Christine Gerwin, Nina Opgen-Rhein, Hannes Ziegler

The Vigilant Subject and the Dynamics and Discourses of Authority in Early Modern England

Introduction

The private participation of citizens in law enforcement is a recurring topic of discussion, especially in places where the state has lost trust or lacks possibilities of surveillance. Thus, citizens are being called upon to report abuses within government agencies or companies as whistle-blowers or are involved more directly in the detection and enforcement of law as members of neighbourhood watches or as community responders, dealing with low level street crime instead of the police. However, in view of an existing state executive body such as the police and a public prosecution service, the participation of private individuals is often viewed with a certain degree of scepticism. Community policing, whistleblowing, neighbourhood watches – wherever private individuals are involved in law enforcement or in the detection of crime, critics fear a weakening of the state monopoly, a lack of efficiency in reporting behaviour or the undermining of state structures by private interests.[1] In contrast, the involvement of private individuals was a well-established and widely accepted phenomenon in early modern times. Early modern rulers relied on the participation of their subjects to maintain law and order due to the absence of executive bodies. The practice of common informing, which lies at the heart of our project, exemplifies how private citizens have long been involved in the enforcement of law; it has even continued to exist as a fixed legal instrument and has survived into modern times.[2]

Professional prosecutors were not part of the legal system of early modern England. It was usually up to the victims themselves or third parties such as informers to bring misdemeanours to court.[3] As informers were typically unaffected by the respective offence, private persons could thereby essentially take on the role of public prosecutor, which was later peu à peu monopolised by the police and a public prosecution service during the course of the 19th century. Before then, informers acted within the framework of the legal principle *qui tam*[4], which allowed them to bring a criminal action in court both for the Crown (whose laws had been violated by the carrying out of the offence) as well as for themselves, that is by earning part of the penalty for the respective offence. In contrast to denunciation in inquisitorial processes more familiar from continental Europe, the act of informing was not an anonymous one. It awarded the plaintiff direct influence over the type of prosecution and the forms of proceedings

1 See for example discussions about the Hinweisgeberschutzgesetz in the German Parliament (Deutscher Bundestag (2022): Plenarprotokoll 20/77/9203-9212); the Bayerische Sicherheitswacht: Pfeifer, Henning: Sicherheitswachten. Nicht überall willkommen, *Bayerischer Rundfunk*, 02.03.2022 URL: https://www.br.de/nachrichten/bayern/sicherheitswachten-nicht-ueberall-willkommen,SyTB6Ob (09.01.2024); or Community Responders in Brooklyn: Cramer, Maria/ Hamja, Amir: How One Neighborhood in Brooklyn Policed Itself for Five Days. In: *New York Times* (04.06.2023).

2 The questions and preliminary findings in this article are drawn from the Emmy Noether Research Group project »Common Informing: Arbitrary Enforcement in Early Modern England« funded by the German Research Council (DFG). Project number: 453126161; URL: https://www.qui-tam.geschichte.uni-muenchen.de.

3 Baker, Criminal Courts, p. 16f.

4 *Qui tam pro domino rege quam pro se ipso* = in the name of the king and for himself.

(i.e. regular procedure, composition). As these decisions were binding even for Crown and Parliament, authorities were thus deprived of the discretion in their use of legal resources and, by extension, part of their sovereignty.[5]

Although well known to legal historians, the political and social dimensions of common informing remain mostly unexplored. This is despite numerous works on popular politics and participation in early modern England. This negligence may have to do with the subject's ambivalence: Common informing eludes clear classification as either an emancipatory practice or as resistant behaviour. This is because the monetary self-interest attributed to the informers neither fits with the unifying goal of ›common peace‹, as Cynthia Herrup has identified it for the participation of middling men in the 17th century, nor does it make them an agent of ruling interests.[6] It is precisely here that we would like to close a gap by focussing on the social and political history of informing. We are particularly interested in three perspectives that we would like to elaborate on in this essay: the diachronic development of informing, its role in the construction of authority, and common informing and the related discourse on the micro level.

Common Informing through the Centuries

If there are few studies on the social and political implications of common informing, fewer still exist on the development and application of *qui tam* throughout the centuries. Even legal historical studies are of little help in this regard because they are mainly focused on more recent developments in the US, where *qui tam* remains a case of application.[7] As such, even the most basic questions remain difficult to answer for the English history of the early modern period: When was *qui tam* most frequently used, when less so? What political circumstances favoured its application? When did governments refrain from using the mechanism? And why?

