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## EARLY TUDOR JPs AT WORK

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### I

The fundamental police powers and jurisdiction of justices of the peace were well established before the sixteenth century. Late in the century the Elizabethan politician and observer Sir Thomas Smith described the traditional functions of local magistrates:<sup>1</sup>

'The justices of the peace be those in whom at this time, for the repression of robbers, thieves and vagabonds, of privy complots and conspiracies, of riots and violences, and all other misdemeanors in the commonwealth, the Prince putteth his special trust.'

By Sir Thomas' day the justices were also called upon to undertake a multiplicity of administrative and political jobs in addition to their primary responsibility to maintain the peace and punish those who broke it.

The intention of this paper is to describe the composition of the Kent commission of the peace during the two generations before Elizabeth I, and to examine the activities of the resident JPs in a period for which surviving records are generally unsatisfactory.

The justices of the peace were, as the leading representatives of the landowning classes, the permanent élite of the county. Their numbers increased significantly during the early sixteenth century, well ahead of the overall population rise during the period. Several explanations for this have been offered. First, there were good reasons for the Crown to enlarge its corps of agents in the countryside, especially as the tasks assigned them increased. Equally evident was a growing desire on the part of the gentry to become JPs. To a Kentish gentleman, membership in the commission of the peace signified more than just the work he was expected to perform. Being a JP was both a public recognition of one's elevated status in the community and a valuable accretion of practical power. JPs, after all, held the power in practice to enforce or not to enforce the law. An individual justice could commit persons to gaol until trial for minor offences and, as he was usually a member of the subsidy commission, he might influence the assessment and collection of taxes. The onerous duties of the job never restrained Kentish squires from seeking appointment.

<sup>1</sup> L. Alston (Ed.), *De Republica Anglorum, or a Discourse of the Commonwealth of England*, Cambridge, 1906, 86. 34 Edward III, c. 1; 1 Edward IV, c. 2.

Some light is shed on the manner in which gentlemen became JPs by a letter written by Sir Henry Guildford – a man prominent in Kent and at court – to Cardinal Thomas Wolsey in May 1528:<sup>2</sup>

‘And also that it may please your grace to put John Crowmer, esquire, in the said commission, assuring your grace that he is a wise man and of good order and always ready to accomplish such commandments as cometh from the King’s highness and your grace.’

Sir Henry, as a privy councillor and comptroller of the Household, was an ideal patron for a local gentleman aspiring to the commission. It was to men like Guildford, who had both county and court connections, that any government would turn for advice in the selection of its representatives in the shires. More formally, the council would seek the recommendations of the central court judges who conducted the assizes in a particular county. During the period under consideration there was usually at least one senior judge whose country residence was in Kent.<sup>3</sup>

In comparison to other shires with roughly similar or greater population and land area, Kent was governed by a relatively numerous commission of the peace throughout the first half of the sixteenth century. During the early years of Wolsey’s predominance the commission for Kent was not much larger than it had been at the beginning of the century: between thirty and thirty-five justices, of whom six or seven were non-resident dignitaries who were named to many county commissions concurrently. Its numbers grew slightly after Henry VIII’s first war against France, but in 1521 it was cut drastically, for no clear reason. This was the only sharp break in the long-term growth of the commission during the period, and is something of a mystery. On the basis of commissions enrolled on the patent rolls between 1519 and 1524, almost all English counties had growing commissions except Gloucestershire and Kent. The enrolment of the reduced commission for Kent was in June 1521, that for Gloucestershire in July 1522. The commissions for both counties were back to their former strength by the next enrolled commissions, in June and May 1524, respectively. And it is not at all certain that the exceptional changes for these two counties were at all connected. The effect of the paring in Kent was to reduce substantially the proportion as well as the absolute number of resident gentlemen on the

<sup>2</sup> Public Record Office (hereafter PRO) SP 1/48 fo.28 (also in [ed. J. S. Brewer, J. Gairdner, R. H. Brodie, 1862–1932] *Calendar of Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII*: hereafter LP) iv, 4276.

<sup>3</sup> For example, Sir John Fyneaux of King’s Bench (d. 1527); John Hales of Exchequer (d. 1541); Sir Christopher Hales, Master of the Rolls (d. 1541); Sir Thomas Willoughby of Common Pleas (d. 1545); Sir Robert Southwell, Master of the Rolls (to 1550).

commission. Almost all of the JPs dropped came from the lower end of the commission: only one knight was excluded while twelve ordinary squires were left off the commission. Most of the latter had become JPs more recently than their fellows who retained their places.

The motives behind the government's reduction of the two commissions are obscure. And, explanation is made no easier by the absence of accounts of JPs' wages for attendance at quarter sessions between 1521 and 1523. The account of wages paid in 1520 suggests that the purge of the commission in 1521 was a conscious measure taken at one time.<sup>4</sup> The council's action may be connected with the fall of the Duke of Buckingham and the imprisonment of George Lord Abergavenny. At least one of the Kent JPs dropped, William Whetnall, was an Abergavenny client.<sup>5</sup> However, both Abergavenny and his brother Sir Thomas Neville were not dropped from the Kent commission. It is more likely that the council, or Wolsey, felt that the Kent commission had grown too large and unwieldy during recent years.

Whatever the intentions of the central government, there was soon pressure to restore the size of the commission, most probably from the men removed and from their patrons at court. And, by 1523, there were also wider political reasons to justify a restored commission, including the loan of 1522 and the new lay subsidy passed by the 1523 Parliament. By the next commission for Kent enrolled on the patent rolls, in June 1524, there were thirty-three Kent residents, including most of the men dropped in 1521. Less than two years after this, and no doubt partly in response to the troubles surrounding the Amicable Grant of 1525, the number of local men had reached forty-two. It further expanded to forty-seven local residents in 1531, and so remained fairly constant through the 1530s and 1540s. There were no purges of the Kent commission during the reign of Edward VI, but within a fortnight of Thomas Wyatt's rising against the government in 1554 the bench was reduced to about thirty-seven residents. However, it regained its former numbers during the remainder of Mary Tudor's reign, although that period saw a heavier than usual turnover in personnel. Not only were a number of men dropped in February 1554, eight new local justices were added. By 1556 another eighteen men who had not been on the initial Marian commission were JPs. They included a few outsiders, as well as three Roman Catholic canons of Canterbury Cathedral. There were, finally, further changes between 1556 and 1558 because of the heavier than normal mortality from

<sup>4</sup> Enrolled commissions printed in *LP*, *passim*. For JPs' wages, PRO E 372/366-7; no similar accounts in E 372/368-9. A number of the JPs dropped in 1521 were paid in 1520.

