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POLICING AND PUNISHMENT IN NINETEENTH CENTURY BRITAIN

Edited by
Victor Bailey

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CRIME AND PUNISHMENT



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Volume 1

POLICING AND PUNISHMENT IN
NINETEENTH CENTURY BRITAIN



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Policing and Punishment in Nineteenth Century Britain

EDITED BY VICTOR BAILEY



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FOREWORD

This is the third volume to be produced by a staff/student co-operative within the Centre for the Study of Social History at the University of Warwick. I wish it as much success as its predecessors, *Albion's Fatal Tree* (1975) and *The Independent Collier* (1978). A fourth volume, *Workmen of Our Class*, is in advanced preparation while a fifth has already taken a hold upon the imagination of the prospective contributors. The fears that these enterprises might divert students' attention away from completing their theses or dissertations, or that they might hinder students from publishing full-scale books on their own account, appear to be without foundation.

So far as I am aware the notion of a staff/student literary co-operative is unique to Warwick and it may be worthwhile to list the essential conditions for its success. First, money – but not nearly as much of it as might be imagined. These volumes have cost nothing to the 'research' funds of the Social Science Research Council. They have been largely funded out of a generous allocation of 'studentships' from that quarter for which I am suitably grateful. But, second, a co-operative requires more than a large number of students. Bigness is fully compatible with miscellany and the sense of isolation and neglect which so often accompanies miscellany. There must be an attempt to go beyond what E.P. Thompson, my predecessor as Director of the Centre, called an 'artisanal research culture'. One must seek out certain concentrated and inter-related areas of research. One must have an eye to these possibilities when deciding to whom awards shall be given. The student must be enabled to be himself or herself, but in company. One must be prepared to learn from the laboratory, but by critical observation only. Third, one needs a sense of discovery: a 'nose' for what ought to be going on in social history. (In this instance I take it to be an awareness of the interplay between patterns of lawlessness and of law enforcement, or perhaps the immoral economy of crowd control!)

In certain minor respects this volume is not obviously in the line of descent from the *Tree* and the *Collier*. For example, there are three valued contributions from scholars who are not students, or former students, at the Centre. Then again, the 'staff' contribution appears to be limited to this brief foreword. However, Dr Bailey would be the first to acknowledge that the whole project owes an immense debt to Mr

Michael Shepherd, formerly lecturer in social history at Warwick. Nor is his the only 'invisible hand'. Dr David Wilson was prevented by his professional duties from appearing in the following pages. Yet most of the members of the co-operative must be well aware of his constructive role in the making of this book. But then to be a good co-operator may require anonymity, long periods of uninterrupted silence and a well developed bump of humility.

Royden Harrison

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1 INTRODUCTION

Victor Bailey

In the years between 1750 and 1868, English criminal justice underwent significant changes. The two most crucial developments were the gradual establishment of an organised, regular police, and the emergence of new secondary punishments, following the restriction in the scope of the death penalty. In place of an ill-paid parish constabulary, functioning largely through a system of rewards and common informers, and often depending on the backing of local para-military forces and the army, professional police institutions were given the task of executing a speedy and systematic enforcement of the criminal law. In lieu of the severe and capriciously-administered capital laws, given renewed legitimacy by Paley's doctrine of maximum severity and discretionary selection, a penalty structure relating the gravity of the crime to the severity of the punishment was erected as arguably a more effective deterrent of crime. Accordingly, the death penalty made way for penal transportation, 'that great sewer which for so many years carried away the dregs of our population', in M.D. Hill's evocative words, and for indigenous prison establishments.¹

The alterations in the modes of policing and punishment were closely linked. They derived from the conviction that an effective system of criminal justice required both a mitigation in the severity of penalties and a reformed and efficient police. They were also mutually reinforcing. Enthusiasm for police reform was charged by the belief that amelioration of the criminal law would be more acceptable if fewer offenders were to avoid capture. More significantly, this massive reorganisation of criminal justice, affecting the spheres of detection, prosecution and punishment, led ultimately to a decided increase in the scale and scope of legal authority. No longer was the enforcement of the criminal law made to rely upon the private initiative of thief-takers, voluntary associations for self-protection and contractor-gaolers. Instead, the responsibility was progressively delegated to the agents of a professional police and prison system. In the realm of criminal justice, *laissez-faire* retreated before the imposition of a widespread apparatus of law and order.

While it is possible, in this way, to sketch the broad outlines of the changes in criminal justice, large lacunae exist in our knowledge. This is

only to be expected of a relatively new field of historical inquiry. The present essays are offered, therefore, as a contribution to a richer understanding of developments in nineteenth-century policing and punishment. In general, the authors have mined new seams of regional and national documentation, and present their findings in the form of detailed case-studies. The essays emphasise less the pre-planned, executive imposition of a new and formal authority, and more the localism, diversity and continuities in the administration of criminal justice. Before examining the essays individually, however, it will perhaps be best to take stock of the existing literature in the fields of policing and punishment, insofar as it forms the backdrop to our own contributions.

I

In the historical literature on nineteenth-century policing, two main themes have claimed attention. The first concerns the factors which led to the foundation of the Metropolitan (1829), the borough (1835) and the rural (1839) constabularies. The traditional perspective is to see the evolution of the modern police as 'a Whig (more exactly, Benthamite) march of progress, the true end and goal being an efficient, centralized, nationally directed constabulary force'.² Drawing, in particular, on the lurid examples of the state of the unreformed police and on the recommendations of a professional police, to be found in the First Report of the Constabulary Commissioners (1839), historians of this persuasion have dignified the statist Utilitarians as farsighted reformers acting with a benign regard for the public interest.³ Against this view, is an explanation which emphasises conflict rather than consensus. In this approach, the introduction of the police was a reassertion of state power in the face of a new and threatening conjuncture. In the 1830s and 1840s, urban disorder was thought to presage an upsurge of the 'dangerous classes', against which the old techniques of policing would be inadequate. Hence the evident deficiencies of a frightened constabulary, a paralysed magistracy, and an exhausted military in the face of an insurgent Chartist movement, is said to have induced the government in the summer of 1839 to countenance reform of the rural police. A professional and bureaucratic control of urban and industrial society would, it was conceived, insulate the powers that be from popular animosity, at the same time as effectively combating crime and disorder.⁴ An integral feature of this second interpretation is the popular hostility which met the 'New Police', suggesting, at the least, that police reform

was not based on some broad consensus of opinion.⁵

A number of smaller motifs enrich the historical debate on the origins of the reformed police. One argument has been to reassert the influence of the incidence of ordinary crime as against the role of popular unrest. As it has been noted, Peel's speech proposing the Metropolitan Police Bill in 1828 referred only to the recent increase in the number of committals for property crime.⁶ So, too, the Constabulary Commissioners' Report of 1839 emphasised the profitability of a criminal career (especially in the poorly-policed rural areas into which bands of criminals were said to be migrating) more than it did the crimes of organised workmen or political radicals. And, anyway, the Report was completed before any major Chartist outbreak.⁷

Another argument has been to emphasise the resistance to the march of constabulary improvement on the part of broad sections of the ruling elite. The nineteenth-century gentry, Whig and Tory, rural and urban, had inherited a resilient cultural antipathy to the extension of Royal and governmental power. Thus the advocacy of a preventive police raised fears of a large standing army and a 'continental' system of spies. This resistance was not simply antiquarian, but the assertion of the value of local and voluntary peace-keeping above that of centralised power.⁸ Not everyone was dissatisfied with the parochial and corporate police. The replies to the Constabulary Commissioners (systematically doctored by Edwin Chadwick before they saw the light of day) commonly declared that the local agencies of law enforcement were equal to the current level of crime; that criminals were not escaping detection and prosecution; and that savings would not necessarily be effected by the institution of a reformed police.⁹ Doubtless for this reason, the Rural Police Act was only gradually implemented, and moves were made in several counties to disband or reduce the size of the force which had been established.¹⁰ It is a pattern which suggests both that the consensual view of police reform has underplayed the local resistance to a centralised police structure, and that the conflict view has too readily assumed the existence of a unified ruling elite, spurred into action by social fear. In all, the social reality which the historian is increasingly uncovering suggests the myopia of highlighting any one set of interests and events to explain the rise of the new police.

The unbroken contemporary debate and dispute about the value of a paid constabulary necessarily affected the organisation and day-to-day activities of the reformed police — the second main theme of the historical literature. According to some historians, the police must be credited with a concerted drive against working-class street and social

life. Such provocative interference in the patterns of life and leisure of working-class neighbourhoods, it is claimed, soured police-community relations, and, as in areas of public mistrust of the police today, inspired a large number of assaults against individual constables.¹¹ Other historians, while accepting that the coming of the new police led to an intensification of external supervision over the lives of the poor, have emphasised rather the fact that the police gradually, if grudgingly, secured public co-operation, and have sought to explain this by examining the ideological and practical limits to police authority.

The Metropolitan Police offers perhaps the clearest example of the way in which the political culture of a community acted as a constraint on the style of law enforcement. Set to work in the context of intense class conflict, the Metropolitan Police Commissioners strove to evoke public acceptance of 'Peel's bloody gang' by creating a disciplined force which would act in accordance with impartial legal standards. The distinctive public image of the London bobby was shaped by policies of recruitment and residency which severed the contact between constable and community; by monitoring police behaviour in matters large and small; and by restricting the scope of police discretion to powers justified by the law.¹² Additionally, the stipendiary magistracy vetoed enforcement strategies which were felt to overstep the mark.¹³ It seems unlikely that the police were entirely immune from using the wide discretionary authority which, for example, the Metropolitan Police Act (1839) accorded them. Nor did the lustre of impersonal authority avoid the occasional blemish. In the 1860s, and again in the 1880s, evident police incompetence in the face of public disorder provoked a crisis in police-public relations.¹⁴ Even so, a set of rules and expectations emerged from this running argument between police and public, which constituted a sort of contract in furtherance of judicious policing.

In contrast, the work on the provincial police has tended to stress the limitations to police authority which were imposed by the slowness and incompleteness of reform, and by the unfailing variety in the strength, payment and efficiency between the numerous separate police forces.¹⁵ The calibre of the first recruits certainly left something to be desired. The tendency of police authorities to draw upon the old night-watchmen and day constables did not help. Nor did the long hours for low pay, which ensured that few recruits joined except out of instrumental considerations, such as clothing and security. Not surprisingly, the early provincial police (as indeed the early metropolitan force) was renowned for inefficiency, indiscipline (notably drunkenness) and a massive turnover of constables. The initial emphasis on the preventive maintenance

of order, as opposed to 'pro-active' detective work, also meant that the new police were little improvement on the parish watches in the suppression of serious crime. The largest number of persons arrested by the police in the early days were drunks, vagrants and 'disorderly characters'.¹⁶ This situation was hardly improved, at least in the boroughs, by the occasional uncertainty as to which body – watch committee, magistracy or head constable – was in charge of the recruitment and appointment of constables, and of the executive role of the police. The Municipal Corporations Act (1835) provided no clear-cut answer on the occasions when these bodies came into open conflict. And, finally, until the 1850s, this rampant localism remained largely unhindered by central authority.

No radical alteration in the general structure of policing took place following the County and Borough Police Act of 1856.¹⁷ This statute, which emerged in the context of the ending of transportation and the implementation of a convict licence system, made it compulsory for all counties and boroughs to establish police forces, and imposed a modicum of central scrutiny and direction of police duties, notably by the machinery of an inspectorate. It was an uphill struggle for the Inspectors of Constabulary to shape a uniform police system out of the 200 separate forces in England and Wales at mid-century. They had more success in enhancing the popularity of the police within middle-class circles, by assigning to the police a number of service functions: the inspection of weights and measures, the inspection of lodging houses, and the enforcement of the licensing and vagrancy laws. In short, the nineteenth century witnessed little substantial change in the organisation of the provincial police; the local autonomy and character of policing remained undiminished. It meant, above all, that professional police solidarities or national administrative precepts only slowly imposed themselves between the police and the public.

II

It was in the nineteenth century that indigenous penal institutions first became the keystone in the punishment of crime. As early as 1805, despite the existence of a large number of capital statutes, capital punishment was no longer the chief weapon in the state's penal armoury. The majority of those convicted, at this date, were sentenced to the two main secondary penalties of the era, transportation and imprisonment. By 1860, imprisonment, especially for short terms of six months and

under, accounted for 78 per cent of all sentences imposed at higher courts; penal servitude (the substitute for transportation) for 18 per cent.¹⁸ Until 1877, the prison system was, of course, divided into two separate administrative units. The local prisons, successors of the bridewells and houses of correction, were run largely by the local magistrates, and held mainly minor offenders and debtors, plus those convicts who were either awaiting transportation or serving the initial stage of a sentence of penal servitude. The system of transportation, the hulks and the convict prisons were the responsibility of the central authorities. Each of these administrative branches had its own complex history, which requires a brief assessment, before turning to the trends in penology.¹⁹

The early decades of the nineteenth century saw the development, under the twin influences of utilitarianism and evangelicalism, of a reform campaign, which sought to bring order, hygiene and discipline to the unreformed local prisons. At first, the reformers recommended the introduction of classification (on the basis of sex and offence-type) and of productive labour. Peel's Prison Act of 1823 put the government imprimatur on this policy. But gradually, assisted by the prison inspectorate, official policy was converted to the penitentiary idea of separation, religious instruction and hard labour. Pentonville was constructed in 1842 to serve as a 'model prison', the design and regimen of which was intended to guide the magistrates in the erection or improvement of local prisons on the separate system. For the next decade, the tenets of separate confinement dominated penal thinking and, to a lesser extent, penal practice. The pattern of discipline and hygiene which the Home Office sought to impose upon local administration contrasted with the licence and squalor of the hulks, and with the unequal and undeterrent features of transportation. The government's chance to bring some method and uniformity into convict discipline came with the abandonment of transportation in the early 1850s and the inauguration of a system of convict prisons. Between 1853 and 1863, the central bureaucracy weathered both internal prison troubles (fostered, in part, by the anomalous operation of the Penal Servitude Acts) and public criticism of the administration of convict prisons; and slowly patched together an acceptable system of convict discipline, based on an introductory phase of separate confinement and a second stage of associated labour on public works. The 'institutional solution' was also the primary mode adopted in the nineteenth century to deal with the insane. By mid-century, most 'criminal lunatics' were held in public asylums or in private licensed houses. But if the most manifestly lunatic were in mental institutions (supplemented by Broadmoor in 1863), considerable

numbers of disordered offenders, especially weakminded or borderline cases, languished in the prisons, victims both of the inertia of magistrates and prison doctors, and of the resistance to accept troublesome cases on the part of the asylums.

It is these changes in penal policy, in particular the development of highly-regimented institutions for the discipline of the criminal and the insane, which have attracted the attention of historians in recent years. Under the penetrating light cast by Rothman's history of American custodial institutions and Foucault's studies of European asylums and prisons, British penal policy has been re-examined.²⁰ The traditional arguments in explanation of the new modes of punishment have been found wanting, notably the Whig view of penal development which rests on a heightened social responsibility for the dependent poor and on the role of central inspection.²¹ In their place, the 'revisionists' have substituted a conflict interpretation, which depicts the prisons and asylums as instruments of social discipline, the products of class interest and class conflict, or, more generally, of a market economy.²² It is unnecessary to labour the various strands of this argument. Suffice it to say that the new attitudes to the treatment of the insane and the criminal are seen as deriving from a society faced with the strains of industrialisation (population explosion, urban growth, and an upward curve of criminality) and from an associated conviction that the preservation of social cohesion could no longer depend upon local and paternalistic modes of control. Accordingly, the argument runs, the Benthamites inspired the establishment of a framework of deterrent institutions (prisons, workhouses, vagrant wards) which, after the professional police force, was the essential agent in the supervision and discipline of the dependent poor.

As yet, the response to this interpretation has largely restricted itself to reservations expressed in review articles and the like. It has been suggested, for example, that the kinship between the market economy and class conflict, on one hand, and the evolution of the asylum and prison, on the other hand, is based on conjecture as much as on historical evidence. More specifically, it has been felt that to see the medical profession and prison reformers as unified groups, certain of their objectives, is to neglect the diversity of nineteenth-century viewpoints; and, further, that to talk of a governmental 'strategy of social control', endowed with a set of clear aims and the wherewithal to implement them, is to mask the unplanned nature of penal change.²³ This points the way to what will eventually perhaps prove to be the strongest objections to this conspiracy theory variant of class analysis, to wit, the

makeshift nature of a good deal of penal legislation, and the wide variety of methods of organisation to be found in the prisons and asylums.

Given the vast number of local prisons (over 190 in the early 1860s), many of which accommodated fewer than 25 inmates, the separate system of prison discipline was bound to be subject to considerable local modification. To talk of a system, at all, seems rather misplaced. As the prison reformer, Charles Pearson, was disposed to say in 1850:

A harlequin's jacket was of a consistent colour in comparison with the variety and discrepancies of the so-called systems which prevailed in this country.²⁴

The situation had improved little by 1863, when a Select Committee of the House of Lords complained about the lack of uniformity of management and treatment in the local prisons. It was the same deficiency of local administration which, in essence, led to the 'nationalisation' of the prisons in 1877.²⁵ The pattern of local response to national directive seems as complex and confused in the incarceration of the insane.²⁶

III

The aim of the present studies is to assess the validity of existing historical interpretations of the patterns of policing and punishment. What the essays hold in common is a sense of the tentativeness, variability and complexity of developments in the procedures and institutions of nineteenth-century criminal justice. Changes in the systems of 'social control' are seen as the product more of makeshift practices and policies than of uniform responses to a widespread threat to the social order. The first four essays address themselves to aspects of policing. Adrian Shubert provides the first in-depth assessment of the Associations for the Prosecution of Felons, the volunteer self-protection forces which were created in large numbers to offset the cost and intricacy of prosecution procedures and the absence of a professional police. Above all, the study advocates that we view the associations less as anachronistic exemplars of unreformed legal justice, and more as testaments to the fact that sections of the eighteenth-century propertied were dissatisfied with the flexible, judicial powers which a 'Bloody Code' occasioned. The subscribers to these associations sought a stricter and unvarying administration of criminal law. So bent upon effective policing were some of these bodies that, contrary to what a number of historians have

maintained, they were supportive of, rather than obstructive towards, the creation of the reformed police.

Another kind of overlap between the reformed and unreformed police is evident in John Field's account of policing in Portsmouth. When reform came in 1835, the men of the old watch system, about whom little criticism had ever been voiced, were drafted into the town police – an element of continuity which, in part, explains the absence of popular resistance to the new force. The body of the essay, however, deals with the contribution to the development of police organisation of the initial identification of priorities in law enforcement (with the emphasis on minor public-order offences) and of the gradual creation of a disciplined constabulary. The police system also reflected the local interests and loyalties of borough government. Dr Field illustrates this fact by pointing to the friction between the local social elite and national government when, in the 1850s, a centralised police was canvassed. The local authority was anxious to retain the right to police itself, along with the associated patronage and privileges. Thus Portsmouth was no pioneer in the adoption of national police precepts for its own force, despite its economic bond, through the dockyard, with central government. Finally, the study suggests that, whatever motivated the formation of the new police, it was only in the 1870s that the local middle class became firmly identified with the police capacity to maintain order.

The widespread reluctance to embrace the new police forces forms the subject of the next essay, which discusses policing in Warwickshire. Barbara Weinberger documents how utilitarian zeal for police reform met a set of contradictory elite demands: efficient policing without increased rates or obstructive modes of enforcement. These demands inevitably reacted on the size, remuneration and role of the police for many decades. Nor was a policed community readily accepted by other social groups. If there was no extensive popular opposition to the establishment of the police forces in Warwickshire, nevertheless the use of the police by national government to enforce vagrancy and licensing laws led, in the 1870s, to an upsurge of working-class assaults on the police. The improvement in the quality of urban life, which these service functions were intended to secure, probably made ratepayers more prepared to fund an adequate police. It is possible, too, that the incorporation of such duties contributed to the development of a professional and more truly national police system. Yet for the poor, it represented a further encroachment on their leisure and liberties. In all, a number of local groups kept a close watch on the Victorian police, a scrutiny which, in turn, modified the style and content of police action.

The restraints on police power are taken up in the final essay on policing. Recent accounts of the threat posed by what the propertied in the 1880s knew as 'Outcast London', have described both an extensive and lasting fear of popular insurrection, and a governmental strategy to put down the unemployed movement and the associated freedom to meet and process. On closer examination, notably of the response of the Metropolitan legal authorities, it becomes evident that the public panic at the riot of 8 February 1886 rapidly turned into indignation at the obvious inertia of the metropolitan police. Moreover, the study contends that the depiction of a unified state repression of the unemployed demonstrations masks influential constraints on law enforcement, namely the disagreement between the Home Secretary and the Chief Commissioner of Police over public-order policy, and the related anxiety, on the part of the Home Office, at the possible divorce between executive police action and the 'rule of law'.

The 'police question' was occasionally influenced, in a very direct manner, by alterations in the system of punishments. This was certainly the case in the 1850s, when the abandonment of transportation contributed to the consolidation of a general system of police.²⁷ But what, in turn, influenced changes in the system of secondary punishments? Two essays in the present collection deal with the critical, transitional years of mid-century, during which the government set about constructing or refurbishing sufficient prisons to house the convicts who could no longer be transported. Above all, the studies document the way in which the ending of transportation was thrust upon the Home Office by colonial opposition, necessitating the resort to improvised measures as opposed to a considered alternative. Heather Tomlinson assesses the origins and unfolding of penal servitude between 1846 and 1865. What is evident is that the practical difficulties confronting the prison administration (the shortage of convict accommodation, the duration of separate confinement, or the question of remission) took precedence over the construction of a coherent penal policy. Only gradually, according to Dr Tomlinson, did a more uniform regimen of convict discipline emerge, and even then due more to the hysterical condition of public opinion, than to the care and conviction of the Home Office. The state of public opinion, as Peter Bartrip illustrates, was a particularly formative influence upon the principle and administration of release on licence. Within a decade of the Penal Servitude Act (1853), the 'ticket-of-leave' experiment was subjected to two draughts of amending legislation, as a result of public panic at the supposed recidivism of licensed convicts. As Dr Bartrip shows, the most significant

effect of this resurgence of security imperatives was the inauguration of an organised method of police surveillance of released convicts.

If the *ad hoc* and expedient quality of much of penal legislation impairs the notion of a coherent penal policy, so too does the variability of local penal practice. Margaret DeLacy's study of Lancashire prisons between 1820 and 1845 documents a wide variety of disciplines, few of which emulated the highly-regimented pattern of Pentonville. The age of prison buildings, the inadequacies of prison staffs and the parsimonious nature of the justices were all contributory factors to the creation of this diversity of institutions. Yet this was Lancashire, the heartland of industry. Dr DeLacy's account, therefore, sustains the case for a qualification of the theory which links the development of industrialisation to the explicit use of specialised segregation to control the criminal poor. Her study also reinforces the need to test the significance attached to national policy against its practical effect at the local level. A similar sort of test is applied by Janet Saunders to the treatment of insane offenders in Warwickshire. Her main theme is to show how and why the magistracy failed to employ the specialised facility of the borough and county asylum, instead continuing to dispatch disordered offenders (including 'weakminded' or mentally deficient cases) to short terms of imprisonment. When change came, in the 1880s, it was due neither to any significant advance in the medical understanding of insanity, nor to any doctrinaire policy to control larger categories of the insane. Nor was it due simply to the volume of weakminded offenders being sentenced to imprisonment, as some would have it. To this 'pressure of circumstances', according to Ms Saunders, must be added the effect of the Criminal Lunatics Act (1884), which induced the magistracy to send lunatic offenders to prison, in order to avoid the inconvenience and cost of certifying them as ordinary lunatics. When it became impossible to gainsay the evidence of this practice, the Home Office had no option but to intervene and urge the magistracy to bypass the procedures of the criminal law and deal with these cases as pauper lunatics.

IV

It is hoped that these studies, by considering events and changes in policing and punishment, often within specific local settings, will contribute to a refinement of the historical interpretations which profess to lay bare the structural basis of the police and prison systems. This

does not imply that the attempt to explain the origins and secular patterns of policing and punishment is a bogus exercise of historical reconstruction. It simply affirms our conviction that further theoretical advances rely upon thoroughgoing inquiries, which uncover the changes in criminal justice in all their variety, intricacy and irregularity. Future hypotheses must needs accommodate such case-histories. Perhaps also these studies will serve to stimulate research into allied or additional features of nineteenth-century criminal justice. There certainly remains much to be unearthed about the detection, prosecution and punishment of criminal behaviour. For until we fully appreciate the principles and practices of Victorian criminal justice, it is unlikely that we shall truly understand those of our own era. The past century bequeathed us a considerable legacy which continues to prevail upon contemporary policing and punishment.

Notes

1. Matthew Davenport Hill, *Suggestions for the Repression of Crime* (London, 1857), p. 185.

2. E.P. Thompson, 'Law as part of a Culture', *Times Literary Supplement*, 24 April 1969, p. 426, reviewing Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750* (4 vols., London, 1948-68), vol. 4.

3. Representatives of this school of thought include Charles Reith, *British Police and the Democratic Ideal* (London, 1943); idem., *A New Study of Police History* (London, 1956); L. Radzinowicz, op. cit.; and D. Ascoli, *The Queen's Peace* (London, 1979).

4. Adherents to this viewpoint include E.P. Thompson, *The Making of the English Working Class* (New York, 1966), pp. 81-2; Allan Silver, 'The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police and Riot', in D. Bordua (ed.), *The Police: Six Sociological Essays* (London, 1967), pp. 10-12; John Foster, *Class Struggle and the Industrial Revolution* (London, 1974), pp. 64-9; and D. Philips, 'Riots and Public Order in the Black Country, 1835-1860', in J. Stevenson and R. Quinault (eds.), *Popular Protest and Public Order* (London, 1974), p. 142. There are other historians who simply stress the role of Chartist disorder, e.g. F.C. Mather, *Public Order in the Age of the Chartists* (Manchester, 1959), p. 128.

5. F.C. Mather, op. cit., pp. 137-8; R.D. Storch, 'The Plague of the Blue Locusts. Police Reform and Popular Resistance in Northern England, 1840-57', *International Review of Social History*, vol. 20 (1975), pp. 61-90.

6. 3 *Hansard* 18, 28 Feb. 1828, cols. 784ff. Note, however, that Wilbur Miller, *Cops and Bobbies. Police Authority in New York and London, 1830-1870* (London and Chicago, 1977), p. 8, argues that Sir Robert Peel devised his scheme of police in 1822, when insurrection was much more of a threat than in 1828.

7. E.C. Midwinter, *Law and Order in Early Victorian Lancashire* (York, 1968), pp. 11-17; idem., *Social Administration in Lancashire 1830-1860* (Manchester, 1969), ch. 4; J.J. Tobias, 'Police and Public in the United Kingdom', in G. Mosse (ed.), *Police Forces in History* (London, 1975), p. 99. The 'migration

thesis' – which states that the exodus of criminals from policed to unpoliced areas was the spur to constabulary reform – has itself been the subject of historical debate. See J. Hart, 'Reform of the Borough Police, 1835-1856', *English Historical Review*, vol. 70 (1955), pp. 411-27; J.J. Tobias, *Crime and Industrial Society in the Nineteenth Century* (Harmondsworth, 1972), pp. 270-73.

8. L. Radzinowicz, op. cit., vol. 3 (1956), passim.

9. Public Record Office, HO 73/6/Pt.1. See also L. Radzinowicz, op. cit., vol. 4 (1968), pp. 259-60.

10. F.C. Mather, op. cit., pp. 130-32; T.A. Critchley, *A History of Police in England and Wales* (London, 1978, revised ed.), pp. 88-93; N. Osborn, *The Story of Hertfordshire Police* (Letchworth, 1970), pp. 20-24.

11. R.D. Storch, 'The Policeman as Domestic Missionary: Urban Discipline and Popular Culture in Northern England, 1850-1880', *Journal of Social History*, vol. 9 (1976), pp. 481-509. See also J.R. Gillis, 'The Evolution of Juvenile Delinquency in England, 1890-1914', *Past and Present*, no. 67 (1975), pp. 96-126.

12. W.R. Miller, op. cit., passim.

13. R.D. Storch, 'Police Control of Street Prostitution in Victorian London', in D.H. Bayley (ed.), *Police and Society* (London, 1977), pp. 50-66.

14. W.R. Miller, op. cit., pp. 111-20.

15. See J. Hart, op. cit., pp. 416-22; T.A. Critchley, op. cit., pp. 64-8; E. Midwinter (1969), op. cit., pp. 149-75. Many of the numerous histories of individual forces provide details of police drunkenness, etc. See, e.g., A. Cookes, *The Southampton Police Force 1836-1856*, Southampton Papers, No. 8 (Southampton, 1972), pp. 16-27.

16. K.K. Macnab, 'Aspects of the History of Crime in England and Wales between 1805-1860' (Univ. of Sussex, Ph.D. thesis, 1965), ch. 4; D. Philips, *Crime and Authority in Victorian England* (London, 1977), ch. 3.

17. See H. Parris, 'The Home Office and the Provincial Police in England and Wales, 1856-1870', *Public Law* (1961), pp. 235-55; J. Hart, 'The County and Borough Police Act, 1856', *Public Administration*, vol. 34 (1956), pp. 409-17; T.A. Critchley, op. cit., chs. 4 and 5; C. Pilling, 'The Police in the English Local Community, 1856-1880' (Univ. of Cambridge, M.Litt. thesis, 1975), passim; J.P. Martin and G. Wilson, *The Police: A Study in Manpower* (London, 1969), ch. 2.

18. L. Radzinowicz, op. cit., vol. 1 (1948), pp. 160-61. See also A.G.L. Shaw, *Convicts and the Colonies* (London, 1966); D.A. Thomas, *The Penal Equation. Derivations of the Penalty Structure of English Criminal Law* (Cambridge, 1978).

19. For further details, see S. and B. Webb, *English Prisons Under Local Government* (London, 1963; first published, 1922); R.S.E. Hinde, *The British Penal System 1773-1950* (London, 1951); U.R.Q. Henriques, 'The Rise and Decline of the Separate System of Prison Discipline', *Past and Present*, no. 54 (1972), pp. 61-93; N. Walker and S. McCabe, *Crime and Insanity in England* (Edinburgh, 1973), chs. 1-4.

20. D.J. Rothman, *The Discovery of the Asylum* (Boston, 1971); M. Foucault, *Discipline and Punish: The Birth of the Prison* (London, 1977).

21. M. Grunhut, *Penal Reform* (Oxford, 1948), first part; K. Jones, *Lunacy, Law and Conscience 1744-1845* (London, 1955). See also N. McLachlan, 'Penal Reform and Penal History: Some Reflections', in L. Blom-Cooper (ed.), *Progress in Penal Reform* (Oxford, 1974), pp. 1-24.

22. M. Ignatieff, *A Just Measure of Pain. The Penitentiary in the Industrial Revolution 1750-1850* (London, 1978); R. Morgan, 'Divine Philanthropy: John Howard Reconsidered', *History*, vol. 62 (1977); A.T. Scull, *Museums of Madness. The Social Organization of Insanity in Nineteenth-Century England* (London, 1979). For an earlier study of the links between punishment and the rise of modern industrial society, see Georg Rusche and Otto Kirchheimer, *Punishment*

and Social Structure (New York, 1939).

23. See M.H. Tomlinson, ‘“Prison Palaces”: a Re-appraisal of Early Victorian Prisons, 1835-77’, *Bulletin of the Institute of Historical Research*, vol. 51 (1978), pp. 60-71.

24. 3 *Hansard* 108, 2 Feb. 1850, col. 704.

25. L. Blom-Cooper, ‘The Centralization of Governmental Control of National Prison Services, with special reference to the Prison Act, 1877’, in J.C. Freeman (ed.), *Prisons Past and Future* (London, 1978), pp. 65-75.

26. J.K. Walton, ‘Lunacy in the Industrial Revolution: a study of asylum admissions in Lancashire, 1848-50’, *Journal of Social History*, vol. 13 (1979), pp. 1-22.

27. L. Radzinowicz, op. cit., vol. 4, pp. 301-2; C. Pilling, op. cit., p. 83; 3 *Hansard* 138, 17 May 1855, cols. 711-12.

2 PRIVATE INITIATIVE IN LAW ENFORCEMENT: ASSOCIATIONS FOR THE PROSECUTION OF FELONS, 1744-1856

Adrian Shubert

Between 1829 and 1856 the official agents of law enforcement were changed from part-time, amateur officials, such as the constable, to full-time, professional, bureaucratic police forces. But in England, as elsewhere, the means of law enforcement were not restricted to those sponsored by the state. The lower classes had their own way of chastising unacceptable behaviour, even if the code of behaviour they were enforcing was not that of statute law.¹ The propertied, while subscribing to the written law, did not leave its enforcement entirely to the state. In literally hundreds of villages, towns, parishes, in virtually every part of the country, they created Associations for the Prosecution of Felons.

These Felons Associations were voluntary associations, and were one of the numerous types of voluntary associations which existed in the eighteenth century. Other such institutions were the Societies for the Reformation of Manners, Societies for the Suppression of Mendicity, and Associations for the Defence of Liberty and Property. Undoubtedly the membership of these organisations overlapped, but felons associations were distinctive in their almost exclusive concern with crimes against persons and property, and especially the latter. With only the rarest of exceptions, crimes against morality, public order and the state did not concern them.

Some felons associations existed before 1750 and a handful continue to function as amusing anachronisms even today, but the century between 1750 and 1856 saw the years of their greatest activity as a means of fighting crime. Their exact origins are obscure, but the existence of societies devoted to the suppression of specific sorts of criminality, such as the Societies for the Reformation of Manners, was certainly one source.

This resort to voluntary association to have the law enforced effectively was clearly in anticipation of the felons associations, but the singular interest of the Societies for the Reformation of Manners in crimes of immorality marks them off from the felons associations. The first voluntary association devoted to fighting property crime was the

Maghull (Lancs.) Agreement for the Prosecution of Felons of 21 July, 1699. With the expression of concern over increasing crime, and the unwillingness of victims to prosecute, the decision to bear the costs of prosecutions jointly, and the use of sanctions against recalcitrants, the Maghull Agreement included many features that would come to define felons associations. Even the language of the text would find imitators:

Whereas heretofore several felonies and pelfering robberies have been committed within the township of Maghull in the County of Lancaster and many of which felons have been supposed to escape prosecution and punishment by reason of the charge and expense that would be occasioned in case the owner of the goods stolen should prosecute such felons by due and legal courts of law.²

But the Maghull Agreement did not create a fully-fledged felons association. It attempted to make a traditional instrument of law enforcement, the constable, more effective, while the felons associations would go further than this. Basing themselves on a traditional principle, 'collective protection within the smaller territorial divisions of hundreds and tithings',³ they bypassed the constable and took the prosecution of offenders into their own hands. They offered rewards to encourage the apprehension of offenders, and can be seen as a half-way house between the traditional and innovative schools of thought on the problem of increasing crime.⁴

The first documented felons association was created at Bretherton (Lancs.) in 1744. Twenty-one people describing themselves as 'landlords or inhabitants' contracted for a period of 21 years to share the costs of prosecuting offenders in proportion to the rates charged on their lands for poor relief. As were many of its successors, the Bretherton Association was primarily a prosecuting society, and was much more concerned over the refusals to prosecute induced by the costs and complexities of the legal system than over any inability to apprehend offenders:

Whereas diverse burglaries and felonies have of late years been committed . . . and persons are induced or encouraged to be guilty thereof by reason that prosecutions are not carried on against the offenders with so much vigour as ought to be on account of the great expense attending such prosecutions and persons from whom goods are stolen often acquiesce and do not endeavour to find out or prosecute offenders by reason of the great expense attending such prosecutions, by which means they go unpunished.⁵

There were at least 450 associations created in England and Wales between 1744 and 1856.⁶ There was no single pattern of distribution, although the density of associations did follow, in a general way, the growth of cities and industry. Counties with large urban or industrial centres had the largest number of associations, and had them earliest. But this was not a rule, only a very general tendency.

Local conditions, and especially the presence of a concerned magistrate or squire, appear to have been very important in determining whether or not an area had a felons association. Many of the Lancashire associations, which took the form of a contract between a gentleman or two and the rest of the interested inhabitants, appear to have started this way. The Poulton-le-Fylde Association is one example; 'whereas the said several parties hereto and the said John Brisbourne (Esquire) and Richard Dickson (Gentleman) have mutually agreed to be at a joint and equal expense in prosecuting, commencing actions, and bringing to justice all offenders.'⁷

Edward Christian is a fine illustration of just such an active magistrate. Concerned about the increasing inability of finding people to prosecute, he suggested that magistrates be permitted to commit offenders, and proselytised in favour of felons associations.

To counteract this most prevailing motive, I have here and everywhere recommended Associations of Men of Property, who will join in the expense of pursuing and prosecuting felons. I have heard murmurs of disapprobation of such Associations, but I have never yet heard any objection which I could so understand as to deserve an answer.⁸

John Hewitt, senior alderman and mayor of Coventry, as well as a JP, was another official who encouraged the associations, and the first, short-lived, Coventry association owed its existence to his efforts. Confronted by 'a great increase in the number of offenders in the year 1773', he responded by recommending to 'the gentlemen, magistrates, and principal inhabitants of Coventry and Warwickshire' that they start a felons association.

The number of dangerous offenders discharged at the last two assizes require the attention of the magistrates and the public. The approach of winter makes highly necessary that some vigorous measures should be taken for the protection of property . . . To stop the progress of such evils it is proposed that Associations be entered into for the

pursuing, apprehending and prosecuting of offenders . . . The farmer's property is most exposed. Those in the liberties of Coventry and the county of Warwick have been great sufferers . . . A considerable number of Gentlemen of the first rank and property in the county of Warwick have expressed their approbation of such a plan and all who are desirous of engaging in it, whether within the limits of Coventry, or in the county of Warwick at large, are desired to send their names to Mr. Thomas at the White Bear Inn.⁹

Hewitt's account also casts some light on the social composition of those who expressed their dissatisfaction with the prevailing means of law enforcement: 'Gentlemen of the first rank and property'. It would appear that, in Warwickshire at least, the discretionary powers available to men of local standing were not enough to protect their property, however much it reinforced the sense of deference of their underlings.¹⁰

The idea of felons associations spread by word of mouth. Hewitt had heard of them elsewhere; 'this . . . hath been pursued in different parts of the kingdom, with great utility to the public, and at a very trifling expense to individuals.'¹¹ In turn, people in other parts of the country came to hear of the Coventry Association and wrote to Hewitt asking for details. He included the articles of agreement in his *Journal* in response to 'applications from different towns and counties in the kingdom for my plan of the association formed at Coventry for prosecuting felons.'¹²

Despite the existence of such contacts among men interested in and responsible for felons associations, they never overcame their local basis. The Society of Gentlemen and Noblemen for the Preservation of the Game was a national organisation, but in this, as in many other ways, it was an exception. The only evidence of co-operation between associations is a letter from the Knowle (Warks.) Association to the Henley-in-Arden Association enquiring whether it was interested in a joint project; 'several associations in the neighbourhood are offering rewards for the apprehension of parties committing robberies in or doing wilfull damage to certain churches in the area.'¹³ Doubtless such joint enterprises were considered at other times and places, but they could not amount to co-ordinated action on a regional level.