Our project is not, at this point, able to provide definite answers to these questions. But our work has already upset a number of assumptions that have to date been treated as established narratives even though they often stand on flimsy feet. Perhaps the biggest myth in the history of *qui tam* in early modern England is that the legal efforts of the parliaments of Elizabeth I and James I to decisively curb the excesses and abuses of common informers where so comprehensive and effective that informing virtually disappeared from the 1620s onwards.[8] This is far from accurate and quite often such assumptions misunderstand the legal implications of the Jacobean laws on informing: They did indeed limit informing practices on existing statutes; but they did not extend to new legislation. The very fact that *qui tam* statutes continued to be introduced after the relevant Jacobean legislation therefore hardly speaks for a disappearance of common informing – if anything, it speaks for a political cesura, whose significance remains to be explored.

Equally misleading is the suggestion that common informing was only or predominantly tied to the economic and fiscal sector and that when these connections were legally challenged by parliament around 1600, this led to its inevitable decline. On the face of it, and based on existing research, this appears to be plausible. But what is problematic here is that these statements are largely based on two influential early studies of common informing by Maurice Beresford and Geoffrey Elton.[9] Perhaps because of the prominence of their authors, these studies have hardly ever been challenged, but it is important to realise that they are both very limited in scope and almost exclusively interested in economic developments. Wherever the view becomes just a little broader both temporally and thematically, it is clear that common informing also related to highly political topics, even to the plots and treasons around Mary Queen of Scots, to the so-called popish recusants, and to more broadly administrative and jurisdictional issues.

It makes perfect sense, moreover, that this should be so. How else can one explain that the later seventeenth century – and in particular the period between 1680 and 1710 – witnessed an unprecedented proliferation of common informing on the English scene? Rachel Weil has even written about this period in terms of a »plague of informers«.[10] Even if she did not quite grasp the legal implications of informing, her assessment rings true: In matters of political allegiance and religious conformity, informing suddenly became ubiquitous. Aside from parliamentary legislation, moreover, various state departments began to use informers for their own ends. Hence their appearance, for instance, in the Post Office.[11] Such proliferation not only glaringly contradicts any statements about the supposed decline of common informing. It also contradicts the accompanying claim about its declining economic relevance. Customs was one of the central administrations perhaps most heavily reliant on informing in the later seventeenth and eighteenth century. In other words: Even in the narrow definition of Elton and Beresford, common informing never disappeared after the sixteenth century. It thrived.[12]

Finally, our project has also challenged the prominent assumption that common informing had fallen into disuse as a political tool by the end of the eighteenth century. It is true that its scope of application had become narrower by that time. But does the claim that its marginalisation was a result of the introduction of a modern police force in 1829 really hold true? Recent studies have seriously challenged the suggestion that the birth of the modern police made other forms of community policing and the involvement of the private individual in policing efforts obsolete.[13] In fact, given that such elements

5 Baker, Criminal Courts, p. 16f.; Ziegler, Qui Tam, p. 313.
6 Herrup, *The Common Peace*.
7 Beck, False Claims Act.
8 Beresford, Common Informer; Elton, Informing for Profit; Lidington, Parliament.
9 Beresford, Common Informer; Elton, Informing for Profit.
10 Weil, *Plague of Informers*.
11 Ziegler, Jacobitism, pp. 305–307.
12 Ziegler, Customs Officers; Ziegler, Preventive Idea.
13 Churchill, *Crime Control*.

remain a central factor in policing efforts well into the twentieth century and are pervasive even now, perhaps the importance of the police as a decisive factor in the alleged decline of common informing has been overestimated. At the time *qui tam* was abolished in the UK in 1951, parliamentarians readily used the argument that the very existence of a modern police made common informing obsolete.[14] But rather than an accurate assessment, this may well be an indicator of their own hopeless ideologization of the modern state. And if the modern police really did make that much of a difference, why, then, did it take parliament well over a hundred years to abolish the now supposedly obsolete mechanism of *qui tam*? Why, then, was it never abolished in the United States? And why are lawmakers on both sides of the Atlantic discussing its re-introduction and expansion as a legal mechanism even now?[15]

It will take more research than we can reasonably carry out in our project to address these questions. In some cases, it must suffice to have raised them. For beyond this macro-level of inquiry, the existence of common informing and its social, cultural, and political implications raises important questions on quite different levels that are perhaps more directly relevant to the social and political historian.

Common Informing and Authority

One of these central questions of a social and political history of informing concerns authority. Although common informing was encouraged and demanded by the authorities to expand law enforcement and social control, it was accompanied by a partial loss of the sovereign's authority through the appropriation of sovereign rights. There was always the danger of subversive tendencies, with informers abusing the authority they claimed for themselves. Even though common informing became an established tool for the enforcement of penal laws in the 16th century, the involvement of third parties in law enforcement raised central questions about the distribution of authority. How was it possible for private individuals to have executive rights and discretionary powers that were otherwise reserved for the sovereign and his officials? Could private individuals be allowed to carry out house searches and confiscate goods? And did the lack of control of these private individuals not jeopardize the actual enforcement of law and order if anyone could in fact invoke the authority of the sovereign to prosecute?