<sup>5</sup> On Whetnall's association with Abergavenny, see PRO KB 27/985 Rex m.7, list of Abergavenny's retainers.



epidemics in the latter part of the reign. The accession of Elizabeth I was followed by a sharp reduction in the Kent commission, but this was to be temporary indeed. By early 1560 the membership of the commission had grown beyond its previously highest point in the late 1530s. Throughout the period then, the size of the county commission was a function both of the pressure of local gentry to obtain membership and the responses of the central government to the political circumstances of the day.

A justice of the peace, once appointed, would normally remain on the bench until his death or resignation in old age. The Marian period interrupted this trend to some extent. But many a justice served under Henry VIII and his two eldest children. The random inclusion of commissions in the patent rolls, often with gaps of five or six years, masks the fact that the commission was continually changing through deaths and the addition of new members, but usually at a snail's pace. A new commission had to be drawn up every time there was any change in the membership, but there was no requirement that each commission be enrolled on the patent rolls. Not only is there a lack of original commissions for Kent during the first half of the sixteenth century, but there are only four *libri pacis*, or similar lists, which cover Kent: those of 1514, 1532, 1543-44 and 1555.<sup>6</sup> Thus, the formal lists of JPs which exist in such profusion for the reign of Elizabeth, and which have been utilized so successfully by Dr. Hassall Smith in a recent study of Norfolk, are among the regrettable *lacunae* in early Tudor records.

Most JPs served for at least five to ten years, and knights and certain more active, or well-connected, gentlemen served for even longer. Sir Thomas Cheyney was a justice from at least 1524 until his death in 1558. Edward Thwaites remained a JP from 1528 to his death in 1550. Of the forty-three local men on the first Edwardian commission of 1547, about 30 per cent had been JPs since 1532 or before, and 45 per cent since 1537 or earlier. The men upon whom the Crown depended for the enforcement of its new religious programme from 1534 onwards were well-established, mostly middle-aged local landowners, the majority of whom began their careers as magistrates before the rise of Thomas Cromwell. As far as one can tell, there was no effort made to pack the Kent commission in the decades after the break from Rome. In fact, during Cromwell's administration there were relatively few additions to the bench. In an average year in the 1530s or 1540s one to three men might win appointment to the commission, while about the

<sup>6</sup> Enrolled commissions in *LP* and in the *Calendar of Patent Rolls* for the reigns of Henry VII, Edward VI and Mary. The 1514 *liber pacis* is British Museum (hereafter BM) Additional MS. 36,773; that of 1532 at *LP*, v, 1694; that of 1543-44 is PROC 193/12/1 fo. 18<sup>r</sup>; that of 1555 is PRO SP11/5 fos. 36-7.

same number of justices died. And, on the basis of somewhat less certain evidence, there are no signs of the frequent removals and reappointments of JPs to the commission such as occurred in Norfolk later in the century.<sup>7</sup> The absence of formed factions among the early Tudor gentry in Kent made it easier for the Crown to maintain the appearance of continuity and good order among its local lieutenants.

Justices as individuals also exuded sobriety and stability. Hence the requirement in statute that most JPs must possess lands worth at least £20 per annum. But were they necessarily the wealthiest members of the local community? The answer, provided by the lay subsidy assessments, is cryptic but consistent with what is known about sixteenth-century ideas about status. In general, JPs were significantly wealthier than the average Kentish squire; but not necessarily richer than successful merchants and clothiers.<sup>8</sup> The average income of thirty-three justices or their widows in the tax assessments for 33–35 Henry VIII was almost £90 p.a. in lands. But there were many below this average: one at £30 p.a., three at £50 p.a. and nine more at £60 to £66 p.a. At the same time, more than half the number were assessed at £100 p.a. or more. This at a time when many landowners rated at £20 p.a. were known as gentlemen.<sup>9</sup> Wealth alone was not sufficient ground for inclusion in the commission, although a generous income seems to have been a minimum requirement.

Besides being among the wealthiest of Kentish landowners, most JPs were sons of families which had produced office-holders in previous generations. As indicated in Table I, almost three-quarters of the resident JPs were members of established county families. Most of the JPs of the 1530s or 1540s were neither 'new men' nor newly planted by the Crown. The distinction drawn by certain historians between men of the law or men with government or court office as contrasted to 'local gentlemen' is inappropriate to sixteenth-century society. Several JPs in Kent were Crown officials or sons of Crown officials, and others held posts at court. But most who were officials were nonetheless members of the local gentry. The most obvious examples from the time of Henry

<sup>7</sup> A. Hassell Smith, *County and Court: Government and Politics in Norfolk, 1558–1603*, Oxford, 1974, esp. ch. iv and App. II.

<sup>8</sup> Merchants of Canterbury: Robert Lewis assessed at £200 in goods in 1546 and John Alcocks at £130 (PRO E 179/125/297); clothiers of Cranbrook: Richard Courthop assessed at £300 in goods in 1541 and Laurence Sharpey at £220 (PRO E 179/124/240). 18 Henry VI, c. 11.

<sup>9</sup> Subsidy assessments from 33 Henry VIII, for most of the shire, but where missing, from 34–35 Henry VIII: PRO E 179/124/223, 240, 244, 245, 247, 248, 249, 260; E 179/125/277. Three JPs rated on goods are not included in the average: Thos. Culpeper (£180 goods), John Tooke (£90 goods), Thos. Grene (£100 goods). The lists of 33–35 Henry VIII do not include two of the wealthiest JPs, Sir Edward Wotton and Sir Anthony St. Leger, both rated at £240 p.a. in 1546: PRO E 179/125/307.

