
Crime and Punishment in Sixteenth-Century Spain

Ruth Pike

Hunter College, The City University of New York

In the sixteenth century crime and delinquency were increasing in Spain as elsewhere in Western Europe. Throughout the century there was a constant stream of comment about the rising tide of violence and lawlessness as well as complaints against the ineffectiveness of authorities to deal with it despite harsh laws and rigorous punishments. Modern historians have accepted the sixteenth-century viewpoint, but if there was an increase in crime, what were its causes and how did society respond to it? Can much of the crime that contemporaries saw be explained by demographic increase, and what about the effect on it of changing popular attitudes and government policies i.e. a growing intolerance toward lawlessness, a demand for more law enforcement and the introduction and widespread use of penal servitude on the galleys. None of these questions have been answered satisfactorily nor has it ever been determined whether or not there really was a "crime wave", as the sixteenth-century critics claimed, because insufficiency of data has long prevented any systematic investigation of the subject.

Jail and criminal court records, the principal sources for such a study, are no longer in existence. Some were victims of popular uprisings in the seventeenth century when mobs stormed the jails and burned the offices of the criminal court clerks as occurred in Seville in 1652. On other occasions in the nineteenth century, the documents in the depositories of the criminal court sections of the Chancillerías of Valladolid and Granada

(the two principal appeals courts) were sold for scrap paper.¹ As for the galley registers, those still in existence in Cartagena some fifty years ago have since disappeared and in any event, they seemed to have been fragmentary and not to have extended back into the sixteenth century.²

Given the loss of these records our knowledge of crime in sixteenth-century Spain depends mainly on contemporary opinion and legislation. Apart from these sources, there exists in the Archivo General de Simancas a collection of documents relating to crime in this period, but up to the present its diverse and fragmentary nature has dissuaded historians from utilizing it. These papers belong to an inquiry ordered by Philip II in 1572 for the purpose of securing a greater number of convict rowers for the galleys. To accomplish his objectives, the king directed all magistrates throughout Castile to inform him as to the number of criminals in jails who had been sentenced to death, or to the galleys, or were awaiting sentencing, or transportation to the galleys. Likewise the judges of the two Chancillerías and those of the Audiencias (subsidiary appeals courts) were asked to report on all cases involving galley or death sentences that were pending on appeal before them. The documents still extant in the Simancas collection represent the results of this investigation.³

The punishment for capital crimes in sixteenth-century Spain was the death penalty or the galleys. Minor offences were punishable by flogging, banishment, fines and various kinds of corporal mutilations. Often two or more of these penalties were applied to a single offender. While this system

¹ ANTONIO DOMÍNGUEZ ORTIZ, *Delitos y suplicios en la Sevilla imperial (La crónica negra de un misionero jesuita)*, in «Crisis y Decadencia de la España de los Austrias» (Barcelona, 1969), 41. In Valladolid many of the criminal court records also disappeared during the Napoleonic occupation when the French soldiers allegedly used them to make cartridges. FRANCISCO MENDIZÁBAL, *Investigaciones acerca del origen, historia y organización de la Real Chancillería de Valladolid*, «Revista de Archivos, bibliotecas y museos», XX (1914), 98.

² In this article *A Map of Crime in Sixteenth-Century Spain*, «The Economic History Review», 21 (1968), 244-247. I.A.A. Thompson used six galley registers for the years 1586-1589 (the only ones that still seem to be in existence) to establish regional crime patterns for this period. The result is a rather distorted and overdrawn account, based more on speculation and guesswork than on facts. He also mistakenly assumed that the criminal court records still existed (p. 244). Some additional data is available for the mines of Almadén. See R. PIKE, *Penal Labor in Sixteenth-Century Spain: The Mines of Almadén*, «Societas — A Review of Social History», III (1973), 193-206.

³ Archivo General de Simancas, Valladolid hereafter AGS, Diversos de Castilla, legajos 28, 29. There are no records for the Chancillería of Valladolid included in this collection with the exception of a few cases from the same district that were appealed to the Chancillería as the District Appeals Court.