These questions developed into a constitutional dispute between the Crown and Parliament when Elizabeth I and later James I granted patents to favoured courtiers to dispense with statutory law and monopolize the enforcement of certain statutes.[16] Ultimately, this attempt at exclusivising law enforcement, including informing, was successfully resisted by Parliament in 1624 with the passing of the Statute of Monopolies. The aim of this section is to provide a brief overview of the multi-layered debates surrounding informing in parliament, as well as the positions expressed in pamphlets and petitions. These debates offer insights into a discussion that not only dealt with the construction, maintenance and legitimisation of authority, but was itself part of its construction.

While the constitutional dispute mainly revolved around licensed informers and patentees with special rights, numerous parliamentary initiatives between 1566 and 1625 sought to reform informing in general in order to strengthen the defendant's position, prevent abusive practices and exercise greater control over informers. Although one would assume that, given the very negative image of informers, Parliament would have considered ending the practice, hardly any parliamentarian demanded its abolition. On the contrary, the numerous statutes passed during this reform phase show that the practice of informing was continuously upheld and even further expanded. Informing was thus implemented in various Acts concerning economic offences such as the illegal importation of goods, moral deviance and religious offences. Nevertheless, there was always a particular scepticism among parliamentarians that informers were undermining the very authority they claimed for themselves. This ambivalent attitude is particularly evident in the case of the English jurist and politician Edward Coke (1552–1632). Even though he described informers as »viperous vermin«, in the reform debates he argued that »informers must not be quite taken away but regulated.«[17] For despite all the risks, informing remained a tried and tested means of enforcing the law and thus creating and upholding state authority in the eyes of Parliament and the Crown. In his guide to the magistrates of London of 1584, the dramatist George Whetstone therefore declared informers to be an instrument of a good ruler and indispensable for the good of society:

> But as there is no assurance of faire weather vntill the skie be cleare from clowdes, so [...] there can be no common wealthe grounded peace and prosperitie, where there are not Informers to fynde out offenders, as well as Iudges to chasten offences.[18]

Whetstone's mirror reflects primarily the authorities' view of informing. But how was informing dealt with beyond these debates in Parliament and in Privy Council? Were similar questions of authority raised and problematised in a broader public discourse? After all, authority results from the relationship between rulers and ruled, in which the former claim authority, but the latter must confirm it and recognize it as legitimate. A sole perspective from above is therefore not sufficient to clarify what role informing played in the construction, addressing and perception of authority. Instead, we need to take a closer look at the relationships between the individual actors. How did people fit into this relationship who were not

14 See for instance Hansard HC Deb., Vol. 483, Col. 2091–2118.
15 For instance in Freeman Engstrom, Private Enforcement's Pathways; Brathwaite, Flipping Markets; Kölbel, Institutionalisierung.
16 Edie, Tactics and Strategies, p. 203.
17 Notestein, *Commons Debates 1621*, p. 257f.
18 Whetstone, George: *Mirour for Magestrates*, p. 66.

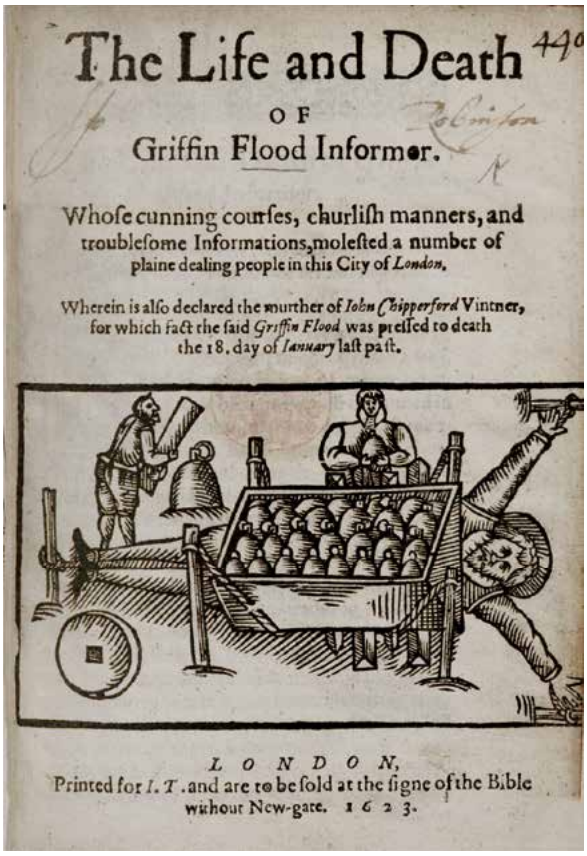

The Life and Death
OF
Griffin Flood Informer.
Whose cunning courses, churlish manners, and troublesome Informations, molested a number of plaine dealing people in this City of *London*.
Wherein is also declared the murther of *John Chipperford* Vintner, for which fact the said *Griffin Flood* was pressed to death the 18. day of *January* last past.
LONDON,
Printed for *I. T.* and are to be sold at the signe of the Bible without New-gate. 1623.