TABLE I

Backgrounds of Resident Kent JPs, 1543<sup>1</sup>

1. From previous office-holding families in Kent . . . . .	23 (56 per cent)
2. From fifteenth-century local gentry family who held no local office . . . . .	6 (15 per cent)
3. Primarily London/Westminster ties <sup>2</sup> . . . . .	3 (7.5 per cent)
4. Non-Kentish background but marriage into prominent Kentish family <sup>3</sup> . . . . .	7 (17 per cent)
5. Background not traced . . . . .	2 (4.5 per cent)

## Notes:

1. Resident JPs including peers and resident judges, but excluding non-Kentish dignitaries, and ecclesiastics. Source: *LP*, xx, i, 622.
2. William Sedley, son of the Auditor of the Exchequer early in the century who settled at Southfleet, Kent; Humphrey Style of the well-known London family, whose father established a seat at Beckenham, Kent, before Humphrey became a JP; Sir Edward Ryngley, who held office in Calais and was assessed in the King's Chamber in 1526. He acquired lands in Kent through his marriage before 1520.
3. This group includes Percival Hart, whose father married the daughter and heiress of Sir John Pecche of Lullingstone; George Harper, the son of a royal official who married the Kentish Clifford heiress; Thomas Roydon and Thomas Wilford, who each married a daughter of William Whetenhall; Edward Thwaites, son of a royal official, who twice married into landed Kentish families; Sir Robert Southwell, who married the daughter of Sir Thomas Neville, of Mereworth, Kent; Sir Thomas Willoughby, who married the daughter and heiress of Sir Robert Rede, of Chiddingstone, Kent.

VIII are Sir Thomas Cheyney, James Hales, Sir Thomas Moyle, Sir Anthony St. Leger and Sir Edward Wotton. Perhaps less well known is Walter Hendley, the son of a gentle family from Cranbrook. He went up to Gray's Inn, prospered as a lawyer for some years, and then entered into a rewarding career as a civil servant in 1537 with his appointment as Solicitor of the Court of Augmentations. He had been a JP in Kent from about 1531, and remained on the bench until his death in 1550. Another royal official of the 1540s, Anthony Aucher, followed a similar pattern.<sup>10</sup> It was commonplace in the first half of the sixteenth century for sons of Kentish squires to attend one of the inns of court or to serve as royal officials. In turn, the central government was pleased to appoint gentlemen lawyers and civil servants to the commission of the peace in the county of their origin. To ask whether Baron John

<sup>10</sup> For Hendley, see W. C. Richardson, *History of the Court of Augmentations*, Baton Rouge, 1961; Felix Hull (Ed.), *Calendar of the White and Black Books of the Cinque Ports, Kent Records*, xix, 1966; Aucher was Master of the Jewel House by 1545 and a Receiver of the Court of Augmentations in 1547. See *LP* and Richardson, *op. cit.*

Hales of the Exchequer or Sir Thomas Moyle were gentlemen or office-holders is *une question mal posée*.

The importance of birth may also be demonstrated by the continuity of families represented on the Kent commission over periods of two or three generations. There were local JPs from eighteen families in the commission of 17th October 1487. Eleven of these were represented by JPs in the 1540s.<sup>11</sup> Taking a wider time span, there were thirty-three Kentish families on the commissions between 1485 and 1494, at least eighteen of which were represented by descendants in the male line on commissions of the peace between 1540 and 1554.<sup>12</sup> A glance at the list of sheriffs of Kent during the fifteenth century produces a surprising similarity to a list of Kent JPs in the 1540s. The sheriffs of Kent between 1449 and 1485 came from about twenty-seven different families, almost all local gentry. Almost sixty per cent of them produced JPs in the reign of Henry VIII.<sup>13</sup> Such statistics can be interpreted in two ways, as one desires to stress continuity or to emphasize social mobility. But if one considers the high possibility that a given family would die out in the male line within three generations, then the degree of continuity may well be stressed. Against the constant chorus of 'new men' and the reputation of Kent as fertile ground for the metamorphosis of merchant into country gentleman, the stability among the governing élite must not be overlooked.

Beyond the categories of wealth and birth, there seems to have been one other consideration present in the selection of JPs for Kent: the location of the man's residence in the county. The seats of resident JPs can be plotted on the map, over time. When this is done, several facts become apparent. First, relative to area and to the concentration of villages and population, there were fewer JPs in eastern Kent than in any other section of the county. Secondly, there was a relatively high number of justices resident in the Weald, and their proportion increased from the 1520s to the 1540s. Also there was – relative to area but not to population – a large number of JPs resident in north-west Kent. Finally, there were always at least two JPs resident in Canterbury, although this fact may be simply explained by the political success of the Hales family. The concentration of JPs in the Weald is apparent by 1524, and one would not have to credit any Tudor

<sup>11</sup> The eleven were: Neville, Brooke, Fogge, Hawte, Guildford, Darrell, Isley, Fyneaues, Isak, Sandes and Brent.

<sup>12</sup> The same degree of continuity is shown by comparing a commission of the 1530s or 1540s with a list of gentry c. Henry VII (BM Cotton. MS. Faust. E. ii fo. 216 sqq.) Fifty-six per cent of the families represented just on the 1537 commission were also on that list.