of capital and corporal punishments continued to be used, galley service was extended until it included all kinds of offenders (both major and minor) as well as all those whose deviant behaviour was defined by the laws of the period as crimes i.e. vagrants, gypsies etc.⁴ Thus, by the second half of the sixteenth century the normal sentence for convicted criminals was the galleys with three exceptions: nobles, clergy and women. The first two classes enjoyed special privileges at law — nobles, for example, were not imprisoned with commoners; instead they were confined to their own homes, or placed in special prisons maintained for them. They could not be sentenced to lashes, or the galleys, or any other form of degrading punishment, and if their crimes merited the death penalty, they were not hanged but decapitated. Except in cases of treason, their sentences usually were commuted to banishment or military service in the royal forces on campaign, or in the North African *Presidios* (fortresses). Likewise the clergy had their own jails and could be prosecuted only by the ecclesiastical authorities, but if convicted of capital crimes, they were often secularized and sentenced to the galleys.⁵ As for women (with the exception of those belonging to the noble and clerical estates), they were subject to the same capital and corporal punishment as men. Since they were not given the death penalty except for particularly heinous crimes, and their physical limitations prevented them from being sent to the galleys, they were punished customarily with public shame, flogging and banishment.⁶ Regardless of these exceptions the data analyzed in this paper provide a good sample of known crime around the year 1572.

The first part of the documents making up the Simancas collection consists of lists prepared by the criminal court clerks of the Chancillería of Granada and the Audiencias of Galicia and Seville containing pertinent facts about all offenders sentenced to death, or the galleys whose cases were on appeal before their respective tribunals in December 1572. They represent a total of 410 cases: 345 for Granada, 37 for Galicia and 28 for Seville.⁷

⁴ FÉLIX SEVILLA y SOLANAS, *Historia penitenciaria española (la galera)*; *apuntes de archivo* (Segovia, 1917), pp. 30-32 lists this legislation.

⁵ FRANCISCO TOMÁS y VALIENTE, *El derecho penal de la monarquía absoluta (siglos XVI-XVIII)* (Madrid, 1969), pp. 318-319.

⁶ *Ibid.*, pp. 352, 392. See also DOMÍNGUEZ ORTIZ, *Delitos y suplicios*, pp. 40-71 for examples of women executed for capital crimes in Seville in the years 1578-1616.

⁷ The records of the Chancillería of Granada can be found in AGS, *Diversos de Castilla*, legajo 29, n. 26; Audiencia of Galicia, *ibid.*, legajo 28, n. 1; Audiencia of Seville, *ibid.*, legajo 29, n. 1. The jurisdiction of the Chancillería of Granada extended over all territory south of the Tagus River with the exception of Seville and its district.

Since the appeals system was notoriously slow, most of the cases still under review in 1572 had originated several years before (the earliest date from 1566). Unfortunately, these records are meagre repositories of information for historians because the court clerks were more interested in recording the legal technicalities of the cases than in stating particulars about the defendants or their crimes. As a result, their accounts contain only the most basic facts about the offenders: their names, places of imprisonment, crimes and sentences.

More information, especially about types of crime and kinds of criminals, can be extracted from the second part of this collection that is, the reports of the ordinary jurisdiction (*corregidores*), a total of 504 cases.⁸ Though not complete (they do not cover all of Castile), most of the important cities and towns are represented, and their replies contain such intimate details about offenders as their ages, occupations, places of birth or residence and criminal antecedents. Thus, it is possible to obtain some knowledge from them as to the background of these criminals and the circumstances surrounding their crimes. Furthermore, these records provide a good deal of information about the nature, extent and motivation for crime while at the same time they reveal existing attitudes and behaviour patterns so important to an understanding of the social context within which both crime and the system of criminal justice evolved.

Crime in sixteenth-century Spain can be divided into two main classifications: violence against persons and violence against property. Nevertheless, there was another category of offences in this period, namely transgressions against "good customs and morals". They included crimes against the institution of marriage (bigamy, adultery, concubinage), those against nature (sodomy, bestiality, incest) and blasphemy, considered an insult to God. Both the secular and ecclesiastical courts had jurisdiction over such offences, but it is not possible to estimate what proportion of them were tried by one or the other tribunal. Throughout the century,

The two Audiencias of Galicia and Seville had jurisdiction over all civil and criminal cases within their districts; only in cases of the death penalty could appeals be made from them to the Chancillerías.