Fig. 1 Anonymous: *The Life and Death of Griffin Flood*. London 1623

public officials, yet often acted in the name of the sovereign against the interests of their social environment and possibly even against those of the sovereign? And how did third parties like merchants, monopolists, persons and institutions, who were often not directly involved in the processes, deal with this claimed authority? Informers often tried to portray themselves as agents of the sovereign and their authority as directly derived from the ruler. But the phrase ›in the name of the king‹ did not always meet with the desired reaction of compliance and obedience by the offenders.[19]

Besides the defendants, the investigation of the relationship between informers and third parties is of particular interest. These third parties were neither defendants nor plaintiffs, but often knew how to utilise the informers' authority for their own benefit. In 1616, the Company of Merchant Adventurers petitioned for the renewal of its monopoly on the export of wool with an additional clause that provided for informers to be allowed to enforce and protect the company's monopoly. The Muscovy Company also approached the Privy Council to have informers control the import of whale fins, a right that belonged solely to was the company alone by proclamation.[20] In previous research, informers were seen as antagonists to the trading companies, persecuting them excessively for profit, while the merchants in return would have influenced legislation against informers through their lobby in parliament.[21] However, trading companies themselves had an interest in the approval of *qui tam* proceedings in a particular economic sector, especially when it came to protecting their own monopolies. It is significant to note here how informing was recognised by the merchants as a means of rule by the state and how they addressed state authority in doing so.

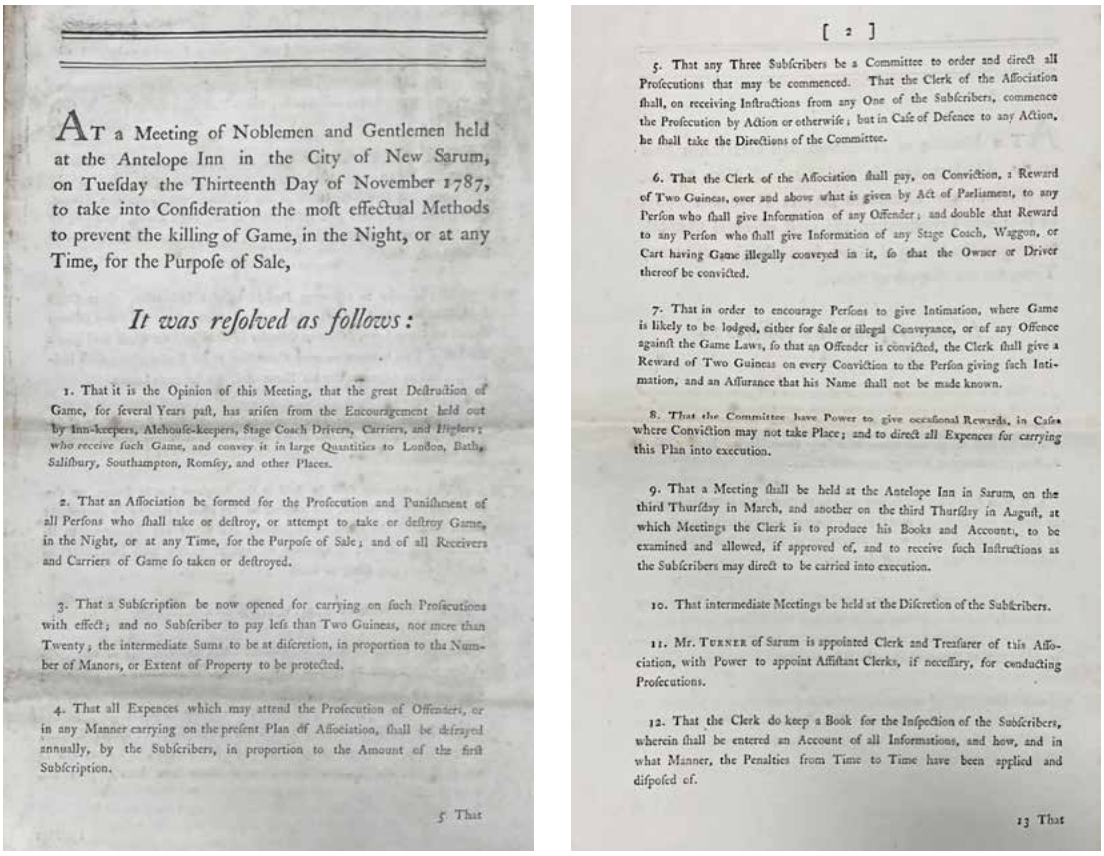
Another largely unexplored part of the history of informing is the relationship between public officials and informers, which strikes at the heart of the questions surrounding authority. On the one hand, informers intruded into public officials' areas of competence and often acted against the interests of officials like customs officials, justices of the peace or constables. It was not uncommon for officials to torpedo attempts by informers to confiscate goods, as in the case of the informer George Whelplay. In August 1538, he had already confiscated several illegally imported horses at the port of Weymouth, but was prevented from searching further ships by the officials present. Whelplay's repeated invocation of the king's authority was ultimately in vain.[22] On the other hand, informers also acted as overseers of public officials on the basis of statutes aimed at corruption and abuse of power, much to the dismay of officeholders like the Warden of the Fleet prison in London. In 1591, the latter complained several times to the Privy Council about an informer who was suing him in the Court of Common Pleas for excessive fees.[23]