<sup>13</sup> Aucher, Brooke, Cheyney, Crowmer, Culpeper, Digges, Darrell, Guildford, Fogge, Hawte, Isley, Kempe, Isak, Peckham, St. Leger, Scott, Waller, Walsingham, Wotton all produced fifteenth-century sheriffs; all were represented by JPs in the 1530s and 1540s.

government with much more than common sense and memory to understand why. The Weald – along with the Maidstone area just north of it – was, for generations, the recruiting ground for all manner of risings and revolts. In the early years of Henry VIII, the region around Tonbridge was one of the centres of the Duke of Buckingham's strength. The government's attempt to impose the benevolence known as the Amicable Grant in 1525 resulted in popular outcry and organized opposition, centring on the Weald. In addition, religious non-conformity had its earliest successes in the Weald and the Medway towns. And there is every reason to believe that population was growing more rapidly in the Weald than in most other parts of Kent.<sup>14</sup>

By contrast eastern Kent was an area not given to popular disturbance, and the Crown appointed relatively fewer JPs there, where it had additional agents and strength, beyond the JPs. The jurisdiction of the Cinque Ports included not only the four towns in Kent but also several smaller towns which were limbs of the Ports, and therefore also governed by the Lord Warden and his apparatus of influence and enforcement.<sup>15</sup> In addition, there was the Church, a considerable agency of social control. Before 1540 the Church was without doubt the largest landowner in northern and eastern Kent. And before and after 1540, the archbishop of Canterbury could exercise his influence in dozens of parishes as the major landowner.<sup>16</sup> Northern and much of eastern Kent – including the north Kent lowland and the Downs – had enjoyed a comparatively settled habit of life for hundreds of years, dominated by manorial jurisdiction and the tempo of the farming calendar. It boasted no burgeoning rural industries with their population of artisans and landless labourers. There were numerous landed gentlemen, and yet not many were needed as justices of the peace at any one time.

<sup>14</sup> Thirty-nine per cent of the resident JPs had seats in parishes in the Weald or partly in the Weald in 1524; in 1528, 37 per cent; in 1532, 36 per cent; in 1537, 40 per cent; in 1542–3, 44 per cent; in 1547, 44 per cent. Buckingham's Kentish lands centred on Tunbridge and after his fall some of them were granted to trusted Kentishmen like the Guildfords. On agrarian disturbance in the Weald, see *LP*, iv, *passim*. On heresy in the Weald, see J. A. F. Thomson, *The Later Lollards*, 1965, and my unpublished Ph.D. thesis, 'Church and Gentry in Reformation Kent', University of California, Los Angeles, 1974, ch. viii.

<sup>15</sup> K. M. E. Murray, *The Constitutional History of the Cinque Ports*, 1935, and 'Faversham and the Cinque Ports', *Trans. of the Royal Hist. Soc.*, 4th ser. xviii (1935).

<sup>16</sup> F. R. H. Du Boulay, *The Lordship of Canterbury*, 1966, and 'Archbishop Cranmer and the Canterbury Temporalities', *English Hist. Rev.*, lxxvii (1952); Joan Thirsk (Ed.), *Agrarian History of England and Wales: iv, 1500–1640*, Cambridge, 1967, 55–64, on the contrasting regions of Kent.

## II

By the sixteenth century, the justices' primary duty remained to keep the peace, but their powers of jurisdiction in relation to other officials and courts had grown considerably. A minimum number of JPs was required by statute to meet in formal sessions at least four times each year to hear and determine most crimes, as well as to limit prices and wages. Their powers and procedures had been brought up to date by statutes in 1487, 1495 and 1504.<sup>17</sup> The Kent county commission had jurisdiction over the whole shire, with the significant exceptions of the Cinque Ports, Romney Marsh and the borough of Canterbury. One justice, acting alone, had certain powers to maintain the peace. He could order rioters and persons who made unlawful entries to cease their actions, arrest them if he could, and call for assistance from any of the King's subjects. He gave the hue and cry when a criminal had not been taken, or had escaped. And, on his own, he could eject men who made unlawful entries and put the rightful occupant back into possession. The most common actions by individual JPs were to commit to gaol persons alleged to have committed a crime, and, secondly, to issue a warrant of surety of the peace which commanded a person to appear before him or another JP to give surety for his good behaviour. The growing variety of additional duties of JPs has been described more than adequately in sixteenth century as well as modern works.<sup>18</sup>

But legal theory is one thing: practice may often be quite another. The remainder of this paper tries to describe the actual practice of the justices in Kent, so far as the sources permit. From the reign of Henry VIII large numbers of letters to the council or to individual councillors survive; in particular this is true for the 1530s. Most of them, however, deal with JPs' actions which were of immediate concern to the council, then embarked on programs and policies which flowed from the rejection of Papal authority in England. At once, the Crown's dependence on its unpaid local agents is apparent. One example chosen from dozens will illustrate the relationship between individual justices and the central government in sensitive political matters. John Fogge,

<sup>17</sup> 3 Henry VII, c. 3; 11 Henry VII, c. 3; 19 Henry VII, cc. 12, 13. Also Rosamund Sillem, 'Commissions of the Peace, 1380-1485', *Bulletin of the Institute of Hist. Research*, x (1933).

<sup>18</sup> Early sixteenth-century JP treatises such as *The Boke of Justyces of Peas* (various edns.). Also William Lambarde's *Eirenarcha*, 1582. Among modern works, see G. R. Elton, *The Tudor Constitution*, Cambridge, 1965, ch. x; J. H. Gleason, *The Justices of the Peace in England, 1558-1640*, Oxford, 1969, ch. vii; article by J. Hurstfield in the *Victoria County History of Wiltshire*, vol. 5; and Bertha Putnam, *Early Treatises on the Practice of the Justices of the Peace*, Oxford, 1924.



one of the more powerful squires in the Ashford area – and a senior justice – was approached by several local residents in September 1537. They informed him that William Marshall, the vicar of Mersham,

‘did not only use himself in the last commotion not like the King’s true & loving subject, but also doth daily use great extortion among the King’s subjects.’

Fogge immediately wrote to Thomas Cromwell, and asked the Lord Privy Seal to issue a letter to himself, William Goldwell and Anthony Aucher, so that they all might examine the allegations.<sup>19</sup> By the 1st October Cromwell had done just that, and their reply followed a few weeks later. By this time they had discovered that there was not much in the accusation against the priest for disloyalty, and that the charges of extortion arose from a dispute over possession of the church living. In the course of their inquiries they interviewed dozens of parishioners to discover the truth and in addition achieved a settlement between the vicar and his local opponents.<sup>20</sup> The case demonstrates the work of JPs in their own parishes which was of most interest to the Privy Council during the period of the Reformation. It also points up the eagerness of Kentishmen to accuse one another to JPs, and the justices’ task of distinguishing political opposition from petty personal quarrels.