In fact, there are some cases of two associations in a single town being unable to get along. It seems that felons associations may even have been the vehicles for transmitting local rivalries. The most striking example was Leamington Spa. The Leamington Priors Association had been started in the 1820s and developed into a large and vigorous

organisation. By 1867 it had a bank balance of over £200 and a membership of 155 which had been growing rapidly for a number of years. It remained active as a prosecuting society and saw itself as an integral part of the town's law enforcement apparatus, enjoying a close relationship with the police.

This success was threatened in 1867 by the creation of the Leamington Spa New Association by John Bowen, a former Vice-President of the Priors. The older organisation tried to put a good face on it, declaring that 'a rival association was . . . no occasion for annoyance or discouragement,' but the New Association, out to establish itself, saw the two as rivals. In 1869 members of both associations were victimised by a swindle known as the 'bubble income tax society'. The Priors preferred charges but before committal the lawyer for the New Association appeared, demanding a place in the prosecution as his clients were also involved. However, when the case came to court he did not appear, and the Priors were left to pay all the expenses. The incident strained their finances and led them to suggest that the two associations work together on such cases in the future. The New Association was not interested.¹⁴

It is not clear why the New Association should have been antagonistic, or, for that matter, why it should have been created at all. By 1868 all of Warwickshire had a police force and Leamington Spa had one of its own. The town's leading citizens did not feel that crime was a problem. Since there was no need for another association it is likely that the split was the result of other disagreements within the membership; personal, economic, or political. The election of 1868 was the first bitterly contested election in South Warwickshire for some years and it is possible that political rivalries carried over into the association. However, an analysis of the votes cast by the members of the Priors — no membership lists for the New Association exist for that year — does not bear this out. The 141 members listed in the printed poll book voted as follows: Conservative 62 (44 per cent), Liberal 30 (22 per cent), split vote 17 (12 per cent), and no vote 32 (22 per cent). The Conservative predominance within the association was much greater than in Leamington as a whole, but not sufficient to indicate a split along party lines.¹⁵

The rivalry between the two Leamington associations is an extreme example of the general lack of co-operation among felons associations. Just why this was so, with each association tending its own garden and showing no interest in fighting crime generally, is unclear. The operations of the associations did not overlap only in towns. Many parishes were served by two or more associations. Among Warwickshire parishes, Bickenhill had the Meriden, Elmdon and Bickenhill associations;

Lillington had the two Leamington associations and the General Association for the Protection of Property; Stoneleigh had the Stoneleigh and Kenilworth associations; and Warwick had the Haseley, Kenilworth, Warwick and Warwick New associations. The potential for a county-wide network existed, but there is no indication that anything of that sort was ever contemplated, let alone implemented.

Within the area covered by any individual association, protection was available to anyone who cared to apply. In some associations it was necessary for new members to be voted on, but it does not appear that this was used as a device for segregating them on class lines. Few people proposed for membership were refused. On the other hand, there were many associations that actively sought new members, though few went as far as the Leamington Priors and offered a commission of 5 per cent of the first year's subscription to the member who recruited him.¹⁶ In fact, it is one of their most striking features that the associations were open to anyone with property that he, or she, wanted to protect. Membership was not restricted to any one class or group, but reflected the occupational structure of the area in which it operated.

No analysis of the membership of felons associations has previously been made. Our own classification of ten Warwickshire associations suggests that there was no class basis for membership, except that all members had some property.¹⁷ However, the associations set up in response to specific outbreaks of social unrest or certain types of crime tended to be more class-based than ordinary felons associations. The Sevenoaks Association for the Protection of Property Against Incendiarism, created in September 1830 in response to the Captain Swing riots, is a case in point. Its purpose was to 'offer rewards and defray expenses to be incurred in the protection of property'.

Although centred on Sevenoaks, the association, like the incendiarism it was designed to combat, covered a larger area. The extent of the area protected is not clear, but there was a central committee in Sevenoaks and subcommittees in the adjoining parishes which were in contact with it. The association had no patrol of its own but the committee had the authority to create one or call in the London police. At the first meeting the committee offered rewards of £100 for the conviction of any arsonist and £10 for the conviction of anyone sending threatening letters.¹⁸

The vast amounts subscribed reflect the seriousness of the situation. Sixty-six members pledged £1,032, from the Earl of Plymouth's £105 to the £1 of a certain Mr Henderson. The composition of the membership is considerably different from that of other associations. There

were three titled aristocrats (Earls of Plymouth and Amherst, and Marquis of Camden) and 14 squires, comprising 25 per cent of the members, and 12 clergymen, or 18 per cent. Both these figures are much higher than for other associations.¹⁹ And most members of the Sevenoaks Association were men of substantial property.

A second example are the societies for the preservation of game. These included the national Society of Gentlemen and Noblemen for the Preservation of the Game created in 1752 and a number of more local organisations. The national Society was very active in attacking the underground market in game. It made use of informers, paid rewards, and set up a patrol to uncover this market in London, but most of all it prosecuted every possible case vigorously.

More than fifty poultrytreres and higgleres were at once haled into court for exposing game for sale. Prosecutions for a number of years rained upon the heads of tradesmen, and at a penalty of £5 per head they found their trade quite interrupted. Sometimes they received mercy if they apologized and made promises for the future. In some cases the most vexatious methods of prosecution were employed for by suing for penalties by action of debt in a court of record, costs could be run up to overwhelming amounts and tradesmen ruined.²⁰

The Society was the only prosecuting organisation that was known to refrain from prosecuting offenders in some instances. Perhaps they were willing to grant mercy in return for an apology and a promise because as noblemen or gentlemen they were more attuned to the preservation of deference than were associations whose membership was drawn from a less elevated stratum of society.

Because they defended the privileges of a very limited social group the game preservation societies were immensely unpopular. As early as March 1752 'placards appeared in the streets about the Houses of Parliament declaring that if the society did not desist from its prosecutions the farmers and their labourers would destroy the game altogether.'²¹ The Society was also the subject of a minor flood of pamphlets, which accused it of being, among other things, subversive of 'the liberties of the people'.²²

Ordinary felons associations provided two basic services for their members. The first was to offer rewards for information leading to the arrest and conviction of offenders. The amounts varied from association to association, but the following list is typical, both in regard to the crimes included and the relative amounts offered:

	£	s	d
Murder	21	0	0
Arson	10	10	0
Burglary, Highway or Footpath Robbery	5	5	0
Theft or Maiming of Horses, Cows, Pigs, Sheep	5	5	0
Theft or Damage to Poultry, Fish, Timber or Tools	2	2	0
Theft or Breakage of Fences, Hedges, etc.	1	1	0
Robbing Orchards, Gardens or Fields	0	10	0 ²³

The second service was to provide members with assistance in prosecuting offenders. There was, however, a great deal of difference in how this was done. The Turton (Lancs.) Association gave only financial aid, leaving the complainant 'to take upon himself all the trouble of prosecuting and providing all the proper evidence . . . as if prosecuting at his own charge'.²⁴ Outside of Lancashire it was common for associations to retain a lawyer to conduct the prosecutions and also act as clerk and treasurer. The complexity of the system of prosecution, which required appearances before a magistrate, grand jury and court for indictable offences, as well as the preparation of briefs, other paper work and the gathering of evidence and witnesses, meant that the provision of a lawyer was of great value.

It could also be very costly. A case before the sessions or assizes could easily cost over £10, and even a simple prosecution of two men for stealing some flour from a barn in Henley-in-Arden cost the Association there £51 16s 1d in 1831. How could the associations bear such expenditure? Most charged their members a fee for joining and an annual subscription, usually of the order of 7s 6d. This went into a fund out of which expenses were met. Even so, the financial position of most associations was precarious and very few managed to maintain a positive bank balance. Certainly the Leamington Priors, with over £200 in the bank, were far from typical.²⁵

Felons associations did not automatically act on every grievance brought forward by the members. Claims were frequently disqualified because the crime had taken place outside the area in which the association operated or because the member had taken steps without the prior authorisation of the committee. On the other hand, associations were adamant on one point: wherever there was a reasonable case, there would be a prosecution. Acquiescence in the loss of property or active collusion with criminals to retrieve it, a common practice in the eighteenth century, were not acceptable. Most associations refused to help members who would not act as witnesses and threatened to expel

anyone 'who shall compound or secrete any felonious offence'.²⁶ The associations did not have any explicit opinions on pardons, the way many offenders escaped punishment in the eighteenth century, but from their determination to have all offenders prosecuted and punished it is clear that they would not have been sympathetic to the liberal granting of pardons.

Some associations offered more than these two basic services of rewards and assistance in prosecution. Many of those started in Salop and Staffordshire in the 1770s required their members to act as a posse and pursue suspects 'on the earliest notice, to set out each a different road in pursuit and ride 100 miles . . . making the strictest inquiries and upon the least intelligence to ride England through.'²⁷ Other associations, especially those in London, had their own patrols. Often these were only a man or two, but some were more substantial. The best known, at least to members of Royal Commissions, was that of the Barnet Association, but the Tenterden (Kent) Association had a patrol at least as elaborate.

At the founding meeting, in January 1824, it was decided to hire eight patrolmen, to be supervised by two members to be chosen by ballot. The town and hundred were divided into three areas; the east with eight routes, the centre with five, and the west with four. The patrol operated until March 1824, and with some success, as a number of offenders were caught in the act or shortly afterwards. It was started up again in November 1830, the time of Captain Swing.²⁸

Despite providing these services, felons associations began to wither about the middle of the nineteenth century. Why? With the establishment of police forces throughout the country in 1856 – which resulted in the police taking over a large number of prosecutions – and the ongoing reform of the system of prosecution, especially the widening of summary prosecution, the conditions which had called the associations into being were disappearing. Some associations, such as those in Tanworth and Leamington, continued to serve as prosecuting societies, carried along one suspects by tradition and *esprit de corps*. In other places specific local needs or conditions kept them active well into the second half of the century. Wales was one such place.

Poaching . . . had long been a favourite pastime in rural Wales, but it seems to have become particularly popular during the 1870's and 1880's. There were long fights, legal and otherwise, over fishing rights in the rivers Dovey, Dee, Ogwen, Tanat, and Wye. It was often a case of labourer and tenant farmer versus the Fishery Board and

Associations for the Prosecution of Felons.²⁹

But this was a purely local development. Other associations, lacking such activities or a strong self-image, had to find new roles for themselves, like the Lincoln Association, which was changing from a felons association into an insurance company, or disappear.³⁰

The existence of felons associations raises two questions that bear on the development of the law enforcement apparatus of the state. First, did felons associations cost less than police forces, and is this the reason for their popularity? And second, did they serve the propertied more effectively, as well as more economically, than police forces? In short, were they 'the logical conclusion' of a system based on 'state assistance for private entrepreneurs with a case to prosecute'?³¹ Did they guarantee enough security to allow the propertied to oppose the creation of police forces? David Philips would say yes:

... large property owners were often opposed to the establishment of police forces, requiring as they did the levying of a police rate, which would fall most heavily on their property, to pay for police for the whole county. Where property owners had an active Association for the Prosecution of Felons in existence their attitude is easy to understand. They paid their subscription to their association, which protected their property alone. Why, then, choose to pay rates for a police force to serve the whole county, which would spend much of its time policing other people's property?³²

This assumes that those concerned felt that a felons association was better value for money than a police force. There is little doubt that it was cheaper, that is that the dues were less than police rates. But this is not the same as value for money. It is far from clear that the associations were particularly good at protecting property. There is ample evidence of dissatisfaction with private forms of protection, of a desire to have police forces, and of satisfaction with them once they were in place.

Some people were genuinely pleased with the performance of the associations. The Solicitor of the Leamington Priors told the annual meeting in 1868 that it was 'indisputable that the Society was a deterrent . . . If the depredators were considering a robbery their first inquiry would be whether the intended victim belonged to the Society and they would be deterred . . . knowing that no expense would be spared in bringing the offender to justice.'³³ Sir C.E. Smith told the Royal Commission on County Rates that the patrol of the Barnet Association was

so effective that many vagrants were fleeing to neighbouring areas. The Secretary of this association, Thomas Dinsdale, credited it with a vast reduction of crime in Barnet, 'proverbially one of the worst places in London'. But he chose to interpret the growing interest in the association not as a vote of confidence for voluntary associations but as evidence of the desire for some sort of police.³⁴

Although the Barnet Association provided a model that could be applied elsewhere at little cost, Dinsdale felt that a uniformed police was more desirable, especially in London:

I do not think it admits of doubt, it would be the most complete protection that could be afforded; it is all that is wanting to make our laws efficient; there is . . . another circumstance which arises, it is so invariably acted upon; the thieves have a list of our association and plunder in between for they know who are on the verge of it.³⁵

Support for police forces was widespread within the associations in the Metropolis but there was also much support from those elsewhere. George Marris, the treasurer of a large association in Lincolnshire, told the Select Committee on Police that he had petitioned for a police force as, in his opinion, it would be more effective than the association. A correspondent from Thirsk, Yorkshire, told an earlier commission that his association was quite useless 'as we have no police and the constables are extremely bad'.³⁶ The creation of the local game association preservation societies shows that even wealthy landowners, with large numbers of servants, could no longer rely on their own efforts to control crime, even crimes such as poaching, which had traditionally been theirs to repress.

But felons associations were not necessarily any more effective. The experience of the Lincoln Association when faced with an outbreak of sheep stealing in the 1840s and 1850s provides a fine example of the ineffectiveness of such associations and the perceived superiority of the police. Between 1847 and 1851, members had 36 sheep stolen. The constable was unable to stop the thefts so, in August 1850, the association bought a bloodhound. The dog cost £30, showing that the members were very perturbed by the thefts. But when the thefts declined and then stopped the cost seemed justified. 'This effect improved morale.' Unfortunately, the £20 per year it cost to keep the animal told on the association's finances and an attempt was made to make the dog self-financing by breeding. When the entire first litter died of distemper the association was left bankrupt and the dog was sold. But sheep stealing

did not reappear. There were only two cases between 1857 and 1860. It is unclear what caused this, but to the members of the association the reason was clear enough — the creation of the county police. 'In 1856 County Police organized. Night patrolling prevented night offences. Sheep stealing ceased to be a fine art.'³⁷

It is well worth asking whether there was any relationship between the existence of a felons association and the adoption, or non-adoption, of county police forces. The Permissive Act of 1839 gave considerable power to the magistrates in deciding whether a police force would be created. If the existence of felons associations did, in fact, mean that landowners could do without police forces then we would expect the counties with the most associations to be the most resistant to the creation of police forces, at least between 1839 and 1856 when the law allowed a choice to be made.³⁸

What we do find is a strong tendency for a large number of associations to coincide with early, not late, adoption of police forces. The 17 counties that had police forces by 1840 accounted for 243 associations, while the 26 counties that waited until 1856 accounted for only 154. Of the five counties with more than 20 associations, four had forces by 1840. At the other end of the scale, seven of the eight counties with no associations did not get the police until 1856. This indicates quite clearly that in counties with numerous associations, the men with the power to decide on such matters did not feel themselves so well protected as to be able to forgo police forces.³⁹

It is possible to suggest that the creation of felons associations was a sign of an awareness that the existing forces of law enforcement were deficient and needed augmenting, and that the propertied did not feel that the protection offered by the associations was an adequate compensation.

Once the police were in place, the associations found no difficulty in working with them. On the contrary, some police officials felt uncomfortable over the warmth which they showed for their forces. This discomfort was centred on the giving of rewards to police officers. The Chief Constables of Essex and Lancashire criticised this practice before the Select Committee on Police. Captain M'Hardy of Essex allowed his men to accept rewards, but only after receiving his permission. Captain Woodford of Lancashire was much more negative.

I discourage as much as possible the giving of rewards by private persons, being fearful that the constables might be disposed to pay too much attention to the property of those persons who would

give money rather than turn their attention to the property of those persons who are unable to give.⁴⁰

The expression of dissatisfaction with existing means of law enforcement contained in the recourse to private initiatives such as felons associations is at odds with Douglas Hay's picture of the eighteenth-century ruling class using the legal system as a means of reinforcing deference. Stated briefly, Hay's thesis is that the ruling classes in the eighteenth century were not interested in legal reform because, in its unreformed state, with its multiple opportunities for discretion in prosecution and punishment, the criminal law served as 'an ideological system' which 'contributed to the maintenance of order and deference'.⁴¹ In this view, the fundamental purpose of the criminal law was not to prosecute wrongdoers by rigorous enforcement. Rather, its fundamental purpose was ideological, and 'an ideology endures not by being wholly enforced and rigidly defined. Its effectiveness lies in its very elasticity . . .'.⁴²

The core of this elasticity was discretion, the freedom available to the person against whom a crime was committed to prosecute or not, to choose the form the prosecution would take, and to petition for – and often get – pardons. Most important, it served to reinforce the authority of the members of the ruling class at the local level.⁴³

Clearly felons associations represented an attack on this system of flexible justice. Their concerns were those of Beccaria, Romilly and other legal reformers, that the law be applied rigorously and consistently in order that criminals be deterred. They were created to ensure that prosecutions were not neglected and aimed to have all offenders punished to the utmost. They had no explicit policy on pardons, but everything about them, and especially their attitude to compounding, indicates that they were hostile to them. The associations also undermined the ability of local notables to establish themselves as the source of leniency and pardon, for once a person joined an association he ceased to act as an individual in the legal arena. His cases were taken by the association and the association offered rewards for him. Even if the local squire were, in fact, the motive force of an association, to the public he would appear as one member among many, and by so doing may also have undermined his own personal authority.

Many associations were created in the middle years of the eighteenth century. They drew their membership from all levels of society with property to protect. Whether they were interested in legal reform or not, and invariably there were both advocates and opponents of legal reform within the associations, the fact that men and women felt it

necessary to join shows that they were not satisfied with the protection offered by the law. The question then becomes, did people who used the law as a means of reinforcing deference also join felons associations? The evidence here is somewhat ambivalent. Hay states that

... it seems likely that many gentlemen cherished in this, as in politics and so many other aspects of life, their independence, the absolute right to conduct their own affairs. The restrictions imposed by the associations ... were probably felt by many gentlemen to be an infringement of the right to make their own decisions.⁴⁴

Perhaps, but when the 'right to make their own decisions' was in conflict with the security of their property, which received priority? It remains to be examined, however, how far deference as exercised in the eighteenth century continued to be an objective of magistrates in the nineteenth century.

Freedom – and deference – at the expense of property would have been cold comfort, and even if new methods were damaging to the first, insistence on the old was dangerous for the last. That many associations – and especially the earliest ones – were started at the encouragement of local magistrates and squires, precisely the type of man best placed to manipulate the law in his own defence, is indicative. The origin of the Coventry Association is particularly instructive. It was a JP, John Hewitt, who suggested that an association be started, and the response came from 'a considerable number of Gentlemen of the first rank and property'. And later, in the nineteenth century, the gentry of the county were not averse to joining felons associations; 11 per cent of the Warwick Association, 14 per cent of the Leamington Spa Association, 10 per cent of the Henley-in-Arden Association, and 24 per cent of the Kenilworth Association came from this group, and the numbers are even greater if clergymen are included.⁴⁵

The situation is more interesting if we look at those instances of crime directed specifically at the ruling classes. Poaching is the prime example; a crime traditionally left to the landowner to repress, and one which the armies of servants to which Hay refers would have been most useful in combating. But rather than deal with it on an individual basis, members of the gentry created a national and a number of local game preservation societies. And, as we have seen, this did nothing to reinforce the deference of the ruled, who paraded outside Parliament threatening to destroy the game altogether.

Perhaps Edward Christian had an inkling of this contradiction

between the double desiderata of preserving authority and protecting property when he made his recommendations of 'associations of the opulent' to prosecute offenders, and especially the suggestion that these not be confined to crimes 'against the persons and property of the subscribers only'.⁴⁶ If so, not many associations followed his advice, and those that did found that 'the inducement to subscribe was not sufficient' or that 'the non-subscribers took away so much money that we were obliged to make amendments and we only protect persons being subscribers'.⁴⁷ The price of deference was, by the beginning of the nineteenth century, becoming very high; too high to be borne by the individual alone, or even in groups.

Felons associations represented an attempt by men of property to overcome the deficiencies of the law enforcement apparatus of the state and see that property was better protected. While the point can not be definitively proved either way, it would appear that the creation of felons associations was an indication of a desire for some sort of policing agency which would, later on, mean support for the police forces created between 1829 and 1856; and once these forces were in place, satisfaction with their being more effective, if not cheaper, than the associations themselves. If, as Hay argues, the law had purposes other than the protection of property, such as the preservation of authority, when the incidence of crime put, or appeared to put, the former at risk, the latter took second place. The meaning of the Associations for the Prosecution of Felons in eighteenth- and nineteenth-century England can be seen as a substantiation of the truistic, but nonetheless true, sentiment that the law exists to serve property and property owners first and foremost, if not exclusively.

Notes

1. E.P. Thompson, 'Rough Music: Le Charivari Anglais', *Annales E.S.C.*, 27 (1972).
2. Lancashire Record Office (L.R.O.), PR2814/1.
3. L. Radzinowicz, *A History of English Criminal Law* (4 vols., London, 1948-68), vol. 2, p. 28.
4. *Ibid.*, pp. 25-9.
5. L.R.O., 2851/12/1.
6. See A. Shubert, "'Lest the Law Slumber in Action": Associations for the Prosecution of Felons' (Univ. of Warwick, M.A. thesis, 1978), Appendix 1, pp. 51-5, for the complete list.
7. L.R.O., Poulton-le-Fylde Association, PR2048.
8. E. Christian, *Charges Delivered to Grand Juries in the Isle of Ely* (London, 1819), p. 222.

9. J. Hewitt, *Journal of the Proceedings of John Hewitt* (n.p., 1790), II, xv.
10. See D. Hay, 'Property, Authority and the Criminal Law', in Hay, *et al.* (eds.), *Albion's Fatal Tree* (Harmondsworth, 1977).
11. Hewitt, *Journal*, II, xv.
12. *Ibid.*
13. Bolton to Coachman, 10 Feb. 1856, Warwickshire Record Office (W.R.O.), CR449/1/24.
14. *Leamington Spa Courier*, 13 Feb. 1869, 12 Feb. 1870; Leamington Priors Association Order Book, 28 Sept. 1870.
15. *Leamington Spa Courier*, 13 Feb. 1869; H. Mills (ed.), *Poll Book of the South Warwickshire Election of 1868* (Warwick, 1869).
16. Leamington Priors Order Book.
17. Shubert, "Lest the Law . . .", pp. 18-19.
18. Kent Record Office (K.R.O.), U44 067/1,2.
19. K.R.O., U44 067/4.
20. C. Kirby, 'The English Game Law System', *American Historical Review*, vol. 38 (1933), p. 255.
21. *Ibid.*
22. *Remarks on the Laws Relating to the Game and the Association* (London, 1753), pp. 14-15. See also *An Alarm to the People of England* (London, 1757).
23. W.R.O., CR276.
24. L.R.O., UDTu19.
25. W.R.O., CR/449/25. Many Lancashire associations did not have such ongoing prosecution funds. Instead, their committees assessed each member's share of any expense as it occurred in relation to the value of their property. As a sanction, the associations claimed the right to confiscate the property of any member who did not pay his assessment, and put it up for auction to raise money. L.R.O., DDN W5/11. Unfortunately, it is not known whether this sanction was ever actually applied.
26. W.R.O., CR 276/1.
27. *Birmingham Gazette*, 21 June 1773. Also 12, 26 July, 2 August.
28. K.R.O., Te/Z4. It is not clear just who these patrolmen were, but Carolyn Pilling mentions that some ex-officers of the Metropolitan Police were employed by Felons Associations: C. Pilling, 'The Police in the English Local Community, 1856-1880' (Univ. of Cambridge, M.Litt. thesis, 1975) p. 38. I owe this reference to Victor Bailey.
29. D.J.V. Jones, 'Crime, Protest, and Community in 19th Century Wales', *Llafur*, vol. 1 (1974), p. 7.
30. Lincoln Archives Office (L.A.O.), WG/1/1; WG8/7/6.
31. D. Philips, *Crime and Authority in Victorian England* (London, 1977), p. 122.
32. *Ibid.*, p. 133.
33. *Leamington Spa Courier*, 15 Feb. 1868.
34. R.C. on County Rates, *Parl. Papers*, 1836, xxvii, p. 30; R.C. on County Constabulary, *Parl. Papers*, 1839, xix, p. 211.
35. *Ibid.*, p. 212.
36. Select Committee on Police, *Parl. Papers*, 1853, xxxvi, pp. 72-4; R.C. on County Rates, p. 151.
37. L.A.O., WG8/7/6.
38. S. and B. Webb, *English Local Government: the Parish and the County* (London, 1963).
39. In Warwickshire, the only hundred to have a police force under the Permissive Act was the Knightlow Hundred, which also had the most associations.
40. S.C. on Police, pp. 54, 103.

41. D. Hay, 'Crime, Authority and the Criminal Law: Staffordshire 1750-1800' (Univ. of Warwick, Ph.D. thesis, 1975), pp. 539, 570.
42. Ibid., p. 570.
43. Ibid., pp. 536-70.
44. Ibid., p. 391.
45. Shubert, "Lest the Law . . .", pp. 18-19.
46. Christian, *Charges Delivered*, p. 134.
47. Royal Commission on the Police of the Metropolis, *Parl. Papers*, 1828, vi, pp. 201-2, 204.

3 POLICE, POWER AND COMMUNITY IN A PROVINCIAL ENGLISH TOWN: PORTSMOUTH 1815-1875

John Field

The police are servants of the community, at least in theory. The blue-coated bobby on his beat is a visual embodiment of the due processes of the law, applied fairly and without favour. The eighteenth-century equivalent was the dread image of the hanging judge, slouched on the bench, red-robed, white-wigged, and capped with the black coif. On one hand, crime is prevented by the 'irrational' deterrents of terror, muted by mercy; on the other by the certain and bureaucratic apprehension and punishment of offenders.¹ The ways that a 'policed society' came to be seen as desirable, and ultimately necessary, have been described often enough for the main outline to be clear. Traditional modes of discipline – paternal benevolence, punitive deterrence – were decreasingly effective in those growing industrial areas where, in Thomas Chalmers' words, 'the poor and wealthy stand more disjoined from each other'.² Specific and local policing operations, carried out by nightwatchmen, volunteer yeomanry or felons associations, were appropriate only to 'unpoliced, hierarchical, pre-industrial society'.³ The vast manufacturing urban sprawls of Lancashire and Yorkshire, and above all the monster that was London, concealed the individuality of all human beings, including the alarming, lawless members of the 'dangerous classes', whose volatility and criminality were felt to be a far more diffuse threat than the specific dangers of riot and revolution.⁴ Enormously unpopular, introduced during talk of rebellion and acts of political reform, the bobby came to be depicted as the thin blue line defending the community from unspeakable chaos.⁵ Today we find it hard to imagine a world without him.⁶

How did this come to be? All evidence points to deep divisions in the community's interests and views on policing. It is not especially surprising that the police are more responsive to powerful groups in our society, nor that the powerful seek strongly to influence police behaviour by direct or indirect means, since it was among elite groups that demands for a policed society have historically arisen.⁷ But just how does elite control of the police operate? What fears were the police intended to allay, what concerns to protect? How did policemen themselves think

of their role, and how did their self-images affect their behaviour on the streets? Were police and their employers successful in persuading others of the need for a 'policed society'? Concern at the way police forces operate today is widespread among intellectuals; yet a recent *New Society* survey indicates that over four-fifths of our citizens feel that the police treat people fairly.⁸ Clearly, the period under study, concerned as it is with a highly visible police system (plain clothes detectives were thought sneaky and 'unmanly') is of limited relevance to the present. But my questions are directed towards those years when the idea of policing became acceptable to Englishmen and women.

I

Broadly speaking, police were supposed to uphold political order, curtail immorality and suppress crime. The degree of pressure for police reform therefore depended upon the type of society that was involved, and in Portsmouth before 1835 there was little pressure for reform. It is worth looking at the type of economy and society that existed, overshadowed as Portsmouth was by the naval base and its dockyard, and by the army and marines garrisons.

The major industries were naval shipbuilding and clothing. While the first employed mainly skilled men, the second soaked up the women of the port — especially single women and servicemen's wives who had no other source of income. The naval yard was large-scale, and some departments, like the smithy, were capital-intensive; clothing was sweated domestic labour. The yard men and their families, together with the servicemen's wives, lived in Landport and Portsea. In Southsea, mingled with a few artisan terraces and one or two slums, were the makings of a distinctive genteel suburb, inhabited by the local urban gentry.⁹ The centre of the town was not Portsmouth township itself, although it housed the municipal buildings and the Lieutenant Governor's residence, but Portsea. Here were the dockyard gates, a fashionable shopping centre (Queen Street), a row of seafront trinket shops and pawnshops and pubs (the Hard), and most of the local brothels. This colourful mixture was not likely to produce a withdrawn and law-abiding populace, as is confirmed by many an enraged Victorian witness. 'If we would look for a high tone of moral feeling, and a strict conformity with the criminal laws of the state', pontificated a local paper, 'a seaport would be the last place in the world where we should suppose that such a desirable state of things existed'.¹⁰ The opinion was fully confirmed by

fact, as we shall see. Yet pressure for police reform was weak, and when reform took place in 1835-6, the borough force showed a marked degree of continuity with the semi-voluntary system that had preceded it. Understanding why this was so, requires some discussion of the policing system before 1835.

A variety of different groups were responsible for policing pre-reform Portsmouth. Apart from the borough force, there was an Admiralty force in the dockyard, the customs men, the yeomanry, military pickets, and ships' corporals.¹¹ All of these deserve consideration, if only because they all had to liaise with those forces upon whom I shall concentrate, the borough and dockyard police. However, the diversity of practices and governing authorities would involve too much detail and time for the limited purposes of this essay.

In the early 1830s, municipal policing alone involved three separate groups: the Corporation's constables, their nightwatchmen and the street commissioners' beables. The 24 constables were part-timers, paid by fees and rewards; several held other corporation posts, such as the Sergeant-at-Mace and his deputy; all were small businessmen. Before they were disqualified by the 1823 Alehouse Licensing Act, most were licensees; the degree of 'influence', and more especially its plebeian sources, to which publicans might be subject, led to their disappearance. They were replaced, if the 1830 list is typical, by little masters in building or manufacture.¹² The nightwatchmen seem to have been recruited from the working class. This is difficult to confirm, for the eight men and two inspectors who patrolled Portsea (Portsmouth township was patrolled by the military) left no records. One whose occupation is known was Henry Hawkins, a bricklayer, who entered the news columns when he broke a leg playing cricket.¹³ The street commissioners' beables were full-time employees, and again were almost certainly from working-class backgrounds.

There were also some private organisations, about which very little is known. A six-man watch at Landport cost its supporters some £110 per annum. There was also a felons association, with offices in Queen Street, which may or may not have prosecuted any felons.¹⁴ Lack of information should discourage firmness, but it does seem that the constables were the most important figures of these different policing groups, and that the private forces were least significant.

The constables were appointed by and responsible to the borough magistrates. The magistrates themselves were chosen by and from the borough aldermen, who were self-elected. Since in any year there were six magistrates, and several of the 12 aldermen lived away from Ports-

mouth, the resident aldermen, in effect, monopolised the bench. That meant the Carter family. The Carters were the town's biggest brewers, and had won control of the Corporation in the mid-eighteenth century. They were reforming Whigs, and had absorbed Jacobin radicals like the attorney Daniel Howard into their ranks, to form an eclectic but fairly popular governing group, no doubt loyally supported by their 70 public houses (out of 235 in the town in the early thirties). The magistrates issued specific directives to the constables, covering such matters as monitoring the pubs, enforcing licensing laws, stopping sabbath day gaming, keeping an eye on apprentices, and so on. The mayor's personal interests counted for a lot: Daniel Howard objected to Sunday trading, while the unitarian James Carter berated constables who failed to arrest 'common Prostitutes and Street Walkers'. Criminal behaviour otherwise was dealt with according to the conscience of the constables and the size of the reward money, which itself was a measure of the indignation and determination of the victim. The system was apparently viewed with satisfaction, Howard informing the Corporations Commissioners that

even the greatest political opponents of the Corporation will do them the credit of saying that there was never the least ground of complaint on that score . . . the Police of the Borough, on all ordinary occasions . . . has been quite sufficient.

It was a claim Howard had made before, and no doubt his opponents would have remembered it had they seriously disagreed.¹⁵

Why the apparent complacency? In the first place, most criminal behaviour was fairly predictable, and occurred in places frequented by soldiers and sailors rather than radical attorneys and unitarian brewers — pubs, alleyways, brothels. Thieving from the person was certainly common: one enterprising seaman even persuaded a ship's mate to give £100 back pay into his keeping for safety, saying before absconding that 'as Portsmouth was a very wicked place, it was not prudent to carry so much money about with him'.¹⁶ Prostitution flourished in the alleys off Queen Street, the Hard and Point, as well as around the barracks and even on the grassy ramparts. Periodically, petty offences became minor local industries, as during the annual Free Mart fair when the lock-ups inevitably groaned with inmates.¹⁷ Again this was predictable, and anyway involved only those who wanted to attend the fair.

Satisfaction with the police system might also reflect the fact that much 'rough' culture was regarded as quite acceptable, even among the

bourgeoisie. When the landlord of the Duke of Clarence was fined £5 for permitting 50 people to sing and drink after midnight, those involved were hardly genteel; they were 'Sailors, some Watermen and . . . some Girls of the Town'. The landlord still found four respectable witnesses, including a leading local Tory by the name of John Friend Pratt, to swear that 'we have never heard any disturbances of any sort'.¹⁸ The two fairs, Free Mart and Portsdown, both of which were later suppressed, were regarded as boisterous but tolerable, even educational amusements. One inhabitant complained in 1825 that the Vauxhall, a sort of travelling dance hall, 'outrages the most extended view of freedom during the Fair'. The Corporation, however, was more concerned that its proprietor paid his tolls.¹⁹ Sir Frederick Madden, as a youth, sedulously recorded in his diary his every visit to the fair in 1819: once with his family, once with an uncle, twice with male friends, and another couple of times on his own.²⁰ Closer investigation into bourgeois culture may well establish that the division between 'rough' and 'respectable' became much more marked during the 1820s and 1830s.

At any rate, there was no great sense of urgency when police reform was posited in the 1835 Municipal Corporations Act. There had never been great antagonism between constables and community, if the number of detected assaults on police is any guide.²¹ Constables and watchmen had customers, friends, kin and even workmates throughout the community, and were loathe to transgress customary norms. Offenders who were not known locally, such as servicemen, cockney pickpockets during the fair, or vagrants, might expect punishment where the local man received a warning. Personal knowledge of the offender was actually *expected* to influence police behaviour. When James Way, a publican and Portsea constable, incarcerated a Queen Street draper whom he had arrested for ill-treating and beating a watchman, the draper sued Way for detaining him overnight in the lock-up. Summing up, the trial judge told Way that he 'was inclined to think, that however he might be justified in detaining strangers, he ought not to commit a respectable man whom he knew'.²² The jury, respectable men who knew everyone involved, awarded the draper £10 damages.

Nothing happened before 1835 to make Portsmouth's inhabitants intolerably dissatisfied with existing policing arrangements. By contrast, many English towns experienced political disturbances, drawing attention to the problem of law and order. In Oldham, where radicals had won control of appointments, a local Police Act of 1826 attempted to secure control in the hands of the larger ratepayers.²³ In Bristol, where there were some 170 policemen in 1830, the reform riots of the

following year led to an overhaul; in the early 1830s Bristol's police force was over 300 strong.²⁴ In London, the Queen Caroline affair caused deep concern, being preceded and followed by reform agitation. Peel's earliest outlines for his Metropolitan force were drawn up two years later, in 1822.²⁵ Industrial towns started to look at their police systems in the wake of Luddism and militant trade unionism, while in the rural south, Swing concentrated minds equally effectively. Portsmouth, which certainly had its share of crimes which might be described as 'urban', did not see any political challenge to the ruling Carter group. Indeed, no one called more effectively for parliamentary reform than the Carters and their allies. Even Peterloo evoked no independent response from plebeian radicals. Unchallenged by political opponents or mass crowd actions, Portsmouth's local authorities saw little need to reform their police, even had the cost not been prohibitive.

II

Provincial police reform came about through the agency of the reforming governments of the 1830s, committed to cheaper and more effective government. The dockyard police force, established in 1834, was only one of many measures aimed at reducing patronage and waste, introduced by the cost-conscious Sir James Graham. The borough police force was set up through an Act whose main concern was local government. Both forces, then, were expressions of the new Whig state machine. How were they received?

In Portsmouth, the blue-coated, top-hatted bobbies were regarded as a mild curiosity. This seems strange, given the hostile outbursts that faced the new county and borough forces as they went onto the streets of northern England for the first time. In Oldham, the radicals determinedly held on to their control of the police commission and they were not dislodged until 1847, after an unseemly brawl between town and county police at the petty sessions, followed by police refusal to defend shopkeepers from victimisation during the general elections.²⁶ Elsewhere, traditional hostility to a 'police state' was combined with more recent experiences: in particular, stories circulated about the part played by the Metropolitan police during anti-Poor Law demonstrations. The police were seen as unmanly, unnecessary, unconstitutional, and unBritish; it was possible to get rid of them, and it was desirable.²⁷ Yet the campaign against what William Benbow called 'the introduction of a constabulary force spy system' had little echo in Portsmouth.²⁸

There were some objections on the grounds of cost. A meeting of burgesses in St Paul's Ward (Southsea and part of Landport) protested that it 'is not necessary or expedient . . . to establish a Night Watch in this Ward'. The protesters, who included a surgeon-Alderman and a merchant, were concerned for their rates bills, and once the force was in operation they stopped complaining.²⁹ Only in 1839, when policing became a national issue, did Portsmouth radicals stop ignoring the local force, responding significantly to a decision to appoint a retired army officer as superintendent (prior to 1839 the force had no superintendent). The local unstamped demanded to know

whether a man trained up to military, implicit, unreasoning obedience, familiarized from his youth to drum-head law, and to the cat-of-nine-tails clotted with human gore, is fit for a civil office requiring the utmost forbearance and discretion, and the most cautious regard to the *rights* and feelings of the citizens of a free country.³⁰

The author, David Brent Price, was judging the force by the standards of advanced liberalism, not challenging its existence in any way. He wanted to underwrite discretion and civil liberty. Similarly, the chartists campaigned for abolition of the superintendent's post and for a reduction in the force's size. When the chartist leader, Dr Peter McDouall, addressed a meeting on the subject, feelings ran high enough for two constables and an inspector to be assaulted afterwards by incensed members of the audience (or so the police claimed).³¹ Neither did the new dockyard force provoke any antagonism on the scale experienced in the industrial north. A riot by shipwrights against the method of searching men on their way out of the yard led to a change in yard police regulations, following chartist complaints about 'those liveried menials'.³² However, there was no demand for the entire dismantling of the force.