⁸ The *corregidores* were royal officials who presided over the municipalities and in criminal cases they had the sole right of ordinary jurisdiction. The reports of the ordinary jurisdiction can be found in AGS, Diversos de Castilla, legajos 28, 29. The following abbreviations will be used: Chancillería (Ch); Audiencia (A); Corregidor (C). The numbers following these abbreviations refer to the prisoner's place on the lists. The references to the Chancillería of Granada will also include the name of the court clerk.

there were bitter conflicts of jurisdiction between the two authorities and complaints by the Castilian Cortes that the Inquisition in particular, had exceeded its power in this sphere. Although in theory the Inquisition was not supposed to try cases unless heresy was involved, in practice, there were great difficulties in deciding whether individual offences constituted heresy or not, and the Inquisition took full advantage of this.⁹

Despite their prevalence and anti-social character transgressions against "good customs and morals" were of minor importance: they were not the offences that filled the calendars of the criminal courts in sixteenth-century Spain. When contemporaries complained about rising crime rates in this period, they were referring to violence against persons and property and especially, in the urban centres. Indeed the records show very high ratios for crimes against persons, e.g., the majority of Castilian offenders in 1572 were men accused of either assault or homicide. But it should not be assumed from this that the incidence of crimes against persons was greater than those against property. Even in modern societies only a fraction of the crimes committed are known to authorities and thus appear in the records. Moreover, certain kinds of crimes would be more reported than others—homicide, for example, is one of the better reported crimes while theft often remain undetected. Therefore, although crimes against property were more prevalent, personal violence formed a larger proportion of the total number of offences known to authorities.

It is also clear that crimes were committed by all social groups and there were relatively few offences that were confined to one specific class. Nobles were as likely to engage in acts of violence and to commit felonies as commoners. Crimes of bloodshed were common, encouraged by the general practice of bearing arms, and could be found at the top as well as the bottom of society. At the lower levels, contrary to what is often alleged, the propensity for violence among craftsmen was great. Weavers, shoemakers, tailors, and journeymen of all trades were responsible for a large proportion of the recorded crimes against persons, at least they are the segment of the population involved in more cases of homicide than any other group included in the records. The character of artisan life with its emphasis on cooperation and interdependency seemed to foster chronic violence. Similarly, these same factors made them more vulnerable to arrest and this may explain their broad representation in the documents.

Two of the most serious offences in the category of crimes against

⁹ The best discussion of this topic can be found in HENRY CHARLES LEA, *A History of the Spanish Inquisition* (4 vols.; New York, 1906-1909), IV, chs. 14, 15.

persons were murder and manslaughter. The documents rarely separate them and in general not enough evidence is given to allow for identification. Nevertheless, the laws of the period made a clear distinction between them; murder was defined as "premeditated or perfidious homicide" and was punished by death and confiscation of property.¹⁰ The classification of crimes as "premeditated and perfidious" depended on several factors, most notably, the relationship between victims and perpetrators. Whenever and wherever victims were caught off guard and unable to defend themselves because of friendship, loyalty or confidence such offences were considered perfidious. Servants, for example, who injured or killed their masters deserved in the legal language of the period to be « punished not only for the act itself, but because of its perfidious nature ».¹¹ Such deeds struck at the core of sixteenth-century social structure for they violated the hierarchical and paternalistic relationship between masters and servants.

The time, place and methods by which crimes were committed also determined their gravity. Offences perpetrated at night or in uninhabited areas were considered "perfidious" because such conditions lessened the ability of victims to defend themselves or receive assistance from others. The same was true for crimes committed in religious establishments, or at the royal court for they reflected not only disrespect for both faith and king, but also greater malice on the part of the perpetrator. Analogously, deaths caused by poison were long considered murder and in the sixteenth century, Spanish jurists held that homicide resulting from firearms should be defined in the same manner. In their opinion, there was no difference between the two crimes because in both instances there was no possibility of defence and the victim was at the mercy of the slayer. In 1563 this concept was incorporated into law when Philip II decreed that all injuries and deaths caused by firearms would be considered "perfidious" and offenders would be subject to the death penalty and confiscation of property.¹²

Even before the classification of homicide caused by firearms as murder, the government had made attempts to control the distribution and carrying of such arms, especially small handguns and continued to do so throughout the century.¹³ These laws were part of a larger effort to place restrictions

¹⁰ *Nueva Recopilación de las leyes de España* (hereafter NR) (Madrid, 1772), Book VIII, title XXIII, laws 7, 10. See also TOMÁS y VALIENTE, *El derecho penal*, pp. 347-350 for a discussion of this topic.

¹¹ NR, Book VI, title XX, law 3.

¹² *Ibid.*, Book VIII, title XXIII, law 15; for the opinion of the Spanish jurists, TOMÁS y VALIENTE, *El derecho penal*, p. 349.