By the 1530s men in Kent were accustomed to taking their complaints and conflicts with their neighbours to the local magistrate, no doubt preferably to the JP who might be expected to sympathize with their position. Evidence of more mundane activities of local justices is to be found not in the State Papers, but in the records of the courts, especially of Star Chamber, the Court of Requests and the Court of Chancery. Undoubtedly not all of the disputes about land and property reached the central courts at Westminster. But there are plenty of instances of a justice making ejections, or forcing one party or another to find surety for his good behaviour; meanwhile the other side sought the same remedies from another JP. All parties to a dispute desired the legal assistance of a justice of the peace if only because a JP could raise overwhelming force in defence of that party if the justice deemed to be in the right. One example will illustrate this point. Star Chamber was confronted with several suits in 1534 concerning a house and lands belonging to Shipbourne chapel near Tonbridge. At issue was the rightful possession of the chapel and lands, whether it was a rectory or a dependent chapel, and which of several ejections that

<sup>19</sup> PRO SP 1/125 fo. 34 (*LP*, xii, ii, 752).

<sup>20</sup> PRO SP 1/125 fo. 264 (*LP*, xii, ii, 959). Much more material on JPs and political and religious enforcement can be found in my thesis, chs. iii and ix, and in G. R. Elton, *Policy and Police*, Cambridge, 1972.



occurred in 1534 had been legal. A defendant in one of the countersuits was Sir Richard Clement, JP, who found for the man who claimed to be the 'parson' of Shipbourne. Sir Richard had restored this man to possession of the property. The 'parson's' opponent, Robert Brenner, accused Clement and others of making a riot and violently ejecting him from rightful possession of the house. What was not in dispute between the parties was the fact that a large body of men led by Sir Richard did eject Brenner from the house. The justice, of course, claimed that he was only enforcing the law, while Brenner claimed that the JP had corruptly used his authority to make an illegal ejection. The interest lies in Clement's description of how he raised several hundred men, by sending,

'some of his servants to three or four villages thereabout to give knowledge that they should come unto him by a certain hour of the same day to serve the King, expressing no cause until they come.'

Clement was certainly not one of the most powerful or wealthy JPs in Kent and this affair gives an idea of what a justice could do in an ordinary local dispute, such as occurred all too frequently.<sup>21</sup> With powers like these, it is hardly surprising that local residents turned to JPs for help.

Justices in Kent were also frequently commanded by the council and the central courts to undertake investigations, take depositions or any of a hundred different tasks over a limited period. As individuals they were normally appointed to the subsidy commissions when Parliament granted the Crown a tax, and to the muster commissions in time of war. They were always assigned to supervise the defence of the Channel coast and the system of beacons which warned of enemy vessels in the Channel. In peacetime a variety of small administrative tasks was assigned to small groups of justices. There were investigations into murders,<sup>22</sup> inquiries about the status of a certain church,<sup>23</sup> as well as commissions of inquiry for Star Chamber,<sup>24</sup> the Court of Requests,<sup>25</sup> and the Court of Augmentations.<sup>26</sup> In times of dearth, JPs were called upon to stop exports of food, enforce reasonable prices, or to

<sup>21</sup> PRO Sta Cha 2/11/55-7; 2/20/385; 2/18/321.

<sup>22</sup> Commission to Willoughby, Chris. Hales, St. Leger and Edward Thwaites to inquire into the murder of William Gerrard, 1533: *LP*, vi, 929(15).

<sup>23</sup> There are several such commissions from the Court of First Fruits and Tenthhs between 1545 and 1551, in PRO E 336/4.

<sup>24</sup> Commission to Sir William Finch, Edward Thwaites and Henry Crispe, July 1547, to take depositions in PRO Sta Cha 2/28/130 and 3/3/6.

<sup>25</sup> Commission to Finch and Edward Isak, Oct. 1546, to hear and determine a case pending: PRO Req. 2/9/154; others at Req. 2/6/149; 2/14/62.

<sup>26</sup> Commission of inquiry concerning lands sought by the Dean and Chapter, Canterbury, 1542-3; Canterbury Cathedral Lib. MS. Misc. Accts. XL, fo. 7<sup>v</sup>.

apprehend forestallors.<sup>27</sup> All of these duties, of course, were in addition to the duties of the magistrates on the bench.

### III

In legal theory the justices of the peace assemble together in the county town four times yearly as a bench of judges to preside over almost all types of criminal trials. For most of the sixteenth-century records, which might offer systematic evidence about the business of the sessions in Kent, are no longer extant. When the records begin, for Kent in the 1590s, they demonstrate a smoothly-running procedure for holding the sessions and recording the actions of the magistrates in both judicial and administrative functions.<sup>28</sup> But what of the practice of quarter sessions of Kent in the first half of the sixteenth century can be known? Material does exist to describe the organization and attendance of justices at sessions, but very little can be known about the business before the bench at those sessions, other than the existence of a certain number of criminal cases, which were later heard in the King's Bench at Westminster on writs of certiorari or error. Three classes of records are useful, and have not been sufficiently mined by historians: the Pipe Rolls, Ancient Indictments in King's Bench, and Estreats of Fines sent into the Exchequer.<sup>29</sup> Under 12 Richard II, c. 10, JPs were allowed a reward of 4s. *per diem* for their attendance at quarter sessions, and the accounts of those payments were subsequently enrolled on the great roll of the Pipe, as part of the sheriff's annual account. In the absence of quarter session rolls, the pipe rolls remain the only *regular* source for JPs' attendance at quarter sessions. There are drawbacks, however. The payments do not record sittings at specific sessions, but only the total number of days per annum for each justice. Also, payments were not made to ecclesiastics, peers or knights banneret, who may in fact have attended sessions. However, the number of days on which the bench sat each year can be found on these accounts.