Absence of hostility may be traced back to the local and discretionary character of the legislation which overhauled the state apparatuses during the 1830s. This is not sufficiently stressed in the debate on the nineteenth-century 'revolution in government'.³³ The local watch committee set up under the Municipal Corporations Act found that, strictly speaking, all it was forced to do was exist and be annually re-elected.³⁴ It received no guidelines as to the numbers, wages, methods of payment, qualifications, or duties of the new force. Evidently the Whigs believed that their measure was compatible with traditional liberties; at any rate, the result, in Portsmouth, was a force that looked remarkably like what

had gone before it. About half the borough force had been beadies, constables or watchmen before 1836 – a pattern repeated in towns like Liverpool, although Bristol and Southampton preferred to recruit mainly new men. Bristol and Southampton were typical of those forces which took London as their model: both asked the Home Office to recommend a metropolitan policeman to act as superintendent; both had full-time forces, and Bristol did away with gratuities. Portsmouth, on the other hand, was reluctant to appoint a superintendent, kept the gratuities, and – most unusual of all – started with a two-tier system of night constables (paid 14s weekly, often keeping a daytime job) and part-time day constables (paid £12 a year retainer).³⁵ Continuity in Liverpool was partly due to the assiduity of its superintendent, recruited from London in 1830, in reforming the old night watch.³⁶ In Bristol, and to a lesser extent in Southampton, the local authorities felt less secure than they did in Portsmouth. The first Portsmouth watch committee included Daniel Howard, who was the most important non-Carter amongst the unreformed magistrates, and who sat on the committee until his death in 1850. In its second year, the committee was joined by Edward Carter, the only member of the family who lived permanently in the town after 1835. The town council, indeed, was still dominated by the Carters and their political allies. These men accepted the old police force as a reasonable source of recruits for the new.

In the dockyard, the old part-time ‘rounders’ and ‘warders’, chosen from among the workforce, provided many of the new constables. The yard was still patrolled at night by soldiers or marines; the customs men continued to help suppress pilfering. The yard police were partly officered by ex-servicemen, such as the town’s master at arms, who had ten years in which to form ‘a knowledge of the character of the persons in this neighbourhood who deal in Marine Stores’.³⁷

Often all that was new, at yard gates or on the streets, was the uniform. Outraged radicals in Bolton or Keighley might glare in horror at the newfangled creatures who patrolled the streets, and they might even get up a demonstration against such an unwarrantable intrusion. The Portsmouth forces were apparently more acceptable to the communities into which they were sent. Those who disliked the way policemen carried out their operations were not interested in abolishing them, or in returning to some supposedly Anglo-Saxon principle of communal discipline. Indeed, one part of the ‘deviant sub-culture’ danced with glee when the new police took over the functions of town beadle Daniel Matthews: ‘on Monday evening last’, reported the local paper, ‘the cads,

cadgers, costermongers and beggars of Oakum Bay celebrated the event of Matthews' cessation of power by burning him in effigy, and having a grand supper of beef steaks and onions'.³⁸ Perhaps they should not have bothered. Ten days later Matthews was sworn in as a borough policeman.

III

The purposes of the new force, in the eyes of the municipal authorities, were as much moral as material, aimed at reshaping popular culture as much as preventing crime. This was less so in the case of the dockyard police, whose job, as set out in the 1837 *Police Instructions for H.M. Dock and Victualling Yards*,³⁹ was primarily to deal with pilfering, and the rare cases of sabotage. But the dockyard management had never seriously tried to interfere with the moral codes of the men under their employ, except in so far as they might involve sympathy for embezzlers. In this respect the working regulations of the yard were unlike those of many private employers, with their long lists of offences and fines. Nor did the yard management try to influence their workers' behaviour outside the gates, by building chapels or parks or clubs, or getting involved in local politics. The yard police were, excepting forays into the stores and workshops of fences, an early workplace security force.

The municipal force, in contrast, was expected to deal with a very broad range of problems. The Corporation's inquiry reported that in Portsmouth township

we were informed by several inhabitants that watchmen were necessary; but the cause assigned by them was, not so much the fear of the commission of crime, as the annoyance caused by the disorderly state of the streets.

They added that 'the latter feeling is fully justified by the fact'. The town council expressed similar assumptions in its first instructions to the watch committee, to consider

what measures should be taken to form an efficient police and watch for the due preservation of Order, Decency and Propriety, and for the protection of Property within the Borough.⁴⁰

Order of discourse may not amount to order of importance in the mind, but one is still struck by the weight given to moral concerns as opposed

to fears of thieving. It was a demand that persisted, with occasional complaints that the force was not doing its utmost to prevent Sunday rowdyism, rough games, and above all prostitution and public inebriety. In 1858, in a typical case, Dr Garrington presented the council with a petition, signed by 200 ratepayers, praying that more police be sent to the Hard.

In the first place, your memorialists have to complain of drunken and disorderly soldiers, sailors, marines, and prostitutes, who are permitted, without molestation, to infest this street at all hours of the day. Their coarse and indecent demeanour; their blasphemous and obscene language; their disgusting appearance and riotous conduct, are most injurious to the business of the neighbourhood, to the safety of our persons, to the security of our property, and to the character of the town; and are such as to shock the delicacy of our wives, and to endanger the moral character of our children.⁴¹

This is all very familiar. Less so are the complaints that yard workers lounged and smoked along the Hard during their mealtimes, which was similarly felt to be a police matter.⁴² And although the council, unwilling to increase the force's size and perhaps incur government inspection, simply sent the memorial to the watch committee, where it was duly noted and forgotten, the general assumptions generated in such discussions indicate the values which informed police supervision.

Portsmouth's experience supports Dr Storch's description of the Victorian policeman: as well as a thief-taker, he was a 'domestic missionary'. His beats suggest that two types of area were closely watched: in Portsmouth, those like Grigg Street, St Thomas' Street, and Somers Town, forming frontiers between working-class and middle-class homes; and those like Point or St Mary's Street, where the immorality of much public conduct was most blatant. A surviving policeman's log book from Rotherham suggests that a similar pattern was probably quite widespread. It also indicates the importance given to regular patrolling along the beat, for each road covered is listed meticulously along with the time of passing.⁴³ The result of this steady patrolling through working-class districts was that monitoring of popular cultural activities probably counted for more in the police-community relationship than intervention in political or industrial disputes.⁴⁴ Yet all studies of the Victorian policeman confirm that he came from the very background that he was being asked to keep under control.⁴⁵ This raises a paradox: who educated this particular group of educators, and how?

The force initially went through some uncertainty and even instability, as both working policemen and the authorities came to formulate the rules of the game. The council was loathe to debate the force's behaviour, lest in doing so it might weaken its public authority, passing one early reorganisation measure without discussion. In 1839, the council heard a sorry tale of disruption and disobedience. There was 'the utmost discord' between the day constables, the night watch and the inspectors. Men argued over fees, refused the less popular duties, and demanded compensation for loss of earnings from their second jobs. There was also a tendency to arrest drunks and ignore criminals when arrest rates were low. A Tory proposal to model the force along metropolitan lines was rejected; instead the council disbanded the force and recruited a new one on a full-time basis.⁴⁶

From 1839 the police became markedly more homogeneous and cohesive, able even to express different interests from those of the watch committee and bench. Over one-third of the 1836 constables had been shopkeepers or publicans.⁴⁷ By the fifties and sixties, most came from manual working-class backgrounds, generally unskilled, and a tenth were ex-servicemen.⁴⁸ Many had come from rural homes, mostly some Wessex village, and it is doubtful whether many came to Portsmouth with the intention of joining the police. They joined, said one councillor, 'merely as a makeshift, for no sooner did they obtain a better post than they left off'.⁴⁹ By 1870 half of Portsmouth's force had five years' service or less, including the sergeants and inspectors. This was high, even by the standards of the time, Bristol having only one-third of its men with similarly short records.⁵⁰ Whether you stopped in the force or not, then, probably depended partly on internal conditions, and partly on the fluidity of the external labour market.

In modern terms, morale was low. Men joined the force, not out of idealism or because they were of a certain character-type. They joined because they came from the miserably poor and downtrodden villages of central southern England, and they wanted a job. Once employed, of course, they shared a growing sense of occupational solidarity, marked not only by the specific characteristics of police work but by the general ones of waged work. Their sense of common identity was expressed in many ways: in collective petitions, for wage rises in 1841, 1846, 1854 and 1867 and against Sunday working in 1842 and 1866. The introduction of new beat arrangements in 1859 led to a stoppage by Landport police, and in 1878 the whole force threatened to strike for higher wages.⁵¹ The men covered up for one another's misdeeds: one inspector, for instance, was disciplined for failing to report that Abraham Lyon,

another inspector, had spent his station duty drunk and fast asleep. They had a sense of dignity and even self-importance. When William Daw, master of the Buckland Commercial Academy, made 'remarks' to a loitering group of constables they marched him down to the station and asked him to repeat them. The watch committee, of course, was deeply embarrassed.⁵²

Like most employers, the watch committee responded with a blend of discipline and accommodation. The first response, like a reflex action, was discipline. Worst of all was association with the drink trade (although several watch committee members, like Carter and Alderman Samuel Garratt, were brewers themselves). An early tolerance of publicans, some of whom were employed as day constables, gave place by 1840 to a resolution to dismiss any man found drunk.⁵³ Had the resolution been firmly applied, it would have eradicated the force in months; 28 men were discharged between 1836 and 1854, more than one half for drink-related offences. Drink also lay behind over one-third of lesser punishments. This assault was due less to high-mindedness than to the watch committee's desire to cut the men off from potentially corrupting influences, and the pub was the most corrosive. Ten Landport constables were admonished, in 1850, merely for accepting a free dinner from a beerhouse-keeper, whose lodgers they had called up in the early mornings.⁵⁴ Other punishable offences included absence from the beat, insubordination, and something classed as 'excess of duty'.⁵⁵ The beat was an easily measured standard of whether or not a man was doing his job, as well as a way of suppressing immorality and crime. If in general there was no excuse for being drunk, most offences merited reprimands for the first time, fines for the second, and dismissal as a last resort. It is worth noting that Portsmouth does not seem to have been unusually harsh in these matters; and if Wakefield is any standard for comparison, it may even have been slightly on the soft side.⁵⁶

Paternalism combines both firmness and benevolence, we are told, and Portsmouth's watch committee certainly resorted to both.⁵⁷ Particularly after the debate over borough policing in the 1850s, the watch committee decided to use positive incentives as well as the stick to weld the men into a more stable and reliable force. The temptations of beer were mollified by the issue of a pint of free coffee to constables on night beats.⁵⁸ The superintendent encouraged his men in 'the recreative and manly game of cricket, if not interfering with their duty'.⁵⁹ Several leading citizens graced the table during the first annual dinner of the force, held in 1870. In the same year wages were raised in the hope of attracting a better class of recruit.⁶⁰ Added to the bonus of superannuation,

first introduced under a local act, but by 1860 governed by national legislation, these benefits would have been highly valued by men whose backgrounds would otherwise have fitted them only for sporadic employment and eventually the poor law.

IV

Despite the Whig reforms of the 1830s, the state at a national level remained an apparatus loosely strung together by the ties of kinship, patronage and obligation. Intellectuals like Chadwick elaborated schemes for a neutral machine, upholding the equilibrium of an atomised social order. But, as Chadwick found when striving for a post, the 'cousinhoods' kept a tight grip upon the controls.⁶¹ The older, more traditional, and most openly corrupt parts of the state – the army in particular – were in full bloom in Portsmouth. Hence the very suggestion of government intervention was examined with deep foreboding. In some dockyards, it was alleged that patronage reached into the admiralty police, and that they were recruited for their political preferences.⁶² The national state was regarded with suspicion by local authorities, and the result for policemen could thus be competing and sometimes contradictory sources of authority.

The interference of the state deserved suspicion, for it could be disgracefully partisan. In June 1839, for instance, Lord John Russell set free an army officer and corporal who had been gaoled for falsely imprisoning three borough policemen. Two army officers, fined by the bench for drunk and disorderly behaviour in 1868, had their sentences quashed by a newly-appointed Conservative Recorder, appointed by a new Conservative Home Secretary. Mocking insult was often added to humiliating injury. The 1839 jury were called 'the Israelites of Portsmouth', the staid local paper a 'pot-house Whig-Radical' sheet, the police a band of drunks who frequented brothels and urinated on guardhouse walls. The town council, naturally, was furious, claiming that 'the interference of Lord John Russell is calculated to subvert the civil power'.⁶³ Abstract notions of a unitary state machine, of which the police were simply one cog, greatly understate the degree of friction that arose between different departments, and above all between national and local authorities.

Local experiences of the army, navy and civilian central government departments helped determine Portsmouth's opposition to the 1856 County and Borough Police Act.⁶⁴ The Hampshire witnesses before the

1852-3 Select Committee, which preceded the Act, had been carefully screened to exclude speakers from the larger towns. The evidence was denounced in Portsmouth as '*ex parte* . . . comprising that of interested Chief Constables of Counties, County Magistrates, or persons favourable to their particular views'. The report's call for greater central control of the scattered local forces would, it was said, lead to 'the ultimate establishment of a national force under Military Organization and central control'. Milton was quoted in the council chamber:

What more oft, in nature grown corrupt,
And by their vices brought to servitude,
Than to love bondage more than liberty?

The *Telegraph* was concerned with the political possibilities:

Great questions of reform may yet arise in the future, which a reactionary [sic] or a government might designate and consider to be revolutionary, and they would try to repress popular demonstrations in their favour.

Portsmouth, for the first and last time, played the role of a great Liberal fortress, becoming (along with York) the headquarters of opposition to the proposed Bill. For three years, councillors went forth to London, held meetings, lobbied MPs, and petitioned the Home Office. The Act, considerably amended, contained none of the most objectionable clauses, establishing a system of inspection, Treasury funding and an 'efficiency' test that was conducted in purely numerical terms. Portsmouth, refusing inspection and the Treasury grant for four years, swallowed its municipal pride in 1860 and accepted the money,⁶⁵ no doubt reflecting that the inspection did little to reduce local autonomy.

In the dockyard, local police autonomy had been limited after 1834, and was deeply eroded in 1860 when the metropolitan police took over responsibility for the provincial yards. Although some of the old yard police entered the force, local connections were generally discouraged. London men were transferred down to Portsmouth, they were housed in purpose-built barracks, and any friction with local magistrates — who at least once refused to convict on police evidence — was soon smoothed over.⁶⁶ To the Admiralty, a transfer of responsibility made sense. It was concerned with protecting property in a large-scale institution, vulnerable both to planned thefts and persistent pilfering, set in a community where smelting, shifting and fencing yard goods was

a modest industry.⁶⁷ The new broom swept through the shadier corners of Landport and Portsea. In their first year of operation in the provincial yards, the new force detected 645 offenders compared with 65 in the previous year. Within four years, the excitement was gone; the men were bored, and 'many of them desire to return to a Metropolitan Division', so little had they to do.⁶⁸

To what extent did centralisation lead to a loss of local control? Portsmouth's working people had never had much say in local policing arrangements, unless they wanted to join the force themselves. Given the preference for recruiting immigrants, it seems doubtful that community norms had ever been so strong after the 1830s as before. Nor is it clear that the government inspectors made much difference to the way that the watch committee operated, or to the advice that other councillors chose to give the committee. Nevertheless, the 1856 Act may be seen as the thin end of a very long and gradual wedge. The published reports of the inspectors gave policing greater prominence and publicity among a limited but highly influential audience. The town's elites themselves were changing, too; from Liberalism to Toryism, from populism to elitism. Certainly by the time of the Battle of Southsea, in 1874, spokesmen for the popular cause depicted the police as tools in the hands of the local gentry. It was a shift symbolised by the erection of a police station, for the first time, in genteel Southsea.

V

Southsea has always contained a peculiar social mix. It started as a group of artisan terraces, which have now been replaced by a vast council estate. Scattered through the suburb were bands of secluded italianate villas and sedate stuccoed terraces. Set in crescents, sometimes concealed behind drives and shrubs, genteel Southsea gave a comforting impression of rural peace, but at night time it shivered in fear of the marauding urban poor. Southsea sent petitions to the council in 1844 and 1847, but little was done; the Liberal councillors tended to feel that if Tories, officers and the like wanted protecting, the least they could do was pay for their own street lights before appealing to local ratepayers. In 1848 things changed. A wave of burglaries was reported, whether accurately or not, as the work of one gang. Among those robbed were several influential citizens, including Sir John Morris, Major Robb and councillor Benjamin Bramble (whose goose and mutton were eaten by the thieves before escaping). In April four men burgled the house of

an old lady, beating her in the process.⁶⁹ These crimes fuelled the campaign to police Southsea.

The council, however, resented this upstart suburb. It was affluent, and considered itself too fine to mix with the 'hoi polloi' of Landport and Portsea (Madden noted that 'Jews and tradesmen' were discouraged from dances). A clergyman complained in 1844 that army and navy officers 'consider themselves (to use their own term) "birds of passage" – and if they give at all to the support of our institutions, limit their contributions accordingly'.⁷⁰ Why, asked the *Telegraph*, should the Southsea elite complain of naked swimmers? 'Our answer to the carriage gentry is, what business have you there? . . . the People must and shall bathe; and it is they who must not be annoyed'.⁷¹ The council refused to support the esplanade, along which Southsea's gentry rode or promenaded, arguing that the users should raise a subscription; a projected road linking Southsea to Portsea was refused aid as a 'minority interest'.⁷² Owen, the architect and developer of the villas and terraces, felt himself and his creation unloved.⁷³

In 1848 T.E. Owen was mayor. Yet he could no more win the council's support for a Southsea police station than he could have flown. 'Look at the modest request that is made', inveighed the veteran radical William Bilton; 'it is that the poor ratepayers are to be taxed merely to protect the plate and wine of the rich inhabitants of Southsea'. Even the burglary at the elderly Mrs Linington's could persuade the council to do little more than assign three men to Southsea beats when they next reorganised the force.⁷⁴ In 1870, when the question arose again, it was shunted off to the watch committee, who decided to await the results of the 1871 census before acting. This was heartily applauded by the *Telegraph*, which thought a police unit in Southsea would chiefly concern itself with detection of burglars and suppression of beggars.⁷⁵ Eventually, in 1874, a station was built, in Albert Road, well away from T.E. Owen's villas and terraces, but in a shopping zone frequented largely by working-class families.

Southsea's 'plate and wine' were reluctantly protected by 1874. This implies some sense of common interests between traders and gentry, Portsea and Southsea, that over-rode earlier hostility. It was a fragile identity of interests, as the furore that followed the four-day 'Battle of Southsea' showed.⁷⁶ This was basically a violent, and ultimately successful, struggle over a public right of way, provoked by the decision of the Southsea Pier Company to enclose a small patch of Southsea Common beside its property. Despite the name, it was not strictly common land, but belonged to the Ordnance Board, who had given permission for the

enclosure. The enclosure was prevented by crowd action on a huge scale. After three days of disturbances, the mayor called in troops to stand by while the police cleared the crowd. This latter task was carried out with great gusto, the men being encouraged by the superintendent to take the side of the Company. He also disobeyed his instructions from the local authorities by arming the pier company's defenders and making them temporary special constables.

The aftermath of the Battle of Southsea indicates the complex range of forces governing Victorian police behaviour. On one hand, most councillors deplored the role of the pier company, and were dismayed by the high-handed police response. On the other hand, the Southsea gentry felt delighted that they had witnessed the defeat of a Portsmouth Commune.⁷⁷ Local radicals started up a campaign to punish those officers who had excessively beaten demonstrators, to remove the superintendent, and to release the one man prosecuted for his part in the battle. The outcome represented a compromise. The watch committee ordered an immediate inquiry, but the latter's findings were ambivalent. The committee could do little with the superintendent but accept his apologies. The right of way was maintained, although the pier company managed to extend its property, cutting a new pathway along the sea-front. The radicals held a series of well-attended public meetings, but neither they nor the council could budge the Home Office on the imprisoned man's sentence, and the over-enthusiastic officers went unpunished. The local authorities had spent years of effort in establishing the police force's public authority; to have challenged it in public would have undermined public confidence in police expertise.⁷⁸

While it would be over-simple to regard the force as a tool of the local bourgeoisie, even in 1874, its partisanship during the battle made such an identification credible to contemporaries. This is hardly surprising; bones had been broken, and feelings were heated. More interesting is the way that radicals mounted their criticism of the local police through a comparison with the yard's metropolitan force. 'If Mr. MacDonald, of the Dockyard Metropolitan Police, had been on Southsea Common', speculated one radical councillor at a Landport protest meeting, 'it would have been a long time before he would have allowed his men to draw their weapons'. Several radical leaders spoke out in favour of a stipendiary magistrate; the two members of the bench who had sentenced the unfortunate after the battle had both been connected with the pier company.⁷⁹ The local experience of the London force, who by 1874 had been administering the supposedly brutal Contagious Diseases Acts for a decade, made the metropolitan model seem desirable to local radicals.

Here was the paradox of 40 years' policing. From opposing the very idea of a policed society, radical critics had come to judge the police by those abstract standards laid down by the system's pioneers: judicious discretion mixed with firm impartiality in enforcing laws that were often blatantly biased against working people. Most ordinary people, too, regarded the police as inevitable, even if they had little love for the force when it showed its face in their own area. While working people seem to have gone to the local station when their own property was affected, they seem to have joined in battles between police and servicemen on the latter's side. Police jokes started early, not merely in *Punch*, but as a part of popular culture. The young audience at the Christmas 1863 performance of Dick Whittington, we are told, particularly enjoyed 'the mischievous tricks of the clown, the patient endurance of the "lean and slippered pantaloons", and the officious watchfulness of the ill-used policeman'.⁸⁰ The bobby was the local symbol of outside officialdom: meddlesome, bossy, only half-trusted, with luck he got his come-uppance.

VI

This essay has tried to examine the changing ways in which the policeman's role came to be viewed by the local authorities, the community, and by himself. By implication, I have suggested that the role of law, and its enforcement, in the modern world is a complex one, subject to many determinations rather than one or perhaps two.⁸¹ While the dominant interpretation of police functions was undoubtedly formulated by elite groups, at national and local levels, there were profound disagreements within what one might call the ruling class. While the watch committee took the leading part in issuing immediate orders, and trying to guide overall development, the committee itself was changing and learning, from its own experiences and from Home Office arguments. Elected by the council every November, the committee included the wisest and most respected grey heads in the chamber, older and from a better social milieu than the general run of councillors. The typical watch committee member was respected for sound practice, in Guildhall and in office, even by his political opponents: as soon as Tories won seats on the council, William Stigant, a Buckland gentleman, was elected on to the watch committee. So were reputable radicals, like alderman Bilton or Admiral Napier's supporter, Edward Casher. They joined not only leading Liberal lights like Carter and Howard, but other

old Liberals like alderman William Jones, a Queen Street banker and wine merchant, a congregationalist, a reformer during the early thirties and magistrate from 1836. Jones, typically enough, was a stalwart of several charities, Treasurer of the Lancasterian schools, and a member of the Literary and Philosophical Society. These were men of independent mind, little affected even after the 1856 Act, by inspectors' reports or Southsea petitions. They were the central figures in shaping the identity of the new force; the policemen themselves could always, at a pinch, be dismissed, and new ones hired.

By the 1870s discipline was a relatively minor problem (although it has never, of course, disappeared entirely). The force was comparatively stable, and had become rather more assimilated to the rest of the nation's practices. Yet elite control was never entirely straightforward. At times, as in the Battle of Southsea, police perceptions of a problem could differ quite markedly from those of the local authorities. Similarly, in Manchester during the 1880s, police might enthusiastically raid brothels belonging to watch committee members.⁸² Police definitions of their own identity and role were, then, real influences upon the way that a policed society came about.

In general, the results were less spectacular, less explosive than in 1874. The policeman's norms, derived on the whole from the rural working-class background that he had only physically left behind him, could at times connive with local working-class norms to evade the instructions of the watch committee. A policeman who wanted to keep up his arrest rate would, without giving offence to those whose houses he walked past every night, pick upon visible 'outsiders' like tramps. Councillors might complain that noisy Portsmouth drunks or cunning burglars were escaping the constabulary's attention; they would be faced with the fiftieth or sixtieth court appearance of Margaret Gage, local laughing stock and inebriate woman, an easy catch.⁸³

In modern provincial forces, lay authorities almost inevitably defer to the policeman's expertise, accepting their chief constable's version of reality.⁸⁴ Indeed, even when counties like South Yorkshire have tried to challenge that version, they have found accountability to the community to be so small that it is barely visible to the naked eye. This is not to say that it does not exist entirely, for few policemen are of a type or mind to incur willingly the dislike or overt mistrust of their 'patch'. It is to argue that 'community policing' of the kind sometimes advocated must be a frail creature where no community accountability is secured. The policemen of Victorian provincial England were not in this enviable position. They had, all the same, managed to survive the

fiercest discipline, the closest public inspection, to impose something of their own views upon the job, affecting the rhythms of work, routines, procedures and areas of investigation. The Portsmouth force gave itself a 'human face' that allowed it to survive the daily taunts and glances on working-class streets, even if it lashed out when, as in 1874, it felt itself provoked beyond endurance.

Notes

1. D. Hay, 'Property, Authority and the Criminal Law', in Hay *et al.* (eds.), *Albion's Fatal Tree* (London, 1975); S.E. Finer, *The Life and Times of Sir Edwin Chadwick* (London, 1952), pp. 29-30.

2. *The Christian and Civic Economy of Large Towns* (London, 1821), p. 27, cited in H. Perkin, *Origins of Modern English Society* (London, 1974), p. 180.

3. A. Silver, 'The Demand for Order in Civil Society: a Review of some themes in the history of urban crime, police, and riot', in D.J. Bordua (ed.), *The Police: Six Sociological Essays* (New York, 1967), p. 20.

4. *Ibid.*, pp. 3-12; J.J. Tobias, 'Police and Public in the United Kingdom', in G.L. Mosse (ed.), *Police Forces in History* (London, 1975), p. 98; W.R. Miller, *Cops and Bobbies: Police Authority in New York and London, 1830-1870* (London and Chicago, 1977), pp. 5-15.

5. R.D. Storch, 'The Plague of Blue Locusts. Police Reform and Popular Resistance in Northern England, 1840-57', *Int.Rev.Soc.Hist.*, vol. 20 (1975).

6. Still 'him', for the quintessential bobby is a man; he suspects his women colleagues of being all right for office work, or helping children cross the road, but too feeble for demonstrations and thief-taking.

7. See Tom Bowden, *Beyond the Limits of the Law: A Comparative Study of the Police in Crisis Politics* (London, 1978), ch. 1; and 'Police and Community Relations', special issue of *New Community*, vol. 3 (1974).

8. *New Society*, 29 Nov. 1979.

9. R.C. Riley, 'The Growth of Southsea as a Naval Satellite and Victorian Resort', *Portsmouth Papers*, vol. 16 (1972).

10. *Hampshire Telegraph* (hereafter HT), 30 Jan. 1858.

11. E. Carson, 'Smugglers and Revenue Officers in the Portsmouth Area in the Eighteenth Century', *Portsmouth Papers*, vol. 22 (1974); J. Stevenson, 'Social Control and the Prevention of Riots in England, 1789-1829', in A.P. Donajrodzki (ed.), *Social Control in Nineteenth Century Britain* (London, 1977), pp. 30-41.

12. HT, 23 Sept. 1822; Corporation Elections and Sessions Book, 1816-1834, Portsmouth City Records Office (hereafter PCRO), CE 1/16; Sessions Book, Officers of the Court, 1827-1831, PCRO, S 6/12. Occupations were taken from directories and newspaper reports, too numerous to list.

13. *Portsmouth, Portsea and Gosport Herald*, 22 Aug. 1830; Rules and Regulations to be Observed by the Night Constables and Watchmen of the Town of Portsea, 30 Mar. 1818, Portsmouth Central Library.

14. Sessions Book, PCRO, S 6/12; Report of the Royal Commission on Municipal Corporations, *Parl. Papers*, 1835, vol. 24, pp. 806-10; HT, 11 Aug. 1817.

15. HT, 17 Mar. 1828, 4 Oct. 1830, 11 Nov. 1832, 8 July 1833.

16. HT, 13 Mar. 1815.

17. E.g. HT, 30 July 1827, 12 July 1830.

18. Evidence relating to Informations, 1826-29, PCRO, 6A/4, entry for 18 July 1826.

19. HT, 11 and 25 Aug. 1825; Misc. Corporation Correspondence, PCRO, CC 1/3, 23 June 1825.

20. Diary of Sir Frederick Madden, Bodleian Library, Ms.140, entries for 12, 13, 16, 17, 19 and 21 July 1819.

21. PCRO, S 6/12. Cf. the figures in J. Field, 'Bourgeois Portsmouth: Social Relations in a Victorian Dockyard Town' (Univ. of Warwick, Ph.D. thesis, 1979), p. 528.

22. HT, 13 Mar. 1815.

23. J. Foster, *Class Struggle and the Industrial Revolution* (London, 1974), pp. 56-8.

24. R. Walters, *The Establishment of the Bristol Police Force* (Bristol, 1975), pp. 3-5.

25. Miller, op. cit., p. 7; Finer, op. cit., pp. 29-30. For Queen Caroline's funeral, see I. Prothero, *Artisans and Politics in Early Nineteenth Century London* (Folkestone, 1979), ch. 7.

26. Foster, op. cit., p. 61.

27. E.P. Thompson, *The Making of the English Working Class* (London, 1968), pp. 88-90; Storch, op. cit.

28. *Manchester and Salford Advertiser*, 29 June 1839.

29. HT, 21 Feb. 1836.

30. *Semaphore*, 1 Jan. 1840 (emphasis in original).

31. HT, 21 Dec. 1840; 7, 14 June 1841.

32. HT, 4 Jan. 1841; *Portsmouth Borough Reporter*, 25 Jan. 1841; *Southern Star*, 22 Mar. 1840. For the introduction of London police into the Deptford and Woolwich yards, see Commissioner's Letters, Public Records Office (hereafter PRO), MEPO 1/38, 30 Mar., 2 Apr. 1841.

33. Cf. P. Richards, 'State Formation and Class Struggle, 1832-48', in P. Corrigan (ed.), *Capitalism, State Formation and Marxist Theory* (London, 1980), pp. 49-55. This whole collection, bizarrely, says nothing about the police.

34. Much social reform legislation was more permissive than is sometimes granted, but police legislation was unusually sensitive to charges of centralisation.

35. A. Cookes, 'The Southampton Police Force, 1836-1856', *Southampton Papers*, vol. 8 (1972), pp. 15-23; Walters, op. cit., pp. 9-11; W.R. Cockcroft, 'The Liverpool Police Force, 1836-1902', in S.P. Bell (ed.), *Victorian Lancashire* (Newton Abbott, 1974), p. 153; and, for another example of continuity, I. Dewhirst, *A History of Keighley* (Keighley, 1974), pp. 28-31.

36. Cockcroft, *ibid.*, p. 151.

37. Gosport Yard Police, March 1834, Victualling Office Letters, PRO, ADM 114/33; Admiralty Letters, PRO, ADM 1/3435, 6 Feb. 1834; Victualling Office Letters, cit., 18, 31 Jan., 8 Mar. 1836.

38. HT, 19 Sept. 1836.

39. Horne Ms., PCRO, 404A.

40. Report R.C. on Municipal Corporations, op. cit., p. 813; Council minutes, 1 Jan. 1836, PCRO, CM 1/1.

41. HT, 30 Jan. 1858.

42. HT, 13 Feb., 8 May 1858.

43. Watch Committee minutes, 23 July 1836, PCRO, CCM 1/1; Log book of P.C. Chapman, Rotherham, 1875, South Yorkshire County Record Office, 14/1.

44. R.D. Storch, 'The Policeman as Domestic Missionary: Urban Discipline and Popular Culture in Northern England, 1850-1880', *J. of Social Hist.*, vol. 9 (1976).

45. J.P. Martin and G. Wilson, *The Police: A Study in Manpower* (London, 1969), p. 12.

46. Watch Committee minutes, 28 Oct., 2, 5, 13 Dec. 1839, PCRO, CCM 1/1; HT, 26 Oct., 28 Nov., 16 Dec. 1839.
47. Watch Committee, 29 Feb., 14 July, 2 Mar. 1836, PCRO, CCM 1/1.
48. Portsea Station Record Book, PCRO, 123A/1/4/1; Portsmouth Police Appointments Book 1822-72, PCRO, 123A/1/5.
49. HT, 24, 27 Nov. 1869. For London turnover rates, see Martin and Wilson, *op. cit.*, p. 13.
50. Report of the Inspectors of Constabulary for the year ending 29 Sept. 1870, *Parl. Papers*, 1871, vol. 28, pp. 544-5.
51. Watch Committee minutes, *passim*; *Monitor*, 24 Aug. 1878; HT, 1 June 1859, 5 May 1866, 6 May 1867.
52. Watch Committee, 11 Jan., 16 May 1848, PCRO, CCM 1/2.
53. Watch Committee, 4 June 1840, PCRO, CCM 1/1.
54. Watch Committee, 9 Apr. 1850, PCRO, CCM 1/2.
55. The figures are in J. Field, *op. cit.*, p. 549.
56. 1836-54 saw 28 men discharged and 69 given lesser punishments; the smaller Wakefield force, by contrast, sacked 8 men and gave lesser punishments to 81 between 1854 and 1861: Wakefield Watch Committee minutes, 1854-62, Wakefield Borough Archives.
57. D. Roberts, *Paternalism in Early Victorian England* (London, 1979).
58. HT, 15 Sept. 1866, 30 June 1860.
59. HT, 15 Feb., 19 Apr. 1862.
60. HT, 8 Jan., 16 Feb. 1870.
61. Cf. Finer, *op. cit.*, pp. 116-48.
62. Rear Admiral W.F. Shirreff, Report on Dock Yards, Oct. 1846, National Maritime Museum (hereafter NMM), SHI/6.
63. Watch Committee, 4, 8, 15 July 1839, PCRO, CCM 1/1; *United Services Gazette*, 6, 13, 20 July 1839; *Portsmouth, Portsea and Gosport Free Press*, 11, 18 July 1839; HT, 22 Oct. 1868.
64. There is a useful summary in J. Hart, 'The County and Borough Police Act, 1856', *Public Administration*, vol. 24 (1956).
65. Report of the Select Committee on County and Borough Police, *Parl. Papers*, 1853, vol. 36, pp. 8, 10, 25-7; Council minutes, 5 Dec. 1853, 9 Feb., 2 Apr. 1856, PCRO, CM 1/3; Correspondence relating to Police Bill, PCRO, S/22; Home Office letters, 18 Nov., 14 Dec. 1857, 26 Jan. 1860, PRO, HO65/3; *The Times*, 22, 23 Feb. 1856; HT, 10 Dec. 1853, 24 June 1854, 7 Apr. 1856.
66. Police Commissioner's Letters, 8 Feb. 1861, PRO, MEPO 3/58. The Acts for the Better Protection of H.M. Naval and Victualling Stores are printed in *Parl. Papers*, 1862, vol. 3, pp. 492-504, 1864, vol. 3, pp. 183-7, and 1867, vol. 4, pp. 485-701.
67. Cf. M. McIntosh, *The Organization of Crime* (London, 1975), ch. 3.
68. Police Commissioner, 21 Dec. 1860, 7 Sept. 1864, PRO, MEPO 1/58.
69. *Hampshire Chronicle*, 1, 15 Jan., 26 Feb., 4 Mar., 29 Apr. 1848; *Portsea and Isle of Wight Advocate*, 27 Nov. 1847.
70. Letters from Portsmouth Infant School, 21 Dec. 1844, National Society Archives.
71. HT, 23 June 1849.
72. Council minutes, 24 Sept. 1838, PCRO, CM 1/1; 7 May 1855, 23 Nov. 1857, 22 Nov. 1858, PCRO, CM 1/3.
73. T. Fleming, an ex-Owen employee, wrote of this in *An Essay on Southsea* (Portsmouth, 1884).
74. Council minutes, 12 Mar., 10 May, 3 July 1848, PCRO, CM 1/2; HT, 1 Jan., 11, 25 Mar. 1848.
75. Council minutes, 4 May, 21 Nov. 1870, PCRO, CM 1/5; HT, 11, 14 May 1870.

76. J. Field, 'When the Riot Act Was Read', *History Workshop Journal*, vol. 10 (1980); 'The Battle of Southsea 1874', *Portsmouth Papers*, no. 34 (1981).

77. References to the Commune are discussed in the essays cited in note 76.

78. Council, 24 Aug. 1874, PCRO, CM 1/5 for the report and its reception.

79. *Southsea Observer and Visitors' Directory*, 21 Aug. 1874; HT, 23 Sept. 1854, 19 Feb. 1870.

80. HT, 2 Jan. 1864.

81. Cf. the works of Thompson and Hay, *op. cit.*; also A. Hunt, 'Law, State and Class Struggle', *Marxism Today*, vol. 22 (1978), pp. 76-7.

82. I owe the Manchester incident to Dermot Healey. See also Victor Bailey's description of the use of law in provincial towns: 'Salvation Army Riots, the "Skeleton Army", and Legal Authority in the Provincial Town', in Donajrodzki (ed.), *op. cit.*, pp. 231-53.

83. *Monitor*, 10 Aug. 1878 for one example.

84. M. Brogden, 'A Police Authority: The Denial of Conflict', *Sociological Review*, vol. 25 (1977).

4 THE POLICE AND THE PUBLIC IN MID-NINETEENTH-CENTURY WARWICKSHIRE

Barbara Weinberger

Why were the police unpopular in the nineteenth century? Historians have offered a number of explanations ranging from popular hostility to the police as agents of a repressive government to ratepayers' resentment at the expense. Explanations have varied according to the problem and period under consideration, but what emerges quite clearly from the historiography and the evidence are the fluctuating levels of police unpopularity. These reached unprecedented heights in the 1830s and early 1840s, and in the 1870s, but dropped to considerably lower levels in the intervening decades. The unpopularity of the new police had numerous causes and was expressed in different forms, some of which were more clearly articulated than others. The main roots of unpopularity lay in: suspicion of the police as an alien force outside the control of the community; resentment at police interference in attempting to regulate traditionally sanctioned behaviour; objections to the expense.

Hostility to the police found expression in complaints over their mode of operation; in lack of co-operation with them; and in physical attacks. While lack of co-operation was probably the most widespread response, it is also the most difficult to document. In this instance it can only be inferred indirectly from the image the police had of themselves as an alienated and despised body of men, and from their occasional complaints, recorded in the newspapers, that people would not come to their aid. Direct evidence of unpopularity took the form of verbal complaints or physical attack, and was expressed by different groups of people at different times for dissimilar reasons. After the initial very general resistance to the idea of new police, those who paid for the police settled to a steady low-level grumbling, which tailed off after mid-century, about their cost and efficiency. In contrast, a section of the working class, after two decades of acquiescence, reacted violently in an upsurge of assaults on the police when they started to implement the licensing and vagrancy laws more stringently in the difficult 1870s. In this essay I shall look at the trends in public hostility to the police, at the roots of that hostility, at the consequences this had on police modes of operation and organisation, and on their self-image, and at

how far police organisation itself became a factor in levels of police unpopularity. The evidence has been drawn from sources relating to Birmingham, Coventry and rural Warwickshire.