At the same time, the narrative often found in research echoes contemporary discourses that held that informers were mere exploiters of the legal system and harassed innocent, especially poor, subjects (Fig. 1). This narrative cannot sufficiently grasp the social reality. What is needed is an in-depth analysis of the complex relationships between the various actors and their respective self-interests in order to get to the bottom of the question of what role informers played in processes of state formation and the construction of authority.

›No set of men can be found bold enough or base enough‹[24] – Discourse on eighteenth-century common informers on the micro level

To gain a comprehensive picture of this historical social reality one must necessarily include a micro perspective which places the common informer within the context of local law enforcement and rural social dynamics. While British historians of the eighteenth century have turned to the history of crime and criminal law with great enthusiasm in the 1970s and 1980s, for instance in the influential publications Albion's Fatal Tree

19 Elton, Informing for Profit, p. 161.
20 Lyle, *Acts of the Privy Council of England*, Vol. 35, 1616–1617, p. 401; The National Archives, Kew, Privy Council: Registers, PC 2/29 f.345.
21 Limprecht, *Common Informers and Law Enforcement*.
22 Elton, Informing for Profit, p. 161.
23 The National Archives, Kew, Privy Council: Registers 2/19, f.154.
24 *Facts, Fully Established*, p. 16.



AT a Meeting of Noblemen and Gentlemen held at the Antelope Inn in the City of New Sarum, on Tuesday the Thirteenth Day of November 1787, to take into Consideration the most effectual Methods to prevent the killing of Game, in the Night, or at any Time, for the Purpose of Sale,

It was resolved as follows:

1. That it is the Opinion of this Meeting, that the great Destruction of Game, for several Years past, has arisen from the Encouragement held out by Inn-keepers, Alehouse-keepers, Stage Coach Drivers, Carriers, and Higlers; who receive such Game, and convey it in large Quantities to London, Bath, Salisbury, Southampton, Romsey, and other Places.

2. That an Association be formed for the Prosecution and Punishment of all Persons who shall take or destroy, or attempt to take or destroy Game, in the Night, or at any Time, for the Purpose of Sale; and of all Receivers and Carriers of Game so taken or destroyed.

3. That a Subscription be now opened for carrying on such Prosecutions with effect; and no Subscriber to pay less than Two Guineas, nor more than Twenty; the intermediate Sums to be at discretion, in proportion to the Number of Manors, or Extent of Property to be protected.

4. That all Expences which may attend the Prosecution of Offenders, or in any Manner carrying on the present Plan of Association, shall be defrayed annually, by the Subscribers, in proportion to the Amount of the first Subscription.

5 That

[2]

5. That any Three Subscribers be a Committee to order and direct all Prosecutions that may be commenced. That the Clerk of the Association shall, on receiving Instructions from any One of the Subscribers, commence the Prosecution by Action or otherwise; but in Case of Defence to any Action, he shall take the Directions of the Committee.

6. That the Clerk of the Association shall pay, on Conviction, a Reward of Two Guineas, over and above what is given by Act of Parliament, to any Person who shall give Information of any Offender; and double that Reward to any Person who shall give Information of any Stage Coach, Waggon, or Cart having Game illegally conveyed in it, so that the Owner or Driver thereof be convicted.

7. That in order to encourage Persons to give Intimation, where Game is likely to be lodged, either for Sale or illegal Conveyance, or of any Offence against the Game Laws, so that an Offender is convicted, the Clerk shall give a Reward of Two Guineas on every Conviction to the Person giving such Intimation, and an Assurance that his Name shall not be made known.