The so-called Ancient Indictments in King's Bench can be used as a subsidiary source because the legal formula of the indictment requires the inclusion of the court before which the indictment was originally

<sup>27</sup> *Acts of the Privy Council, 1550-52*, 135, 137, 366, 429, 455; *ibid.*, 1554-56, 222; *Calendar of Patent Rolls, 1550-53*, 141.

<sup>28</sup> In the Kent Archives Office, Maidstone, QM and Q. For sources on late sixteenth-century JPs, see T. G. Barnes and A. Hassell Smith, 'Justices of the Peace from 1558 to 1668', *Bulletin of the Institute of Hist. Research*, xxxii (1959).

<sup>29</sup> PRO E 372; KB 9; E 137.

heard. At a minimum each indictment records the location of the court – usually either Canterbury or Maidstone – and the date. The names of the justices are given in some indictments, while in others only one or two JPs are specified. The advantages of this source are obvious. When indictments found their way into the records of King's Bench, they supplement the pipe roll accounts with specifics of each session held. And, when JPs are listed in full, they indicate to what extent JPs tended to be present at sessions only in their nearest county town or attended sessions at both towns. Unfortunately, for Kent at least, there are not surviving indictments for every session or even for every year in the early sixteenth century, and therefore they cannot be used systematically.

The final source, Estreats, have also survived only haphazardly: for Kent there are complete returns for 12–13 Henry VII, 14–15 Henry VII, 19–20 Henry VII and 30–31 Henry VIII; the next surviving estreat rolls are for the second and twelfth years of Elizabeth I.<sup>30</sup> When they survive intact, the estreats record the date and place of each session and the names of all the JPs in attendance at each. They also record the fines levied, as well as the names of constables appearing before the bench. The evidence for Kent is completed by a pair of stray sheriff's accounts for 1547 and 1554, which record actual attendance at specific sessions.<sup>31</sup> The incidental virtue of all three sources is that they occasionally fill in the long gaps between enrolled commissions and provide more exact dates for individual JPs' appointment: they show that the apparently large turnover from one commission to the next is usually the result of small additions and removals almost annually.

The Kent justices usually sat at Canterbury beginning on the Tuesday or Wednesday after Easter and before Michaelmas. Sessions at Penenden Heath near Maidstone opened on the Tuesday or Wednesday after Epiphany (January 6) and before the feast of St. James (July 25). However, it appears that early in the reign of Henry VIII at least, the magistrates did not keep rigidly to this conventional schedule. There were, for example, sessions at Canterbury in December 1522, 1524, 1530 and 1533, and at Maidstone in December 1528.<sup>32</sup> Beyond this the magistrates occasionally held sessions away from the two county towns entirely: at Dartford (August 1515), at Goudhurst (June 1520), at Sittingbourne (July 1519), at Sevenoaks (February 1520 and August 1542), at Gravesend (January 1522) and at Wingham (May 1545). These sessions were certainly not the petty sessions

<sup>30</sup> PRO E 137/18/2–4; several fragmentary returns in E 137/215/44.

<sup>31</sup> PRO E 101/567/4–5.

<sup>32</sup> PRO KB 9/490 no. 3; 496 no. 25; 515 no. 27; 526 no. 70; 509 no. 127.

envisioned by the statute 33 Henry VIII, c. 10, which was repealed by 37 Henry VIII, c. 7.<sup>33</sup>

In most years during the 1530s and 1540s, when the commission included about forty resident justices, twenty or so of that number attended at least one sitting. The sessions usually occupied no more than six or seven days each year, some lasting for one and others for two days. (See Table II.) In 1547 there were only two sessions accounted for, one in each of the county towns. The Maidstone session, in January, lasted two days and attracted six JPs. The Easter sessions, in Canterbury, met for one day with eight JPs in attendance, three of whom had also attended the other session.<sup>34</sup> The number of justices in attendance varied widely. For example, the Maidstone midsummer sessions in 1539 attracted half a dozen justices, while the following Michaelmas sessions at Canterbury boasted fifteen.<sup>35</sup> In 1554 the Canterbury sessions were both of two days' duration and attended by eight JPs each, while the west Kent sessions were both of one day only, with six justices present at each meeting.<sup>36</sup> The attendance lists from these three years, as well as the *Estreats* from the reign of Henry VII and the indictments from the period of Henry VIII, show that most JPs attended sessions only at the county town nearest them, although a few men – notably lawyers and several royal officials – attended at both towns. A check of the names of JPs attending over a dozen years or more shows that most resident justices, including peers, attended occasionally, although with no apparent regularity.<sup>37</sup> Between 1530 and 1558 only about eleven JPs who might have appeared on the various accounts do not, and most of these men were permanent office-holders in the capital, courtiers and one Londoner.<sup>38</sup> At the same time, a number of JPs during all periods attended at least one sitting annually for many years running. The fluctuations in the

<sup>33</sup> PRO KB 9/469 no. 104; 478 no. 2; 479 no. 30; 482 no. 37; 553 nos. 42–3; 487 nos. 37–8; 563 nos. 49–50. These additional sessions often had as large an attendance of JPs as many 'ordinary' quarter sessions.

<sup>34</sup> PRO E 101/567/4.

<sup>35</sup> PRO E 137/18/3; also shown in the presence recorded in many indictments.

<sup>36</sup> PRO E 101/567/5.

<sup>37</sup> Lay peers did often attend quarter sessions: John Lord Clinton in 1504 and 1513: PRO KB 9/442 no. 7, 470 no. 101; George Lord Abergavenny in 1505 and 1516: KB 9/439 no. 40, 470 no. 23; Thomas Lord Cobham in 1524: KB 9/495 no. 51; George Lord Cobham in 1530: KB 9/975 no. 231.