Trends in Hostility to the Police

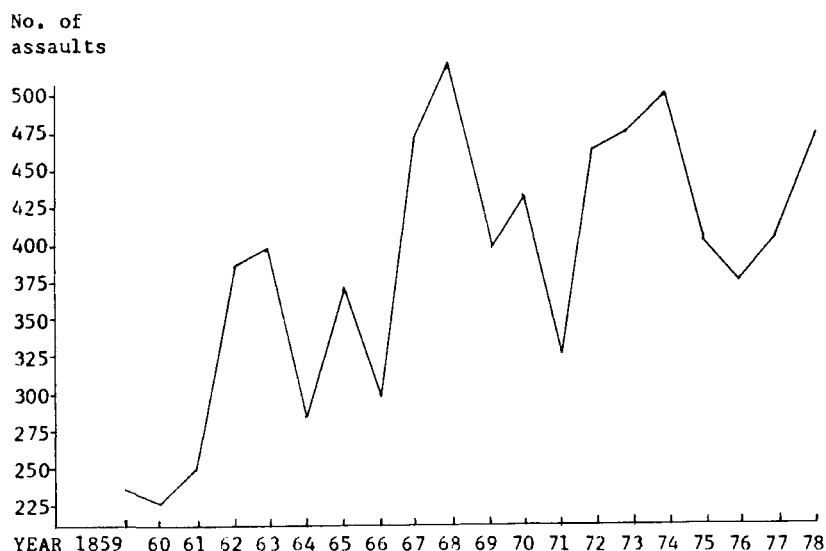
All sorts and conditions of men were hostile to the police for a variety of reasons. In the 1830s and 1840s opposition to the new police was part of a 'rejectionist' front ranging from Tory gentry to working-class radicals against an increasing number of government measures seeking to regulate and control more and more aspects of productive and social life. Undoubtedly some outbursts of working-class hostility during these years were politically motivated attempts to check the implementation of the County Police Act, as in Oldham where radicals formed a liaison committee with other towns in order to 'foil the magistrates in putting this Act into force'.¹ Chartist, enraged at the use of the Metropolitan police called in to suppress the Bull Ring riots in Birmingham in 1839, determined 'to have no police whatsoever until the working classes had a voice in the making of the laws of the land'.² Here they were joined by liberal magistrates and members of the Corporation in their opposition to the police — although Birmingham is no doubt a special case because of the imposition of a police force under the control of an independent Commissioner of the Peace after the Chartist disturbances. Opposition to the constitution of a rural police force, however, was equally general and widespread throughout the country, based on fears that the new police would be used as a quasi-military force or to institute a spy system; and opposition reached a peak in 1839-42, not matched by any subsequent events including the implementation of the 1856 Police Act.³

In the 1850s and 1860s the police continued to be criticised by magistrates and ratepayers and disliked by those against whom they acted. But the relative ease with which the 1856 Police Act was accepted is remarkable, given the concerted opposition to the Bill voiced by local authorities and others before it was enacted by Parliament. It is as though the major battles of principle — on the grounds of class opposition or of non-interference in local affairs — had all been fought out earlier, while the motivation for a new battle against the 'centralising tendency' of the Act was apparently not as substantial as the opposition's rhetoric had implied. The initial widespread and very vocal hostility to the new police died down. Most of the working class settled to a steady mistrust

and dislike of the police, but there were no more calls, as in the early Chartist days, to attempt to get rid of them from any section of society. The subsidence of active hostility to the new police was surprisingly quick, given the protracted and substantial resistance which greeted their establishment. It was brought about by the general lowering of the political temperature; by the very gradual advance made towards constituting new forces; and by their method of deployment. The most general fear, first voiced by a Select Committee over a Metropolitan force, that 'it is difficult to reconcile an effective system of police with that perfect freedom of action and exemption from interference, which are the great privileges and blessings of society in this country', kept police forces small, inefficient and cheap. Thus working-class hostility was muted by the very patchy interference of the police in their affairs, and middle-class hostility abated because only moderate demands were made on their pockets. The fears of both groups of anything resembling a standing army or a spy system were allayed by the fact that the police were unarmed, and by the very cautious introduction of the use of detectives in most forces. Hart's view, that in most provincial towns up to 1856 one was much nearer the old world of the early-nineteenth-century watchmen than the new world of the professionally supervised Metropolitan force,⁴ accounts for much of the reduction in hostility as many fears remained unrealised.

In the 1870s, however, police unpopularity rose to new heights, fuelled by police action in connection with the licensing laws and with Poor Law policy. The number of attacks on the police soared, and they were subjected to mob assaults in the towns of a kind which had not occurred since the earliest days of the establishment of the County Police. Figure 4.1 shows the overall upward trend in assaults on the police over two decades in Birmingham, as well as the sharp variation in assault rates for particular years.

Although the statistics are extremely localised, the upsurge in assaults on the police from the late 1860s is supported by similar evidence from other parts of the country. Assaults on the police rose from 1867 to a peak in 1868,⁵ remaining at a generally higher level throughout the seventies than they had been in the previous decade. The reasons for this are complex, but one aspect of the problem becomes clearer if we look at the Judicial Statistics for certain summary offences in 1868, in the years immediately before and after this date, and in 1877 for comparison with another year of severe depression. For all the offences listed in Table 4.1, except deserting family, the numbers brought to court were greater in 1868 than in any other year in the period 1859-78.

Figure 4.1: Numbers Arrested Annually for Assaulting the Police in Birmingham, 1859-1878

Note: Figures not adjusted for population.

Source: Judicial Statistics for England and Wales, 1860-1879.

Table 4.1: Statistics of Six Summary Offences in Birmingham, 1867, 1868, 1869, 1877

	Larceny by offenders under 16	Assault on PC	Begging	No visible means of support	Deserting family	Disorderly in workhouse
1867	198	465	82	500	10	4
1868	461	530	483	956	114	133
1869	362	388	92	323	62	36
1877	420	409	95	183	183	61

Source: Judicial Statistics for England and Wales, 1868-1878.

1868 was a year of general depression and a peak year for the number of vagrants applying for out-relief. If many people who were arrested that year resorted to stealing, begging or deserting their families out of want, being arrested in such circumstances would cause greater resentment than an arrest under 'normal' conditions. Another point of contention arose at this time through the 1867 Reform Act which abolished compounding of the rates and demanded that every occupier should pay his rates in full. This led to 35,000 poor people being summonsed

for non-payment in the year from October 1867.⁶ Critical attitudes to the police may well have crystallised at this time, the influence of which continued to be felt in the 1870s. The high offence rate at the end of the 1860s will also have aroused a new determination among the law enforcement authorities to curb offenders. Together this helps to account for the heightened tension in the relationship of the police and the working class in the 1870s. Assaults on the police in that decade, while not numerically as high as in 1868, were of a more violent nature and often took the form of mob assaults. Some of these assaults were quite large affairs involving hundreds or even thousands of riotous people, according to the newspapers, and so would imply the need for a modification of Storch's view that after the 1850s anti-police violence became an undercurrent in Victorian life.⁷ For some years in the 1870s at least, this violence was more than an undercurrent. However, it was largely carried out by distinct sections of the working class – initially to a large extent by the Irish, and increasingly by the young and the drunk. Lowe has shown that one-third of those arrested for assaults on the police in Manchester and Liverpool between 1846 and 1871 were Irishmen, although they formed only about 13 per cent of the population.⁸ In Birmingham they formed a smaller proportion (circa 4 per cent in 1861) and were more intermixed with the general population than in Manchester or Liverpool.⁹ This makes the large proportion arrested for assaulting the police the more striking.¹⁰ The statistics also show that assaulters were not confined to the lowest stratum. Table 4.2, containing figures for assaults on the police in Birmingham for selected years, provides an index of working-class hostility from 1862,¹¹ and of public concern with this issue, as shown by the percentage of cases of assault on the police which were reported in the newspaper.

Table 4.2 shows that an increasing proportion of youths were involved in cases of assault on the police. Attacks were frequently carried out by gangs of youths who terrorised certain neighbourhoods, and who pelted and stoned the police on sight, usually after closing time on Saturday night. It was these gangs, and not the police, who controlled the areas they considered to be their territory. Thorne describes the activities of the Navigation Street gang, who lived in the area behind the Theatre Royal, and states that until the time of the Navigation Street riots in which a policeman was killed, neither the police nor the theatre authorities were able to control the behaviour of this gang.¹² The newspapers are full of accounts of such disturbances in the seventies, which culminated in a gang war between rival groups of Irish and English youths on a scale which had not been seen in the town since the Murphy riots.¹³

The police were not anxious to get involved; but occasionally the disturbance reached such a pitch that local residents or councillors forced them to intervene, in which case they were inevitably attacked.¹⁴ The lack of recreational facilities for the young in the slum areas of the town was recognised at the time to be part of the problem; but in addition, the police were identified as the natural enemy in such areas.¹⁵

Table 4.2: Characteristics of Offenders Arrested for Assaulting the Police in Birmingham

	1862-3 %	1867-8 %	1870-1 %	1873-4 %	1876-7 %
Skilled manual	17	9	11	13	11
Semi-skilled	19	48	68	40	32
Unskilled	12	31	21	19	30
White collar	2	3	2	2	2
Not stated	50	9	8	26	25
Drunk	22	28	28	31	48
Under 21	—	17	18	50	36
Over 30	—	20	17	16	11
Irish	35	11	15	19	20
n =	40	64	65	147	159
% of assaults on the police reported in the newspaper:	10	12	21	29	38

Baiting the police had possibly become a tradition for sections of the working class by the seventies as a result of their experience of the police in the preceding decade, and the young may have undertaken this with the tacit approval of their elders. It was certainly traditional for the Irish, whether out of anger at the police discrimination against them, or out of natural dislike. In a case reported in the Police Court for 1863 in Birmingham, for instance, four men abused a policeman as he passed them in the street and two of them, both Irish, attacked him. One said to the other 'Here, Father, you kick him and I'll throttle him'.¹⁶ Denvir asserts police discrimination against the Irish in his account of the no-Popery riots following the Murphy lectures in Birmingham in 1867 where he says that the riots could easily have been prevented but for the partisanship of the police who assisted in attacking the Irish, demolishing their homes and stealing their goods.¹⁷ While the newspaper accounts do not directly substantiate his claim that the police joined with the rioters in attacking and stealing from the Irish, it is nevertheless clear that they did nothing to prevent the rioters' entry into the Irish quarter or the destruction and ransacking of Irish houses. The fact that a majority of those appearing in court after the riot bore

Irish names and were charged with throwing stones at the police from *inside* their houses makes it very obvious that the police sided with the anti-Irish rioters and were seen to do so by the inhabitants of the quarter.¹⁸ Finally, the greater number of people charged with assaulting the police from 1873 onwards for whom no occupation was given in the newspaper accounts (see Table 4.2) is partly due to the increasing number of youths arrested and charged together and simply designated as 'gangs of ruffians'; and partly a consequence of the greater number of women being charged, for whom no occupation was given. It is noteworthy that from 1871 the Poor Law Board had proclaimed that outdoor relief to single women should only be given on a labour test, that deserted wives should not be given outdoor relief for a year after their desertion, and that out-relief to wives and children of men in gaol should be restricted.¹⁹ Thane makes it clear that this policy was not actually carried out in Birmingham until the mid-eighties, but nevertheless the existence of such policy recommendations may well have had the effect of a much closer scrutiny of women claiming outdoor relief.²⁰

In order to place working-class hostility in its proper context, however, a distinction needs to be drawn between confidence in the law and respect for policemen among the working class. There is no direct correspondence between these two factors. Evidence from Warwickshire depositions to Quarter Sessions, which corroborates Philips' evidence for Staffordshire and Worcestershire,²¹ shows that despite the time, trouble and expense involved in bringing a case to court, the proportion of working-class victims resorting to the law was at its highest before police reorganisation (see Table 4.3). In a system where the police largely remained passive until asked to act by the prosecutor, the confidence shown by members of the working class in the law at a time of great social turbulence is striking. The high proportion of working-class prosecutors in the 1830s appears even more remarkable when compared with the lower proportion in the peaceful 1850s. If trends in police unpopularity had been anything to go by, one would have expected the opposite to have been the case. While the popular response to the police thus cannot be directly inferred from an analysis of who resorted to the law, the difference between the 1830s and the 1870s in the proportion of working-class victims bringing cases to court suggests at the very least that popular confidence in the law and its officers was not on the increase, whereas that of shopkeepers remained at a much more constant level throughout.²²

Table 4.3: Occupation of Victims of Offences Dealt with at Warwickshire Quarter Sessions, 1836, 1847, 1857, 1867, 1877²³

Occupation of victim	1836	1847	1857	1867	1877
	%	%	%	%	%
Unskilled manual	16	24	21	12	12
Skilled manual	28	10	16	19	13
Retail trade	29	25	23	24	28
Farmer	6	13	21	15	8
Manufacturer/merchant	2	2	1	6	10
Gentry/professional	5	5	5	7	8
Lower white collar	3	4	6	7	4
Other/not stated	11	16	7	9	16
n =	228	180	91	94	90

Roots of Working-Class Hostility

Four possible causes for working-class hostility to the police will now be presented. First, we consider the implications of unemployment on expressions of hostility to the police. The industrial structure and the pattern of industrial relations has to be taken into consideration when discussing the implications of the figures in Tables 4.2 and 4.3. W.L. Sargant, a Quaker businessman and Birmingham magistrate, had been one of the first to comment on the orderly habits of the townspeople. He compared the small force of police in Birmingham in 1839 with those found necessary on the Continent, and concluded that 'our mechanics, rude as they are to the eye and the ear, are a very peaceable race, far indeed from being addicted to violence'. From this he deduced that 'the comparatively equal laws and mild rule of hundreds of years have gradually produced a reverence for law and a willing submission to its administrators.'²⁴

Subsequent commentators also remarked on the peaceable nature of class and industrial relations. Trade union organisation remained weak, and strikes were rare in an industrial structure largely based on small workshop production and semi-independent master craftsmen. Employers were too numerous to act in concert; and until 1875 it was said to have been unknown for a great number of trades to suffer simultaneously.²⁵ Certainly many of the skills required in the hardware trades were easily transferrable between the different branches. Class relationships thus appeared less strained than elsewhere. But Duggan has pointed out as a corrective to the earlier view that an abundance of trades did not preclude short-time working, and that Birmingham suffered national

recessions as deeply as any other city.²⁶ He comments that where piece-work was prevalent, as in Birmingham, workers very rarely encountered sustained periods of full employment. Wages failed to rise above competitive levels, and hardware workers, tied to piece-rates, could quickly lose income or jobs.²⁷ In addition, many processes in the metal trades required little skill. A pool of unskilled boy labour kept wages low, and employers found it more profitable to dismiss boys in their late teens in favour of younger hands.²⁸

The influence of some of these factors can be traced in the arrest and prosecution statistics. Thus the rise in the percentage of manufacturers and retailers bringing cases to court in 1877 points to the deteriorating economic climate with employers and shopkeepers showing a greater determination to prosecute for workshop and other pilfering, or against piece-workers who sold or absconded with material given to them to make up. The social class distribution for assaulters on the police, however, does not show a significant rise for any one class at this date. The class distribution does not deviate very greatly from that of the general population in 1871 except in respect of white collar workers, although skilled manual workers tended to be under-, and semi and unskilled workers over-represented.²⁹ Assaulters were not confined to a particular social stratum, all the manual strata being well represented. It is to their position in particular trades and in their propensity to drink (the two often being associated) that one must look to find real differences between assaulters and the rest. Among the leading artisans, for instance, jewellers were conspicuous by their absence from the list of those who assaulted the police. They were equally well known for their stable employment prospects and for their sober habits and abstention from drink.³⁰ By contrast, Reid attributes the recklessness of the gun-men to the extreme fluctuations in demand to which their trade was subject; and gunmakers and others in the hardware trades are well represented among the assaulters. Reid states that the adherents of 'St. Monday' were increasingly drawn from skilled workers in declining trades, from garret masters outside the ranks of the 'society' men, and from casual labourers; and that by the 1870s such men had come to be despised by leading artisans for their custom of drinking during working hours.³¹ Many of the young men who assaulted the police may also have belonged to that group of unskilled labourers who had been thrown out of work after their early years in employment. They hung about the pubs and streets and made nuisances of themselves and no doubt got picked on by the police, who often arrested several of them together.³² While a distinction can therefore be made between the 'roughs' who assaulted

the police and the respectable who did not, this distinction does not differentiate between social layers as such, but rather between the position and expectations of different groups of people within them.

A second possible explanation for working-class antipathy to the police was based on the claim that they were controlled by alien class interests, a view that found greatest currency in the Chartist period. In the period before the introduction of the new police, the police and the working-class public were interlocked in ways which no longer obtained after police reorganisation. The failure of the parish constables in bringing offenders to justice had been said to be due in part to the 'natural sympathy between culprits and constables as acquaintances and fellow townsmen, and to a dread of retaliation on the part of offenders should measures be taken for their discovery'.³³ But a surprisingly large proportion of working-class people had resorted to the law in the 1830s (see Table 4.3), which would seem to indicate a high level of confidence by members of the working class in a system of law enforcement over which they had some measure of control, and in which they could retain the initiative. So it is possible that the fall in the proportion of working-class prosecutors from the 1840s can be attributed to the unpopularity of an alien force, which deterred a number of would-be prosecutors from seeking them out for aid or as witnesses. While the parish constable was to be found in the public house or living in the same street, the new police were not supposed to frequent pubs, and were newcomers in the districts where they operated. Unlike the constables, they usually had no other employment except as policemen, and through the operation of the beat system, presented an intrusion into working-class neighbourhoods not previously kept under routine surveillance. Their interference in the lives of the poor was unsolicited and deeply resented – most strongly, as Storch has observed, in the 'move on' system as an attack on the traditionally sanctioned freedom of assembly in the streets.³⁴

The working class had little reason to welcome the new police. They were resented as snoopers and parasites. But despite the grievance listed in the Chartist Petition of 1842 that 'an unconstitutional police force is distributed all over the country at enormous cost, to prevent the due exercise of the people's rights',³⁵ there is nothing in Warwickshire in the 1830s and 1840s corresponding to working-class attempts in some northern towns to gain control over the police. There were no widespread disturbances at the introduction of the new police in the County or Boroughs. The riot in Birmingham was against the Metropolitan police, and would not have occurred, in the opinion of the Police Super-

intendent, if the police had been a local force. 'A great many of the men who threw brickbats would not have done so if they had known they would be liable to be recognised' he believed. In Coventry the Scottish Chartist, Dr Taylor, denounced the Birmingham magistrates after the Bull Ring troubles, saying 'there is no justice in England but an Englishman's right arm'. But the local magistrates played down the importance of Taylor's address to the Home Office, as they saw no likelihood of a riot in Coventry.³⁶ So while class feeling against the police was more clearly expressed during the Chartist years than at any other time, the police were equally disliked because they were strangers who intruded unnecessarily into working-class neighbourhoods where they had no other business except surveillance.

The unpopularity of the police for this reason forms the basis for the third hypothesis — that the police were disliked because they were biased against the working class. Here there is a wealth of evidence of police intervention in the traditional practices and pastimes of the poor, particularly those which took place in the public streets, which occurred throughout the period and aroused strong resentment. Will Thorne recalled how the police would intervene when he and his companions held races in the streets in the 1870s;³⁷ and how boxing matches were surreptitiously organised to take place in fields outside the town, when it was rumoured that the police were going to stop the fight.³⁸ Specific targets of police discrimination were vagrants, agricultural labourers, gangs of youths and the Irish. Action involving the police with members of these sub-groups varied considerably over time. Thus vagrants were largely ignored by the police until the end of the 1860s; agricultural labourers received attention from the police after they were given rights of search by the Prevention of Poaching Act of 1862; action involving gangs of youths came to the fore in the 1870s; and the anti-Irish sentiment of the police was most vividly demonstrated by their behaviour during the Murphy riots in 1867. Discriminatory action against particular working-class groups, it would appear, depended to a considerable extent on the directives of the magistrates and of statute law, and it is only in the case of the Irish that there is direct confirmation of police prejudice.

The fourth postulate is that there was hostility to the police on the grounds that they were used by government as an arm of the bureaucracy, interfering with people not previously interfered with, especially in the matter of pub licensing and vagrancy. The grounds for this claim are that there was an upsurge of assaults on the police, which occurred in towns all over England in the 1870s. The reason put forward here is

that this was a consequence of the coincidence of a simultaneous change in government free trade policy over drink and the attitude of the Poor Law Board to out-relief. Through the tightening up of policy in both fields, there was brought about a sudden sharp increase in the coercive role of the police over large sections of the population not engaged in any criminal activity, with a sharp increase in hostility as a response. This is dealt with more fully in the final section.

The Roots of Middle-Class Objections to the Police

The main causes of working-class hostility to the police — on the grounds of class antagonism, of police discrimination, and of bureaucratic interference in non-criminal matters — have now been enumerated. Middle-class hostility was based on a different constellation of factors, the most constant of which were objections to the police as too great an expense to the ratepayers. This came to the fore most particularly in the early 1840s, when petitions to disband the new force were received at Warwickshire Quarter Sessions, attempts to get the watch rate lowered were made by Coventry councillors, and Birmingham at first decided that it could not afford to levy a watch rate at all. In almost every case, the outstanding obstruction to police reform was a financial one. While there were no more proposals to disband the force in later years, the need for economy to keep down the rates remained a constant concern at least until the 1870s, having direct implications and effect on the size of police forces and their organisation; while the relatively smooth implementation of the 1856 Police Act can be largely attributed to the offer of a government grant to cover a quarter of the cost of an efficient service.

One consequence of the concern for economy, however, was periodic charges of police inefficiency, with requests for better watching and the suppression of disorders being made by ratepayers. Complaints against the police on these grounds were most numerous before the 1860s (at least in Birmingham) but had dwindled to almost none by the 1870s.³⁹ Here the decrease in ratepayers' grievances is in direct contrast with the increase in working-class hostility to the police at that time.⁴⁰

Finally, there was hostility to the police on the grounds of unprofessional behaviour, chiefly expressed by the magistrates, watch committees, and teetotal members of the Council concerned to set standards for police behaviour. However, the views of these bodies did not necessarily coincide. While some Birmingham councillors campaigned against

allowing the police to drink while on duty, the Watch Committee had other preoccupations. The latter were more concerned with discipline and obedience to officers; while magistrates sometimes exhibited quite marked hostility to the police whom they suspected of illegal procedures when making an arrest. This hostility came to a head in the 1870s during the spate of assaults on the police and the increase in 'street ruffianism' in Birmingham. Commenting on the national increase in assaults on the police, *The Times* condemned the magistrates who dealt too leniently with this⁴¹ – but four years later the police newspaper, the *Police Guardian*, was still complaining over the extraordinary leniency with which the magistrates treated assaults on the police, and called for a law to protect constables by making the minimum sentence for aggravated assault 12 months.⁴² The *Town Crier* commented ironically:

Carefully avoid the policeman, as abundant proof is daily furnished they are the principal objects of ruffianly vengeance. If near them you may share with the members of the force a broken head and a kicked face. Should you be attacked and survive . . . upon no consideration allow yourself to be persuaded to communicate with the authorities, as the term of imprisonment meted out to your assailant will but serve to whet the appetite of himself and friends to repay you on his release for the trouble you have taken.⁴³

When complaints were made in the Watch Committee over the rising number of street disturbances in Birmingham, the Chief Superintendent defended himself, saying the police were doing all they could but that offenders were only fined derisory amounts. He believed the rowdiness would have abated if offenders had been dealt with more severely.⁴⁴ In the following instance, the defence of the magistrates by a member of the Birmingham Watch Committee shows the basic, and contradictory, grounds on which hostility to the police generally rested. In a discussion about street rowdiness, Councillor Taylor spoke against the use of plain-clothes policemen. 'In the old days when policemen had a red collar and were armed with an ashplant, one policeman was sufficient to drive away 400 roughs', he said. However, when the Chief Superintendent complained of the small amounts these roughs were fined when brought up in court, the same councillor remarked that as only small lads were taken into custody, the justices could not punish them too severely.⁴⁵

Complaints over expense, inefficiency and unprofessional behaviour were the main middle-class objections to the police. How were these objections expressed, and with what effect on the organisation of the police?

Police Organisation: the First Decades

It is unlikely that the desire for a new system of police was ever felt to be as urgent by local authorities as Chadwick and his witnesses made out. The system of parish constables combating normal crime in small- or medium-sized communities has been shown by Philips to have been more effective and to have persisted longer than was previously supposed. This is not to deny that a genuine need for a more effective service had evolved – quite apart from alarm over Chartist disturbances – as the administrative problems of urbanisation and industrialisation outgrew the remedies and capacities of magistrates acting according to traditional precepts; but to stress that the move towards a fully-fledged service covering the whole country was halting and gradual, resisted by vested interests in the counties and parsimony in the towns. Dislike of administrative centralisation, of spies and of the resemblance of the police to a standing army also underlay this resistance. These considerations often outweighed the desire for order in the early years after re-organisation. In Warwickshire, petitions for the abolition of the new County force were first received a year after the force was set up; while a motion put forward in 1841 and again in 1842 that the force be disbanded as it was no longer needed, was narrowly defeated.⁴⁶ This was part of a common experience in the establishment of County forces.⁴⁷

The need for a more effective constabulary was not felt to be pressing by Warwickshire JPs, the majority of whom were fairly substantial landowners⁴⁸ with their own servants and gamekeepers to act as watchmen.⁴⁹ The county magistracy also constituted a long established policing body with judicial functions and endowed with a traditional authority which they were naturally reluctant to have questioned on grounds of efficiency. Pilling has shown how the new police were in fact fitted in to the existing pattern of county government, living and operating within the orbit of the magistrates as part of an existing hierarchy of control – and that where this control was more complete, as in closed villages, it was rare to find a policeman stationed.⁵⁰

In the boroughs, the watch committees were a new body whose *raison d'être* was control of the police, so they could hardly have felt threatened by the imposition of the new force. However, they did feel threatened by their need to spend money, and were unsure of their ability to raise it. In Birmingham, political discord with established authorities unwilling to surrender their powers to the new corporation had initially prevented the setting up of any watch committee at all; and a proposal to pay for the new police force was dropped because of

doubts as to the powers of the Council to raise the funds.⁵¹ The very real financial difficulties of the watch committees were compounded or induced by the mid-Victorian mania for cheap government, so that demands for economy tended to outstrip the immediate financial necessity. In Coventry, for instance, two councillors attempted to force a reduction in the watch rate in 1842 on the grounds that a force of 15 constables was more than the city required.⁵² In Birmingham, the Watch Committee, finally constituted in 1842, took over responsibility for the police and almost immediately set up a sub-committee 'specially directed to a reduction in the expense of maintaining a police force'. The Committee recommended a cut-back of 50 men from the force of 369.⁵³

But over and above their own attempts at economy, the Corporation's policy of minimum expenditure constrained the freedom of action of the Watch Committee and soured relations with the Recorder, Matthew Hill.⁵⁴ The relationship between the Council and the Watch Committee described by Pilling for Sheffield and Cambridge, in which the Committee enjoyed wide financial autonomy and the Council never failed to ratify their decisions, was not the position in Birmingham. Here the Council kept a close watch on all the financial implications of Watch Committee policy. They dragged their feet over the establishment of a police superannuation fund. Watch Committee decisions to increase the size or pay of the force were not automatically ratified.⁵⁵ There was also a running dispute with the officers of the courts over gaol expenses,⁵⁶ over the Clerk of the Peace's fees,⁵⁷ and over the amount the Council was willing to pay for juveniles sentenced to reformatories.⁵⁸ Birmingham was probably an extreme, although by no means untypical, example of the effect of an 'Economist' faction on administrative policy. Thus concern over expenses appears as one of the main organising principles of Watch Committee policy, especially before the late 1860s, in a largely successful attempt to keep down the rates. In Coventry the watch rate had been held constant, and although the growing yield from that rate permitted some increase in the size of the force in 1853, it was not until 1858 that for the first time the police were able to institute a regular patrol of all the areas of the town.⁵⁹ In Birmingham, an inadequate borough rate led to a rising deficit in the Corporation's accounts, but an Improvement Bill to increase the Council's borrowing powers was thrown out after a ratepayers' poll in 1855. As a consequence, the Corporation was refused any extension on its overdraft; the Finance and Public Works Committees resigned *en bloc*, and the 'Economists' took over and set about reducing all kinds of public expenditure. The Watch

Committee's request for more policemen was turned down, even though the refusal meant losing government aid — and despite the warnings of the Chief Superintendent that only more police would be able to prevent 'the assaults and depredations in the Borough, of which such great complaints had lately been made'.⁶⁰ A new Improvement Bill passed in 1861, and supported this time by a ratepayers' poll, finally enabled the Council to raise loans without actually increasing the rates.⁶¹

The price to be paid was charges of inefficiency. In the early days this charge had been brought forward as one reason for requesting the disbanding of the new Warwickshire force; while the *Coventry Herald* was complaining as early as 1839 that the police were expensive, very inefficient, and in fact non-existent by day since there was only one man assigned to day duty.⁶² Out of 40 complaints received by Birmingham Watch Committee from its commencement down to 1877, nearly two-thirds were made in the 1850s at the time of the Council's greatest financial stringency. The charge of inefficiency against the police in promoting order or suppressing crime was not one which was made with any regularity by ratepayers, at least in the places examined here, perhaps for the obvious reason that a demand for better protection would have meant paying more for more police. Individual complaints about robbery and assault would have been taken to the Superintendent of Police. The Watch Committee was the place for groups to bring complaints, and these were mainly in the nature of demands that the police should take action to impose order in the streets and enforce standards of public behaviour and morality. The fact that very few of the memorials were concerned with the better suppression or detection of crime indicates that there was little concerted indignation over the effectiveness of the police on this account. Ratepayers appear to have felt more threatened by 'assemblages of idle persons' and more indignant at boys playing tip-cat or bandy in the streets, than by robbery or assault.

Complaints against the police for unprofessional behaviour were chiefly voiced by those in public office — by magistrates upholding legal standards and guarding the rights of the poor, and by councillors and members of the Watch Committee sensitive to the effect of police behaviour on their electorate. In the early years there were police scandals in both the Coventry and Birmingham forces (1861 and 1857, respectively) when the Chief Superintendents were dismissed for indebtedness and misappropriation of funds. But quite apart from obvious instances of illegal behaviour, it took time for those having charge of the police to define areas of responsibility and to clarify what standards of behaviour they expected. Part of the financial difficulties of the Chief

Superintendents mentioned above was due to the fact that they were held responsible financially in a chronically under-financed force so that the temptation to borrow from funds which were to hand proved too great in a period before the lines of demarcation of duties had been clearly drawn. Decisions had to be taken to prohibit the police from holding other jobs, from accepting gratuities, or from undertaking private watching on the estates or premises to which they were given access — all of which had been common practice before police reorganisation. Conflict on these points was largely confined to the early years of the new forces and was more quickly overcome than was the drunkenness which remained the besetting sin of the service.

Drunkenness was the chief occasion for disciplinary action against the police, being punished by reprimands, fines, dismissal and even imprisonment on two occasions in the county.⁶³ In Birmingham, policemen found drunk on duty were dismissed after the third offence.⁶⁴ However, the Birmingham police defended their right to a glass of ale 'as the work they had to do could not be performed unless they did have some refreshment'.⁶⁵ This was a plea for beer while *on duty*, something which would never have been allowed in the county, where any constable reported drinking in a pub while on duty was not considered eligible for promotion.⁶⁶ The boroughs showed considerably more leniency over drinking in the force than the county. The Watch Committee decided not to increase punishments for drinking on duty, the Chairman of the Committee going so far as to lay the blame for their drinking on the public. 'The general public did not use the police force with discretion' he said. 'They were too apt to ask them to take something to drink, and so much of the drink in Birmingham was adulterated that in some cases half a pint or a pint would upset a man.'⁶⁷ The fact is, as Harrison points out, that the police relied on publicans for information about the criminal world, so that their responsibilities for enforcing the licensing laws and for controlling crime were to some extent contradictory.⁶⁸ While the Watch Committee was certainly concerned over the extent of drinking in the force and of the police being corrupted by publicans, they found that too strict an enforcement policy was not practicable.

The style of policing adopted by the county and borough forces had originally been designed by the Police Commissioners to allay public hostility. In the delicate balance sought by those in charge of the police of providing protection without undue interference, the authorities were at pains to organise the police so that their presence was largely public and predictable. Detective forces were kept small, beats were

regular, and punctuality in reporting at preordained points along the beat, the first duty of police constables. In Birmingham, a Detective Inspector was appointed in 1848, but a wary eye was kept on his department, and all its members were required by the Watch Committee to report daily on how they had been engaged and what steps they had taken in every case.⁶⁹ Coventry first appointed a detective in 1858; but in the county it was not until 1873 that two sergeants were designated for detective work. Sensitivity to charges of spying had a marked and constant influence on the organisation of police forces from their inception, only overcome in times of crisis when urgent and effective action was demanded. This sensitivity is well illustrated by the following order from the Chief Constable of Warwickshire. In discussing the difficulties arising from a number of vacant beats in the county, he says:

the loss of protection to ratepayers throughout the County can be much diminished by tact . . . no need for anything that may be interpreted as inquisitiveness or to have some hidden meaning . . . it is possible by judicious patrolling of an unoccupied beat to elicit if there is anything requiring attention . . . it would be as well if a neighbouring constable should be on duty near the church of such a village during Divine Service, he will soon hear if there is anything which needs his attention.⁷⁰

The concern for the interests of ratepayers evident in this quotation was a major factor which influenced police organisation. Constant worry over the unpopularity of the police rate meant that this was held down at the expense of the level of police wages and the establishment of police superannuation funds. The police were paid the lowest wage at which it was possible to get literate men, and one which was sometimes too low to fill vacancies. This was particularly the case in the county where the Chief Constable reported difficulties in filling vacancies in 1865, and for nearly every year in the seventies.⁷¹ Most police superannuation funds were very slow in becoming established even after these had become mandatory, and while compulsory contributions to the funds were made from the wages of all policemen, very few actually received a pension before 1890. Contributions were too low and the income of the funds never high enough to meet obligations after the first wave of retirements.

Another factor which had direct consequences on police work was central government's perception that the police needed to gain the moral assent of the community in order to be effective. This accorded

well with local authorities' concern for ratepayer finances. The extra duties which the police were required to undertake saved money, and accustomed the public to contact with the police outside the field of peacekeeping or crime control. As Chadwick had been at pains to stress, such action would

exercise a beneficial influence on the labouring classes by teaching them to respect and trust the administration of the law and the law itself; by showing them that they are cared for by the authorities and are not, as they must but too commonly suppose, merely and exclusively the subjects of coercion.⁷²

Police organisation, then, reflected the influence of watch committees and magistrates, ratepayers and the Home Office. It also operated to heighten the sense of isolation inculcated in policemen by their discipline, uniforms and low wages. Normally, the police could not expect support from their overseers on the watch committee, or from the public, and their senior policemen expected an unquestioning obedience and undivided loyalty. The relationship was best summed up by the Chief Superintendent for Coventry, when he said that 'he took pleasure in his men and looked upon them as his children, because they obeyed and he believed much respected, their father'.⁷³ This unquestioning obedience is belied by the difficulties over discipline experienced in every force. The job was a hard and unpleasant one, turnover was high, and there is no evidence that policemen in the ranks saw their jobs as a vocation or were motivated by any moral imperatives. Pilling's assertion that policemen felt a sense of salvation in their jobs,⁷⁴ is not corroborated by the Warwickshire evidence. Men were drawn to the service by the security of steady employment, but the low pay and harsh discipline induced many to leave. P.C. Green, chairman of a meeting of the whole constabulary force in Birmingham in 1872, spoke for many when he said that when he first joined the force:

the rate of wages was such that he would never have accepted had he not been driven to it. It was the very last employment he would have sought, for the performance of police duties not only deprived them of their comfort but of their liberty, and when they put on their uniform they became the scoff of every low blackguard in town.⁷⁵

To be scoffed at implies being despised rather than respected or feared – and there is certainly an element of envy and contempt in the denigra-

tion of the Coventry police in the 1840s, as men who had sold their freedom and the necessity for any productive labour for security and the right to a uniform.⁷⁶ Twenty years later the same contempt is still evident in the abuse of a Birmingham policeman who was told to 'Pay for your clothes, you blackguard'.⁷⁷ But even where the police were able to gain the moral assent of the public, the job was not one which inspired much respect for their status and authority.