¹³ NR, Book VI, title VI, law 7, 12.

on the use of weapons in general. In this period all men regardless of social class routinely carried swords, daggers and knives on their persons and as the documents show, it was precisely these weapons that caused the largest percentage of deaths. The relationship between the practice of bearing arms and crimes of bloodshed was clearly recognized by those in authority, and thus, legislation to regulate and limit the carrying of arms began early in the century. In 1523 a royal decree recognized the right of all men to arm themselves with sword and dagger, but prohibited these weapons from being carried into the brothels, or by plebeians into the royal court, or worn in the company of two or three others so armed. Two years later the king ordered the establishment of a curfew at 10:00 o'clock at night after which time until sunrise the next morning the carrying of arms was forbidden. The language of the law was explicit: « the carrying of arms fosters violence, that is, many persons take advantage of the cover of darkness to commit all kinds of crimes and misdemeanors ».¹⁴ In the second half of the century there were additional attempts at weapons control in conjunction with the laws outlawing small handguns.¹⁵

The attitude of the government toward the practice of bearing arms can be understood in face of the social unrest and disorder arising out of the readiness of all classes to resort to them to settle disagreements. Most homicide was the result of arguments, often over minor or trivial matters. Property disputes, long-standing enmities and jealousies, women and money were the principal causes of such disagreements. Moreover, the records are full of homicides caused by such minor matters as refusal to pay for goods or services rendered. Others arose out of purely chance occurrences—an accidental jostle on the street, some derogatory remarks, an argument over a seat at a public performance or a table at an inn.¹⁶ Such disputes did not necessarily have to end in loss of life, but given the state of medical knowledge and practice at the time, any kind of injury could degenerate into a fatal wound and bring sudden death.

Killings could occur at any time or place, day or night, but the domestic household was frequently the background for them. Tension among members of the family often erupted into violence and death. Although instances of parents killing children and vice-a-versa can be found in the documents, the familial relationship that most commonly led to bloodshed was that

¹⁴ *Ibid.*, law 5. For the legislation of 1523, *ibid.*, law 4, Slaves and *Moriscos* (converted Moslems) were exempt from this law and specifically prohibited from carrying arms.

¹⁵ NR, Book VI, title VI, laws 10, 11.

¹⁶ AGS, *Diversos de Castilla*, legajo 29, Seville, C (5), (17), (11), 21).

between husbands and wives. Disagreements between the spouses arising out of jealousy, infidelity or incompatibility could result in injury and death. Infidelity was a common cause of attacks and killings. Even the slightest suspicion of unfaithfulness could provoke husbandly rage to the extreme as can be seen in a case that occurred in Logroño where a man who suspected his wife of being unfaithful waited for her and her supposed lover and stabbed them repeatedly until they were dead and then burned their bodies.¹⁷ In almost all instances of marital disagreement, wives were the victims, but sometimes other female relatives lost their lives as well. On the other hand, the bloodletting was not all on one side, for husbands also were killed by their wives, or by their lovers, or both acting in collusion.¹⁸

Violence in the home was not confined to family members for servants often became involved in disputes, and lost their lives as a result. Indeed, the relations between masters and servants could degenerate into bloodshed. The documents do not give any examples of masters slaying their servants because such crimes were almost never reported, but cases in which slaves or servants injured or killed their masters, do appear.¹⁹ Mistreatment was the usual cause of such attacks, but regardless of this fact the laws dealt harshly with offenders and these cases as noted before, were classified *ipso facto* as murder. In addition servants consistently argued among themselves, and sometimes there was great tension in the household caused by animosities among the domestic staff. This was especially true in the large noble establishments where there were many different kinds of servants and the stewards and butlers exercised unlimited power over them.²⁰

Both within the home and outside of it women were the objects of a great deal of physical violence. Sometimes they were accidental victims; for example, in a case before the Chancillería of Granada the defendant was accused of stabbing a neighbour's wife as she observed an argument between him and another man.²¹ Prostitutes in particular were vulnerable to physical abuse and injury, since the laws prohibiting the carrying of weapons into the brothels were universally ignored. There are numerous cases in which inmates of the brothels were beaten and stabbed by customers,

¹⁷ *Ibid.*, legajo 28, Logroño, C (3).

¹⁸ DOMÍNGUEZ ORTIZ, *Delitos y suplicios*, pp. 46, 53. For a case in which a female relative was killed by a irate husband, AGS, Diversos de Castilla, legajo 29, Segovia, C (6).

¹⁹ DOMÍNGUEZ ORTIZ, *Delitos y suplicios*, pp. 46, 59.

²⁰ AGS, Diversos de Castilla, legajo 29, Valladolid, Ch (9); among servants, *ibid.*, Seville, C (7). Conditions of servants in noble households are described in DIEGO DE HERMOSILLA, *Diálogo de los pajes* (Madrid, 1901).