8. That the Committee have Power to give occasional Rewards, in Cases where Conviction may not take Place; and to direct all Expences for carrying this Plan into execution.

9. That a Meeting shall be held at the Antelope Inn in Sarum, on the third Thursday in March, and another on the third Thursday in August, at which Meetings the Clerk is to produce his Books and Accounts, to be examined and allowed, if approved of, and to receive such Instructions as the Subscribers may direct to be carried into execution.

10. That intermediate Meetings be held at the Discretion of the Subscribers.

11. Mr. TURNER of Sarum is appointed Clerk and Treasurer of this Association, with Power to appoint Assistant Clerks, if necessary, for conducting Prosecutions.

12. That the Clerk do keep a Book for the Inspection of the Subscribers, wherein shall be entered an Account of all Informations, and how, and in what Manner, the Penalties from Time to Time have been applied and disposed of.

13 That

Fig. 2, 3 **Printed resolutions of a meeting held at New Sarum to consider methods of stopping poaching, 1787, pp. 1–2**

(1975) or An Ungovernable People (1980), they have had little to report on informers.[25] Research is especially sparse on their activities outside London and after around 1750. Thus, their role in the context of many offences that are typical for rural or peripheral parts of the country has not received much attention. Among these, offences related to the extensive game code have arguably been a favourite among social historians. For one, this area of law has been a popular object of study for representatives of the history from below approach as a prime example of a so-called ›social crime‹, where legislative will and popular belief collided. Moreover, the plethora of Acts passed in the seventeenth and eighteenth century indicate that the game laws were a central concern to members of the English ruling class. Whether it was the numerical significance of poaching offences[26] or the symbolic importance that the privileged gentry attached to game,[27] Parliament and country magistrates alike were occupied with the game code. For these reasons, this area of law presents an especially promising field for the investigation of the role of common informers in rural communities. It shall here serve as an example that illustrates how they were the subject of both contestation in public discourse and of negotiation processes in the social arena.

When eighteenth-century common informers are discussed in the context of poaching offences, historians agree that they were of pivotal importance to initiate prosecutions. This is demonstrated by the persistent attempts by the landed gentry and legislators to win over informers through often substantial rewards or the promise of impunity.[28] Although research has not yet devoted any systematic attention to the figure of the common informer and its function within the criminal justice system, scholars have approached a characterisation of these individuals with varying degrees of decisiveness. They repeatedly point to the stigma associated with the activity of informers in general, but especially in the context of offences legitimised by popular opinion; typically associating informers with the accusation of abusing the law and victimising their neighbours purely for their own benefit.[29] What is disputed, however, is the extent to which the much-invoked solidarity within the rural population was able to prevent potential informers from acting contrary to the ideas of justice shared among these communities.

The historiographical characterisation of common informers, for example as »universally hated«[30], bears a striking resemblance to the portrayal by contemporary critics of

25 Hay et al., *Albion's Fatal* Tree; Brewer/Styles, *An Ungovernable People.*
26 Hay, Poaching, pp. 192, 251.
27 King, *Crime,* p. 99.
28 Munsche, Game Laws in Wiltshire, p. 221ff.; Munsche, *Gentlemen and Poachers,* p. 86f.
29 Kirby, Game Law System, p. 252f.
30 Ibid, p. 253.

Fig. 4 C. Blake: *»The Poacher's Progress«: Poachers in Prison (The Pardon)*, graphite and watercolor on paper, undated, Yale Center for British Art

the game system. The mostly anonymous pamphlets from the second half of the 18th century show that this discourse was likewise influenced by a strong disapproval of informing. Their complaints about unscrupulous perjury and the ruthless pursuit of profit were, for instance, accompanied by comparisons with the Spanish Inquisition: »The poor Man who has only killed a single Partridge perhaps, shall be stabbed by a Person in the Dark; and, like the poor Heretic, in Spain or Portugal, not so much as know who His accuser is.« In view of the large number of informers ready to prey on the innocent, their hatred and fear is presented as justified: »When the Gentlemen concerned in the Inquiry or Inquisition concerning the Game hang out such alluring Baits, they can never want Informers. There are enough to be found, such as they are, who will not refuse these tempting offers.«[31]