New Police Authority Initiatives

The multiple purposes which police forces were to serve did nothing to ease the conflict of the policeman's role. Public relations exercises were, however, designed to improve their image (and possibly their self-image). To this end, government inspectors had advocated that the police undertake the inspection of weights and measures, thereby making the poor their friends,⁷⁸ while their duties as Inspectors of Nuisances were to serve the same ends. But not all extra duties included good public relations as a motive. As far as local authorities were concerned, the temptation to use the police for any unforeseen administrative task was obviously very great. In Birmingham they were also used as auxillary firemen, the Watch Committee reporting as late as 1871 that they considered it too expensive for the Council to establish and maintain a separate fire brigade in the borough;⁷⁹ while the alderman who acted as returning officer in the Birmingham School Board elections suggested using the police to distribute voting papers, thereby saving £100 in postage.⁸⁰ Finally the Home Office sent round a letter listing the extra duties the police could undertake without forfeiting the government grant — only the inspection of common lodging houses, the relief of vagrants, and the inspection of nuisances and of weights and measures being acceptable.⁸¹ This was never strictly adhered to. Local administration was burgeoning irresistibly, and the police were ready-made to undertake many of these tasks as the only nationwide body of men under the control of local authorities. But as the police also undertook more tasks at the direction of central government and other statutory bodies they became a more professionally autonomous body, initiating their own enquiries, issuing licenses and taking proceedings under a number of Acts passed in the 1870s. In Birmingham, police were appointed to assist the Summoning Officer in levying the rates (1868), as official agent for proceedings against parents for the Inspector of Reformatory and Industrial Schools (1872), and as relieving officer in the

tramp ward of the workhouse (1869). This last officer was also responsible for tracing and detaining men whose families had entered the workhouse and so became a charge on the parish. In attempts to enforce the licensing laws, Birmingham policemen were accompanied by civilian members of the Vigilance Committee to help overcome the difficulties in catching offending publicans (1871). When this aroused adverse comments in the Council it was abandoned, but later the experiment was made of appointing five policemen as Public House Inspectors for the same purpose (1876-7). In this way, a far more interventionist approach over a whole range of non-criminal matters was developed as opposed to the previous emphasis on routine peace-keeping. What such peace-keeping had involved is best illustrated by an analysis of the action initiated by a policeman in the county force over a six-month period.⁸² In this time, he served four summonses, appeared in court five times, took action in respect of gypsies once, and once in respect of farm animals, received one crime complaint and reported one person for a summons. The rest of the time was spent in walking the beat. This was the style of policing which had been adopted by the borough and county forces since their inception, to allay public hostility and suspicion of the police. When the authorities began to look for more direct results, a quite different style of policing was enforced. In the campaign against vagrancy, for instance, the Chief Constable of Warwickshire issued the following order:

Vagrancy can only be checked by an organised and systematic course of action. An occasional tramp may be caught in the act of begging by a policeman in uniform, but more will be done by one in plain clothes or disguise watching for the tramp departing from the Unions or lodging houses and following them. Such plain clothes policemen should hand over to the nearest uniformed policeman the tramp he has arrested and continue his work of watching and following to pick up more.⁸³

While many of the tasks undertaken by the police had been accorded to them in *ad hoc* fashion in response to local needs and interests, the demand for police intervention to control vagrancy and drunkenness was part of a more general view that these were particularly closely connected with the causes of crime. The problems caused by unemployment had long aroused fears of 'the whole rabble of the vagrant and dissolute classes, who labour by fits and starts and eke out subsistence by pilfering and who are ever on the verge of more serious breach of the law'.⁸⁴

In his 'migratory theory of crime', Chadwick had put forward the view that most rural crime was committed by vagrants. Many rural magistrates agreed. So did the first Inspector of Constabulary for the Midland region, Major Cartwright, who believed the suppression of vagrancy to have been the main purpose of the 1856 Police Act, while he saw drink as the basis of all general crime.⁸⁵ The close association of drunkenness and vagrancy with crime was a commonplace held to be self-evident by most social reformers. What varied were the prevailing attitudes with regard to policy of those involved with either problem. Thus in the drink question, the greatest victory of the temperance movement was the conversion of Gladstonian Liberals in the 1860s from a free licensing to a restrictive policy, the outcome of which was the Wine and Beerhouses Act of 1869 and the 1872 Licensing Act restricting the conditions and hours of opening of beer houses and pubs.⁸⁶

Since the establishment of the new police, constables had always been liable to mob attack if they tried to interfere in activities seen as legitimate by those engaged in them — such as gambling, prize-fighting or wife beating. But the upsurge of assaults in the 1870s points to new causes of unpopularity. It would seem that previous efforts to gain the assent and co-operation of the public, reflected in the organisation of the police, broke down when the police came to be deployed to implement other policy directives. Hostility was now aroused, not only by the purpose behind police interference, but also by the methods used.⁸⁷ Much of the hostility to the police in the 1870s arose through their attempts to enforce the licensing laws, from their presence in and around pubs and from their interference in the drinking habits and drinking places of the working class. The number of persons proceeded against for drunkenness in Birmingham increased after 1872, and showed a constant tendency to increase for the next four years.⁸⁸ Since only the beginning of the decade was prosperous only some of this increase can be ascribed to the association of drink with prosperity. Of equal significance are local variations in policy implementation. The greatest proportion of offenders arrested for assaulting the police when drunk occurred in 1876-7 (see Table 4.2) during a period of economic depression, but covering a time exactly corresponding to the appointment of five special policemen who were to 'endeavour to obtain better observance by publicans of the licensing laws' by watching and entering public houses. Although this resulted in a very much larger number of prosecutions and of convictions in the first instance, there was such an outcry against the use of these inspectors that the magistrates later refused to convict in many cases and the scheme finally had to be abandoned.⁸⁹

Similarly, Poor Law policy was altered in the face of the rising numbers of vagrants on relief in the 1860s.⁹⁰ The police were to be employed as relieving officers in an attempt to distinguish the thieves, mendicants and prostitutes who crowded the vagrant wards from the honest unemployed in search of work; but from 1871 the Poor Law Board encouraged a general tightening up of relief and insisted that the workhouse test should be strictly applied. For vagrants after this date, there was the universal establishment of the deterrent casual ward for all wayfarers, and the exclusion from the workhouse of even the worthiest of them.⁹¹ Until the upsurge in vagrancy in the late sixties which alarmed local authorities throughout Warwickshire, those in control of the police had taken very little direct interest in the problem of vagrants⁹² – although ‘idle and dissolute persons’ such as beggars and prostitutes were likely to be charged under the 1824 Vagrancy Act. But despite the fact that Major Cartwright had been encouraging the appointment of police as relieving officers from the very beginning, it was not until pressure was put on the magistrates and watch committees by the local Poor Law guardians that the police came to be widely employed in this role. By 1869, all the forces in Warwickshire had designated policemen as relieving officers as part of a determined effort by the Poor Law Unions to reduce the soaring costs of out-relief. The results were dramatic. The nightly attendance of a constable at the tramp ward of the workhouse reduced the number of applicants for out-relief in Birmingham from 29,578 to 9,174 within the year,⁹³ and there were similar reductions in the numbers of applicants reported in Coventry and the county,⁹⁴ in consequence of the strict rules applied for admittance.

The number of people, particularly the poor and destitute, coming in for close attention from the police was increasing. The result shows up clearly in the rising national tide of assaults on the police in the larger towns. In 1877 the Recorder of Birmingham noted the many cases of violence against the police over the previous eight years. He said that when he first knew Birmingham, policemen bore a charmed life in the town, but that lately they were knocked about, stabbed, and in one case murdered.⁹⁵ Several cases of policemen found drowned or attacked were noted in the police newspaper, and the editorial complained that:

in populous places . . . such as seaport towns or manufacturing centres where there are canals, it would really seem as if constables require protection even more than the warehouses themselves.⁹⁶

Under these circumstances they questioned whether it was fair or safe to allow policemen to patrol their beats singly and alone.⁹⁷

The relative lack of concern shown by the respectable over the street disorders in which the police were involved in the 1870s is an indication that these mostly took place in parts of the town where the general public rarely ventured. Most of the mob assaults on the police occurred around the lodging house area and in the Irish quarter where thieves, prostitutes, tramps and the destitute lived. These were the people who mostly attacked the police. But other sections of the working class may also have increasingly come to dislike the police. Historians have tended to stress the hostility to the police aroused by their interference in the leisure activities of the working class. It could, however, be argued that many traditional recreations and customs were in any case on the wane, given changing social conditions, and that police interference was just one factor in their decline. But a social life centring on the pub, and a working life threatened by under- and unemployment were not part of this declining tradition but a major part of the lives of many members of the working class in the 1870s. Police action to suppress vagrancy (which in the depression of the mid-1870s meant action to deprive many of those without resources of a bed for the night) and to regulate drinking aroused greater hostility against them than any shown by this section of society since the early 1840s. Whether this amounted to 'alienation from the law itself' is debatable, given that a large number of the working class continued to resort to the law; but it is likely that much of the 'dislike and distrust of the police which smoulders away among working people', noted by observers of working-class attitudes early this century,⁹⁸ was based on the type of police behaviour described above.

When tracing the development of the relationship of the police to the public in mid-nineteenth-century Warwickshire, it becomes clear how important local attitudes and policies are in any attempt to provide explanations for police action and the reactions to it. Nineteenth-century policing history has to be placed within the existing structure of local government, since it was local imperatives rather than national ones which articulated the local organisation and role of the police. This essay has attempted to show how the initial unpopularity of the new police was based on the hostility of all sections of society to any possible encroachment on their existing rights and liberties. While this hostility abated, it never entirely disappeared. Its decline in mid-century is attributed to the fact that the police did not prove to be as expensive or as

obtrusive as had been feared. The styles of policing adopted, with their emphasis on routine peace-keeping, had been carefully designed to allay public hostility. A passive demeanour and a predictable routine were the chief characteristics of the policeman's life. They were chided for ineffectiveness by the middle class and disliked as parasites by the workers. But as soon as a more active role was allotted to them in the implementation of national policies against the interests of the working class, hostility against the police rose sharply, often expressed in mob attacks on the police in the towns. The new style of policing also re-activated the distrust of the police in magistrates and liberal councillors who were suspicious of any police method which smacked of spying or of the use of undue force. The use made of the police by local and central government to carry out a range of bureaucratic tasks in the service of the public was not on the whole sufficient to allay a general suspicion of the police.

Notes

1. J. Foster, *Class Struggle and the Industrial Revolution* (London, 1974), p. 60.
2. Quoted in F.C. Mather, *Public Order in the Age of the Chartists* (Manchester, 1959), p. 124.
3. R.D. Storch, 'The Plague of the Blue Locusts. Police Reform and Popular Resistance in Northern England, 1840-57', *International Review of Social History*, vol. 20 (1975).
4. J. Hart, 'Reform of the Borough Police 1835-1856', *English Historical Review*, vol. 70 (1955).
5. Judicial Statistics for England and Wales, 1868-9. See also V.A.C. Gatrell and T.B. Hadden, 'Criminal Statistics and their Interpretation', in E.A. Wrigley (ed.), *Nineteenth Century Society* (Cambridge, 1972), Table I, p. 389, which shows that 1868 was the peak year for summary and indictable committals to trial between 1857-92, throughout the country.
6. J.T. Bunce, *History of the Corporation of Birmingham*, vol. 2 (Birmingham, 1885), p. 40.
7. R.D. Storch, op. cit.
8. W.J. Lowe, 'The Irish in Lancashire 1846-1871' (Univ. of Dublin, Ph.D. thesis, 1974), pp. 227-8.
9. J. Denvir, *The Irish in Britain* (London, 1892), p. 415.
10. The comparatively low figure for Irish assaults on the police in the year of the Murphy riots (1867-8), is partly accounted for by the fact that the statistics run from after the autumn Quarter Sessions in 1867 to October 1868, thereby excluding those brought to Petty and Quarter Sessions after the riot.
11. The figures are extracted from daily police court accounts in the *Birmingham Gazette*, and can only be taken as a guide rather than as a complete record of all such cases appearing in court.
12. W. Thorne, *My Life's Battles* (London, 1925), p. 28. The Birmingham magistrate, J. Malins, also recalled that 'roughs were a troublesome element among

gallery frequenters of the Theatre Royal, and only one policeman in the town, known as Curly . . . could be trusted to face them . . . The play on the stage was frequently interlarded with duels in the gallery between Curly and the hooligans, whose main efforts were directed at throwing the officer over the front into the pit below': *Birmingham Gazette and Express*, 18 Sept. 1908.

13. *Birmingham Daily Mail*, 14 July 1874.

14. J. Malins, op. cit.: 'On half the nights of the week there was invariably a turnout of customers (from the pub) in order to have a street fight. The police only came on the scene when there was an uproar of unusual dimensions.'

15. See *Town Crier*, Sept. 1874, p. 4.

16. *Birmingham Gazette* (hereafter, B.G.), 5 June 1863.

17. Denvir, op. cit., p. 260.

18. B.G., 22 June 1867.

19. P. Thane, 'Women and the Poor Law in Victorian and Edwardian England', *History Workshop*, No. 6 (1978).

20. The Chairman of the Aston Board of Guardians, W. Fowler, wrote in *The Poor Law and Its Administration in the Aston Union* (Birmingham, 1873): 'Deserted wives trouble us very much. We refuse out-relief except in very rare cases.' He also said in connection with families of militiamen on duty: 'These are very perplexing cases, and we discourage applications as far as possible. The same may be said of women whose husbands are sent to gaol for trifling offences for a limited period. If it is a first offence, with a prospect of the husband being able to support his family again, we usually consent to give out-relief; but only under exceptional circumstances.'

21. D. Philips, *Crime and Authority in Victorian England* (London, 1977), Table 13a, p. 124:

Working-class victims in Staffordshire and Worcestershire:

	1836	1839	1842	1847	1851
	%	%	%	%	%
Unskilled manual	30	17	20	15	14
Skilled manual	24	30	16	14	15

22. The fact that the police were more often technically acting as prosecutors in the later decades is discounted in Table 4.3 which refers only to the occupational status of the victim.

23. *Warwick County Record Office*: QS 30/13, 30/24, 30/34, 30/44, 30/54. Note that the greater number of depositions in 1836 is due to the fact that prosecutors from Birmingham are included. By 1847 Birmingham had its own Quarter Sessions. The smaller number of depositions from 1857 onwards is the consequence of the Juvenile Offenders Acts, 1847 and 1850 (10 and 11 Vict.c.126), which had the effect of transferring many cases from indictable to summary jurisdiction. The question is whether this affected working-class prosecutors to a greater extent than wealthier victims who could better afford indictable prosecutions. While some weight must be given to this possibility on commonsense grounds, the fact remains that the percentage of working-class victims bringing cases to the higher court was comparatively high in 1857 when the impact of the jurisdictional change should first have become apparent, and fell to its lowest percentage over 20 years after this jurisdictional change had been implemented. So the connection is by no means clear.

24. W.L. Sargent, *The Economy of the Labouring Classes* (London, 1857), pp. 304-5.

25. *Victoria County History of Warwick*, vol. 7 (London, 1964), pp. 135-6.

26. E.P. Duggan, 'The Impact of Industrialization on an Urban Labour Market: Birmingham 1770-1860' (Univ. of Wisconsin, Ph.D. thesis, 1972), p. 6.

27. *Ibid.*, p. 187.

28. Ibid., p. 170.

29. A 1 per cent sample of those aged over ten drawn from the 1871 census for Birmingham shows the following social class distribution: unskilled 19 per cent; semi-skilled 22 per cent; skilled manual 41 per cent; lower white collar 13 per cent; professional 4 per cent. The social class gradings, particularly within the manual group, are by no means straightforward, firstly because of the imprecision of the self-assigned occupational labels; secondly, because such labels do not unambiguously define social class levels, but vary, at least in the period being considered, according to the locality, scale and nature of the productive enterprise. I have basically followed the industry by industry gradings based on Birmingham in M.D. Blanch, 'Nation, Empire and the Birmingham Working Class 1899-1914' (Univ. of Birmingham, Ph.D. thesis, 1975), pp. 399-402.

30. D.A. Reid, 'The Decline of St. Monday 1766-1876', *Past and Present*, No. 71 (1976).

31. Ibid.

32. cf. J.R. Gillis, 'The Evolution of Juvenile Delinquency in England 1890-1914', *Past and Present*, No. 67 (1975), where Gillis notes that in the 1890s, in Oxford, boys were usually arrested in groups for non-indictable offences, which he attributes to a tendency on the part of the police and the public to ascribe anti-social intent to boys collectively.

33. First Report from the Commissioners as to the best Means of Establishing an efficient Constabulary Force in the Counties of England and Wales, *Parl. Papers*, 1839 (169), vol. 19, p. 102.

34. R.D. Storch, 'The Policeman as Domestic Missionary: Urban Discipline and Popular Culture in Northern England, 1850-80', *Journal of Social History*, vol. 9 (1976), pp. 481-509.

35. Quoted in H. Pelling, *Popular Politics and Society in Late Victorian Britain* (London, 1968), p. 69.

36. P. Searby, 'Weavers and Freemen in Coventry 1820-1861' (Univ. of Warwick, Ph.D. thesis, 1972), pp. 306-7.

37. W. Thorne, op. cit., p. 26.

38. Ibid., p. 25.

39. *Birmingham Watch Committee Minutes* (hereafter B.W.C.), 1842-77.

40. Though Birmingham was, from the era of Joseph Parkes to that of Joseph Chamberlain, notoriously a town of Radical and Liberal alliances between the middle and working classes, no reference to the police has been found in the periodical literature of Birmingham Radicalism and Liberalism. The lack of coincidence of working-class and middle-class complaints against the police could be one consequence of the weakness of the radical opposition press in a town famed for its class collaboration.

41. *Police Guardian*, 5 Aug. 1873.

42. Ibid., 12 Sept. 1877.

43. *Town Crier*, Sept. 1874, p. 4. The *Town Crier* was a humorous paper started by a group of men closely connected with George Dawson who used the paper as a vehicle to chivy local government and promote the 'civic gospel'.

44. B.G., 10 June 1874 (Watch Committee Report).

45. B.G., 17 June 1874.

46. R.S. Heydeman, 'County Administration in Warwickshire' (Univ. of Birmingham, B.A. thesis, 1953), p. 73.

47. D. Foster, 'Public Opinion and the Police in Lancashire 1838-42' (Univ. of Sheffield, M.A. thesis, 1975), p. 71.

48. R. Quinault, 'The Warwickshire County Magistracy and Public Order c.1830-70', in J. Stevenson and R. Quinault (eds.), *Popular Protest and Public Order* (London, 1974), p. 189.

49. The number of depositions by such employees on behalf of their masters to the county magistrates confirms this role. See depositions for Warwickshire in the Warwick County Record Office in this period.

50. C. Pilling, 'The Police in the English Local Community 1856-1880' (Univ. of Cambridge, M.Litt. thesis, 1975), pp. 178-80.

51. L. Radzinowicz, *The History of the English Criminal Law* (4 vols., London, 1948-68), vol. 4, p. 235.

52. Searby, op. cit., p. 620.

53. B.W.C., 8 Nov. 1842. Eighteen months later it was noted that there were only 21 men on day duty in the town. See C. Gill, *History of Birmingham*, Vol. I (London, 1952), p. 275: 'The cost of the police was by far the heaviest charge on the Borough fund, and now that the Council was in command it was determined to keep the cost as low as possible.'

54. Gill, *ibid.*, p. 414.

55. B.W.C., 15 Dec. 1859; 31 Aug. 1859; 3 April 1866.

56. P.W.J. Bartrip, 'The Career of Matthew Davenport Hill' (Univ. of Wales, PhD thesis, 1975), p. 198.

57. B.W.C., 6 Feb. 1872; 14 Sept. 1873.

58. *Ibid.*, 7 Jan. 1864; 12 March 1875; 15 May 1877.

59. Searby, op. cit., p. 627.

60. A. Briggs, *Victorian Cities* (London, 1963), pp. 211-14. Gill, op. cit., p. 419, adds that a dislike of centralisation and of taking orders from a government department also played a part in the Council's refusal to increase the size of the police force.

61. See E.P. Hennock, *Fit and Proper Persons* (London, 1973), Table 4, pp. 27 and 29, where he shows how the Council was dominated, until the 1860s, by small businessmen for whom low rates were a first consideration.

62. V. Milan, 'The Coventry Watch Committee and Police Force 1836-1875' (Univ. of Warwick, M.A. thesis, 1976), p. 18.

63. Warwick County Police Headquarters, Chief Constable's Order Book, 1865 and 1869.

64. Birmingham Council Minutes, 4 April 1871.

65. *Police Guardian*, 29 Oct. 1875.

66. Chief Constable's Order Book.

67. Watch Committee Report to Council, 5 May 1871.

68. B. Harrison, *Drink and the Victorians* (London, 1971), p. 376. However, the police used their power to enforce the licensing laws for their own purposes. In his evidence to the Select Committee on Intemperance, Chamberlain complained that they blackmailed publicans with the threat of enforcing these laws: Select Committee on Intemperance, 1877, 1st Report to the House of Lords, *Parl. Papers*, XI, p. 226, q.2281.

69. B.W.C., 11 Dec. 1851.

70. Chief Constable's Order Book, Sept. 1876.

71. Annual Reports of the Inspector of Constabulary, *Parl. Papers*, 1857-1877.

72. Constabulary Commissioners' Report, 1839, p. 227, quoted in A.P.

Donajgrodzki, 'Social Police and the Bureaucratic Elite', in Donajgrodzki (ed.), *Social Control in Nineteenth Century Britain* (London, 1977), p. 67.

73. Reported in the *Police Service Advertiser*, 15 Sept. 1870.

74. Pilling, op. cit., p. 377.

75. *Police Service Advertiser*, 29 Nov. 1872.

76. Storch, 'The Policeman as Domestic Missionary'.

77. B.G., 1 June 1863.

78. J. Hart, 'The County and Borough Police Act', *Public Administration*, vol. 34 (1956).

79. B.W.C., 14 March 1871.
80. *Police Service Advertiser*, 20 Dec. 1870.
81. *Ibid.*, 5 Jan. 1871.
82. Warwickshire Police Headquarters, Beat Book from the Atherstone Division, February-August 1871.
83. Chief Constable's Order Book, March 1877.
84. T. Plint, *Crime in England, its Relation, Character and Extent, as Developed from 1801 to 1846* (London, 1856), quoted in V. Bailey, 'The Dangerous Classes in Late Victorian England' (Univ. of Warwick, Ph.D. thesis, 1975), p. 182.
85. Pilling, pp. 229, 235.
86. B. Harrison, *op. cit.*, Tables 8 and 9, pp. 328 and 329, show the legislative changes in opening hours for pubs and beer houses between 1830 and 1874.
87. See the evidence of Chamberlain to the Select Committee on Intemperance, where he describes the public outcry against prosecutions brought by the Public House Inspectors, so that the magistrates refused to convict: Select Committee on Intemperance, pp. 226-7, qq. 2286-2291. Similarly, in a case where the police entered a private house and arrested four men for gambling, the Stipendiary was extremely critical of the police, and a councillor brought a formal complaint against them to the Watch Committee: B.G., 4 July 1877; B.W.C., 10 July 1877.
88. Select Committee on Intemperance, p. 225, q. 2272. This accords with the national trend as shown in the criminal statistics for drunkenness in Gatrell and Hadden, *op. cit.*
89. *Ibid.*, pp. 226-7, q. 2272. The new police chief of Birmingham pursued a policy of arresting 'quiet drunks', instead of only those who were drunk and disorderly, which greatly increased the numbers arrested, and the indignation of those so detained. One, who was discharged, pleaded corns as the cause of a limping gait the policeman had mistaken for drunkenness. Another, fined 5s, declared, 'I was not drunk. I shall be a Tory now . . . if these are your Liberal laws': *Police Guardian*, 17 Nov. 1876.
90. Jones attributes the rise in the number of tramps committed to Welsh gaols in the 1860s to stricter Poor Law and police controls, as well as to unemployment: D.J.V. Jones, "'A Dead Loss to the Community': The Criminal Vagrant in Mid Nineteenth-Century Wales", *Welsh History Review*, vol. 8 (1977), pp. 312-44.
91. S. and B. Webb, *English Poor Law Policy*, Vol. X (London, 1910), pp. 95-6, 99.
92. B. Weinberger, 'Crime and the Police in the late 19th Century' (Univ. of Warwick, M.A. thesis, 1976), Table 13.
93. B.G., 14 April 1870.
94. Warwickshire Quarter Sessions Minutes, Epiphany, 1870.
95. B.G., 7 April 1877.
96. *Police Service Advertiser*, 18 Oct. 1872.
97. See *Police Guardian*, 22 Aug. 1873.
98. H. Pelling, *op. cit.*, p. 71.

5 THE METROPOLITAN POLICE, THE HOME OFFICE AND THE THREAT OF OUTCAST LONDON

Victor Bailey

What is the true view of Home Office history for the last six years I do not know — that history remains to be written at a date safer for sound judgement than the present. At all events no chronicle will be of value unless it relies upon the testimony which you and I alone can supply. (A Home Office clerk to E. Ruggles-Brise, Principal Private Secretary to the Home Secretary, 1892; in *Sir Evelyn Ruggles-Brise. A Memoir*, compiled by Shane Leslie (1938), p. 79.)

I

In what sense did Victorian society feel threatened by 'outcast London'? According to Dr Stedman Jones, public concern about poverty and the London poor re-emerged in the 1880s out of fear of the 'dangerous classes' and of the disaffection of the adjacent social stratum, the 'respectable working class'. Middle-class London feared, in particular, an insurrectionary alliance between the casual 'residuum' and the 'true working classes'. The real depth of these fears, we are told, was revealed by the disturbances of 1886 and 1887 when, for a brief but significant moment, the urban poor represented a social menace to propertied Londoners.¹

The present essay submits a reassessment of the threat of revolution in the 1880s by examining, in the main, the response of the Home Office and the Metropolitan police force to the unemployed disturbances. This reconstruction of the viewpoint of Metropolitan authority draws extensively upon departmental papers hitherto unavailable under the Official Secrets Act. The essay argues, first, that the fears aroused by the Trafalgar Square riot of 8 February 1886, related to the casual residuum, not to an alliance of the 'outcast' and 'respectable' poor. Contemporaries spoke of a spontaneous outburst of the East End barbarians, not a movement which included bona fide unemployed and 'decent' workmen. The social distinction which had been forged in the mid-Victorian years

between the 'dangerous' and the 'respectable' classes was not thawed by the economic and social crisis of the 1880s. It is further submitted that the level and durability of middle-class alarm about the casual residuum has been exaggerated. The practical initiatives of the propertied and of authority, in the sequel to the riot, do not reflect an abiding fear of social insurrection. It was quickly recognised that the outbreak and continuance of the riot owed considerably more to the inflexibility of existing police organisation, than to any premeditated iconoclasm on the part of the 'mob'.

The essay also assesses the response of the legal authorities to the disorders of 1887, which reached their apogee in the clash of police and poor around Trafalgar Square on 'bloody Sunday'. Previous work has presented too simple a model of a unified governmental strategy to repress the protest of the unemployed and the attendant campaign to maintain the right of public meeting. In fact, police determination to deal with the threat from the unemployed was hedged round with important constraints. There was manifest disagreement over the policy of public order between the Chief Commissioner of Police and the Home Secretary. To this disharmony was added the inhibiting effect of the 'rule of law' on executive action. Too much mythology, then, has grown up around the events of Trafalgar Square in 1886-7. It has masked an understanding of the threat posed by these events to middle-class London, and of the complexity of the attitudes of those involved in administering the law of public order.

II

By 1886, a largely socialist-led unemployment movement was holding regular open-air meetings, at times challenged by a protectionist agitation under the auspices of the Fair Trade League.² The meeting in Trafalgar Square on 8 February was called by the League in support of protectionist tariffs. An opposing platform was organised by the Social Democratic Federation. Some ten to twenty thousand unemployed dockers and building workers assembled in the square. Later in the afternoon, a confused contingent of socialists, anti-socialists and unemployed moved off towards Pall Mall, the 'street of the big political, aristocratic and high-capitalist clubs'.³ The march-past brought club members to the balconies and windows, from where they derided the 'great unwashed'. The outcome was extensive damage to the clubs from stone-throwing, a mere prelude to a general attack on visible wealth in

the form of shops and passing carriages. The black banner of the unemployed lent its name to 'Black Monday' in the annals of propertied London, a few hours of rioting within the hallowed precincts of the West End producing an estimated £50,000 of damage.⁴

Worse riots had occurred in the course of labour disputes, anti-Catholic affrays or at election time.⁵ London, however, was the centre of government and of Empire, the headquarters of the *ancien régime* of landed wealth, the heart of the country's commercial and financial system – and extremely vulnerable to disorder. It was difficult to assert complete control of the casual labour force of this largely non-factory city, yet London had gradually acquired a reputation as the special home of security. Hence, disturbances which revealed that the principal streets of the capital were inadequately policed sent shock-waves through the nervous system of the propertied. There followed the days of 9 and 10 February when, according to George Bernard Shaw, there was ample material for 'a study of West End mob panic'.⁶ Rumours of predatory mobs marching on the West End were increased by the heavy fog of the next days.⁷ That stout Tory, Beatrix Potter, could think of little else. She recorded that on the 10th there had been absolute panic caused by the rumours of 10,000 roughs marching from Greenwich and Deptford: 'The bridges were guarded, the troops held in readiness at the barracks, and a guard at the banks'.⁸ The whole was a self-inflicted 'grande peur'.

In post-Chartist England, the rich feared most not an organised movement of rebellion, but sudden mob disorder as portrayed by Dickens in *Barnaby Rudge* or *A Tale of Two Cities*. What the wealthy now found dangerous about the 'dangerous classes' was 'an undefined yet serious misgiving on the score of safety to life and limb – to say nothing of property'.⁹ Doubtless the Paris Commune of 1871 had refreshed the fears of irresponsible tumult. Following the 8 February incident, Beatrix Potter queried 'are we to have something like the Gordon Riots again?' She also sketched the standard interpretation of the riots: 'no one seems to lay the blame on the working men, it is the Jacobins, roughs and thieves'.¹⁰ In press accounts, police reports and parliamentary speeches, the blame was put squarely on the criminal and dangerous classes. The honest workman or the bona fide unemployed were exonerated. Press and parliamentary comment emphasised, indeed, that the riots were deprecated by the respectable work force.¹¹ As the *Pall Mall Gazette* concluded:

It was no Socialist demonstration. It was no hunger raid upon food. It was simply the surging up to the surface of the bandits of civilization.¹²

'Low-life' pamphleteers and social investigators advanced the same interpretation. So, too, George Gissing and W.H. Mallock, novelists who, *inter alia*, evaluated the revolutionary threat in the 1880s, described the rioters as a great urban *lumpenproletariat*.¹³

The middle-class interpretation of the Trafalgar Square riot was based on confidence in the social differentiation of the 'real working class', including those who were unemployed, from the casual 'residuum'. But what of the Socialists, the organisers of the unemployed agitation? In fact, they affirmed the contemporary distinction. In the subsequent trial of the leading members of the Social Democratic Federation, Henry Hyndman blamed the riot on 'the anti-sugar bounty mob', the tools of protectionist intrigue.¹⁴ Frederic Engels, the doyen of English Socialism, had believed this all along. The procession to Hyde Park, he told Bebel, was composed of 'the masses of the Lumpenproletariat, whom Hyndman had taken for the unemployed'.¹⁵ Engels felt only contempt for crude street looting. The criminal and slum rowdy were not the recruits vital to an organised labour movement. In the assessment of the West End riot, then, the Socialists also insisted on distinguishing between 'respectable labour' and the 'residuum'.

Contemporary interpretation was leavened by the Metropolitan economy. A 'dangerous class' of intimidating proportions was fashioned out of the distinctive features of London's industrial structure. The capital was the haven of seasonally-required, casual and unskilled labour, particularly in the building, transport and service sectors. This pool of underemployed labour, moreover, was thought to shade imperceptibly into those social groups more clearly unattached to the industrial economy — paupers, vagrants and criminals. H.E. Hoare, voluntary worker for the Charity Organisation Society, spoke of 'the casual labourers who live on the brink of starvation and crime, and who are a disgrace and may easily become a danger to London.'¹⁶ Whilst in other cities, vast portions of the labouring class had been withdrawn from membership of the 'dangerous class', in London it was more difficult to separate the casual labour force from the semi-criminal, pauperised residuum. Yet if the London 'residuum' incorporated the unskilled workforce, the entire social stratum was thought to be morally and socially distinct from the 'respectable working class'. Mid-century social investigations, many of which were based on the East End of London, had redefined the bottom rung of the social ladder as the 'residuum', distinguished as much for their incompetence as their rebelliousness, and had identified a distinct stratum of respectable workers.¹⁷ It was a social differentiation which was not undermined in the 1880s, even in the face of the

Trafalgar Square riot.

It has been argued that the main component of middle-class anxiety in the days following the riot was the threat of social insurrection on the part of the city residuum. Related to this was the comforting judgement that the riot had not been supported by the respectable working class or the bona fide unemployed. Equally significant is the fact that the Socialist organisations endorsed the middle-class description of aimless rioting. In a city which retained 'pre-industrial' forms of production, a 'pre-industrial' definition of a semi-criminal mob coloured public discussion of the threat of social upheaval.

III

'Throughout the rest of 1886 and 1887', according to Dr Stedman Jones, 'fear of a "sansculottic" insurrection remained strong.'¹⁸ What evidence is there for such a claim? There are the pamphlets of contemporary social reformers, in which, however, the fear of disorder was so often manipulated to disturb an indifferent public into contributing money. There are the warnings of impending catastrophe to be found in the newspapers, yet as early as March 1886, William Morris of the Socialist League stated that the 'cool-headed people of the middle-classes rather smile at the ravings of the *Telegraph*'.¹⁹ The testimony of anxious social workers or excitable London dailies could never act as an exhaustive source of evidence on which to base an estimate of the fear of revolution. A more reliable, and largely neglected, way of assessing the level and persistence of alarm about the 'dangerous classes' is to document the practical response of the propertied and the authorities to the Trafalgar Square riot.

Riots commonly remind the propertied of their social responsibility to the poor. The immediate reaction of one gentleman in Brooks's Club was far from charitable, according to the Liberal MP for York:

As the windows crashed in he shouted, 'This'll do 'em no good!' . . . and as the fire got hotter his language grew stronger, and he finally was swearing that he would stop 'all his subscriptions to everything'.²⁰

In fact, there was a rapid increase in subscriptions to the Mansion House Relief Fund in the wake of the riots. Was this an attempt by the propertied 'to assuage the threatening discontent of the poor'?²¹ On 8 February

the fund stood at £3,300; by 23 February at £60,000. The lessons taught by the Charity Organization Society, particularly the prescribed distinction between the 'deserving' and 'undeserving' poor, were neglected. The money was doled out without system by emergency committees.²² But after the initial spurt of donations, little more came in. If this was 'ransom' money to disarm the threat of outcast London, the sum seems pitifully small.

A more considered proposal to alleviate the social distress which was felt by some to underlie the riot, was a temporary relaxation of the conditions for granting outdoor relief in London.²³ But no other welfare measures were conceded. The riot was not, according to Jose Harris, responsible for Joseph Chamberlain's circular of 15 March which sanctioned public relief works for the unemployed.²⁴ If the riot brought the problem of unemployment into public discussion, therefore, it had little direct impact on social policy for the relief of the unemployed. As Harris put it, the unemployed were still seen 'as a problem of public order rather than of social distress – as the responsibility of the Home Office rather than of the Local Government Board.'²⁵

What, then, was the response of metropolitan authority? Some 20 rioters were dealt with by the police courts, charged with being disorderly or riotous, or with committing wilful damage. The convicted were either bound over in recognisances to be of good behaviour, or fined between 5s and £1, or (in the cases of wilful damage) imprisoned for between one and two months. A dozen more cases were committed for trial to the Middlesex Sessions, where they were generally indicted for breaking and entering, and stealing items of jewellery, food or wine. Apart from one sentence of five years' penal servitude, the guilty were mostly given short sentences of imprisonment of between three and twelve months.²⁶ A more significant proceeding was the State prosecution of the speakers at the Trafalgar Square meeting. Perhaps in order to avoid conferring notoriety on the Socialists, the government initially sought to prosecute them summarily, but the Law Officers advised against it. By 12 February, the Attorney General, Sir Charles Russell, believed that there was sufficient evidence against Hyndman, Burns, Champion and Williams to indict them for unlawfully uttering seditious words with intent to incite to riot, and for conspiring together to effect the same. A conviction for the crime of seditious speech was often difficult to obtain, however, as subsequent events proved. Unswayed by the excitement aroused by the disturbances, the jury found all the defendants not guilty.²⁷ There is little evidence, then, of a stern legal response to the riot. The sentences passed on the rioters were unexceptional in

severity, and the one State prosecution ended in ruin.

Nor was there any haste to assert greater police control over the assemblages of unemployed in the centre of London. Insurance against further disorder was sought, by some, in a tougher policy towards outdoor demonstrations which, it was thought, attracted the 'roughs' and criminal classes.²⁸ The Queen suggested to Hugh Childers, the Liberal Home Secretary, that since public meetings in Trafalgar Square were, in strict law, illegal, disorderly meetings there might be forbidden. However, Childers was not prepared to restrict the places of holding meetings — 'To withdraw a permission, granted or recognised by successive Governments, would be a very grave step.'²⁹ Moreover, whilst firm precautions were taken to avoid disorder ensuing from an SDF meeting in Hyde Park on 21 February, the Home Office refused to disturb the public mind by swearing in special constables. Significantly, too, military support was arranged by the Chief Commissioner of Police because of 'a very strong feeling among the "unemployed" against the Social Democrats which might possibly lead to a collision'.³⁰ Again, these do not seem like the actions of a government under threat from a revolutionary situation.

Indeed, judging from a close assessment of the concerns of the parliamentary community in the first months of 1886, there was remarkably little governmental attention devoted to the Trafalgar Square riot. The Cabinet acceded to the pressure from shopkeepers to secure proper compensation for the damage to their property.³¹ But politicians and the government were, and remained, considerably more engrossed with the Irish question than with working out why economic depression and unemployment had led to disturbances under Socialist leadership.³² The riot, in fact, was seen less as a problem of government, a concern of parliamentary life, than a simple matter of police. This position was reinforced when it became clear that the 'dangerous classes' had not been on the verge of mass uprising, but that a street riot had developed out of police incompetence.

IV

The pre-eminent response of the propertied to the riot was one of indignation at the obvious inertia of the Metropolitan police force. It was quickly recognised that the rioters could have been routed by a handful of police had they been in the right place. Indignation was increased by the fact that the panic of the days following the riot had been fuelled

by the police advising shops to close, thus admitting their inability to keep order.³³ So indecisive had the police appeared, in fact, that Engels was not alone in suggesting that 'the row was *wanted*'.³⁴ The evidence points rather to the incapacity of the force to respond efficiently to a sudden emergency. Ironically, the Metropolitan force was originally formed as a para-military organisation in response, not only to crime *per se*, but also to the possibility of riot by the 'dangerous classes'. Its power of mobility and co-ordination had become revered as a successful antidote to mob disturbance. So confident were the chiefs of police that the technique developed of keeping the police in reserve in order not to antagonise the demonstrators.³⁵ The riot came, therefore, as a severe blow to public confidence. It was one of the rare occasions since the establishment of the modern force in 1829 that a crowd had got the upper hand of a large body of constables.³⁶

The Home Secretary's first act was to set up a Committee of Inquiry into the disturbances and the conduct of the police authorities. It met in the Home Secretary's room, taking evidence from 15-20 February.³⁷ The most important witness, inevitably, was Sir Edmund Henderson, Chief Commissioner of Police.³⁸ Henderson had clearly been very conscious of his responsibilities during the interregnum between Home Secretaries, but, lulled by the previous security of London, he had displayed little foresight and assumed no overall command. His evidence illuminated two main facts about police arrangements. First, CID information suggested that any disorder would take place between the rival contingents within Trafalgar Square. Accordingly, Henderson took adequate precautions for the management of the crowd in the square.³⁹ Secondly, experience suggested that crowds invariably went back by the routes on which they had come, usually eastwards, past Whitehall. Therefore, the superintendents of those police divisions through which the crowd would return on 8 February were asked to keep order. The flaw in the arrangements was that no precautions were taken in the event of the crowds going westwards, and the police in the square saw no evidence of the crowd moving in that direction. All that happened was the belated despatch of the police reserve in St George's Barracks to Pall Mall. The message was confused and the reserve set off for the Mall.⁴⁰

The other police witnesses revealed a most unexpected state of affairs in Trafalgar Square. The Chief Commissioner was there, but not in command of police action. That responsibility was given to a 74-year-old District Superintendent. Dressed in civilian clothes and jammed in the densest part of the crowd (during which his pockets were picked), he

had found it difficult to transmit any orders. It had been equally difficult for other policemen to find him.⁴¹ The evidence also pointed to a decided lack of initiative among the subordinate officers. The superintendents adhered rigidly to their orders, refusing to shift position, even when, in one case, the riotous mob could be seen in Piccadilly.⁴² Finally, the system of telegraphic communication between the police on the ground and headquarters was clearly deficient. As Godfrey Lushington, the Permanent Under Secretary of State, said to Childers, after the Committee had reported, the riot showed

that it was possible for a riotous crowd to make a raid through the streets of the Metropolis for more than an hour without any intimation of their proceedings reaching Scotland Yard.⁴³

The Report of the Committee condemned the lack of overall leadership, the poor communication between different sections of the force and the inflexibility of the police response to an unexpected occurrence. It identified, as the main single fault, the lack of arrangements made for managing the mob after it had broken up, 'although it was well understood that a large element of a very dangerous class was present'. As the Committee recognised:

had the police authorities shown greater resource, acting upon a good and well-understood system, the mob might have been effectively headed, and easily broken up at an early period of their progress.⁴⁴

The Report went on to identify briefly the defects in the police system which the riot had exposed. Emphasis was put on the inadequate number of 'officers of superior rank and education, or of experience in the habit of command'; on the defective chain of responsibility in the force; and on the lack of a settled system for dealing with large meetings. Its final proposal, therefore, was for a second inquiry into the administration and organisation of the police force.⁴⁵

Yet by no means all senior statesmen were convinced of the need to interfere with police organisation. Only a few days after the riot, Gladstone, the Prime Minister, 'expressed himself against any great alteration in the metropolitan police as a consequence of the West End riots'. R.A. Cross and Sir William Harcourt, both previous Home Secretaries, also discouraged any drastic reorganisation in the system of police administration. For Harcourt, indeed, the riot was a 'most lamentable accident', unlikely to recur.⁴⁶ Despite the speed with which the first Committee

of Inquiry completed its task, it was not until July that the second Committee started work. Even then, their recommendations were hardly thoroughgoing — development of the telegraphic system, the use of mounted police, and clearer regulations for the guidance of officers at public meetings.⁴⁷ Another proposal was the appointment of more senior officers. The moribund posts of District Superintendent were revived, in order to enhance the element of 'educated control' and to provide another link in the chain of responsibility between Commissioner and constable.⁴⁸ These appointments exhausted the drive for reform. They were little indemnity against an undue centralisation of administration and hardly affected materially the actual system of control.