<sup>38</sup> JPs not attending in any year: Thomas Cromwell, Robert Southwell, Henry Norris, Anthony Knyvett, Thomas Hatcliffe, Edward Boughton, William Middleton, John Lucas, Thomas Digges, John Dudley and Martin Bowes. Four others appeared only once or had long gaps between attendances: George Harper, apptd. 1539, but did not appear until 1551; Percival Hart, often present in the royal household, apptd. 1542, but did not appear until 1553; John Bere attended in 1538 and 1540 and then not again until 1550.

## EARLY TUDOR JPs AT WORK

TABLE II  
JPs' Attendance at Quarter Sessions<sup>1</sup>

Date	Days in sessions	JPs attending at least one session	Total sittings
1520	7	17	50
1521	(complete account lacking)		
1522	(complete account lacking)		
1523-24	7	12	32
1525-26 <sup>2</sup>	10	18	52
1527	7	16	50
1528	(complete account lacking)		
1529	5	15	41
1530	(complete account lacking)		
1531	6	21	48
1532-33	6	16	41
1533-34	7	18	54
1535 (Apr-Oct)	4	13	21
1536	7	17	53
1537	7	19	54
1538	5	18	34
1539 <sup>3</sup>	—	22	—
1540	4	17	27
1541	7	26	57
1542	8	22	56
1543	6	21	54
1544	5	19	34
1545	4	16	24
1546	5	19	40
1547 (Jan-Apr)	2	11	20
1548	(complete account lacking)		
1549 (Apr-Sept)	3	14	19
1550	5	20	31
1551	7	21	53
1552	8	17	50
1553 (Apr-Sept)	3	16	21
1554	6	18	45
1555	7	21	56
1556	7	25	56
1557	5	19	32

Notes to Table II:

1. Excluding peers. Source unless otherwise stated: PRO E 372/366-403.

2. Payments for at least six sessions, during two years.

3. JPs' attendance taken from E 137/18/3 in absence of Pipe Roll accounts.

number of days in session and in the total number of sittings are displayed in Table II. The reduced numbers in 1544, 1545 and 1547 may be related to the circumstances of war. Other reductions in sittings may be connected to outbreaks of plague or sweating sickness. But it is nevertheless clear that the business of the bench was often transacted in one-day sessions with a very few JPs in attendance. The slender percentage of the commission present at individual sessions was not a late development of the mid-sixteenth century. It is just as obvious from the records of sessions in the early decades of the century.

## IV

Finally, what of the quorum of the commission of the peace? From a mere handful of justices in the mid-fifteenth century, it, like the commission as a whole, had grown exceedingly. By 1514 some of its typical sixteenth-century characteristics were already visible. The quorum was already a very large proportion of the total commission. As shown in the *liber pacis* of 1514, it included 44 per cent of the whole commission; if peers are excluded from these calculations, the quorum numbered well over half the commission. The relatively large quorum here is in part explained by the sizeable presence of central court judges on the commission, who were the first six of the sixteen quorum members.<sup>39</sup> By 1532 the quorum made up 45 per cent of a much more numerous commission. The Dukes of Norfolk and Suffolk, along with Thomas Boleyn, the Earl of Wiltshire, were all members of the quorum, perhaps a reflection of power in the royal council in the years preceding Thomas Cromwell's ascendancy. Like the 1514 quorum, that of 1532 excluded a number of locally-resident knights, while including a sizeable proportion of justices from the lower end of the commission. The 1532 quorum is comparable to the quorum of the 1540s in its strong official element.<sup>40</sup>

More detailed information can be given about the personnel of quorum in November 1543.<sup>41</sup> Seventeen men of the full commission of fifty formed the quorum. Fifteen of the quorum resided in Kent; seven were knights, but peers are no longer represented. It was headed by three judges and the master of the rolls. More than half their number

<sup>39</sup> BM Add. MS. 36,773 fos. 11–11<sup>v</sup>. This *liber* can be dated by the presence of Lewis Clifford, who was off the bench by March 1514, and of John Petit, who first appeared on an enrolled commission in Jan. 1514.

<sup>40</sup> Dated to 1532 by the absence of the Archbishop of Canterbury in the *liber* which notes quorum members: PRO SP 2/Fol. M no. 28.

<sup>41</sup> 1543 commission with quorum marked: PRO C 67/74 (also at LP, xx, i, 622). By 1544 the quorum numbered 20 of a commission of 52: PRO C 193/21/1 fos. 18<sup>v</sup>–19<sup>v</sup>.

were full-time royal officials who happened to live in Kent. The large official contingent might not be duplicated in counties more distant from London.<sup>42</sup> Far more than the commission in general, the quorum represented legal talent: nine and perhaps ten of its members were trained in the common law.<sup>43</sup> The quorum – like the commission as a whole – included both younger men and veterans of ten or more years' service. Socially, the quorum, taken without the judges, included a higher proportion of men from well-established county families.<sup>44</sup> However, there is little to distinguish the eight non-official members of the quorum from many other men on the commission. They did not make up the wealthiest element on the commission, nor were they the local JPs with the longest tenures on the bench. A glance at the 1543 commission would quickly suggest other men with comparable backgrounds, experience and estates, whose appearance as part of the quorum would be readily understandable.

Did membership in the quorum lead to higher attendance at quarter sessions? The attendance figures for the quorum of 1543 are set out in Table III. Since the sheriffs' accounts do not include the judges, the figures are for fourteen men only. Most striking is the poor showing made by five of the six other royal officials. The exception here was Sir Thomas Moyle, who attended at least one session during most of the 1540s. The 'mere gentlemen' had much better attendance records, with the exception of Humphrey Style, who was as much a Londoner as a Kentishman. However, there were a number of JPs not of the quorum who attended as regularly or more frequently than quorum members. In no year with complete accounts did the quorum make up most or even half of the justices present at sessions. It may be suggested from this evidence that outstanding enthusiasm for the work of the commission at sessions was neither a prerequisite for nor a consequence of membership in the quorum. For men who were not full-time officials, being of the quorum was more a gesture of honour or trust by the government of the day than an attempt to reward past devotion to duty or maintain a minimum level of attendance. Even long years of residence outside Kent did not disqualify a JP from the quorum. Sir Edward Wotton, a member of the quorum since before

<sup>42</sup> The judges: J. Baldwin, R. Lister, T. Willoughby, Robert Southwell; Edward Wotton, Treasurer of Calais; John Baker, Chancellor of First Fruits and Tents; Thomas Moyle, a General Surveyor of Crown Lands; Walter Hendley, Attorney of Augmentations; William Roper, clerk of the pleas in King's Bench.