²¹ AGS, Diversos de Castilla, legajo 29, Granada, Ch (Orantes, 27).

or otherwise injured because of the disputes and fights that were daily occurrences there.²²

Women also were the principal victims of sexual attacks. While these crimes occupy a prominent place among those that remain unrecorded it does seem that historians may have assumed a greater frequency for crimes of abduction and rape than actually existed. The largest percentage of such offences probably were committed by members of the privileged classes (the nobility in particular), and represented a reaction against the constraints that sixteenth-century society placed on upper-class women. As for the lower classes, especially in the larger towns and cities, the general licentiousness of the times and the availability of so many prostitutes surely worked to keep down the number of such crimes. In any event, abduction and rape seemed to have been more common in the towns and villages than in the cities.²³ There were only 19 cases of rape on appeal before the Chancillería of Granada in 1572 [out of a total of 410 cases] and with three exceptions, they took place in towns with less than 2,000 *vecinos* (householders). Another factor stands out sharply: as in other instances of crimes against persons, victims and offenders knew each other, were members of the same socio-economic group and sometimes the same family.

A more common offence than rape was seduction, but since most victims were hardly in a position to complain, few cases were ever reported. Seduction could take place under many different circumstances (inns and rooming houses were notorious as settings for it), but most frequently it occurred within the home. Servant girls and poor female relatives were especially vulnerable to the advances of their masters and male family members as well as other servants. Although the laws provided strict punishments for licentious sexual behaviour in the household, e.g., illicit sexual relations between masters and servants and among servants themselves, these penalties — one year's banishment for nobles and two year's banishment and 100 lashes for commoners — were infrequently applied.²⁴ Few cases of this kind ever reached the courts for in almost all instances they were settled privately by the use of threats, money payments, physical abuse or dismissal. As for seduction occurring outside the household the standard procedure was as follows: upon denunciation, suspects were arrested and regardless of their social rank or economic position they were kept imprisoned

²² *Ibid.*, Ch (Fuente, 84); in Segovia, *ibid.*, C (15).

²³ For example, in a city like Seville with some 25,986 *vecinos* in 1588 there were only two cases of abduction and rape before the courts in 1572 and both involved young journeymen (17 to 19 years of age).

²⁴ NR, Book VI, title XX, law 4; Book VIII, title XX, law 6.

for the duration of their case. If convicted, they were given the choice either option meant continuing in jail. The objective of this law was (the amount was set arbitrarily by the judge) whereas failure to accept either option meant a continuation in jail. The objective of this law was quite clearly to force the culprits to marry the offended parties whenever possible and this was the usual outcome since most individuals did not have the funds to finance the payment and few would choose voluntarily to remain in jail.²⁵

With the exception of law enforcement officers, acts of personal violence against those in authority were infrequent. Moreover deliberate or unprovoked attacks against constables and their men were rare, and most instances involving them occurred in the performance of their duties. On many occasions, constables suffered injuries when making arrests and were attacked by suspects or their friends. There were 30 such cases (resistance to arrest) before the Chancillería of Granada in 1572 and the documents provide many interesting details about them. The penalties for resistance to arrest were severe: depending on the circumstances and the degree of injury, they could include death or a maximum of eight years in the galleys.²⁶

Most crimes against persons resulted from spontaneous circumstances and involved nonprofessionals, but there was also a group of professional murderers and assassins whose crimes are vividly described in the documents. These were the men called ruffians (*rufos* or *jácaros*) in the language of the period, and whose principal activities consisted of inflicting punishments for pay — murders, stabbings and cudgelings. Some pertinent data on the ruffians can be extracted from the records. To begin with, none of these men were marginal types, unskilled labourers or transients. All had respectable trades and professions— weavers, shoemakers, tailors were in the majority, but there were also silversmiths, constables and notaries. In age, they ranged from 20 to 30 years and the majority were denizens of their respective towns. Most had long criminal records and were charged with an assortment of felonies, mainly homicide, assault and injury, and resistance to arrest.

In contrast to the numerous cases before the courts involving crimes against persons, the recorded incidence of offences against property is surprisingly low. Regardless of the harsh laws and the efforts of authorities to enforce them, the majority of thieves were never caught, and thus, the records do not accurately reflect the rate of property crime in sixteenth-

²⁵ See TOMÁS y VALIENTE, *El derecho penal*, pp. 361-365.