The only other facet of the legal system which came under scrutiny as a result of the riot was the working relationship of the Home Secretary and the Chief Commissioner of Police. On 8 February, Childers, the new Home Secretary, had received a message from his wife in Piccadilly which mentioned riot damage to neighbouring houses. He asked to know the meaning of this passage, which, said his private secretary:

I was unable to do, having had no communication from the police, and having no idea that any riot had occurred. I at once telegraphed to Scotland Yard. No one in the Home Office had the remotest idea of what had occurred.⁴⁹

The conjunction of the riot with the changeover of governments had not helped an interchange of information. But advocates of reform in the government of the Metropolitan police seized their chance. Municipal rather than Home Office control of the police was recommended as a better way of directing the police to maintain order.⁵⁰ Nevertheless, in the parliamentary debates on the riot, Childers argued for continued Home Office authority over the Metropolitan police, and defended the existing distribution of duties between Home Secretary and Chief Commissioner. A Home Secretary, said Childers, would be unwise to interfere in police arrangements. There might be joint discussion about the level of policing, but thereafter responsibility for public order rested with the Commissioner. Nor was it usual, the House was told, for communications to pass between Scotland Yard and the Home Office during the course of a meeting.⁵¹ Other parliamentary speakers agreed that the Commissioner should have the power to act on his own responsibility without hindrance from the Home Office. The second Committee of Inquiry into the police confirmed that the primary responsibility for

public order rested with the Commissioner. It simply recommended that the Home Office ought to be kept informed of abnormal circumstances, especially if it seemed that military aid might be needed.⁵² Otherwise, the West End riot only reinforced the sense of need for Home Office oversight of executive police action, and largely endorsed the respective spheres of responsibility of Home Secretary and Chief Commissioner.

It has been submitted that the evidence for a crisis of middle-class confidence in the face of the Trafalgar Square riot does not exist in the active response of the propertied or of governmental and legal authority. Faced with a coincidence of economic depression, a Socialist-led unemployed campaign, and riotous expression of proletarian discontent, it is not too surprising to find that the propertied were momentarily haunted by the spectre of upheaval. But in the aftermath of the riot, there was little sense of an urgent mission to alleviate the economic and social distress of unemployment by charitable donations or by welfare measures. Few, if any, exemplary sentences were imposed to deter further rioting. There was little parliamentary support for a more coercive policy towards the unemployed demonstrations; no Home Office pressure to alter markedly the policing of open-air meetings. Even widespread criticism of police incompetence, public demands for the reform of the force, plus two departmental enquiries which revealed deficiencies in police organisation, led only to a few minor changes, along with a measure of decentralisation which had previously failed. Moreover, no change was made in the government of the Metropolitan police; no greater restraint was placed on the Chief Commissioner's freedom of action. Middle-class nerves were largely soothed, it seems, by the resignation of Sir Edmund Henderson, and by placing police administration in the more vigorous charge of Sir Charles Warren.⁵³ The extreme reluctance to countenance more radical responses to the Trafalgar Square riot is explained by the fact that it was seen merely as an unfortunate lapse on the part of the Metropolitan police, not as the thin end of the revolutionary wedge.⁵⁴

V

Yet the Trafalgar Square riot inevitably cast a shadow over subsequent policing arrangements whenever the outcast poor converged on the West End.⁵⁵ This was notably so in the autumn months of 1887. Seasonal unemployment in a year of severe depression turned Trafalgar Square into an encampment of the homeless poor. Soon there were daily meetings

of the unemployed in the square, forays of beggars into the surrounding streets and spontaneous marches on the Mansion House and the Local Government Board. The effect of such disorderly events, according to Lady Monkswell, was that 'all law-abiding people began to fear that any day we might have an incursion by the roughs as we had 18 months ago when they broke the windows in St. James's Street and Pall Mall, and looted shops.' Engels, writing on 12 November, took up the story:

After a deal of hesitation and vacillation the police have at last forbidden all meetings on Trafalgar Square; the radical clubs have answered by calling a great meeting thither for tomorrow afternoon . . . I do not anticipate a serious collision. But it is just possible that Matthews and his colleagues of the Tory government for once show fight; especially as the daily Liberal press have taken the side of the police, and as there is no general election in sight just now . . .⁵⁶

There was never any likelihood that Trafalgar Square would be successfully entered on what has become known as 'bloody Sunday'. The police and military were husbanded too well for unarmed and unorganised demonstrators. Ernest Bax described the ensuing scene in Northumberland Avenue and Parliament Street:

The police were in strong force and the military behind. As the contingents of the various Radical clubs, branches of the Socialist organizations, and Irish Societies of London debouched through the streets leading into the Square, they were attacked and mostly dispersed by the police.⁵⁷

In the history of the working-class movement, 'bloody Sunday' is celebrated as the climax to the struggle between the Socialists and the authorities in the 1880s over the issue of free speech and free assembly. The argument is that the police, encouraged by the unorganised state of the unemployed agitation, deliberately forced to a head the issue of free speech in the metropolis.⁵⁸ Undoubtedly, 'bloody Sunday' had the trappings of a set-piece confrontation, reminiscent of other significant episodes in the past – Kennington Common in 1848, Hyde Park in 1866. Its importance is only underlined by the readiness of the propertied classes to steel the government's resolve, in the aftermath, by serving as special constables. However, the implication of previous assessments is that the Metropolitan authorities were as one in their determination to move against the 'direct action' of the unemployed.

A more scrupulous examination of the role of the Metropolitan police and the Home Office suggests that the mainsprings of social control were more complex and confused. Why else were meetings in the square between mid-October and mid-November alternately allowed and dispersed? The high point of inconsistency was reached when, on 6 November, the morning meeting in the square was banned, whilst the one in the afternoon was allowed.⁵⁹ What explains this vacillation in policy? The answer emerges from a reconstruction of the attitudes of Metropolitan authority in the prelude to 'bloody Sunday'. In the following sections of the essay, it is argued that the dilemma of the Conservative administration, which had been in office since July 1886, arose from a conflict over approach to the threat of the outcast poor between the Police Commissioner and the Home Secretary, and, relatedly, from the constraints imposed on the executive by the need to legitimise the policy of public order by appeal to the law.⁶⁰

Sir Charles Warren's appointment as Chief Commissioner of Police had been applauded as restoring lost confidence in the force and reassuring the public. Warren was a strong-willed, opinionated and combative man, a stern disciplinarian with an imperious military attitude. He saw his role as being 'to bring into order and reorganise the Police of the Metropolis'.⁶¹ Warren's short tenure of office has been described by Sir John Moylan as 'a signal instance of the failure of a military administration of the Metropolitan police'.⁶² This statement rests primarily on Warren's 'militarisation' of police organisation and discipline, his impatience of 'civilian' interference at the Home Office and Scotland Yard, and his ferocious campaigning attitude towards the unemployed disorders in 1887. These separate strands of the description are worth closer examination in so far as they disclose a distinct police attitude to social disturbance, and a strategy which was pursued often without Home Office sanction.

Warren's period of office did not mark a wholly new venture into militaristic discipline and organisation. A common indictment of the Metropolitan force, indeed, was that it was too militarised to perform the duties of a civil body. Since 1869, according to one MP, the police had been transformed into 'a quasi-military force, drilled, distributed and managed as soldiers,' a 'cumbrous and badly-organised army, which was never required as a whole, and was nearly useless in detail.'⁶³ Nevertheless, it was felt that Warren considerably advanced the tendency towards militarism by his appointment of ex-Army men to the new positions of Chief Constable and Assistant Chief Constable, as well as by the severe enforcement of internal regulations, further abbreviating

personal initiative. To an inflexible discipline was added a renewed emphasis on squad drill with the despatch to all inspectors of copies of the handbook, *Field Exercise and Evolutions of Infantry*.⁶⁴

Police administration was assimilated to military administration in other ways. Warren resolved that his efforts to reorganise the Metropolitan police should not be impeded by officials at Scotland Yard and the Home Office. He fought implacably against any restraint on his operational independence, seeking to limit the Metropolitan Police Receiver's functions to purely financial matters, and to make the Receiver an equivalent of the War Office's Accountant General. This was because he resented the Receiver's reports on the financial implications of his reform proposals being sent to the Home Secretary.⁶⁵ Warren also considered that his relationship with the Home Secretary should resemble the one which existed between the Secretary of State for War and the commanding officer of an overseas expedition. In a series of petulant letters to the Home Secretary, Warren complained about the interference of the permanent Home Office officials in his reforming efforts and in what ought, in his opinion, to be a personal relationship with the Secretary of State. Such interference, he even implied, by producing disorganisation in the police force, had been the main cause of the Trafalgar Square riot in 1886.⁶⁶ Warren's pretensions to be in no way subordinate to the Home Office had practical import. Having asserted his independence of any 'civilian' control, he was in a strong position to act unilaterally against the threat of the unemployed demonstrations.

Beginning in the warm summer nights of 1887, homeless unemployed and vagrants camped out in Trafalgar Square. Initial reluctance on the part of the police and the First Commissioner of Works to remove the squatters, along with indiscriminate food donations, increased the scale of the problem.⁶⁷ Police reports reveal the gradual formation of opinion that leaving the casual poor in the square could prove troublesome.⁶⁸ On 17 October, Trafalgar Square was, in fact, cleared by Chief Constable Howard, who later advised Warren to prevent 'these roughs from entering the Square at all'. On the 18th, Warren kept the square clear all day.⁶⁹ A few days later, Warren urged the Home Secretary, Henry Matthews, to close the square against the next day's meeting and to break up processions en route, rather than risk disturbances. His argument was as follows:

We have during the last month in my opinion been in greater danger from the disorganised attacks on property by the rough and criminal element than we have been in London for many years past. It is not

that I apprehend any organised movement from the Socialists themselves or from any other organised body, but it is from the roughs and criminals who always attach themselves to large processions and meetings that I anticipate serious damage to property.⁷⁰

Warren was pressed by the Home Secretary to allow the meetings for the next few days, but on 25 October he again claimed the right to disperse what he described as 'the veriest scum of the population':

a mob of these people may be innocuous in their own district; but very dangerous when among the houses of the opulent classes to which they do not belong and to which they have no ties.⁷¹

His fears were sharpened when it seemed that the once-disorganised 'mobs' were developing an element of cohesion:

It is now apparent that the policy of the mob leaders is to settle in private their tactics for each day how to elude the Police, and I think it more than probable that they will get out of hand in a very short time if they are not dispersed . . . [By] some private signal they appear to be able to get together now to the number of two or three thousand in two or three minutes about the region of Charing Cross.⁷²

The Chief Commissioner was clearly anxious to avoid being caught by a spontaneous burst of rioting, as had occurred in 1886, especially since it would be said that earlier intervention was warranted.

Warren was certainly not prepared to wait upon the Home Office's deliberations. He had already written to the Office of Works to obtain their authority for closing Trafalgar Square if disorder broke out – a letter which the Home Secretary, himself, would not have sent without Cabinet endorsement.⁷³ At the same time, the Chief Commissioner put pressure on the Home Secretary by sending him memorials from tradesmen and others complaining of the riotous proceedings.⁷⁴ Eventually, on 1 November, Warren issued a notice which warned that disorderly crowds would be dispersed. Although he recommended such a notice to the Home Office, he was too impatient to wait for a reply, and issued the notice without prior submission to it.⁷⁵

Warren's approach was evident. In the absence of legal justification, where the 'mob' terrorised the West End, the police should vigorously intervene. Haunted by the doings of the 'London mob' in February 1886, Warren's strategy was to strike quickly at the wandering bands of

unemployed. By his unilateral action, however, the Chief Commissioner carelessly interfered in policy-making. Putting expediency before legality, Warren remained insensitive to the Home Office exploration of the question – partly one of policy, partly one of law – whether and how the unemployed could be brought to heel.

VI

The Home Office was not entirely unsympathetic to Warren's interpretation of the threat to public order. Henry Matthews wrote to the Prime Minister on 22 October to gain Treasury sanction for an increase in the police force, which, said the Home Secretary, was under excessive strain in dealing with the Socialist meetings and with 'a continuance of this Carnival of roughs urged on by statesmen to set law and order at defiance'.⁷⁶ Departmental memoranda similarly displayed anxiety at the condition of the West End. This is Godfrey Lushington's view of Warren's letter of 25 October: 'The state of things depicted . . . is a chronic condition of semi-disorder in the streets'. Along with the unemployed, the Under Secretary continued, there was invariably a portion of 'ill-disposed Socialists, roughs, thieves and wild mischievous youths', and, as witness the riots of 1886, 'in a town like London full of shops, it requires but a very few minutes for a very few men to do a vast amount of actual mischief'. Lushington was likewise convinced that the matter should not drift, especially considering the possible political effects of disorder in the Metropolis:

The political consequences that may arise might of course be most serious looking to the strong party animus now existing. Any disorder or looting of shops arising from the inactivity of the police on one hand or any violent conflict with the mob on the other, would undoubtedly lead to grave political embarrassment to the Government.⁷⁷

Despite this state of affairs, the Home Office papers indicate that the formulation of a policy to diminish the threat of the outcast poor was held back by the search for statutory or common-law justification for executive action. There were very distinct mentalities at work in the department. Henry Matthews was a distinguished lawyer but a cautious administrator.⁷⁸ At his side was Godfrey Lushington, the Permanent Under Secretary of State, industrious, painstaking, with a meticulous

legal mind.⁷⁹ These two shared the burden of decision-making. Above all, they wanted a defensible legal case before acting against the bands of unemployed. The division between the administrative and judicial wings of the legal system ensured a scrupulous attention by the Home Office to the legal validity of police prosecutions. It proved difficult, however, to find legal backing for the immediate dispersal of street 'mobs'. One way of acting against them was to prohibit meetings in Trafalgar Square. Here again there were legal difficulties. Organised meetings could be regulated but not prohibited by the police. Moreover, encroachment on the right of public meeting invariably aroused intense political emotion. Yet the unpredictable behaviour of the 'wandering mobs' posed a threat which had to be dealt with. In short, Home Office acceptance of a prohibition on meetings in the square seems to have developed out of the legal difficulties experienced in dealing with the riotous potential of these disorganised bands, not from a politically-motivated determination to crack down on an important outdoor forum of organised protest.

The problem was that bands whose conduct was not riotous, and who could only with great difficulty be proved to be unlawful assemblies, were really beyond the reach of the law.⁸⁰ There was only the Metropolitan Police Act of 1839, which allowed police interference with a wide array of street activities in order to prevent obstructions or breaches of the peace.⁸¹ The chief magistrate of Bow Street had informed the Home Office that he had no judicial objection to a police notice, based on section 54 of the Act, declaring that, for the space of a month, such bands would be dispersed.⁸² The Attorney- and Solicitor-General (Sir Richard Webster and Sir Edward Clarke) insisted, however, that such a notice would be *ultra vires* in relation to the statute, since it would practically prohibit groups of men wandering through the streets. The section of the Act in question gave power to the police to make special arrangements on particular occasions when the streets were liable to be obstructed; it did not justify any general prohibition. They reiterated their opinion when asked to consider the prohibitory notice of 1 November which Warren had issued without Home Office sanction. They remained convinced that objective conditions still did not justify the Home Secretary instructing the police to interfere with meetings or processions coming within the description in the police notice.⁸³

Significantly, the need to act in accordance with the rule of law soon imposed itself upon executive government. Increasing pressure was being put on Matthews to alleviate the deteriorating state of affairs by prohibiting the meetings of the unemployed. It came from West End

tradesmen and property-owners, in the form of memorials and deputations, complaining of the disruption of trade caused by leaving the streets in the hands 'of roughs, and thieves whose only object is to promote disorder for their own purposes'. In the same idiom, came criticism from the press, Liberal as well as Conservative; from the Chief Commissioner of Police; and from within the Cabinet.⁸⁴ The Cabinet finally resolved to prohibit meetings in the square, a police notice to that effect being issued on 8 November.⁸⁵ But the notice had no legal basis. It was certainly not a regulation order under the 1839 Police Act. This became evident when, on 11 November, William Saunders, late Liberal MP for Hull, addressed a meeting in Trafalgar Square, where he was arrested and charged with disorderly conduct and obstructing the police. In effect, that is, he was charged with a breach of the Commissioner's notice of 8 November.⁸⁶ Yet this notice made no reference to any statutory regulation which, when knowingly disobeyed, could be dealt with summarily in the police courts. Before the chief magistrate on the next day, therefore, the case was adjourned to allow the government to state the legal grounds for the arrest.⁸⁷ At the adjourned hearing on 17 November, Henry Poland, acting for the Treasury, withdrew the prosecution. Saunders could have been *indicted* for attempting to hold an unlawful meeting, but for a summary prosecution there was only the charge of obstruction.⁸⁸ For the latter charge, however, the admission would have been necessary that Trafalgar Square was a thoroughfare. At this stage, the government did not want to make such an admission, since they thought they might ultimately have to argue that Trafalgar Square was Crown property and that the Crown had the right to prohibit meetings held there.⁸⁹ Saunders' case illustrated that the law did not allow the permanent prohibition of meetings, for which there was power of arrest and summary disposal of offenders, and that the publication of a police notice would not make illegal a meeting which in law was not so.⁹⁰

The authorities had eventually decided to forestall the threat of the 'wandering bands' by prohibiting all meetings in the square. Even then, the Home Secretary felt it necessary to emphasise, before a deputation, that he was acting against 'tumultuous assemblages that . . . threaten to attack and destroy property', not bona fide gatherings. The effect of these ambiguous words was to leave it still open to question as to whether bona fide meetings in the square were illegal (including that called by the Metropolitan Radical Federation for 13 November 1887, to protest against the prohibitory notice).⁹¹ The Home Office now asked the Law Officers whether processions en route to the square could be dispersed. The Officers still believed that the 1839 Police Act

would not justify such action, but they tentatively advised another police regulation prohibiting processions from approaching the square. As to the Commissioner's right to prevent public meetings in the square, the Law Officers postponed judgement. They simply recommended that, since the meeting had been prohibited, the police ought to occupy the square in force.⁹² In this equivocal manner, the government faced the Radical and Socialist organisations, which traditionally united in the defence of free speech. If the Home Office was ultimately impelled by the consideration that public safety and public opinion would justify the action of the police, it had hung fire in the knowledge that the law would have to be strained to the utmost.

VII

In the wake of 'bloody Sunday', the success of government policy was celebrated by the press and the propertied classes. Thus encouraged, the police bridled the bands of unemployed and forestalled renewed attempts to meet in Trafalgar Square. The Radicals and Socialists, meanwhile, astonished at the facility with which the police dispersed the demonstrations, seemed reluctant to instigate further mass action. Yet despite every indication that the authorities had secured and consolidated an unqualified victory in the streets around Trafalgar Square, it was, as the Home Office had anticipated, preface to a longer contest over the legality of public-order policy. These reactions to 'bloody Sunday' require closer assessment.

Not quite everyone in respectable circles approved of the manner in which the demonstrators had been put to rout. 'My own feeling', wrote the Rev Samuel Barnett, founder of Toynbee Hall, 'is that repression has been ill managed. The crowds should have been sternly controlled but grievances should not have been created.'⁹³ A fiercer epistle came from Henry Scott Holland, leader of the Christian Social Union:

I never saw a crowd look more innocent of revolution in my life: and there was no disturbance to London . . . until the Police smashed their heads. The Government seem *bent* on manufacturing a Revolution — I have seldom felt so sad, or so mad, at a political wickedness.⁹⁴

Such dissent was drowned in a sea of public rejoicing. *The Times* applauded Warren's defeat of 'a deliberate attempt to set aside the elementary safeguards of civilized society and to terrorize London by placing

the control of the streets in the hands of the criminal classes'. The same editorial convinced itself that the demonstrations had been composed of 'all that is weakest, most worthless, and most vicious in the slums of a great city'.⁹⁵ On the 15th, *The Times* reported that the West End was rejoicing at the police victory, and that the London working classes were 'foremost in expressions of satisfaction that the noisy faction has been debarred from making a mockery of public meeting in Trafalgar-square'.⁹⁶ Members of the Stock Exchange expressed their gratitude by opening a subscription list to reimburse the police.⁹⁷ Others offered to raise drilled volunteers in the event of further trouble.⁹⁸

The Chief Commissioner of Police had already asked the Home Office for 3,000 special constables to occupy Trafalgar Square on 20 November, and 20,000 more to protect the suburbs while the regular police defended the approaches to the square. Warren feared that another attempt might be made to enter Trafalgar Square. He told Godfrey Lushington:

I think that if anything does take place on Sunday it will either be something small by way of protest, or else it will be organised on a very extensive scale as a supreme effort; and I think it is necessary to be prepared with an overwhelming force to frustrate the most vigorous effort that the combined roughs and anarchists can possibly make.⁹⁹

The Home Secretary agreed. 'If we are to have another battle,' Matthews minuted to Lushington, 'we should have some of the public on our side.'¹⁰⁰ It was with difficulty that some 6-7,000 specials were recruited, but they were employed on the 20th to defend the square.¹⁰¹ In harassing the straggling crowds, however, the mounted police fatally injured Alfred Linnell, a Radical law-writer. If this mishap embarrassed the authorities, it did not deter them from keeping the massive funeral procession, which was subsequently arranged by the Radicals and Socialists, away from Trafalgar Square.¹⁰²

Delegates from the London Radical clubs had met on 16 November to decide whether a second assault should be made on the square. However, little confidence remained in the power of unorganised demonstrators to resist the police. Instead, the Metropolitan Radical Federation, pressured by the Gladstonian Liberals, agreed to rely on legal action to open the square to public meetings.¹⁰³ Shortly afterwards, a Law and Liberty League was formed on the initiative of W.T. Stead, editor of the *Pall Mall Gazette*. Its ultimate aim was to bring the Metropolitan

police under popular control, but in the short term it represented political offenders in court and, more significantly, started litigation in the cause of free assembly.¹⁰⁴ The League was as aware as the authorities that the police notice of 8 November had done nothing to resolve the uncertainties in the law of public meeting.

Not until after 'bloody Sunday' did the Law Officers adjudicate on the right to prohibit meetings in the square. They stated that neither the Crown nor the Police Commissioner had the power to prevent 'user' of the square as a public place. But they considered that section 3 of the Trafalgar Square Act (1844) put the square in the position of a thoroughfare for the purpose of the 1839 Police Act. As such, if the Commissioner felt the meetings were causing serious obstruction to the thoroughfare, directions could be given under section 52 of the Police Act to prevent such meetings. On the 18th, therefore, a police notice prohibited meetings in and processions approaching Trafalgar Square, 'until further notice'.¹⁰⁵ A permanent ban on meetings and processions had finally been worked from the existing statutes. Above all, the Law Officers estimated that it would hold up in the law courts.

Already, the initiative in judicial proceedings had been taken by the Home Office. Matthews made it clear to Lushington, the day after 'bloody Sunday', that he wanted a jury's verdict in favour of the government. He insisted that a case 'of an aggravated kind' for which there was sufficient proof should be sent to the Old Bailey. As he explained:

Throughout all these meetings I have not had brought before me a report of a single case of the kind one would wish to try. It will not do to rest on decisions of Police Magistrates.¹⁰⁶

The anticipated prosecution became *R. v. Cunninghame Graham and John Burns*. Both defendants had tried to force their way into the square on 13 November, when they were arrested and charged with riot, unlawful assembly and assaulting the police. At the trial, the Crown's case was that there was no right of public meeting in the square. For the defence, H.H. Asquith concentrated on the uncertainty shown by the authorities as to the legal basis of the prohibitory notices. The trial judge, Mr Justice Charles, took the view that the duty of preserving the peace fell upon the Chief Commissioner who, in consequence, had the right to issue police notices prohibiting meetings and processions. Accordingly, both defendants were found guilty of unlawful assembly and sentenced to six weeks' imprisonment.¹⁰⁷ The decision was hardly the express adjudication upon the question of a right of public meeting in Trafalgar Square

which the Home Secretary hankered after, but it served, nevertheless, as authority for subsequent judicial decisions.

The decision in *Graham and Burns* influenced a succession of cases promoted by the Law and Liberty League.¹⁰⁸ The stipendiary magistrates took the law to be laid down by Mr Justice Charles and generally refused to state a case for the opinion of Queen's Bench.¹⁰⁹ In the case of Antonio Borgia, a member of the Clerkenwell Patriotic Club, even the Home Secretary looked forward to a high court judgement on the question of public meeting. Prior to the hearing, Evelyn Ruggles-Brise, Principal Private Secretary to the Home Secretary, wrote to the Treasury Solicitor:

Mr. Matthews wishes me to tell you privately that he would be extremely glad if the question of a 'right of public meeting' in Trafalgar Square could be directly raised in a special case. However clear this point may be, it will do good to have an express adjudication upon it.¹¹⁰

But the stipendiary, Mr Vaughan, would not allow the issue to be raised.¹¹¹ In short, throughout 1888, the courts deflected all attempts to challenge the prohibitory notice of 18 November 1887. Trafalgar Square was seen, in effect, as a direct responsibility of executive government.

Even with judicial opinion running in the required direction, however, the Home Office was made to feel uneasy about the legal basis of the police notice. In September 1888, the Treasury Solicitor advised the Home Office that it was unlikely the police notice allowed the continued closure of Trafalgar Square, given that it referred to a state of public unease specific to the previous November. He went on to suggest that, under the authority of the Trafalgar Square Act (1844), the Commissioner of Works should frame regulations to prohibit all meetings in the square.¹¹² But this did not meet with Home Office approval. It failed to incorporate what Lushington considered were two necessary features — that the police should have the power to arrest without warrant those who disregarded the prohibition; and that it should be possible to proceed summarily against those arrested. There were other deficiencies, too. 'This would be an admission', said Lushington, 'that hitherto the Police had been acting without sufficient authority: and it seems to me very doubtful whether the Trafalgar Square Act gives this power to the Commissioner, and at all events the point would be disputed.'¹¹³ Lushington, himself, was attracted to a bill which would

prohibit all meetings in the square, but he knew that this would be rejected by the Commons. Once again, therefore, the opinion of the Law Officers was canvassed. They advised that it was unwise to rely on the police notice of 18 November, and that a better course was to give the Commissioner of Works statutory power to make regulations to deal with meetings.¹¹⁴ Again, the Home Office was unconvinced. Lushington thought that such a bill would succeed only if it carried a pledge that meetings would be allowed, a pledge which the government would not wish to give.¹¹⁵

At this point, James Monro, Warren's successor as Chief Commissioner of Police, added his voice to the internal deliberations on the question of Trafalgar Square. He asked the Home Office whether the proclamation of 18 November was defensible in relation to bona fide political meetings, when there was no reason to fear disturbances. He also declared that if the enforcement of the proclamation could be justified in such circumstances, 'the police practically acquire the power of stopping meetings anywhere in London at discretion, and this is a power which will not I take it be conceded to them'.¹¹⁶ At the beginning of 1889, Monro pressed the Home Office for legislation to clarify the position. He thought the time was opportune because of the dissension within the Metropolitan Radical Federation. At a meeting of the Federation, the London Liberal MPs had opposed fresh moves to arrange a meeting in Trafalgar Square. The Chief Commissioner went on:

With the prospect of legislation by Government in view, the hands of the Police will be enormously strengthened, as they will then only have to deal with the faction of disorder, who apparently will not be content with any course but asserting their supposed right by force to hold meetings in the Square.¹¹⁷

By this time, however, the Home Office seemed to think it unwise to rekindle the emotions surrounding the issue of Trafalgar Square, which the introduction of legislation would have brought about.

For quite some time after 'bloody Sunday', then, the Home Office had periodically to review the strengths and limitations of the prohibitory notice of 18 November. The legal basis of the police notice was section 52 of the Metropolitan Police Act (1839), a provision which allowed the regulation of meetings and processions, but which did not authorise their permanent prohibition. It was fortunate for the executive that no objection to this formation of law by administrative decree was ever sustained by the judiciary. But the prospect that the courts

might not remain so favourably disposed to executive policy impelled the Home Office to examine more reliable defences. Legislation to prohibit meetings in Trafalgar Square on a permanent basis was the most desirable but also the least obtainable. Only legislation which would allow meetings under prescribed regulations stood any chance of success. With the Liberal and Radical parties pressing for exactly this, however, such a measure would have been interpreted as a political concession on the part of the government.¹¹⁸ In the face of these difficulties, the Home Office abandoned the idea of legislation. It again took shelter behind the police proclamation, which managed to see out the remaining years of the Salisbury administration. The abrogation of the prohibitory notice of 18 November had to wait for the Liberal Home Secretary, H.H. Asquith, who, in 1892, instructed the Commissioner of Works to make regulations allowing meetings in the square on specified days and under certain conditions.¹¹⁹

VIII

Judging from the Trafalgar Square riots of 1886/7, it is unwise to presuppose the relationship between the state and the legal system. This requires concrete examination in every specific case, and never more so than in relation to the distinctive socio-legal context of London. The Metropolitan juridical system was characterised by three main features – a semi-military, highly centralised police system which conferred immense discretionary authority on the Chief Commissioner; a Minister of State whose direct control over this crucial agency for law enforcement in the nation's capital gave a political aspect to every lapse in public order; and a pronounced separation of police and judicial functions. The indecision and hesitancy in law enforcement in the autumn of 1887 was the product of the tensions between these factors. Exploiting the ill-defined relationship between Chief Commissioner and Home Secretary, Sir Charles Warren sought support for decisive action against the disorderly groups of unemployed, however politically or legally inappropriate. His *modus operandi*, that of a high-handed military campaigner in the outskirts of Empire, inevitably pre-empted Home Office decisions.¹²⁰ Matthews, the Home Secretary, was, in fact, well aware of the damaging political repercussions if the government were held responsible for renewed damage to property in the centre of London; but there were political risks, too, in the illegal suppression of unemployed demonstrations, given the commitment of many parties to freedom of speech

and assembly. The very division of police and judicial duties and the consequent impossibility of predicting the outcome of court hearings also obliged the executive to construct meticulously a sustainable legal case for the suppression of meetings in Trafalgar Square. These divisions and stresses within the policy of public order make existing evaluations of 'bloody Sunday' appear inadequate. The government, of course, eventually used the police to rid the West End of the threat of further riot, illustrating that the courts and the 'rule of law' do not alone define the role and conduct of the police force. But the depiction of a unified state repression of 'outcast London' masks both the conflict of personalities which distracted the enforcement of law, and the constraint, if only in the sense of outer limits, which the rule of law imposed upon the use of authority.

Notes

1. G. Stedman Jones, *Outcast London* (Oxford, 1971), pp. 285, 290-1.
2. See D. Torr, *Tom Mann and His Times* (2 vols., London, 1956), vol. 1, pp. 226-9; B.H. Brown, *The Tariff Reform Movement in Great Britain, 1881-1895* (New York, 1943), ch. 2.
3. D. Torr (ed.), *The Correspondence of Marx and Engels, 1846-1895* (London, 1934), p. 447.
4. *The Times*, 9 Feb. 1886, p. 6. For other descriptions of the riot, see E.P. Thompson, *William Morris* (London, 1977), pp. 406-7; C. Tsuzuki, *H.M. Hyndman and British Socialism* (Oxford, 1961), pp. 73-4.
5. See e.g., Public Record Office (hereafter PRO), Home Office Papers HO 144/73872 (Lancs. cotton riots, 1878); PRO, HO 45/A36317 (anti-Catholic riot, Cleator Moor, 1884); PRO, HO 144/A41348P (Nottingham election riot, 1885).
6. G.B. Shaw (ed.), *Fabian Essays in Socialism* (London, 1962; first published 1889), pp. 226-7.
7. *The Times*, 10 Feb. 1886, p. 5; 11 Feb. 1886, p. 6; *Justice*, 13 Feb. 1886, p. 3.
8. *The Journal of Beatrix Potter from 1881-1897*, transcribed by L. Linder (London, 1966), p. 175. See also, G. Cronje, *Middle Class Opinion and the 1889 Dock Strike* (London, 1975), p. 6; PRO, HO 144/A42380/1-4; PRO, Metropolitan Police Papers MEPO 2/182; *The Times*, 10 Feb. 1886, p. 6. The panic in London was probably reinforced by news of the riots in Leicester on 11 February, which accompanied a hosiery workers' strike: *The Times*, 13 Feb. 1886, p. 8.
9. A. Fleishman, *The English Historical Novel* (London, 1971), ch. 4; Anon. 'How to Deal with the Dangerous Classes', *Leisure Hour* (Jan. 1869), p. 53.
10. *The Journal*, op. cit., pp. 173-4.
11. See *Spectator*, 13 Feb. 1886; *Saturday Review*, 13 Feb. 1886; *Fortnightly Review*, March 1886, p. 298; 3 *Hansard* 302, 18 Feb. 1886, cols. 555-77; 26 Feb. 1886, cols. 1412, 1426-9, and 1437; PRO, HO 144/A42380/16 & 40.
12. *Pall Mall Gazette*, 9 Feb. 1886, p. 9.
13. A.S. Krausse, *Starving London* (London, 1886), pp. 163-4; H. Solly, 'Our Vagrant and Criminal Classes', *Leisure Hour* (1887), pp. 761-7, 830-3; G. Gissing, *Demos* (London, 1886), vol. 3, pp. 244 and 251; W.H. Mallock, *The Old Order*

Changes (London, 1886), vol. 3, pp. 31-2, 43 and 46-9.

14. D. Walker-Smith and E. Clarke, *The Life of Sir Edward Clarke* (London, 1939), p. 202; H. Hyndman, *The Record of an Adventurous Life* (London, 1911), pp. 400-7; HO 144/A42380/40. Cf. the Liberal attempt to establish a connection between the Tories and the Trafalgar Square riot through the 'fair trade' activities of Peters and Kelly: A.B. Cooke and J. Vincent, *The Governing Passion* (Brighton, 1974), p. 375.

15. *M-E, Correspondence*, op. cit., p. 447. Cf. *Engels-Lafargue, Correspondence* (Moscow, 1959), vol. 1, p. 334.

16. See G. Stedman Jones, op. cit., Part I; H.E. Hoare, 'Homes of the Criminal Classes', *National Review*, vol. 1, March 1883, p. 838. Londoners were often reminded of the prospect of marauding mobs from the metropolitan slums: George Sims, *How the Poor Live and Horrible London* (London, 1889; first published 1883), p. 44; Henry George, *Progress and Poverty* (London, 1881), pp. 474-88.

17. See V. Bailey, 'The Dangerous Classes in Late Victorian England' (Univ. of Warwick, Ph.D. thesis, 1975), ch. 5; E.P. Hennock, 'Poverty and social theory in England: the experience of the eighteen-eighties', *Social History*, No. 1 (1976), pp. 77-8; E.M. Yeo, 'Social Science and Social Change: A Social History of Some Aspects of Social Science and Social Investigation in Britain 1830-1890' (Univ. of Sussex, Ph.D. thesis, 1972), ch. 8.

18. G. Stedman Jones, op. cit., p. 295.

19. *Commonweal*, March 1886.

20. Sir Alfred E. Pease, *Elections and Recollections* (London, 1932), p. 106.

21. G. Stedman Jones, op. cit., p. 298. Cf. B.B. Gilbert, *The Evolution of National Insurance in Great Britain* (London, 1966), pp. 32-9.

22. *Charity. A Record of Philanthropic Enterprise*, vol. 1, Dec. 1886, p. 119; *Pall Mall Gazette*, 23 Feb. 1886, p. 10; C.L. Mowat, *The Charity Organisation Society 1869-1913* (London, 1961), p. 132; G. Stedman Jones, op. cit., pp. 298-300.

23. *Pall Mall Gazette*, 10 Feb. 1886, p. 1; *The Times*, 10 Feb. 1886, p. 6.

24. Jose Harris, *Unemployment and Politics. A Study in English Social Policy 1886-1914* (Oxford, 1972), pp. 75-6.

25. *Ibid.*, p. 56.

26. *The Times*, 10 Feb. to 10 March, 1886. The arrested rioters, mostly under 30 years of age, were drawn mainly from London's casual trades and associated residual occupations.

27. *The Letters of Queen Victoria*, ed. G.E. Buckle, 3rd ser. (London, 1930), vol. 1, p. 54; PRO, HO 144/A42380/15 and 24; *R. v. Burns and others*, 16 Cox C.C. (1886), pp. 355-67. Burns doubtless eased public anxiety by emphasising the peaceful intentions of the SDF speakers, and insisting that they had tried to stop the looting: Central Criminal Court, *Sessions Paper*, vol. 103 (1886), p. 681at pp. 693-4.

28. 3 *Hansard* 302, 25 Feb. 1886, cols. 1174-81; 26 Feb. 1886, cols. 1405-6; 3 *Hansard* 303, 15 March 1886, cols. 758-9; PRO, MEPO 2/182.

29. *Letters Q.V.*, loc. cit.; 3 *Hansard* 303, 5 March 1886, col. 16.

30. PRO, HO 144/A42380/3-7. The SDF made it clear to the authorities on more than one occasion that they were anxious to avoid further disorder, and they asked for police assistance on 21 February: PRO, MEPO 2/182; HO 144/A42380/21.

31. PRO, MEPO 2/182; 3 *Hansard* 305, 20 May 1886, cols. 1612-4; A.B. Cooke and J. Vincent, op. cit., p. 376.

32. Cooke and Vincent, op. cit., pp. 4-7. Cf. Viscount Chilston, *Chief Whip. The Political Life and Times of Aretas Akers-Douglas. 1st Viscount Chilston* (London, 1961), p. 137.

33. See editorials in *The Times*, 10 Feb. 1886; *Daily Telegraph*, 9 Feb. 1886; *Pall Mall Gazette*, 10 Feb. 1886. See also, PRO, HO 144/A42380C/10; R.F.V. Heuston, *Lives of the Lord Chancellors, 1885-1940* (Oxford, 1964), p. 103; E.S.E. Childers, *The Life and Correspondence of the Right Hon. Hugh C.E. Childers 1827-1896* (London, 1901), vol. 2, p. 240.

34. *E-L, Correspondence*, op. cit., vol. 1, p. 336 (emphasis in original); *M-E, Correspondence*, op. cit., p. 447. Engels's interpretation has been endorsed recently by Y. Kapp, *Eleanor Marx* (London, 1976), vol. 2, p. 77, and R. Mace, *Trafalgar Square* (London, 1976), p. 167. But for a contemporary rejection of the theory that Henderson was ordered not to act, see the letter of Sir William H. Russell, 10 Feb. 1886, in *Wolseley Papers*.

35. See A. Silver, 'The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police and Riot', in D. Bordua (ed.), *The Police: Six Sociological Essays* (London, 1967), pp. 7-8. See also, Anon., 'The Police System of London', *Edinburgh Review*, vol. 96, July 1852, pp. 9-10; Anon., 'The Police of London', *Quarterly Review*, vol. 129, July 1870, pp. 91 and 122; A. Wynter, *Curiosities of Toil*, vol. II (London, 1870), pp. 96-7; W.R. Miller, *Cops and Bobbies: Police Authority in New York and London, 1830-1870* (London, 1977), p. 13.