<sup>43</sup> All the officials with the possible exception of Wotton, plus James Hales, later a puisne justice in Common Pleas.

<sup>44</sup> Twelve of the fourteen non-judicial members of the quorum were members of fifteenth-century gentry families.



TABLE III

Attendance of the Quorum at Quarter Sessions<sup>1</sup>

Name and year of appointment	No. of appearances in each year:						
	1540	1541	1542	1543	1544	1545	1546
Baker, Sir John (1515)	0	0	0	0	0	0	0
Wotton, Sir Edw. (1524)	1	0	0	0	0	0	0
Roper, Wm. (1526)	0	0	0	0	0	0	0
Monins, Edw. (1527)	2	1	2	1	2	1	2
Goldwell, Wm. (1528)	2	0	2	2	1	1	0
Culpeper, John (1531)	2	2	4	4	3	2	3
Hendley, Walt. (1531)	0	2	0	2	0	0	0
Moyle, Sir Thos. (1537)	1	6	4	3	1	1	0
Norton, John (1537)	2	0	6	4	3	2	2
Harlakenden, Thos. (1537)	0	1	2	0	1	0	2
Hales, Jas. (1537)	0	0	2	0	2	2	2
Grene, Thos. (1538)	0	2	2	3	1	0	5
Southwell, Sir Rob. (1538)	0	0	0	0	0	0	0
Style, Humph. (1539)	0	2	0	2	Sheriff	0	0
<i>Selected non-quorum members:</i>							
Thwaites, Edw. (1528)	1	3	2	1	0	0	1
Wilford, Thos. (1531)	0	3	2	4	1	1	0
Roydon, Thos. (1531)	2	4	4	4	3	1	3
Guildford, John (1537)	0	2	4	5	0	0	1
Wombwell, Thos. (1537)	3	4	2	2	3	2	2
Tooke, John (1540)	—	0	2	2	2	3	3

<sup>1</sup> Source: PROC 67/74 and E372/386-92. All men lived beyond 1546.

1528, held his place during the 1540s when he continually resided at Calais.<sup>45</sup>

Towards the close of the period the quorum of the Kent commission was briefly reduced in size, by the Marian government in the wake of Wyatt's revolt. It numbered only fifteen out of forty-two justices in February 1554, and for the first time in decades included a non-resident peer.<sup>46</sup> This drop in the number of men honoured by inclusion in the quorum is not surprising considering the widespread lack of enthusiasm among Kentish gentry to support the government during Wyatt's rising. The inclusion of peers was to become normal in Elizabethan commissions, and by 1559 and 1562 about half the justices

<sup>45</sup> He was already of the quorum at the time he was knighted, about 1528: PRO SP 1/48 fo. 28 (LP, iv, 4276). Wotton was appointed Treasurer of Calais in Nov. 1540 and retained the office into the next reign: LP, xvi, 305(46); PRO E315/249 fo. 49<sup>v</sup>; *Acts of the Privy Council, 1547-50, passim*.

<sup>46</sup> *Calendar of Patent Rolls, 1553-54*, 20.

were again named to the quorum. Beyond the half-dozen dignitaries now in the quorum, the rest of the group was composed of a few of the leading knights and a larger number of resident gentlemen and esquires drawn from all levels of the commission.<sup>47</sup>

For both members of the quorum and ordinary JPs alike, the organized quarter sessions were the exceptional and apparently less important stage for their activities. Governing the shire meant policing the parishes nearest one's seat, rather than assiduous attendance at sessions. Without doubt the attendance at quarter sessions did not increase at the same rate as the number of JPs in the sixteenth century. There may well have been higher attendance of JPs at the twice-yearly assizes, where pleas of land as well as criminal matters were heard, and the assizes may already have begun to grasp criminal business from the quarter sessions.<sup>48</sup> Nevertheless, the JPs' record of attendance was not significantly different in the 1530s or 1540s from what it had been in the middle years of Henry VII's reign. Whatever the reason – whether it be the encroachment of the assizes, or the dull administrative duties to be gone through, or the increasingly professional nature of business at sessions – the picture drawn in the historical literature of the justices assembled together as a body was never a reality.

<sup>47</sup> The commission at the beginning of Elizabeth's reign: quorum of 25 out of a full commission of 46 (or 54 per cent); excluding non-resident dignitaries the quorum still made up 47 per cent of the JPs: BM Lansdowne MS. 1218 fo. 16<sup>v</sup>. In the purged commission of 1562 the dignitaries remained on the quorum, which made up almost 50 per cent of the full commission: *Calendar of Patent Rolls, 1560–63*, 438.

<sup>48</sup> It was probably an assize court which heard the treason charges against William Knell, the Tuesday before Easter in 1538; according to Christopher Hales, 'there was very good and great appearance of the commissioners and of the country' (PRO SP 1/131 fo. 142). There is little evidence about early Tudor assizes. If the practice of the early years of Elizabeth is anything to go by, they were held in July at Maidstone and in late March or early April at East Greenwich or Dartford. In 1559 and 1560 the number of JPs in attendance at assizes was substantially higher than at quarter sessions, and the Maidstone assizes seemed to have attracted more JPs than the other meetings, in the same way that Maidstone quarter sessions earlier in the century were better attended than the Canterbury sessions. PRO Assize 35/1/2, 6; 2/2, 6. See also T. G. Barnes (Ed.), *Somerset Assize Orders in Somerset Rec. Soc.*, lxx, Frome, 1959, and J. S. Cockburn (Ed.), *Calendar of Assize Records: Sussex Indictments, Elizabeth I*, 1975.