²⁶ NR, Book VIII, law 7; AGS, Diversos de Castilla, legajo 29, Segovia, C (17); *ibid.*, Sevilla, C (40).

century Spain. Much of the theft was done by amateurs, the poor and the unskilled, the chronically unemployed or underemployed for whom stealing was a way to survive. This was particularly true in times of economic crisis, e.g., food shortages, high prices and unavailability of work, for any dislocation in the economy seriously disturbed people living at subsistence level. The connection between poverty and crimes against property has been pointed out repeatedly, and it has been noted that when prices rise there is a correlating upward movement of theft; when prices decline, there is less theft.²⁷ In sixteenth-century Spain the level of criminal activity was greatly affected by two factors: demographic growth and inflation. Spanish population rose steadily throughout the century exerting great pressure on all aspects of the economy. As the population continued to increase, the demand for food was intensified and its prices rose correspondently. Food shortages were common, but from the 1550's they began to occur more frequently. The rise in population also influenced the falling real wages of workers. As the supply of labour grew, the demand for it declined and consequently, wages began to fall. Thus, a combination of high prices and low wages brought an intensification of misery and poverty. Economic desperation drove an expanding number of people to steal and increased the number of criminals drawn from the poor labouring class. In addition to economic hardship the special conditions of urban life should also be considered. The anonymity of the city facilitated the perpetration of property crime and escape after its committal, while at the same time urban concentration of wealth provided more opportunities for it.

Coincidentally, the high incidence of personal crime among artisans may also be a reflection of the growing pressures on Spanish industry. Spanish industrial production that had enjoyed a brief period of prosperity in the first half of the sixteenth century began to feel the effects of inflation and foreign competition in the second half of the century. The clothing industry, one of the most highly regimented under guild control, was the first to become depressed and to decline. Tensions within the guilds increased sharply as more people tried to enter them and rise to the top at a time when the market for Spanish goods was declining, and the guild masters were closing their ranks. This situation is clearly revealed by a decree of 1551, included in subsequent legislation on the subject, prohibiting the

²⁷ For example, WILLEM BONGER, *Criminality and Economic Conditions*, ed. A.J. Turk (Bloomington, 1969) for a discussion of the connection between poverty and crime. For Spain, J. VICENS VIVES, *Historia económica y social de España y Hispanoamérica*, III (Barcelona 1957), pp. 50-54.

formation of journeymen societies. Under such conditions it is not surprising that artisans played an important role in the urban popular uprisings of the sixteenth and seventeenth centuries.²⁸ Just as their discontent found an outlet in rioting, it may have also found expression in personal violence, that is, in the daily assaults and homicides in which they were involved. The fact that so many of the criminals in the data under study were artisans, in particular, textile and clothing workers, supports this contention. From this point of view, crime statistics can be seen as indicator of instability and tension reflecting both economic and psychological causes.

As the economic situation deteriorated, larger numbers of unemployed workers sought to enter domestic service, especially in the noble establishments.²⁹ Domestic theft, always quite common increased as the noble households grew larger. The conditions in many households — minimal salaries and meagre rations — actually encouraged petty larceny on a daily basis. Pilfering of food, silverware, home ornaments, animal feed and firewood occurred so regularly that some people developed a business based on the purchase of such goods from servants and slaves. A law of 1565 threatened them with arrest and punishment as receivers of stolen goods. There were several cases on appeal before the Audiencia of Galicia in 1572 in which the defendants had been convicted of systematically stealing such items from their masters over the course of years and selling them to unscrupulous businessmen.³⁰ While most of these thefts were so small and insignificant that they went undetected, there were others that were more daring. Often servants stole money, jewellery, or clothing from their masters, but rarely did thefts of this kind result in personal violence against the master or his family. There is only one such case in the records—a servant in Galicia who assaulted and raped the daughter of his master after stealing money from him.³¹ In general, culprits at this level were respectful of class lines and did not harm or injure those above them in social status.

As for the professional thieves, they represented a large and diverse group.³² They included males of all ages from teenagers to fifty-year-olds,

²⁸ A. DOMÍNGUEZ ORTIZ, *Alteraciones andaluzas* (Madrid, 1973), pp. 138-140, 195-197. For the decree of 1551 and a discussion of Spanish industry see A. DOMÍNGUEZ ORTIZ, *El Antiguo Régimen; Los Reyes Católicos y los Austrias* (Madrid, 1973), pp. 134-138.