36. See B. Harrison, 'The Sunday Trading Riots of 1855', *Historical Journal*, vol. 8 (1965), pp. 219-45; R. Harrison, *Before the Socialists* (London, 1965), ch. 3.

37. The Committee members were Hugh Childers (the new Home Secretary, who acted as Chairman), Lord Edward Cavendish, Henry T. Holland, C.T. Ritchie and Viscount Wolseley. The last three were Conservatives. It is important to establish the political chronology of these years. In February 1886, a Liberal government under W.E. Gladstone took over from the Conservative government of Lord Salisbury. The West End riot coincided with this change of ministries. The defeat of the Irish Home Rule bill, however, led to an early dissolution of Parliament in July 1886 and to the return of a Conservative ministry under Salisbury. The Conservatives remained in office until 1892.

38. On Henderson, see *The Times*, 10 Dec. 1896, p. 8; *Royal Engineers Journal*, vol. 27 (1897), pp. 32-5.

39. Report of a Committee to Inquire and Report as to the Origin and Character of the Disturbance which took place in the Metropolis on Monday 8 February, with Minutes of Evidence, *Parliamentary Papers* (hereafter PP), 1886 (Cd. 4665), vol. 34, p. 381 at p. 392 (q. 9); p. 397 (q. 177), p. 403 (qq. 331-5) and p. 489 (Appendix VII). Cf. evidence of Lieut-Col. R.L.O. Pearson, Assistant Commissioner of Police: p. 405 (q. 382), p. 411 (q. 537), p. 417 (q. 677); and James Monro, Assistant Commissioner in charge of CID: p. 418 (q. 722).

40. *Ibid.*, p. 384, p. 386 (para. 22), p. 387 (para. 29), p. 398 (qq. 178-9, 187), and p. 403 (q. 334). Cf. James Monro: p. 419 (q. 728), p. 484 (Appendix II); R.L.O. Pearson: p. 411 (q. 538), p. 418 (qq. 695-702). Henderson insisted that the riot was an unexpected event: 'I am perfectly assured it was wholly unpremeditated . . .' p. 401 (q. 308).

41. *Ibid.*, evidence of Robert Walker, one of four District Superintendents appointed in 1869: p. 426 (qq. 978-83), p. 429 (q. 1083), pp. 437-8 (qq. 1303-30). See also p. 388 (para. 40).

42. *Ibid.*, Superintendent Hume: p. 448 (q. 1602), p. 449 (q. 1661); Inspector Knight: p. 470 (qq. 2517-22).

43. PRO, HO 45/B158/1.

44. Report, p. 386 (para. 28), p. 387 (para. 32), p. 388 (para. 39). Cf. Henderson: p. 400 (qq. 260-4). See also Eleanor Marx to Lavrov, 9 March 1886, quoted in Y. Kapp, op. cit., p. 78. Wolseley first drafted a Report of the Police Committee, but Childers 'cut the Report to pieces before approving it': *Sir Evelyn*

Ruggles-Brise. A Memoir, compiled by Shane Leslie (London, 1938), p. 57.

45. *Ibid.*, pp. 389-90 (paras. 45-9), p. 490 (Appendix IX); PRO, MEPO 2/174; Copy 'of a Memorandum by the Secretary for the Home Department on the Report of the Committee appointed to inquire into the Origin and Character of the Disturbances . . .', PP 1886 (Cd. 132), vol. 53, p. 351.

46. Cooke and Vincent, *op. cit.*, p. 375; 3 *Hansard* 302, 26 Feb. 1886, cols. 1446-8; 3 *Hansard* 330, 14 Nov. 1888, col. 1166.

47. Report of the Committee appointed by the Secretary of State for the Home Department to Inquire into the Administration and Organisation of the Metropolitan Police Force, PP 1886 (Cd. 4894), vol. 34, p. 493 at pp. 497-8. The Committee members were Hugh Childers, Sir Charles Warren, Henry James, J.T. Ingham and E. Leigh Pemberton. See also C.T. Clarkson and J. Hall Richardson, *Police!* (London, 1889), pp. 81-2.

48. *Ibid.*, pp. 495-6. For the history of the District Superintendents, see Sir John Moylan, *Scotland Yard and the Metropolitan Police* (London, 1934), pp. 146-9; PRO, HO 45/74577A; 'Custos', *The Police Force of the Metropolis* (London, 1868), pp. 14-27. The riots were also followed by an augmentation of constables: Report of the Commissioner of Police of the Metropolis for 1889, PP 1890-91 (Cd. 6237), vol. 42, p. 307 at p. 376.

49. E.S.E. Childers, *op. cit.*, vol. 2, p. 239.

50. 3 *Hansard* 302, 26 Feb. 1886, col. 1394; *The Times*, 27 Feb. 1886, p. 11.

51. 3 *Hansard* 302, 18 Feb. 1886, cols. 594-6, 600, 603-6; PRO HO 45/B158/23; MEPO 2/X7215/31a; E.S.E. Childers, *op. cit.*, vol. 2, pp. 242-4; PP 1886, vol. 34, p. 381 at p. 389 (para. 43).

52. 3 *Hansard* 302, 26 Feb. 1886, col. 1438; PRO, HO 144/A48409/2; Y. Kapp, *op. cit.*, pp. 80-1; S.H. Jeyes and F.D. How, *The Life of Sir Howard Vincent* (London, 1912), p. 188. See also R. Plehwe, 'Police and Government: The Commissioner of Police for the Metropolis', *Public Law* (1974), p. 332.

53. Lord George Hamilton, *Parliamentary Reminiscences and Reflections 1886-1906* (London, 1922), vol. 2, p. 14. See also, Shane Leslie, *op. cit.*, p. 56; PRO, MEPO 2/166; HO 144/A42552; *The Times*, 23 Feb. 1886, p. 9.

54. The metropolitan authorities were similarly unmoved by the threat of unemployed disorder in 1894: PRO, HO 45/B13077C/1; J. Harris, *op. cit.*, pp. 81-3.

55. Warren was vigilant towards processions and meetings of the unemployed. See PRO, HO 144/A45155; HO 144/A42480; HO 144/A45225; HO 144/B862; HO 144/A46834; MEPO 2/173.

56. See B. Burleigh, 'The Unemployed', *Contemporary Review*, vol. 52, Dec. 1887, pp. 770-80; Charles Booth, *Life and Labour of the People in London*, 1st ser. (London, 1902), vol. 1, p. 231; PRO, MEPO 2/181; *A Victorian Diarist. Extracts from the Journals of Mary, Lady Monkswell 1873-1895*, ed. E. Collier (London, 1944), pp. 145-6; *Engels-Lafargue Correspondence* (Moscow, 1960), vol. 2, pp. 71-2. Henry Matthews was Home Secretary in the Salisbury administration from July 1886 until July 1892.

57. E.B. Bax, *Reminiscences and Reflexions of a Mid and Late Victorian* (London, 1918), p. 87.

58. See E.P. Thompson, *op. cit.*, pp. 484-5; R. Mace, *op. cit.*, pp. 178-9; D. Torr, *op. cit.*, vol. 1, pp. 259-62.

59. B. Burleigh, *loc. cit.*; 'Remember Trafalgar Square', *Pall Mall Gazette Extra*, No. 37, p. 3.

60. The same events have been examined, to little effect, in L. Keller, 'Public Order in Victorian London' (Univ. of Cambridge, Ph.D. thesis, 1977), ch. IV. There is a more suggestive appraisal in B. Lewis, 'The Home Office, the Metropolitan Police and Civil Disorder 1886-1893' (Univ. of Leeds, M.Phil. thesis, 1975), ch. III.

61. Watkin Williams, *The Life of Sir Charles Warren* (Oxford, 1941), pp. 195-7; C. Pulling, *Mr. Punch and the Police* (London, 1964), pp. 109-10; *Letters Q.V.*, op. cit., vol. 1, pp. 65-6; PRO, HO 144/A47288; HO 144/A42763; D.N.B. (Supplement 1922-30), p. 889; E.S.E. Childers, op. cit., vol. 2, p. 241. In 1885 Warren had contested unsuccessfully the Hallam Division of Sheffield as a Liberal candidate. He was summoned from a military command in Africa to be Commissioner of Police. The main candidates for the job, apart from Warren, were Sir Redvers Buller and Lord Charles Beresford (both of whom declined the post when it was offered by Childers), and James Monro, Assistant Commissioner in Charge of the CID.

62. J. Moylan, op. cit., p. 49. See also, D. Ascoli, *The Queen's Peace* (London, 1979), pp. 157-63.

63. Ibid., pp. 42-3; W. Miller, op. cit., pp. 2, 40 and 116-7; 3 *Hansard* 330, 13 Nov. 1888, cols. 1146-8 (Mr. Lawson).

64. PRO, HO 45/A49455, HO 45/A46751; MEPO 2/257; MEPO 2/170; MEPO 7/48; *Pall Mall Gazette*, 9-13 Oct. 1888; Charles Warren, 'The Police of the Metropolis', *Murray's Magazine*, Nov. 1888, pp. 592-4. Dissatisfactions among the constabulary concerning the system of police administration led to meetings in Hyde Park: PRO, MEPO 2/171; Anon., *The Metropolitan Police and its Management* (London, 1888).

65. PRO, HO 144/A47600; HO 144/A46998; HO 45/A46889; MEPO 5/306. See also, R.M. Morris, 'The Metropolitan Police Receiver in the XIXth Century', *The Police Journal*, vol. 47 (1974), pp. 70-2. A similar conflict of authority broke out between Warren and James Monro, Assistant Commissioner in charge of CID: PRO, HO 144/A464728; HO 144/A46472C; HO 144/A48606.

66. PRO, HO 144/A47288/1; E. Troup, *The Home Office*, 2nd. ed. (London, 1926), p. 105; R. Plehwe, op. cit., pp. 326-32. The situation came to a head, finally, in November 1888, when Warren wrote a controversial article criticising the general organisation of the police force (see n. 64 above). When Warren's response to Home Office criticism of this action was to insist that the Home Secretary had no authority to interfere in the exercise of powers expressly conferred on the Chief Commissioner by statute, Lushington minuted to the Home Secretary that 'the Commissioner is and has long been out of hand, in a state of complete insubordination, ignoring the Secretary of State': PRO, HO 144/A48043/3 and 4. See also, Matthews, 1 May 1888, in Salisbury MSS, Class E; *Letters Q.V.*, op. cit., vol. 1, p. 448; MEPO 5/256. Warren resigned in November 1888. Unlike his previous letter of resignation of March, it was accepted by the Home Secretary: PRO, HO 144/A47288/3; HO 144/A48043/4.

67. 3 *Hansard* 319, 25 August 1887, col. 1804; PRO, MEPO 2/185; Report of the Commissioner of Police of the Metropolis for 1887, PP 1888, vol. 57, p. 349.

68. PRO, MEPO 2/181; HO 144/A47976/43D. See also, *R. v. Graham and Burns*, 4 Times Law Reports 212 (1888).

69. PRO, HO 144/A47976/43D.

70. PRO, HO 144/A47976/8: quoted in W. Williams, op. cit., pp. 209-10.

71. PRO, HO 144/A47976/14. Matthews's reply to Warren's letter of 22 October was: 'I think you should not attempt to prevent any orderly body of persons from meeting or making speeches in Trafalgar Square tomorrow' (A47976/8).

72. Warren to Lushington, 31 Oct. 1887, PRO, MEPO 2/182. See also *R. v. Graham and Burns*, Central Criminal Court, *Sessions Paper*, vol. 107 (1888), p. 377 at pp. 394-6; PRO, MEPO 7/49, P.O. 258.

73. PRO, HO 144/A48043/1 and 2.

74. PRO, HO 144/A47976H; A47976E/1; A47976/43D.

75. PRO, HO 144/A47976/18 and 19; A47976I/20 and 23a; MEPO 2/182.

Warren, however, was without a Legal Adviser at this time: PRO, HO 45/A47471/2; MEPO 5/302.

76. Salisbury MSS, Class E. Matthews refused to swear in special constables because of the alarm it would cause: Viscount Chilston, *W.H. Smith* (London, 1965), p. 266.

77. PRO, HO 144/A47976/14.

78. DNB (Supplement 1912-21), p. 370; Shane Leslie, op. cit., pp. 57-8; Cooke and Vincent, op. cit., p. 452; Shane Leslie, 'Henry Matthews Lord Llandaff', *Dublin Review*, vol. 168 (1921), p. 13.

79. *Positivist Review*, vol. 15, 1st March 1907, pp. 70-1; Sir L. Guillemard, *Trivial Fond Records* (London, 1937), p. 14; Sir A. West, *Contemporary Portraits* (London, 1920), pp. 151-2; PRO, HO 45/B17626; J. Pellew, 'Administrative Change in the Home Office 1870-1896' (Univ. of London, Ph.D. thesis, 1976), pp. 60-6.

80. PRO, MEPO 2/182. The following section has been guided by the 'Memo as to Law Officers' Opinions (1867-1905) on regulation of meetings and processions' (1906), in PRO, HO 45/136764.

81. 2 and 3 Vict. c. 47, ss. 52, 54 and 64.

82. PRO, HO 144/A47976/15.

83. PRO, HO 144/A47976/17-21; HO 144/A47976I/23a.

84. PRO, MEPO 2/182; HO 144/A47976H/30; HO 144/A47976/26; *Commonweal*, 12 Nov. 1887, p. 360; *The Times*, 18 Oct. 1887, p. 9; E.A.A. Douglas, loc. cit.; *Letters Q.V.*, op. cit., vol. 1, p. 357.

85. *Letters Q.V.* op. cit., vol. 1, p. 358.

86. The Rev Stewart Headlam (English Land Restoration League and founder in 1877 of the Socialist Guild of St Matthew) had told Warren: 'I wish by peaceable means to get a legal decision as to the legality of your proclamation': PRO, MEPO 2/182. On Headlam, see M.B. Reckitt, *Maurice to Temple* (London, 1947), pp. 124-36.

87. PRO, HO 144/A47976G/2. Cf. HO 144/A47976F/1.

88. *Weekly Dispatch*, 20 Nov. 1887, p. 4; *The Times*, 18 Nov. 1887, pp. 4 and 9; HO 144/A47976G/1; 3 *Hansard* 322, 1 March 1888, col. 1896; Anon., *Right of Meeting in Trafalgar Square* (London, 1887).

89. Matthews, in fact, told a deputation on 11 November that the square was Crown property and the Queen had a legal right to withdraw permission to meet there: PRO, HO 144/A47976/26. It was only on 17 November that the Law Officers declared that the square could be taken to be a thoroughfare.

90. Cf. A.V. Dicey, 'On the Right of Public Meeting', *Contemporary Review*, vol. 55, April 1889, p. 509.

91. PRO, HO 144/A47976/26; *Pall Mall Gazette*, 12 Nov. 1887, p. 1; C.T. Clarkson and J. Hall Richardson, op. cit., pp. 208-9. Home Secretary Matthews claimed subsequently that the 'bloody Sunday' demonstrators did not constitute a bona fide gathering. Judging from an examination of 55 court cases, however, those who tried to enter Trafalgar Square were workmen in the staple trades and industries of east and south London, such as the building and finishing trades: 3 *Hansard* 322, 1 March 1888, cols. 1908-9; *The Times* and *Weekly Dispatch*, November and December, 1887; PRO, HO 144/A479760; HO 144/A47976/63-8.

92. PRO, HO 144/A47976/34 and 35.

93. Barnett Papers, F/BAR/61. I am grateful to the Greater London Record Office for permission to quote from this document.

94. Quoted in P. d'A Jones, *The Christian Socialist Revival 1877-1914* (New Jersey, 1968), p. 195 (emphasis in original).

95. *The Times*, 14 Nov. 1887, p. 9. Cf. E.P. Thompson, op. cit., p. 491.

96. *The Times*, 15 Nov. 1887, p. 10.

97. Ibid. £400 was raised.
98. PRO, HO 144/A479761/1A.
99. PRO, HO 144/A479761/1. Cf. PRO, MEPO 2/174.
100. PRO, HO 144/A47976/36. Matthews already knew that the Prime Minister was averse to the employment of soldiers in and around the square.
101. *Annual Register*, 1887, p. 177; A. Liddell, *Notes from the Life of an Ordinary Mortal* (London, 1911), p. 254; W.S. Adams, *Edwardian Portraits* (London, 1957), p. 6.
102. PRO, HO 144/A47976P/2-7.
103. PRO, HO 144/A49014/8; Y. Kapp, op. cit., p. 232; H. Hamilton Fyfe, *Annals of Our Time* (London, 1891), vol. 3, p. 17.
104. Y. Kapp, op. cit., p. 235; G. Williams, *The Passionate Pilgrim. A Life of Annie Besant* (London, 1932), pp. 170-73.
105. PRO, HO 144/A47976/35 and 39. See also Return giving the Regulations issued by the Chief Commissioner of Police with respect to Trafalgar Square, issued 12 and 18 November 1887, PP 1889, vol. 61, p. 265.
106. PRO, HO 144/A47976/36.
107. 4 *Times Law Reports* 212 (1888); 16 Cox C.C. 420 (1888); PRO, HO 144/A479760/1; Sir Richard Webster, *Recollections of Bar and Bench* (London, 1914), p. 173; D.G.T. Williams, *Keeping the Peace* (London, 1967), p. 80; C. Watts and L. Davies, *Cunninghame Graham: A Critical Biography* (Cambridge, 1979), pp. 71-6. Another 55 demonstrators were arrested during 'bloody Sunday' and charged mainly with assaulting the police. Of these, 28 were sentenced to imprisonment with hard labour for periods varying between 14 days and six months. Two more were tried at the Middlesex Sessions – one was sentenced to 12 months' imprisonment; the other to 5 years' penal servitude, for wounding a constable. Another 16 were fined between 20s and 40s each; the rest were bound over to keep the peace or were discharged: PRO, HO 144/A47976/60-68.
108. E. Reed, 'Remember Trafalgar Square', *Pall Mall Gazette Extra*, no. 37, p. 2; A. Hutt, *This Final Crisis* (London, 1935), p. 111. Annie Besant was particularly active in the attempt to test the legality of the prohibition issued by the Chief Commissioner: PRO, HO 144/A47976/53, 55, 82 and 83.
109. E.g., the case of Hicks, *Pall Mall Gazette*, 23 Jan. 1888, p. 4. One case, however, went before the Divisional Court, where the judges affirmed that there was no right of public meeting in Trafalgar Square: *Ex parte Lewis*, 21 Q.B.D. 191 (1888); PRO, HO 144/A49014/4; 'The Trafalgar Square Question', *St. James's Gazette*, 29 June 1888. For criticism of the decision in *ex parte Lewis*, see B.L. Mosely, 'Trafalgar Square', *Law Magazine and Review*, vol. 13 (1888), p. 260.
110. PRO, HO 144/A49014/11. Cf. HO 144/A47976/100.
111. Ibid.; *Pall Mall Gazette*, 13 Aug. 1888.
112. PRO, HO 144/A49014/13. Cf. HO 144/A47976/106.
113. Ibid.
114. HO 144/A49014/15.
115. Ibid.
116. HO 144/A49014/16.
117. HO 144/A49014/17-18.
118. 'A Bill for the Regulation of meetings in Trafalgar Square', PP 1888, vol. 7, p. 449; PRO, HO 144/A49014/4; HO 144/A47976/90. In July 1889, the London County Council's request to be given control of Trafalgar Square was turned down: D. Torr, *Tom Mann and His Times* (London, 1956), vol. 1, p. 344.
119. PRO, HO 144/A47976U/9.
120. Lest it be thought that Warren's personal contribution alone explains the 'divided counsels' in public-order policy, the next Chief Commissioner, James Monro, was to have his troubles with the Home Office when, in 1890, he claimed

the right to prohibit peaceable processions: HO 45/A48160; MEPO 2/248; D. Ascoli, op. cit., pp. 163-5.

6

PENAL SERVITUDE 1846-1865: A SYSTEM IN EVOLUTION

M. Heather Tomlinson

It is characteristic of the English genius for practical affairs that we are suspicious of system . . . the English tend rather to deal with the situation confronting them, and afterwards discover on what principles they have done so, and what precedent for future action they have established.¹

I

A major problem for all societies is how to punish its criminally deviant element, for although there is rarely agreement on how it should be done, no society has yet ventured to suggest that crime should go unpunished. This universal problem was exacerbated for our Victorian forebears by the fact that three of its principal modes of punishment were simultaneously under threat of abolition — hanging, transportation and confinement upon the prison hulks. These were, moreover, the punishments allotted to the more serious offences, so it was imperative to find an efficacious substitute, one which criminals would dread, and one in which the general public could place its confidence. The substitute devised to fulfil these aims was penal servitude.

This paper will endeavour to show how penal servitude evolved from the *ad hoc* measures introduced to meet the transportation crisis in 1846 to a most precisely detailed and regulated discipline which emerged after three Acts of Parliament in 1864-5. It will examine some of the factors which brought about the changes in penal servitude, factors such as reconciling the letter of the law with the expectations of the convict, and reconciling the convicts to the expectations of society. Furthermore, it will explain that although the transportation crisis forced improvised measures, which almost fortuitously led to a new system — as we should expect from Archbishop Temple's dictum that the English distrust system until it is established — it also created the opportunity to implement penal ideas and administrative arrangements which had been maturing in various quarters for some while.

II

From 1717,² when the American colonies were first used as a dumping ground for British convicts, until 1852, when the Australian colonies declared their final intention of ceasing to accept Britain's criminal dregs, the British government relied heavily on transportation as its principal secondary punishment — that is, its punishment next in severity to capital punishment. There were breaks in the system, for example from 1775, when the War of Independence closed the American colonies to our felons, until 1787, when the Australian colonies were opened as a new outlet for disposing of them.³ This gap was filled, however, by enlisting convicts into the army and navy,⁴ and by fitting up old ships of the line as temporary floating prisons — the prison hulks⁵ — from which bases their inmates were set to work dredging the Thames. By such expedients, the more serious offenders⁶ against law and order were punished and removed from society's midst, and all was deemed to be well.

By the mid-nineteenth century, however, this system of convict disposal was under threat. The eighteenth century had seen the debate begun on the principles of justice and the purpose of punishment, so by the mid-nineteenth century, the efficacy of transportation was in question, not only from the colonists' standpoint — that they wanted no further contamination of their society by England's criminals — but also on the ground that it flouted moral justice. For transportation varied enormously in character, from severe penal labour carried out in chain gangs for the intransigent offender, to working for a colonial settler under the assignment system, which was the fate of the less hardened offenders. More important were the differences within the assignment system, for conditions ranged from virtual slavery to simple employee status depending on the character of the settler to whom the convict was assigned.⁷ And once the 'exile' system was introduced in 1845 — a system whereby prisoners served simply a term of separate confinement in Pentonville before being sent to Australia with a conditional pardon, the condition being merely that they should not return to Britain during the term of their sentence — it was queried, indeed, whether transportation had not become a boon rather than a punishment. This attitude is explained by the fact that many of the honest poor would have liked to have emigrated, but lacked the funds to do so, while 'exiled' convicts gained 'a free passage on a comfortable ship, an excellent outfit, a prospect of wife and family following, and the certainty of employment at adequate wages immediately on arrival, or of

being supported until such employment be obtained'.⁸ The British government could hold out no longer against questions in the House, reports of Parliamentary Committees, and successive letters of despatch from the colonies. Reluctantly, in 1852, they took the decision to send only a handful of convicts – no more than 600 annually – to Western Australia, and cease transportation altogether to the other Australian states. This decision left the Home Office with around 3,000 convicts a year sentenced to be transported, but with nowhere to send them.

This time, extending the range of hulks was not a viable alternative, for although the 'temporary expedient' of the 1770s had continued its existence uninterrupted into the 1840s, the convict department was now aware of the inadequacies and evils of the hulks. Indeed they made poor prisons, because they were leaky and liable to disintegrate, and once rotted they were difficult to remove and costly to replace. More importantly, it was impossible to achieve the ends of penal justice on board these ships, as neither reformation nor discipline could be attained beneath the hatches at night. Instead, the hulks were a hot-bed of riot and insubordination on the part of the convicts, and the scene of cruelty and neglect on the part of the officers in charge. Additionally, due to their insanitary conditions and insalubrious moorings, sickness and disease were rampant on the hulks, taking their toll of convicts, and endangering the lives of the military guard posted to keep order on board the hulks.⁹ Once again, parliamentary questions and a Home Office investigation in 1847¹⁰ into the conditions on the hulks forced the government to reconsider its means of dealing with the convict population. Faced simultaneously with two crises – the ending of transportation and the imperative need to abolish the hulks – the Home Office was forced to adapt and amend the other resources at its disposal, and construe them into a system – a system which a few years later was embodied in the sentence of penal servitude.

The additional resources at the government's disposal in the mid-1840s took the form of two¹¹ prisons, the Millbank Penitentiary and Pentonville Prison. Millbank had been intended as a place of reform for convicts who were not to be transported. Flogging was forbidden¹² and the emphasis was on seclusion, labour and religious instruction. Disorder was rife, however, and penitence was not forthcoming, so flogging was brought back¹³ and the prison opened to all classes of convict. There was a new attempt at making Millbank function as a penitentiary from 1837 to 1844, when the posts of governor and chaplain were held simultaneously by the reverend Daniel Nihil, in the hope of pervading the whole establishment with the air of reformation and high moral tone.

But the experiment was not a success, and the designation 'penitentiary' was finally abandoned in 1844.¹⁴ Millbank then became simply a large convict *dépôt* capable of housing around 1,000 convicts, and its value in the transportation crisis lay in providing desperately needed cell space.¹⁵

Pentonville Prison was of far greater importance in shaping the character of penal servitude. It was first opened in 1841 as the 'Model Prison', built to demonstrate to JPs how to construct and run their local prisons on the separate system. For the separate system, a modification of the solitary system practised in some prisons in the United States, was the government's most recent solution to the problem of the rapidly increasing crime rate¹⁶ that the existing prison systems did nothing to curb. Indeed, it was thought that the local gaols were 'schools of crime' where criminals picked up tricks from their companions; also they were deemed to be lacking in the terror required to deter potential criminals from committing crimes, and, most important of all in an age of evangelical revival, the prison regimes were not considered to be conducive to reformation. According to the enthusiasts for separation, these shortcomings would be eradicated in a prison built on the separate system — that is a prison in which each inmate was housed in a single soundproof cell, heated in winter, lighted by gas, and serviced with its own sink and water-closet — for contamination would be impossible if the prisoners never met to communicate; the deterrent element would be very strong as solitude was a dreaded punishment; and the possibility of reformation was greatly enhanced by the chaplain being enabled to minister individually to his flock.¹⁷

Accordingly Pentonville was built as a model of design and as a working experiment in separation. Immediately on its completion, it was brought into the convict system as an adjunct to transportation, for the Australian colonies had expressed their resentment of the influx of hardened criminals into their midst, and the Home Office hoped that if the convicts were already 'reformed' before they embarked for Australia, they might be more acceptable on their arrival. It was a forlorn hope. The colonists' campaign to end transportation continued and succeeded, but Pentonville remained, and so did the separate system, taking its place as an indispensable element of the new penal discipline.

Pentonville and Millbank between them, it was estimated, could house around 1,600 prisoners in full or modified separate confinement. There was also at the government's disposal the Scottish prison at Perth, which would provide another 400 cells, and there was the further prospect of renting cells — five to six hundred of them — from various local prison authorities which were reconstructing their prisons on the Pentonville

plan.¹⁸ Separate confinement, however, could not provide the sole solution to the transportation crisis. Sentences of transportation were for seven, ten or 14 years, or for life, and it had already been decided that 15 to 18 months was the maximum a man could stand in separate confinement without destroying his mind or permanently weakening his constitution. Even with daily excursions to the chapel and exercise yards — both divided off into single sections to preserve the prisoner's separation from his fellows — and visits from the governor, chaplain and trades-instructor, 12 months was as much as many convicts could take, and some showed signs of insanity in under a year.

With the example of the hulks in mind, the obvious solution was for convicts to complete their sentences labouring on the public works, but by 1846 the government was committed to the abolition of the hulks. So on-shore establishments had to be designed and constructed in which the convicts could be more effectively disciplined and controlled, and in which the good effects of separate confinement would not be instantly negated. The onerous task of calculating the number of convicts to be confined in such public works prisons, and constructing the prisons in which to confine them, was given in 1846, to Major Jebb, R.E.¹⁹ Jebb was a man of great optimism and boundless energy, two qualities which were essential for the job. He began by estimating that four years was the minimum period of detention that a convict should serve 'with a view to secure a deterring effect on others'. With an annual figure of 3,000 sentenced to transportation, that made 12,000 convicts to accommodate. By some sleight of hand, he disposed of 4,000 of them, 'infirm prisoners, juveniles and pardons, etc. etc.', leaving 8,000. He reckoned on one year being the average length of time convicts would spend in separation, so he needed 2,000 cells for them — cells that were already at the government's disposal; and for the remaining 6,000 convicts serving their three years on the public works, he planned five on-shore establishments, each housing around 1,200 convicts.²⁰

The first of these prisons was built at Portland between 1847 and 1849, where it stood for the best part of half a century. But when Jebb designed it, he feared that the work at Portland might not last for more than a few years, so he turned his attention to devising a prison which could be erected in one place, then dismantled and removed elsewhere once the first project was completed. To this end, he rejected stone or brick structures, deciding instead on a wooden framework for the cells and external walls, with corrugated iron internal divisions.²¹ The finished construction consisted of four large halls, 88 feet by 21, with four tiers of small cells, seven feet by four, on each side of the hall, plus two large

open rooms in which 50 prisoners slept in hammocks. So the principle of separation was retained for the majority, if abandoned for the remainder. Thirty-two masonry punishment cells, a chapel, infirmary, bakery, kitchen, wash- and store-houses and warders' quarters completed the prison at Portland.²² This general design was followed in the other public works prisons at Dartmoor (refurbished 1850), Portsmouth (constructed 1850-52) and Chatham (completed 1856), although the details were somewhat modified after Portland's erection. At Portsmouth, for instance, brick was used for the boundary wall, and iron and slate for the cell doors and floors;²³ and by the time of Borstal's construction in 1874, the corrugated iron cell divisions were the most striking feature to be retained from the Portland plan.²⁴ So the Portland plan was open to later improvements and adaptations, but in 1846 it provided the blueprint for the public works prison of the future convict discipline

In November 1846, when Jebb completed his report on where and how to house the convicts thrown upon the government's hands by the transportation crisis, it was still hoped that Britain's convicts would face ultimate deportation to the colonies as 'compulsory exiles'. Jebb did not share their hopes, or even approve of them.²⁵ Instead he concentrated on developing a system which, once all the convict outlets were finally closed, could safely begin and end in Britain. So when 1853 arrived, Jebb was confident. The discipline of separation and hard labour had had a trial run, and he was more than ready to see it embodied in the sentence of penal servitude.

III

The first penal servitude act (16 and 17 Vic. cap. 99) was passed in 1853, retaining the sentence of transportation, but introducing the sentence of penal servitude to stand side by side with it. Four years penal servitude was to be the equivalent of seven years transportation – the old minimum sentence; four to six years penal servitude would replace seven to ten years transportation; and six to eight years penal servitude was the alternative to ten to 14 years transportation. Those sentenced to 14 years or life transportation were still to be transported. The rest of the Act's provisions treated the two sentences identically: conditional pardons were to be equally applicable to both; the places of confinement were the same; the chances of being sent overseas were equal; and licences to be at large could be granted to convicts under either sentence.

Evidently either hopes were high that some new penal colony would soon be found, or else the Home Office feared that society would be alarmed at the total abandonment of transportation. Besides, Western Australia was still willing to accept convicts, and continued to do so until 1867.

The passing of the 1853 Act, however, was the beginning rather than the end of the evolution of penal servitude, for no sooner was the system begun than problems were encountered. One principal issue to settle was the question of remission.

It had long been the practice to grant early release to convicts who were sentenced to transportation, but were retained on the hulks or in Millbank. A convict on the hulks serving seven years could, if well behaved, secure his release after four years;²⁶ and a convict in Millbank would serve five years of a seven-year sentence; seven years for a sentence up to 14 years; and ten years for a life sentence.²⁷ Jebb had assumed that remission would continue to be granted to all well-conducted convicts.²⁸ Horatio Waddington, Permanent Under Secretary at the Home Office, was quite determined, however, that the new sentences would be carried out to the letter. He considered that sentences of penal servitude had been made shorter than those of transportation, so that in practice they would both be the same length, and therefore they must be carried out in full. He rigorously opposed Jebb in his efforts to secure remissions, taking his stance on upholding the letter of the law, which was necessary, he declared, for the protection of society and the deterrence of future crime; and on maintaining an appreciable difference between a sentence of penal servitude carried out in convict prisons, and a sentence of hard labour carried out in a local gaol.²⁹ Waddington was supported by his Home Secretaries, who felt that any pardon — that is, any early release — should be regarded as a special boon granted by the Secretary of State only in exceptional cases, and not a right to be expected by all convicts, regardless of circumstances.³⁰

Jebb, however, was influenced less by legal niceties than by practical issues. He was responsible for implementing the new sentences, and was acutely aware of the strain placed on the prison officers by having disgruntled convicts to control. And there was sure to be discontent among the convicts, for labouring side by side on the public works there were three groups of criminals: those convicted before 1853, and those subsequently sentenced to transportation both of whom were to be released after only half their term; and those sentenced to penal servitude who were to have no remission at all.³¹ In practice there might be only a matter of months difference in the terms served, but this did not mollify

the penal servitude convicts who grew reckless in Portland Prison, at their inability to abridge their period of imprisonment. Waddington shrugged off such considerations. 'Col. Jebb evidently thinks of nothing but keeping the prisoners in good humour and getting them to work cheerfully' he complained to Palmerston, 'but the great object of punishment is to deter'.³² In relation to the feared outbreak at Portland, he simply recommended that the military guard should be strengthened, and precautions taken to prevent the attempt.³³

Not only was there danger of rioting among the men in the public works prisons, but there was also trouble to be expected from the female convicts who had to undergo the entire period of their sentence in close confinement. Some vented their disappointment at not being transported by destroying their bedding, tearing up their clothing and smashing the cell windows; others who bottled up their feelings began to suffer in health, until the chaplain of Brixton claimed that the prison would soon be turned into a large hospital and lunatic asylum.³⁴

The situation was further complicated for everyone concerned, by the fact that judges had not known that remission would not be granted in penal servitude cases. At least one learned recorder had passed very stiff sentences, fully expecting them to be abridged by remission, and he had even gone so far as to say so in court.³⁵ Keeping faith with these convicts and releasing them early only brought about even more dissatisfaction among the others.³⁶ It was clearly time for a revision of the 1853 Act. A select committee was appointed in 1856 to inquire into the provisions of the first penal servitude Act,³⁷ and based on the committee's recommendations, an amending Act, 20 and 21 Vic. cap. 3, was passed in 1857.

The second penal servitude Act cleared up one anomaly by decreeing that no more sentences of transportation were to be passed, although convicts could still be shipped abroad. It also lessened the severity of the sentence by reducing the minimum term from four years to three. What the Act did not do, however, was to extend the new system of remission, applicable to those sentenced under the 1857 Act, to those already serving time under the provisions of the first enactment. This was a thoughtless oversight, as it had been largely due to the unrest among that section of the convict population, which had led to the appointment of the 1856 Commission.³⁸ Jebb, by now the champion of the 1853 penal servitude men, attempted to rectify this oversight by a new form of certificate which made remission applicable to convicts sentenced under both Acts.³⁹ But Jebb's initiative appears to have been obstructed for at least a year, for it is not until 1861 to 1862 that there

is any evidence of remissions being granted to the 1853 convicts.⁴⁰

IV

The main reason for the Home Office's hard line on the remission issue was to try and ensure public confidence in the sentence of penal servitude. For much less recourse was now had to capital punishment,⁴¹ and so the principal secondary punishment was inflicted on those who would, just a few decades earlier, have been permanently removed by execution.⁴² While violent criminals had been dispatched into the next world or dispersed overseas,⁴³ the British citizenry had slept easily in their beds; now that they were released at home, there was much greater demand for evidence that first they had been adequately punished and deterred.

Such evidence was not forthcoming, or where it was, from the pen of Sir Joshua Jebb, it was not believed.⁴⁴ Instead widespread doubts existed not only about the efficacy of penal servitude but also about the form of penal servitude. Nobody outside the Home Office seemed to know exactly what penal servitude was (one critic even suggested that those inside the Home Office were equally ignorant),⁴⁵ not even the Lord Chief Justice himself, the Right Honourable Lord Campbell. When he was asked in 1856 whether the sentence of penal servitude would become more frightening as people came to know it better, he replied 'I think that will depend upon what the sentence of penal servitude really is, for I to this hour do not myself understand it.'⁴⁶ And, indeed, the sentence of penal servitude — with or without remission — had a certain nebulous quality about it.

The lack of precise definition was due to two factors; firstly that there was no concerted agreement on what punishment was meant to achieve — deterrence, reformation, retribution or rehabilitation — and thus no recognisable strategy to combat crime. As one exasperated contemporary wrote:

After years of studious investigation, numberless and expensive penal experiments, both at home and in the colonies, and the alternate fluctuation between rude severity and morbid over leniency, criminal jurisprudence in relation to the prevention of crime has made no decided and positive advance in the moral portion of the question since the close of the eighteenth century.⁴⁷

There was no shortage of theorists. The evangelicals stressed the possibility of reformation through solitude – a theory which found shape in the separate system prison; in contrast, the utilitarians emphasised the creation of useful, hard-working citizens through enforced industrial labour⁴⁸ – an idea matured into the ‘marks system’ by Captain Maconochie.⁴⁹ Then there were those who upheld the principle of less-eligibility – that convicts should not be better treated than, or receive advantages which were not available to the honest poor;⁵⁰ a principle countered by those who expressed the futility of throwing men back into society no better than they had been when they transgressed the law.⁵¹ Finally, there were inevitably the likes of Thomas Carlyle, who proclaimed the ‘whip ’em, brand ’em, hang ’em’ approach as cheap, quick and efficient.⁵² The only notion that they all held in common was that the question of economy should not be overlooked.⁵³

With so many differing points of view it is scarcely surprising that no clear approach to the problem of punishment emerged, all the more so as some individuals held simultaneously opinions which appeared to be mutually exclusive. Besides, and this is the second reason for the lack of precise formula in a penal servitude sentence, there was no moratorium on crime and therefore no *tabula rasa* on which a new single scheme could be imprinted – even if the government had had one. Convicts were flowing into prison in their thousands each year and the Home Office could do only what was practicable with the resources at their disposal. The resulting amalgam, ‘imprisonment with labour under a reformatory treatment’,⁵⁴ failed to impress anybody at all. Not only was it imprecise, it was not even uniformly administered, for circumstances and practical considerations, rather than any principle of moral justice, brought about frequent modifications in detail.