This criticism was directed as much against the wealthy members of the Game Associations as against the informers encouraged by them. Indeed, incentivising informers by offering payments over and above the statutory rewards was perhaps the most important concern of these societies that had been active at a local scale since the 1740s. When Wiltshire noblemen and gentlemen met to discuss methods to curb poaching and the sale of game in 1785, these additional rewards paid to informers were evidently considered a vital aspect of their strategy (Fig. 2, 3). The landowners' efforts point towards the ambivalent position of common informers in rural areas: On one side, they fulfilled an essential task that – judging by the considerable expenditure and effort it involved – was deemed very valuable by game preservers all over the country. At the same time, according to critics of the game system, »employing and encouraging that most viable and detestable Set of Men the common informers« damaged the reputation of members of the landed gentry who had to resort to this »indispensable Necessity«. As a result, their good intentions of stopping »a set of idle and dissolute people« from giving in to the temptation that poaching generated are seen to be corrupted »by the Arts and Contrivances of self-interested and designing Men«, who »in eager Imitation of that destructive Vigilance wherewith the ugly poisonous Spider views each unwary Insect, are ever upon the Watch for an Opportunity of entangling and perplexing Mankind.«[32]

Accounts of informers as targets of popular justice[33] suggest that the topos of the self-interested and ostracised informer that appears in these pamphlets was also reflected, at least in part, in the reality of the 18th century: In 1767, Lord Ailesbury received a letter from his steward in which the latter reported the case of the labourer Thomas Bright from Ramsbury in Wiltshire. To avoid being punished for poaching himself, he had informed against the salesman and the buyer of the game. As a result, Bright was, as he says, »very much abused by everybody for peaching« and apparently felt threatened by his neighbours as they were »ready to knock him on the head«. Bright's distress was aggravated as the overseer of the poor of his parish refused any help. Because the informer »had done a roguish thing to impeach people«, he could not expect any support, although »the poor man with tears in his eyes said he had not a bit of bread in the house«. The refusal is particularly noteworthy since the man who held the office that year was also bailiff to Sir William Langham Jones, Lord

31 *Some Considerations on the Game Laws*, p. 12f.

32 *Remarks on the Laws Relating to the Game*, p. 3.
33 Banks, *Informal Justice*, p. 109.

of Ramsbury manor. As the steward was probably right to assume, he would not have been pleased to hear that his servant, through his dealings with informers, »should discourage discoverings of this kind, which is the only way to check this vile practice of poaching«. Accordingly, it was hoped that upon hearing of the incident, Mr. Jones would give orders to his servants to support the gamekeepers' future efforts of prosecuting offenders. This way, the justice of the peace who had convicted the offenders might be successful in »Weakening, if not destroying the Confidence there is amongst that Nest of Thieves«.[34]

This rather inconsequential example suggests that the reaction to common informers and the circumstances of taking on such a role were shaped by the aspect of class affiliation. It also shows that the figure of the informer prompted negotiation processes that affected their immediate social environment, but also other parties involved in the criminal justice system, both as private individuals and as public officials. A social-historical study of informing practices shall therefore question the contexts in which informers moved and which dynamics they created at the micro level within and beyond the criminal procedure (Fig. 4). It is hoped that this will enable a re-examination of both the discourse on informing evident in eighteenth-century debates and the historiography of crime and policing in the light of more systematic empirical evidence.

Many of the questions raised in this essay remain open questions at this point. What has already become apparent is that the questions regarding the social and political dynamics around the legal mechanism of common informing in early modern England focused on in our research group are in many ways closely related to the phenomena of vigilance, exploring, for instance, the conditions and limitations of this kind of responsibilisation and its acceptance in different historical contexts. During the next few years, we therefore look forward to continuing to collaborate with the CRC »Cultures of Vigilance« with regard to both these and other questions.

Christine Gerwin is an academic researcher for the Emmy Noether Research Group »Common Informing. Autonomy and Rule in England in the Early Modern Period« at the LMU Munich.

Nina Opgen-Rhein is an academic researcher for the Emmy Noether Research Group »Common Informing. Autonomy and Rule in England in the Early Modern Period« at the LMU Munich.

Hannes Ziegler is an early modern historian and head of the Emmy Noether Research Group »Common Informing. Autonomy and Rule in England in the Early Modern Period« at the LMU Munich.

