each other in the south Midlands, nine J.P.s turned up at the Nottinghamshire county quarter sessions.

This determined effort to preserve society, was characteristic of the country's J.P.s: the keeping of order was their business. In Staffordshire the justices went into special session in November and decided to arm a 'third force' aimed at keeping soldiers from either army out of the county. Whilst the Nottinghamshire men did not go to these lengths, their determination to hold sessions even as the war progressed was a similar statement of intent. In the end it was all to no avail. In Staffordshire, the Royalists garrisoned Stafford, Dudley, Lichfield and Wolverhampton. Nottingham was garrisoned by John Hutchinson, himself a son of the J.P. Sir Thomas Hutchinson of Owthorpe. By the end of 1642 Royalists had occupied Welbeck and Newark. Quarter sessions were not held again until 1646 and minutes were only kept regularly after 1652.

The ending of the sessions was not the end of J.P. involvement in the keeping of order and county government. Several were active supporters of one side or another. A total of five were involved in the commission of array. Others had duties outside the shire. Isham Parkyns of Bunny (J.P. 1628-42) became the governor of Ashby de la Zouch castle under Lord Loughborough. Sir Matthew Palmer (J.P. 1628-1642) served with the Earl of Newcastle in the North. The Earl of Kingston (J.P. 1633-1642) reluctantly became the King's commander in Lincolnshire and was killed in a bizarre accident after being captured at Gainsborough. The Earl of Chesterfield (J.P. 1608-29, 1635) garrisoned his house at Bretby, Derbyshire, and after being driven out of there, occupied Lichfield. The five commissioners, Richard Byron (J.P. 1635-42) Sir Gervaise Clifton (J.P. 1609-39), Robert Sutton (J.P. 1617-41), Lord Chaworth (J.P. 1632-38) and Roger Cooper (J.P. 1641-42) all served at Newark where the commission was based. Cooper held privy sessions during the war at his garrisoned Thurgarton home. Indeed part of the traditional role was maintained. Offences against the public order, undertaken by soldiers were dealt with in civil courts. Disputes over war time taxation was also supposed to be sorted out by the J.P.s on the commissions (18). These were not the main tasks of the commissioner of the peace turned commissioner of array. In effect they were responsible for the allocation of taxation designed to support the Royalist war effort. In Nottinghamshire, this entailed the provisions for the large garrison of Newark, the garrison at Welbeck and the minor outposts at Wiverton,

Shelford and Thurgarton. The weekly tax, the Contribution, and the ancillary collections of necessities such as bedding and food, were undertaken by quartermasters of horse and several troopers, who taxed the communities around the county. Thus, because the J.P.s were responsible for the establishment and level of taxation, their role as independent arbiters in taxation disputes had gone!

Parliament's county government took the form of a County Committee which bore the same responsibilities as the commission of array. Coincidentally five one time J.P.s also sat on this body too. These were Gilbert Millington (J.P. 1629-42), Gervaise Pigott (1641-2), Francis Thornhaugh (J.P. 1642) and his father, Sir Francis (1626-37) and Sir Hardolph Wastneys (J.P. 1608-37). The committee was based at Nottingham Castle and was largely dominated by John Hutchinson. There was a significant opposition mounted against Hutchinson's control, but he was maintained in power largely because of the confidence placed in him by Parliament. The committee dealt with taxation and such in more or less the same manner as the commissioners, and their weekly tax, the Assessment, was set at about the same level as the contribution.

The quarter sessions resumed in 1646. Although we can assume that the commissions of the peace for these years chiefly comprised of Parliamentarians only, we cannot be more specific as for some reason the normal minute book was either not available or simply not used. However, in 1652 we can pick up the thread again. Some six of the committeemen now served on the commission of the peace, but only one pre-war justice, Gilbert Millington was present. John Hutchinson, now Sir John was now a J.P.; he could have expected to have been a justice, under normal circumstances, following in his father's footsteps. In 1658 a further committeeman, Charles White entered the commission.

Only White survived the changeover at the Restoration. The other committeemen and new J.P.s returned to the relative obscurity from which they had been chosen or thrust. There was a return of some of the pre-war justices, Robert Sutton, now Lord Lexington returned in person and younger members of the Cliftons, Stanhopes, Coopers and Pierrepoints took up their places. A certain continuity had been maintained.

Restoration brought about the recreation of the traditional form of government - the lieutenancy, the Shreivalty and the judiciary. New problems faced the justices, the need for vigilance in the early years of the Restoration, and the draconian measures taken against the Quakers being but two. But in all things the desire was to maintain order and to re-establish the order, lost before the civil war. Just as had been the case then, personal beliefs and public spirit mixed in the pursuit of this goal. Although Moseley's probable misogynism had gone, Nottingham now had to cope with Robert Thoroton's religious bigotry. The quest for order continued.

NOTES

1. The material for this paper forms part of a research project aimed at examining the relationships between the governments and the governed in Seventeenth Century Midland England. The initial work for the project was conducted with the kind and generous help of the British Academy.

2. Historical Manuscripts Commission, *Report on the Manuscripts of the late Reginald Rawdon Hastings, Esq.*, HMSO, 1930, Vol IV, p209.
3. Public Records Office (PRO), SP16/33, f1311.
4. Everett-Green, M. A., ed, *Calendar of State Papers Domestic Series*, Kraus Reprint, Lichtenstein, 1968, (CSPD), 1625-6, p434.
5. PRO SP16/73, 34.
6. CSPD, 1635, p371.
7. *ibid*, 1636-7, pp189-190.
8. *ibid*, 1637-8, pp327, 443.
9. Nottinghamshire Archives Office, QSM 1/11, f98.
10. CSPD, 1638-9, pp134, 151.
11. NAO, PRMW 6/4; QSM 1/7, f127.
12. NAO, PRMW 11/4, QSM 1/8 f248, 1/9 f16.
13. PRMW 1/10, QSM 1/8 ff159, 184, 284.
14. 18.1% compared with 9.63% for the lowland areas.
15. NAO, PRMW 28/6; QSM 1/7 f127.
16. NAO, QSM 1/9, f408.
17. NAO, DDR 123/33, manuscript is in Moseley's hand.
18. For a full discussion of the organisation of both the Royalist and the Parliamentarian was efforts see, Bennett M, '*The Royalist War Effort in the North Midlands, 1642-1646*', unpublished PhD thesis, Loughborough University, 1986, chapters Two and Three. Figures given there about J.P. involvement are superseded by the article.