²⁹ See complaints of the Castilian Cortes in *Cortes de León y Castilla* (Madrid, 1882-1903), vol. IV, V, and the royal decrees limiting the number of servants in noble households, NR, Book VI, title XX, laws 1, 2, 6.

³⁰ AGS, *Diversos de Castilla*, legajo 28, Galicia, A (5, 11); for the law of 1565, NR, Book VI, title XX, law 5.

³¹ AGS, *Diversos de Castilla*, legajo 28, Galicia, A (11).

³² For a description of the different kinds of thieves see CARLOS GARCÍA, *La desordenada codicia de los bienes ajenos*, in «La novela picaresca española», ed. Angel Valbuena Prat (Madrid, 1956), chapter VIII, p. 1179.

although most tended to be within the 18-to-35-year-old category. Their backgrounds were varied: many were transient and marginal individuals (domestics, menials, vagrants and unemployed) but a surprising number of thieves were craftsmen and denizens of their home towns. The fact that many professional criminals were indeed artisans contradicts the commonly held opinion that theft was confined to marginal and transient groups. The professionals were skilful and well organized and when they finally were apprehended, their long and varied criminal records testify to the ineffectiveness both of the laws and the forces of order.

In sum, an assessment of the incidence of crime in sixteenth-century Spain may never be possible given the loss of records. It is clear, however, that much of the increase in criminal activity can be accounted for by the enlarged population and the social and economic dislocations resulting from demographic growth. Moreover, the rise in crime created a demand for the adoption of new methods to make the criminal justice system more effective. Certain physical punishments that had been used formerly to supplement the system of fines, mutilations and the death penalty began to be applied to a larger number of offences. Public shame, flogging and banishment gradually became the regular forms of punishment for almost all crimes and the first two were also imposed as additional penalties along with death and galley sentences. But despite the rigorous enforcement of these penalties, crime rates continued to grow, and by mid-century their inadequacy and ineffectiveness was quite apparent even though the crown and the courts through lack of any other solutions, continued to protest their efficacy. It was widely recognized that instead of reducing the amount of crime they actually contributed to the professionalization of criminals—that the continued application of public shame and lashes eventually destroyed their intimidative effect while banishment merely served to remove culprits legally from the scene of their crimes and transfer them to other areas where they were unknown to authorities. No wonder the Castilian Cortes repeatedly tried to persuade the king to introduce branding as a means of identifying thieves, that is, to place the letter “L” for *ladrón* (thief) on their shoulders, or under their arms, but all such petitions were rejected.³³

The failure of public shame, flogging and banishment to reduce crime led to a greater utilization of penal servitude, especially in the form of galley service. The galleys enabled the state to exploit the labour power of prisoners for its own interests while at the same time removed dangerous

³³ Cortes de León y Castilla, V, pp. 312, 401; TOMÁS y VALIENTE, *El derecho penal*, pp. 343-344; 361.

elements from society. Although penal labour on the galleys was believed to be the best method for controlling crime throughout the early modern period, there is no indication that it was any more effective than the other corporal penalties. On the contrary, it seems likely that the galleys may have created the opposite effect, that is, contributed to the maintenance of high crime rates, in particular, major crime. In support of this contention several points can be made. In the first place, by applying the same penalty for minor crimes as well as major crimes, criminals faced with identical risks would attempt more daring and profitable ventures. The declarations of prisoners in the Simancas collection seem to bear out his assumption. Again, while the hardships and privations of life on the galleys were well-known and condemnations to them greatly feared, for desperate men they were final, "finibusterre", as expressed in the colourful thieves's jargon of possibility of a return from the galleys (remote or not) while the gallows were final, "finibusterre", as expressed in the colorful thieves's jargon of the era.³⁴ Spanish literature of the period is quite revealing in regard to this point of view. In *Don Quijote*, for example, one of the prisoners in the chain of galley slaves who was sentenced to six years on the galleys states: « I am young yet, and if I live long enough, everything will come out all right ».³⁵ The same opinion can be found in the statements of the prisoners whose cases were on appeal before the Chancillería of Granada in 1572.

Prison conditions are another factor to be considered. In Spain as elsewhere in Europe in the sixteenth century imprisonment as a punishment was almost unknown and jails were primarily places of detention for persons awaiting trial, or decisions on their appeals, a procedure that usually lasted from three to six years.³⁶ During that time no provisions were made for their upkeep, and if prisoners could not afford to purchase food and other necessities of life from wardens and jailers then it was expected that they would be supported by relatives and friends. Failing this, inmates supported themselves by begging and alms donated by religious and charitable institutions, but the funds collected in this manner were hardly enough to sustain life. In consequence, many poor and destitute prisoners died of starvation.³⁷ In contrast to the total lack of rations in the jails, prisoners

³⁴ MIGUEL DE CERVANTES SAAVEDRA, *La ilustre fregona*, in « Novelas ejemplares », II (Barcelona, 1958), p. 63.