34 Wiltshire and Swindon History Centre, 9/1/448, Letter 23/01/1767.

Bibliography

- Baker, John H.: Criminal Courts and Procedure at Common Law, 1550–1800. In: Cockburn, James S. (Ed.): *Crime in England, 1550–1800*. Princeton, NJ 1977, pp. 15–48.
- Banks, Stephen: *Informal Justice in England and Wales, 1760–1914. The Courts of Popular Opinion*. Woodbridge 2014.
- Beck, J. Randy: The False Claims Act and the English Eradication of Qui Tam Legislation. In: *North Carolina Law Review* 78 (2000), pp. 539–642.
- Beresford, Maurice: The Common Informer, the Penal Status and Economic Regulation. In: *The Economic History Review* 10 (1957), pp. 221–238.
- Brathwaite, John: Flipping markets to virtue with qui tam and restorative justice. In: *Accounting, Organizations and Society* 38 (2013), pp. 458–468.
- Brewer, John/Styles, John (Eds.): *An Ungovernable People. The English and their law in the seventeenth and eighteenth centuries*. New Brunswick/New Jersey 1980.
- Churchill, David: *Crime Control and Everyday Life in the Victorian City: The Police and the Public*. Oxford 2018.
- Edie, Carolyn A.: Tactics and Strategies. Parliament's Attack upon the Royal Dispensing Power, 1597–1689. In: *The American Journal of Legal History* 29 (1985), pp. 197–234.
- Elton, Geoffrey: Informing for Profit: A Sidelight on Tudor Methods of Law-Enforcement. In: *The Cambridge Historical Journal* 11 (1954), pp. 149–167.
- *Facts, Fully Established, and Submitted to the Consideration of Every Member of Both Houses of Parliament.* Bath 1784.
- Freeman Engstrom, David: Private Enforcement's Pathways: Lessons from Qui Tam Litigation. In: *Columbia Law Review* 114 (2014), pp. 1913–2006.
- Hay, Douglas: Poaching and the Game Laws on Cannock Chase. In: Hay, Douglas/Linebaugh, Peter/Rule, John G./Thompson, E.P./Winslow, Cal (Eds.): *Albion's Fatal Tree. Crime and Society in Eighteenth-Century England*. New York 1975, pp. 189–254.
- Hay, Douglas/Linebaugh, Peter/Rule, John G./Thompson, E.P./Winslow, Cal (Eds.): *Albion's Fatal Tree. Crime and Society in Eighteenth-Century England*. New York 1975.
- Herrup, Cynthia B.: *The Common Peace. Participation and the Criminal Law in Seventeenth-Century England*. Cambridge 1987.
- King, Peter: *Crime, Justice, and Discretion in England, 1740–1820*. Oxford 2000.
- Kirby, Chester: The English Game Law System. In: *The American Historical Review* 38/2 (1933), pp. 240–262.
- Kölbel, Ralf: Zur wirtschaftsrechtlichen Institutionalisierung des Whistleblowing: Lehren aus der Praxis des »Qui tam«-Verfahrens. In: *JZ* 63 (2008), pp. 1134–1141.
- Lidington, D. R.: Parliament and the Enforcement of the Penal Statutes: The History of the Act »In Restraint of Common Informers« (18 Eliz. I c.5). In: *Parliamentary History* 8 (1989), pp. 309–328.
- Limprecht, Joseph: *Common Informers and Law Enforcement in England, 1603–1640*. Berkeley 1975.
- Lyle, J. V.: *Acts of the Privy Council of England*. Vol. 35: *1616–1617*. London 1927. https://www.british-history.ac.uk/acts-privy-council/vol35 [last access: 01.02.2023].
- Munsche, Peter: *Gentlemen and Poachers. The English Game Laws 1671–1831*. Cambridge 1981.
- Munsche, Peter: The Game Laws in Wiltshire 1750–1800. In: Cockburn, James (Ed.): *Crime in England 1550–1800*. London 1977, pp. 210–228.
- Notestein, Wallace/Relf, Frances Helen/Simpson, Hartley (Eds.): *Commons Debates 1621*. New Haven/London 1935.
- *Remarks on the Laws Relating to the Game, and the Association Set on Foot for the Preservation of It. In a Letter From a Country Gentleman to His Friend in Town*. London 1753.
- *Some Considerations on the Game Laws; And the Present Practice in Executing Them: With a Hint to the Non-Subscribers*. London 1753.
- Weil, Rachel: *A Plague of Informers. Conspiracy and Political Trust in William III's England*. New Haven 2013.
- Ziegler, Hannes: Customs Officers and Local Communities: Informing in Late Seventeenth-Century England. In: Martín Romera, María Ángeles/Ziegler, Hannes (Eds.): *The Officer and the People: Accountability and Authority in Premodern Europe*. Oxford 2021, pp. 325–348.
- Ziegler, Hannes: Jacobitism, Coastal Policing and Fiscal-Military Reform in England after the Glorious Revolution, 1689–1702. In: *Journal of British Studies* 60/4 (2021), pp. 290–314.
- Ziegler, Hannes: The Preventive Idea of Coastal Policing. Vigilance an Enforcement in the Eighteenth-Century British Customs. In: *Storia della Storiografia* 74 (2018), pp. 75–98.
- Ziegler, Hannes: Qui tam pro domino rege quam pro se ipso. Über die Herrschaftswirkungen privater Strafverfolgung (common informing) im frühneuzeitlichen England. In: *Historische Zeitschrift* 315 (2022), pp. 289–318.