³⁵ MIGUEL DE CERVANTES SAAVEDRA, *Don Quijote de la Mancha*, ed. Martín de Riquer (Barcelona, 1966), Part I, Chapter XXII, p. 207.

³⁶ CARL LUDWIG VON BAR, *A History of Continental Criminal Law*, trans. Thomas S. Bell (Boston, 1916), chs. VII-XI; *Cortes de León y Castilla*, V, p. 852.

³⁷ The three principal sources for prison life in sixteenth century Spain are: BERNAR DINO DE SANDOVAL, *Tractado del cuydado que se debe tener de los presos pobrer* (Toledo,

on the galleys were supported by the king. Though badly prepared, monotonous and insufficient, the king's ration at least represented regular meals in addition to periodic clothing allotments. Documents from the Simancas collection indicate that prisoners eking out their days in the jails often were so desperate that they asked to be sent to the galleys before the termination of their appeals. In December 1572, for example, the Corregidor of La Coruña wrote the king that a large number of convicted criminals who had been in the town jail for three years or more awaiting the outcome of their appeals had petitioned him repeatedly to send them to the galleys where they could « serve the king instead of starving slowly to death ».³⁸

As for the labour of the galleys, was it as arduous and fatiguing as it appeared to be? Indeed, when the ships were at sea, the work was hard and oppressive, but such labour was seasonal for the galleys were tied up in port some seven or eight months a year. When the fleet was in, the prisoners remained on board because in the sixteenth century convict oarsmen were not sent ashore to work in the ports and arsenals as was done in the seventeenth century.³⁹ It is clear that criminals were well aware of the long "slack periods" on the galleys (the *pícaro* Ginés de Pasamonte in *Don Quijote*, for example, felt that he would be able to finish his autobiography while serving his sentence because there was plenty of leisure time on the Spanish galleys.⁴⁰ Again, when the prisoners who were condemned to hard labour in the mercury mines of Almadén (another form of penal servitude in sixteenth-century Spain) were asked by a royal investigator in 1593 what could be done to improve their conditions, they all answered that they preferred to finish their sentences on the galleys. At Almadén the convicts worked at bailing water out of the mines in order to prevent flooding, this labour was constant and strenuous and had to be performed both day and night. In sworn depositions the prisoners declared that despite the fact that the food, living conditions and medical services at Almadén were adequate (actually far superior to the galleys), they could not tolerate the continuous toil to which they were being subjected and for this reason they wanted to be transferred to the galleys.⁴¹

1564); THOMÁS Cerdán de Tallada, *Visita de la cárcel y de los pobres* (Valencia, 1574); CRISTÓBAL DE CHAVES, *La relación de la cárcel de Sevilla* (Seville, 1591).

³⁸ AGS, Diversos de Castilla, legajo 28, la Coruña. The standard daily fare per man on the galleys was 26 ounces of biscuit, and a vegetable stew composed of six ounces of beans, or an equivalent amount of chickpeas, or two and one-half ounces of rice and olive oil. Water was the customary beverage except on special occasions when more effort was required from the rowers and wine would be distributed in the hope that it would stimulate them. See SEVILLA y SOLANAS, *Historia penitenciaria española*, pp. 160-164.

³⁹ SEVILLA y SOLANAS, *Historia penitenciaria española*, p. 78.

⁴⁰ CERVANTES SAAVEDRA, *Don Quijote*, Part I, Chapter XXII, 209.

⁴¹ PIKE, *Penal Labor*, pp. 202-205. Prisoners at Almadén received a daily ration per man of one pound of meat, or fish on meatless days, two and one-half pounds of bread, an a pint and a half of wine.

The connection between crime statistics and the widespread use of penal servitude on the galleys could be developed much further than can be done within the limits of this paper. Nevertheless, the data strongly suggest the close relationship between actual crime and the administration of criminal justice: that is, the practices and efficiency of the system of criminal procedure affected the amount of crime, which in turn influenced the methods and degree of law enforcement. Thus, crime in sixteenth-century Spain must be viewed against the background of a complex conjunction of factors involving the pressures exerted on criminals by the socio-economic environment as well as society's response to criminal activity as expressed in the laws and institutions created to control it and to maintain public order.