The first portion of the sentence which was spent in separate confinement, for instance, was intended to reform and instruct the convict, but no one could say how long that would take. Lord Chichester, a great friend and supporter of Jebb, favoured a long period of separation – 18 months to two years – on the basis that ‘there must be something external to afflict, to break down his [the convict’s] spirit, some bodily suffering or distress of mind, before the still small voice will be heard and the man brought to himself’.⁵⁵ Whereas Lord Palmerston, prompted by concern for prisoners’ physical and mental health, wanted the period of separation shortened to nine, or even six months.⁵⁶ In the event it was a circumstance other than either evidence of a reformed character, or the deteriorating health of the convict that determined his period of separation, and that was the availability of space in the public works

prisons.⁵⁷ This was hardly indicative of a rigorous enforcement of a fixed and definite discipline.

Besides, as time went on, less confidence generally was felt in the capability of separation to reform. The 1830s and 1840s had been the heyday of that idea, when the two prison inspectors, William Crawford and William Whitworth Russell, had been its chief proponents. Their energy and enthusiasm had resulted in a vast prison building programme, and the existence of the new prisons ensured the perpetuation of the system. But the evangelical drive and belief in the possibility of reformation began to evaporate on their deaths in 1847, and although lip-service continued to be paid to it throughout the 1850s, an increasing number of people came to the conclusion that the good lodging, good food and plenty of sleep which convicts enjoyed in separate confinement, went far to counter-balance their loss of liberty, and abstinence from women, spirits and tobacco.⁵⁸ Slowly but surely the emphasis shifted to deterrence and economy.

Deterrence and economy were the chief elements to be found in the second stage of penal servitude — labour on the public works: economy, because the convicts were supposed to pay for their keep by carrying out work that would otherwise have to be hired out to private contractors, and deterrence because the work — building breakwaters, harbours and fortifications — was supposed to be arduous and exhausting. But this, too, was open to dispute on a number of grounds. In the first place, not everyone was convinced that convicts paid their way on the public works. In particular, the civilian chief engineer at Portland, John Coode, gave convict labour a bad name in his evidence given before the Harbour Refuge Commission of 1857, and at the Institution for Civil Engineers in 1859, suggesting that it took two and a half convicts to do the work of one free man.⁵⁹ Coode was not alone in his belief that convicts did significantly less work than contractors. Various committees reported that prisoners would do no more than two-thirds, or even just one half of the labour to be expected of a free contract workman,⁶⁰ but they seemed to accept this as inevitable and not unsatisfactory, whereas Coode expressed his impatience with the system of convict labour by failing to co-operate with the governor of Portland Prison over the disposition of working parties.⁶¹

The second point of dispute concerned the kind of labour suitable for convicts. Should it be hard and irksome for maximum deterrence, or should it give scope for acquiring industrial training which would be useful to the convict at the end of his sentence? Jebb quarrelled constantly with the various departments on whose behalf the convicts

laboured because he wanted them entrusted with skilled jobs.⁶² He was greatly opposed, for example, to the use of 12 or 14 men, whose wages should have been worth 30 shillings a week, for hauling a cart, a task which would have been better performed by one horse.⁶³ In the event, the men tended to do heavy labouring – quarrying and hewing stone, excavating earth and mud, making roads, laying railways and digging drains, as well as fetching and carrying in the dockyards and arsenals,⁶⁴ so the idea of maximum deterrence would appear to have won the day. Yet one contemporary writer described a convict's labour as 'a trifling amount . . . more gentle and intermittent exercise by which no man could earn a decent subsistence', and he was most derisory about the convicts being brought in when it rained.⁶⁵

So what was the truth of the matter concerning convict labour? In the first place it is a fact that a proportion of the workforce was absent from labour each day, being either sick, under punishment, or attending the compulsory half day school per week, so their potential earnings were lost.⁶⁶ It is also true that convicts were brought in when it rained, because, as Jebb explained to the 1863 Royal Commission, it was so difficult to dry the men's clothes once they were wet.⁶⁷ And no doubt convicts did shirk as often as they could with impunity, for such is human nature; and they certainly fastened upon any excuse – for instance, the absence of molasses from their cocoa – to strike work altogether.⁶⁸ Yet in spite of everything, the public departments were keen to have convicts labouring for them, and, just occasionally, a note of genuine praise for the convicts was sounded.⁶⁹

It was not, however, only the quantity and quality of the labour itself which prompted doubts as to the punitive nature of penal servitude, but also the system of penal discipline under which the convicts lived while they laboured. For Acts of Parliament were too inflexible for administering the details of a penal servitude sentence, and consequently a large degree of discretion had to be vested in the Home Secretary. Due to the excessive burden of their other duties, the most diligent Home Secretaries could retain only a notional supervision of prison affairs, and so the major responsibility was left to Jebb, whom one contemporary described as that 'amiable enthusiast . . . not merely the confident propounder of his own theories, but practically the undisturbed executor of his own plan, his own sole censor and supervisor and architect'.⁷⁰ Exaggerated though this claim was, Jebb was undoubtedly considered to be the originator and prime representative of the English convict system – an opinion which he himself shared – and as such, he bore the brunt of the criticism heaped upon the system.

The basis for Jebb's dubious reputation as a manager of convicts, lay in his origination of the 'progressive stage system'. It had its roots in the old regime on the hulks, whereby a prisoner who did not misconduct himself, received sixpence a week from the dockyard, which was spent on bread and vegetables for him on two specific days a week. In 1846 Jebb mooted a refinement of this, awarding allowances on a scale — threepence, sixpence or ninepence a week — to be granted according to a convict's industry. This money could be spent on little luxuries — tea, coffee, butter, cheese, fruit — or saved for him on his release, or sent to his family. He added that as an encouragement to general improvement, the chaplain and schoolmaster might place the men in different classes according to their moral conduct.⁷¹ A few years later, to provide some consolation and encouragement for the 1853 penal servitude convicts who were not eligible for transportation or remission, he devised a more complex system in which badges, gratuities, improved diet, the receipt of letters, permission for visits, and distinctive prison clothing all came to play a part in the convict's life.⁷² The system was simplified after the 1857 Act, but Jebb was not prepared to forgo it altogether, since he claimed that people were influenced more by a small but immediate advantage, than a great but distant one.⁷³

Criticism of the 'progressive stage system' rained down upon Jebb's head. One contemporary wrote that 'All his [Jebb's] plans are based on or pervaded by the idea that convicts are to be *persuaded* and induced into good behaviour while in prison, and the abandonment of vicious courses when they leave it, by rewards rather than by punishment'⁷⁴ — a view that would probably not have been disputed by Jebb. A fellow Director of Convict Prisons,⁷⁵ Captain Mark Gambier, went even further, asserting that Jebb's system of advantages and advancement was 'almost holding out a reward for crime'. The convicts were, he complained, 'pampered with luxuries' and he claimed to have the support of the public works prisons' governors, in requesting the implementation of a uniform rate of earnings, a single dietary scale, and a maximum gratuity of one shilling and threepence a week.⁷⁶ The theme of pampering was taken up in *Punch's Almanack*, which featured a cartoon contrasting the garotter's⁷⁷ lunch as Sir Joshua Jebb would give it — a convict reading a paper while sitting in a plush arm-chair, his feet resting on a foot-stool, being served turtle soup by a butler, who promises rump steak pudding and snipe to follow — with the garotter's lunch as *Punch* would administer the same — this time the convict stands in the stocks, while some morsel is prepared to be handed to him by means of some lethal-looking tongs.⁷⁸ The convicts' diet, indeed,

frequently provoked controversy, as it was held to have been of better quality and greater quantity either than was necessary, or than was accessible to the wage packet of an honest labourer.⁷⁹ Whether or not it was true is less important than the fact that it was believed to be true, and helped to give Jebb's system a bad name. And perhaps Captain Gambier was right to put in a plea on behalf of the prison governors, for it must have been difficult for the officers to keep track of who had graduated to which scale of diet, and it probably caused dissension among convicts at meal-times which, in the public works prisons, were taken communally in large halls. All in all, diet was an important feature of 'the intricate system of graduation of punishment' which C.B. Adderley, speaking for many, opposed in Parliament. He lumped it together with conditional remission as 'moral incentives' which, he concluded, gave penal servitude an 'indistinct and hazy aspect' and inspired neither confidence in the public, nor terror in the convict.⁸⁰

The situation was further aggravated for Jebb by the fact that penal servitude was more rigidly conducted in Ireland, under the direction of Sir Walter Crofton. Crofton himself made no claim to originality in his administration of 'the Irish system',⁸¹ and rightly so, for the differences between the two systems were few. In Ireland the prisoners received lower rations and lower gratuities than in England,⁸² and that alone commended the system to many. But the two chief distinguishing characteristics of the Irish system were the intermediate prison and police supervision of convicts released on ticket-of-leave.

The purpose of the intermediate prison was gradually to inure convicts to freedom. Men who had served most of their sentence in separation and on the public works, completed their time in these special prisons, where they had opportunities to run errands outside the prison, where their education was continued and extended, and where they were given a little discretion in how to dispose of their sixpence a week.⁸³ As we have seen, there was nothing new in the idea of prisoners spending or saving a small sum of money: Jebb had formulated similar ideas as early as 1846.⁸⁴ What is more, he had determined upon the building of what was effectively an intermediate prison for females at Fulham in 1853,⁸⁵ although it was not completed until 1856.⁸⁶ But little credit was given to Jebb for that. Besides, the issue which created most heat was the question of police supervision of convicts released on ticket-of-leave, something which Jebb rigorously opposed introducing in England,⁸⁷ as did others,⁸⁸ principally on the ground that it would make the task of finding honest employment even more difficult for the convict. As the relative merits of police supervision are closely bound

up with the controversy over releasing convicts early with tickets-of-leave, which topic is dealt with at length by Peter Bartrip in his contribution to this book,⁸⁹ there is no need for further treatment of it here. Suffice it to say that the constant murmur of discontent at the working of all aspects of penal servitude continued, and after 1862 was brought to a crescendo in the literary journals, parliamentary debates, meetings of the Social Science Association, parliamentary blue books and newspapers, when an outbreak of garotting in the Metropolis was thought to have been perpetrated by ticket-of-leave men, and was thus firmly attributed by both prison 'experts' and public opinion to defects in the penal discipline.⁹⁰ A Royal Commission was accordingly set up to inquire into the operation of the two existing penal servitude Acts, and to make recommendations for its improvement.

The commissioners made some preliminary gestures towards justifying the principles on which Jebb's system was based, and condoning the existing arrangements. Thereafter, however, they lamented its deficiencies. The sentences, they said, were too short, and the discipline was defective, so convicts were not adequately punished. Society at large, moreover, was not sufficiently protected, for convicts released on remission had little chance of finding employment, and were not effectively supervised by the police. In addition, the commissioners thought that there was no possibility of gauging how far the discipline was deterring or reforming offenders, as there was no sure method of establishing whether offenders had been recommitted. The blame for some of these defects, such as the length of sentence and the problem of employment for ex-convicts, could not be placed solely at Jebb's door. But others, for instance the organisation of the penal discipline, and the rough and ready way of guessing how many convicts returned to a life of crime, were Jebb's responsibility, and he took the criticisms as a personal attack. After all, he regarded the convict population as his own family, in whom he took a great, often individual, interest, and in his private correspondence he bemoaned the problems he faced in reconciling the letter of the law with the wishes and needs of his convicts.⁹¹ The humanitarian, christian impulses which led him to 'soften the needful discipline towards all on whom it pressed' and to 'interpose his authority most happily in a manner peculiar to himself',⁹² were under attack by the commission, and a harsher, more uniformly administered regime was demanded. It recommended increasing the minimum sentence, inflicting severer punishment on reconvicted criminals, and maintaining a strict supervision over those released in England with a ticket-of-leave⁹³ — a point with which Jebb could not agree.

By then, feelings were running high, and the government's penal servitude amendment bill suffered a stormy passage through Parliament before finally being passed on 25 July 1864.⁹⁴ The general feeling was that the government's measure did not go far enough in increasing the certainty and severity of the penal servitude sentence, and such subjects as the minimum sentence to be passed on reconvicted offenders, the nature and extent of police supervision of ticket-of-leave convicts, and the desirability of returning to the old transportation system, were debated with great heat from the bill's first reading on 18 February 1864,⁹⁵ until it gained royal consent. The measure which finally emerged indeed rendered the sentence of penal servitude more awesome. It lengthened the minimum sentence to five years for a first conviction, and seven years for any subsequent one.⁹⁶ The imposition of stricter controls with regard to ticket-of-leave men, moreover, was introduced with a vengeance,⁹⁷ and photography was to be employed as an aid to tracing second offenders.⁹⁸ A more rigorous administration of the system was the remaining means to be employed in achieving a more severe and daunting punishment, although the details of this could not be regulated by Act of Parliament.

And so penal servitude, having passed through three successive Acts of Parliament, entered a new phase. The task of enforcing the new-style penal servitude was given to Sir Edmund Frederick Du Cane,⁹⁹ who declared it his hope that it would become 'the last and most dreaded result of a heinous offence against life and property, short of capital punishment',¹⁰⁰ and did his utmost to ensure that it would be.

Ironically, the post-1864 penal servitude was as complex as Jebb's system, but on much stricter lines. Remission of sentence was to play as crucial a part as before, and something closely resembling the progressive stage system was incorporated, named this time the classification system. Briefly, there were four basic classes, the probation class, third class and second class, in which each convict had to spend a minimum of one year and earn 720, 2,920 and 2,920 marks, respectively, before entering the first class. In addition to these four, there was the special class, in which a prisoner might earn extra remission, not exceeding one week. In the probation class – at least nine months of which was to be spent in separate confinement – the convicts were to receive no gratuity, no visits, no letters except one on reception from separate confinement, and they were permitted just one period of exercise on Sundays. Gratuities, visits, letters and exercise periods were increased as the convict passed through the successive classes, so that by the first class, visits and letters were permissible once a quarter, gratuities could amount to 30

shillings per annum, and convicts were entitled to three exercise periods on Sundays. Additionally, there were small improvements in diet to look forward to: a choice of tea and bread instead of gruel in the second class, and the option of baked rather than boiled meat in the first class. Small modifications in uniform were made as the convict progressed through the classes, and details of his class and marks were incorporated in a badge worn on his sleeve, all of which, in outline at least, resembled Jebb's arrangements.

The principal difference between the pre- and post-1864 system, however, lay in the rigid enforcement of the discipline through the introduction of marks to measure the degree of good conduct and industry displayed by the convict, on which depended his entitlement to remission. So the time a convict had to pass in prison was represented by a number of marks which he had to earn by actual labour performed, eight marks daily being the highest for steady hard labour and the full performance of an allotted task. No marks could be earned by good conduct, but marks could be forfeited for bad conduct. If, by his industry on public works, therefore, a convict gained eight marks per diem, and forfeited none for misconduct, he was entitled to the full remission of one quarter of the time spent on public works — there was to be no remission of the period of separate confinement. There was no way of increasing the length of the sentence passed in court, but if the convict failed to co-operate in any way, he served the whole of his term in the lower classes, forgoing his right to the privileges available in the higher classes. There was also provision for cross-irons, parti-coloured clothing and penal-class cells to punish the refractory prisoners. The public works prisons were altered to admit of keeping the different classes of convict apart in their living quarters, and they were set to work also, in segregated labour gangs.¹⁰¹

The period of separate confinement was also made more penal: all associated cells were abolished; the outer doors of the cells were kept bolted at all times to make the separation more complete (formerly they had been opened after the first two months); harder beds were introduced; the diet was reduced from 306 ounces of solid food per week to 284 ounces; and instruction was to be cellular rather than in classes.¹⁰²

The reduction in time for instruction was much lamented by the chaplains both in the public works and in the closed prisons. At Pentonville, Ambrose Sherwin complained that he had to lay aside the subjects formerly taught, and was left only with the three Rs. As teaching was to take place individually in the cells, there was correspondingly less time available to each convict; and any chance of the prisoner making

up the loss by private study was rendered well-nigh impossible, by the regulations allowing fewer books in the cells — all library books of a merely amusing character were eliminated — and permitting the use of paper and ink only on letter-writing days.¹⁰³ The chaplain at Portsmouth Prison also regretted the restricted opportunities for instruction. The one half day per week allowed under Jebb's regime was abolished, and only evening study remained. He had to devote most of that, moreover, to special individual tuition in reading and writing, as section 50 of the rules stated that prisoners emerging from the third class without these skills would forfeit their gratuity. That left him very little time for teaching anything else.¹⁰⁴

The medical officers also found cause for concern in the stricter conditions of the Du Cane era. At Chatham where the prisoners at labour were exposed to wind and rain, the number of deaths, largely from pneumonia, rose to 11 in 1865, and a record 14 in 1866¹⁰⁵ — perhaps Jebb had not been so ridiculous after all to bring in his convicts when it rained. As important as climatic conditions to a convict's state of health, was the scale of dietary which had been reduced. The medical officer at Portland evidently feared the effects of this restriction in food, as he took the opportunity in his annual report to recommend its increase.¹⁰⁶ Such recommendations and pleas, however, made by some of the chaplains and doctors were little heeded. They were merely exhorted to eliminate the discursive elements from their reports, and keep them brief and to the point.¹⁰⁷ For nothing was to interfere with the establishment of a 'sound and wholesome penal discipline' which, in the words of the Directors' report, was to 'unite reformation with repression, and teach convicts to hate prison, but hate crime more'.¹⁰⁸

V

Transportation may have been criticised for the unevenness of its justice, and Jebb's system condemned for its lack of precision and its softness, but no such fate would befall Du Cane's regime. Inevitably it suffered criticisms of the other extreme, that it was characterised by crushing harshness and unintelligent government by mere routine,¹⁰⁹ and that 'while the material efficiency of these [convict] prisons is certainly very high, the moral action seemed feeble'.¹¹⁰ Be that as it may — and there has been a recent attempt to rehabilitate Du Cane, and revise his reputation as a mindless martinet¹¹¹ — Du Cane fulfilled the requirements of the 1863 commission, and brought into being the final phase of penal

servitude discussed in this essay. No longer was it an *ad hoc* measure to tide the convict department over the transportation crisis — that situation had been dealt with; no longer was it in a transitional period, open to modification by public opinion, or convict protest, or personal whim of the chairman of Directors, for the principles of penal discipline had been discovered. After 20 years of clashing personalities in the prison administration, and of high but contradictory ideals coming into conflict with purely practical problems, at last the system had evolved, and the code of conduct and precedents were well and truly established for the next 30 years.

Notes

1. Archbishop Temple, *The Ethics of Penal Action* (1934), quoted in L.W. Fox, *The English Prison and Borstal System* (London, 1952), p. 3.

2. Transportation was, in fact, first introduced as a condition for pardon in the seventeenth century, and there is mention of it in an Elizabethan statute. See L. Radzinowicz, *A History of English Criminal Law* (4 vols., London, 1948-68), vol. 1, pp. 108-10.

3. For a history of transportation, see A.G.L. Shaw, *Convicts and the Colonies* (London, 1966).

4. Radzinowicz, *op. cit.*, vol. 4, p. 96.

5. For a history of the hulks, see W. Branch Johnson, *The English Prison Hulks* (London, 1957).

6. For more minor offenders, sentenced to imprisonment with or without hard labour, for periods of three days to two years, there existed a network of county and borough prisons, administered by the local magistrates and councillors.

7. See Shaw, *op. cit.*, chaps. 9, 12, 13 and 14.

8. Major Jebb, R.E., 'Confidential Report on Convict Discipline' (1846), deposited in Box 12 of the Jebb Papers in the London School of Economics.

9. Much of the evidence for the state of the hulks is taken from documents dated 1847 and onwards, because until that date, when the Home Office took a much closer control over the administration of the hulks, they had been in the hands of Henry John Capper, who had kept scant records. For the unsound condition of the hulks, see Public Record Office (PRO), HO 9/16, correspondence between H.O. and Trevelyan, 14 Nov. 1848, and H.O. and Captain Hamilton, 29 Nov. 1848; for expense of replacements, see *ibid.*; for riotous conduct of convicts, see PRO, HO 45/0S 1842, Admiralty to H.O., 19 Nov. 1847; for sickness and unhealthy site see PRO, HO 9/16, correspondence Oct. and Nov. 1848 and July 1849 concerning the cholera outbreak; and for an account of the cruelty and neglect of the officers, see Johnson, *op. cit.*, chap. 19.

10. W.J. Williams' investigation and report, *ibid.*

11. Also Parkhurst Prison for young offenders built in 1837-8. But as this essay does not encompass the treatment of juveniles, Parkhurst will be omitted from this section, although it was later brought into the convict establishment for adults, females being imprisoned there from 1864 until 1869, and invalid males from 1869 until the end of the century.

12. 59 Geo.III cap. 136 (1819), An Act for the Better Regulation of the

General Penitentiary for Convicts at Millbank, ss. vii, viii, xiv, xv.

13. 7 and 8 Geo.IV cap. 33 (1827), An Act for the Further Regulation of the General Penitentiary at Millbank, preamble and s. ii.

14. Parliamentary Papers (P.P.) 1839, vol. 21 (210), p. 48; P.P. 1844, vol. 28, pp. 1-4.

15. Even in this respect, it must be added, it failed to come up to expectations, as filling the prison to capacity drastically increased the proportion of sick inmates, which, due to Millbank's insalubrious site, was always high in any case. See P.P. 1839, vol. 21 (210), p. 37, and PRO, HO 12/1/45, Treasury sanction for the removal of convicts from Millbank during the cholera outbreak, 3 Aug. 1849.

16. It is debatable how far the increase in committals to prison was an indication of a real growth in crime, and how far it was attributable to such factors as improvements in policing and a reduction in the severity of the law which made the public more willing to prosecute. See V.A.C. Gatrell and T.B. Hadden, 'Criminal Statistics and their Interpretation', in E.A. Wrigley (ed.), *Nineteenth Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data* (Cambridge, 1972), pp. 345, 350, 352.

17. For an explanation of the separate system, see my article, 'Prison Palaces: a Re-appraisal of Early Victorian Prisons, 1835-77', *Bulletin of the Institute of Historical Research*, vol. 51 (1978), pp. 60-71.

18. See Jebb's Confidential Report, p. 3.

19. Joshua Jebb had originally been seconded to the Home Office in 1837, to help the prison inspectors in designing separate system prisons and advising local prison authorities on how to build them. He had been jointly responsible with those inspectors for supervising Pentonville's construction, and from there he gradually extended his sphere of influence to all areas of convict discipline. He was appointed chairman of the Board of Convict Prison Directors when it was formed in 1850, and he still held that post on his death in 1863. For further details see Eric Stockdale, 'The Rise of Joshua Jebb, 1837-1850', *British Journal of Criminology*, vol. 14 (1976), pp. 164-70.

20. Jebb's Confidential Report, p. 3.

21. *Ibid.*, pp. 11-13.

22. P.P. 1847, vol. 29 (867), pp. 147-49; P.P. 1850, vol. 29 (176), p. 174.

23. P.P. 1852-53, vol. 51 (1572), p. 51; PRO, HO 12/9/1793, Jebb to H.O., 2 Aug. 1850.

24. R.G. Alford, *Notes on the Buildings of English Prisons*, I (Printed in H.M. Prison, Parkhurst, 1909), p. 89.

25. Jebb's Confidential Report, pp. 14-17.

26. *Hansard*, 3rd. ser., 1847, vol. 93, col. 305, statement by Lord John Russell that this had been the case since 1824.

27. 56 Geo.III cap. 63 (1832), s. xiii.

28. PRO, HO 12/4/362, Jebb to Waddington, 22 Sept. 1853.

29. *Ibid.*, Waddington's report, 14 Sept. 1853. PRO, PCom. 7/421, Waddington to Jebb, 19 Oct. 1853; L.S.E., Jebb Papers, Box 3, Waddington to Jebb, 26 Sept. 1853.

30. E.g., see Sir George Grey's views, *ibid.*, Sir G. Grey to Jebb, 5 Jan. 1852; PRO, PCom. 7/421, Waddington to Jebb, 17 Aug. 1855 and 9 July 1856; and Palmerston's, PRO, HO 12/4/362, note by Palmerston, 20 Nov. 1853.

31. P.P. 1854-55, vol. 25 (2004), pp. 4, 5, 12, 13, Jebb's report on the discipline of the convict prisons.

32. PRO, HO 12/4/362, Waddington to Palmerston, 14 Sept. 1853.

33. PRO, PCom. 7/421, Waddington to Jebb, 6 Aug. 1856.

34. P.P. 1854-55, vol. 25 (1986), pp. 368, 373.

35. PRO, PCom. 7/421, H.O. to Jebb, 6 Aug. 1856, make a list of those men concerned.

36. P.P. 1857, sess. 2, vol. 23 (2263), p. 225.

37. P.P. 1856, vol. 17 (244), p. 1 *et seq.*

38. *Ibid.*, p. 399.

39. PRO, HO 12/4/362, Jebb to Waddington, 28 Dec. 1859. This was not the first time that Jebb had attempted extra-judicial methods of circumventing the law. See correspondence between Jebb and Waddington, *ibid.*, 10 Feb. 1853, where Jebb proposed a wholesale reduction of seven-year transportation sentences to three years, ten-year sentences to four years, and 15-year sentences to five years, in order to soften the blow to convicts who were disappointed not to be transported.

40. Then see, for example, *ibid.*, Colonial Office to Waddington, 31 July 1861, on new scale of remission; and P.P. 1862, vol. 25 (3011), p. 527, Dartmoor governor's report.

41. In 1837 capital sentences were abolished for all but 12 crimes, and in 1861 they were abolished for everything except high treason and murder.

42. P.P. 1856, vol. 17 (355), p. 16.

43. Sir Robert Peel had declared in Parliament as early as 1841, that it was unwise to abolish both capital punishment and transportation, and that while the House was disposed to limit the use of capital punishment, it was not safe to abandon transportation. *Hansard*, 3rd ser., 1841, vol. 57, cols. 1057-58.

44. Jebb provided figures of recommitments among ticket-of-leave men in his annual report as Director of Convict Prisons. For evidence of doubts as to their accuracy, see their reception in Parliament, e.g. *Hansard*, 3rd ser., 1855, vol. 139, col. 364; *ibid.*, 1856, vol. 141, cols. 391-92.

45. J.H. Burton, 'Our Convicts', *Blackwood's Magazine*, vol. 83 (1858), p. 310.

46. Evidence to 1856 Commission on Penal Servitude, P.P. 1856, vol. 17 (355), p. 441.

47. James Morris, 'The Government Criminal Returns', *Dublin Review*, vol. 28 (1850), p. 330.

48. See U.R.Q. Henriques, 'The Rise and Decline of the Separate System of Prison Discipline', *Past and Present*, no. 54 (1972), pp. 63-4.

49. Captain Maconochie's marks system was based on the idea that a man should serve not a time sentence, but a sentence of so many marks which he had to earn by hard labour. See his correspondence with the Home Office, PRO, HO 12/20/6350, March 1852. A further refinement of his scheme was in fact introduced into the sentence of penal servitude in 1864. See above, pp. 141-2.

50. This notion can be seen, for example, in Jebb's reluctance to transport criminals to Australia while the honest poor could not find the fare to emigrate. See above, pp. 127-8.

51. An opinion also upheld by Jebb, when, for example, he supported the teaching of trades and crafts in prison, so that a man might leave prison better able to support himself. See above, p. 136. He also argued that better clothing, lodging, etc., were really only the enforcement of cleanliness and regularity, which for criminal characters was a legitimate element of punishment. P.P. 1857-58, vol. 29 (2414), p. 379.

52. T. Carlyle, 'Model Prisons', in *Latter Day Pamphlets* (London, 1855), p. 68; F.W. Newman, 'Corporal Punishment and Penal Reformation', *Fraser's Magazine*, vol. 71 (1865), pp. 156-65.

53. On the question of economy, Jebb's view was that 'expense was not a paramount consideration, but one of great importance to keep steadily in view'. Jebb's Confidential Report, p. 13.

54. PRO, HO 12/4/362, Aberdeen to Palmerston, 22 May 1853.

55. L.S.E., Jebb Papers, Box 2, Chichester to Sir George Grey, 26 Sept. 1850.
56. PRO, HO 12/23/7556, draft circular on prisoners' health, 13 Sept. 1853; *ibid.*, Jebb to H.O., 17 Dec. 1853, on the difficulty of carrying out instructions to shorten period of separation to nine months; *ibid.*, endorsement by Waddington, referring to Palmerston's request for a further reduction to six months.
57. *Ibid.*, Jebb to H.O., 8 May 1854, that he could not comply with Palmerston's instructions, as plans for a third public works prison were delayed by lack of a suitable site.
58. W.R. Grey, 'Convicts and Transportation', *North British Review*, vol. 38 (1863), p. 8. For more comments on the 'comforts' of the separate system prisons, see my article, 'Prison Palaces', *loc. cit.*
59. L.S.E., Jebb Papers, Box 4, Jebb to Coode, 4 Jan. 1861.
60. P.P. 1861, vol. 13 (286), p. 554 (a select committee on transportation); P.P. 1863, vol. 21 (3190), p. 45 (the penal servitude acts commission).
61. L.S.E., Jebb Papers, Box 4, Whitbread to Jebb, 30 April 1860.
62. See, for example, PRO, HO 12/21/6614, correspondence of 18 Feb. and 21 March 1853, which illustrates the conflict between Jebb and the Ordnance Office over the type of labour to be performed by convicts.
63. P.P. 1861, vol. 30 (2879), p. 262.
64. P.P. 1850, vol. 29 (1192), p. 183; *ibid.*, 1857, sess. 2, vol. 23 (2263), p. 349; *ibid.*, 1861, vol. 30 (2879), p. 410.
65. Grey, *loc. cit.*, p. 9.
66. P.P. 1861, vol. 13 (286), p. 531.
67. P.P. 1863, vol. 21 (3190), p. 41.
68. PRO, PCom. 2/427, Chatham Governor's Journal, 7 Aug. 1860.
69. L.S.E., Jebb Papers, Box 3, War Dept. to Capt. Rose, 9 Feb. 1856, convicts work so well, etc.
70. Robert Fergusson, 'Results of the system of separate confinement as administered at Pentonville Prison', *Quarterly Review*, vol. 92 (1853), p. 493.
71. Jebb's Confidential Report, pp. 8 and 9.
72. L.S.E., Jebb Papers, Box 12, taken from a confidential report written for the 1863 Penal Servitude Acts Commission.
73. *Ibid.*, Box 6, File 11-20, memo from Jebb to Gambier, 13 Dec. 1859.
74. Grey, *loc. cit.*, p. 7. Emphasis in original.
75. During this period, there were three directors, Jebb and two others. Jebb was the chairman of the directors, but they never met as a board: Jebb took the decisions himself. The other two directors divided between them the routine supervision of the convict prisons, one taking responsibility for the public works prisons, and the other overseeing the close confinement prisons.
76. L.S.E., Jebb Papers, Box 6, File 11-20, memo from Gambier to Jebb, 6 Dec. 1859.
77. It was widely believed, at this time, that every other convict was a garotter. See above, p. 140.
78. *Punch's Almanack for 1863*.
79. It thus offended against the principle of less-eligibility. See above, p. 135. For an analysis of what was eaten in Victorian prisons, and on what basis the diet was devised, see my article, 'Not an Instrument of Punishment: Prison Diet in the Nineteenth Century', *Journal of Consumer Studies and Home Economics*, vol. 2 (1978), pp. 15-26.
80. *Hansard*, 3rd ser., 1864, vol. 173, col. 742.
81. *Papers and Discussions on Punishment and Reformation: Transactions of the third department of the National Association for the Promotion of Social Sciences* (1862), pp. 47 *et seq.*
82. *Ibid.*, p. 42.

83. Ibid. (1857), p. 264.

84. See above, p. 138.

85. L.S.E., Jebb Papers, Box 6, Jebb to Waddington, 16 April 1861.

86. P.P. 1857, sess. 2, vol. 23 (2263), p. 40.

87. L.S.E., Jebb Papers, Box 6, Jebb to Waddington, 16 April 1861.

88. Including Palmerston (see PRO, HO 12/4/362, Palmerston's endorsement to a letter from Gordon to Waddington, 26 July 1854) and other men working in the convict service (L.S.E., Jebb Papers, Box 6, File 1-10, Answers of Governors and Chaplains: Inquiries relating to Intermediate Prisons and Police Supervision), and even Waddington hinted at fleeting doubts on the issue (PRO, HO 12/4/362, endorsement to a letter from Aberdeen to Palmerston, 22 May 1853).

89. See ch. 7: Peter Bartrip, 'Public Opinion and Law Enforcement: The Ticket-of-Leave Scares in Mid-Victorian Britain'.

90. For examples of overt and implied criticisms of the English convict system see G.C. Swayne, 'Ticket of Leave: A Letter to Iranaeus', *Blackwood's Magazine*, vol. 81 (1857), p. 174; W.R. Grey, op. cit., pp. 1-38; *Hansard*, 3rd ser., 1862, vol. 168, col. 1035; *ibid.*, 1863, vol. 169, cols. 558-9; *ibid.*, 1864, vol. 173, cols. 743-4, 1501, 1516-7; *ibid.*, vol. 174, col. 1253, 1260-63; *Transactions of the National Association for the Promotion of Social Sciences* (1857), pp. 264-5 (papers by M.D. Hill), pp. 315-27 (J.T. Burt); *ibid.* (1862), pp. 16-23 (papers by Sir W.C. Crofton), pp. 23-5 (J.T. Burt), pp. 39-46 (W.L. Clay); P.P. 1863, vol. 21 (3190), p. 20; *The Economist*, 13 Dec. 1862, p. 1375; *Weekly Review*, 21 Feb. 1863; and *Punch's Almanack for 1863*, 'The Garotter's Lunch' and 'Going out to Tea in the Suburbs'. For Jebb's defence see, e.g., P.P. 1861, vol. 30 (2879), p. 263; *Trans.NAPSS* (1862), pp. 4-15 and 46-58 (papers by J. Jebb); and J. Jebb, *Reports and Observations on the Discipline and Management of Convict Prisons*, ed. Earl of Chichester (1863). For a fuller appraisal of the garotting outbreak, see J. Davis, 'The London Garotting Panic of 1862: a Moral Panic and the Creation of a Criminal Class in mid-Victorian England', in V.A.C. Gatrell, B. Lenman and G. Parker (eds.), *Crime and the Law: The Social History of Crime in Western Europe since 1500* (London, 1980).

91. L.S.E., Jebb Papers, Box 5, Jebb to Frances Miles, Nov. 1853. 'With my family of 8,000 there is a disadvantage I feel every hour of my life. I have to carry out *the law* and make them as comfortable as I can according to my *notions*, but I cannot hope to please them all because I am precluded from meeting their individual views . . .' Emphasis in original.

92. P.P. 1864, vol. 26 (3388), pp. 341-42. These are the words of the Portland Prison chaplain, written in his first report after Jebb's death.

93. P.P. 1863, vol. 21 (3190), pp. 22-23, 72. There were dissenters from this report. Mr Henley, for example, held the view that tickets-of-leave were injurious to both convicts and to society; and the Lord Chief Justice declared that sentences ought to be even stiffer and carried out in full. *Ibid.*, pp. 74, 75-97.

94. The government's original bill was very much amended (P.P. 1864, vol. 3 (23), p. 211; *ibid.* (71), p. 219; *ibid.* (167), p. 22) and a rival bill, the Penal Servitude Acts Consolidation Bill, was in the meantime introduced and withdrawn again (*ibid.* (36), p. 229) before the government's bill became law.

95. *Hansard*, 3rd ser., 1864, vol. 173, cols. 723-92.

96. 27 and 28 Vic. cap. 47, s. 2.

97. *Ibid.*, ss. 4, 5, 6. See also P. Bartrip, op. cit.

98. *Hansard*, 3rd ser., 1864, vol. 173, col. 740, speech by Sir G. Grey.

99. Jebb had died suddenly on 26 June 1863, before the third penal servitude Act was passed. This solved many potential problems for he was too closely associated with the milder measures of the original penal servitude system, and was out of sympathy with the general sentiments in the country. As he could no longer

hold back the tide, it was as well that he was not placed in the invidious position of having to swim along with it.

100. P.P. 1865, vol. 25 (3573), p. 5.

101. P.P. 1865, vol. 25 (3573), pp. 19-23.

102. P.P. 1864, vol. 26 (3388), pp. 216-17.

103. P.P. 1866, vol. 38 (3732), p. 30.

104. Ibid., p. 165.

105. P.P. 1864, vol. 26 (3388), p. 416; *ibid.* 1865, vol. 25 (3573), p. 167; *ibid.* 1866, vol. 38 (3732), p. 119.

106. Ibid., p. 111.

107. See references to this, for example, by the chaplain of Millbank, P.P. 1865, vol. 25, p. 69; P.P. 1867-68, vol. 34 (4083), p. 570.

108. P.P. 1865, vol. 25 (3573), p. 14.

109. Report of the Howard Association (Sept. 1871), p. 5.

110. E.C. Wines, *Report on the International Penitentiary Congress of London* (London, 1873), p. 210.

111. P. Tibber, 'Edmund Du Cane and the Prison Act 1877', *Howard Journal*, vol. 19 (1980), pp. 9-16.

7 PUBLIC OPINION AND LAW ENFORCEMENT: THE TICKET-OF-LEAVE SCARES IN MID- VICTORIAN BRITAIN*

Peter W.J. Bartrip

One cannot study any branch of history very long without becoming aware that what people *think* is true is often more important in its consequences than what is actually true.¹

I

Historians of nineteenth-century reform, political, administrative and social, rightly place considerable stress upon isolating and evaluating the relative importance of ideas, movements and events on the reform process. When, in 1958, Professor MacDonagh reopened the debate on nineteenth-century government growth, he criticised the haphazard way in which factors promoting social reform and central government growth (closely linked developments in his view) tended to be analysed and interrelated. Drawing upon methodology employed in the other social sciences, he constructed a five-stage model detailing the process from 'discovery' of an evil through to its bureaucratic 'solution'. The motivation behind this process was MacDonagh's 'intolerable situation' or pressure of events.²

MacDonagh's account found many supporters. But it has also been criticised by historians who complain that it belittles the efforts of individuals, notably Jeremy Bentham, and generally overlooks the importance of ideas.³ John Goldthorpe, on the other hand, bringing a sociological perspective to the problem, emphasised the need to take account of the activities of contending interest groups in social and administrative reform processes.⁴ Here, then, we have the causal triumvirate: ideas, movements and events.

The starting point for MacDonagh's, and, indeed, much subsequent work on this subject, was A.V. Dicey's book, *Law and Public Opinion*.⁵

*This essay is based in part upon a chapter of my thesis: 'The Career of Matthew Davenport Hill with Special Reference to His Place in Penal and Educational Reform Movements in Mid-Nineteenth Century England' (PhD, Wales, 1975).

However, although Dicey has, justly, been criticised, particularly for his division of the nineteenth century into three distinct legislative periods, relatively little attention has been paid to his main thesis, viz., the central role of public opinion in legislation and law in general. Hence, more than three-quarters of a century after Dicey delivered the Harvard lectures on which his book was based, *Law and Public Opinion* remains the foremost exposition of this important topic.⁶

Dicey's aim in *Law and Public Opinion* was 'to exhibit the close dependence of legislation, and even of the absence of legislation, in England during the nineteenth century upon the varying currents of public opinion'.⁷ To modern eyes, jaundiced by the manifest fallibility of public opinion polls allegedly employing scientific sampling techniques, the obvious question arising from this statement of intent is: how does one define and measure public opinion? Although it is clear that this problem at least occurred to Dicey, he made no serious effort to solve it. He produced no rigorous and internally consistent definition of public opinion or, indeed, of other key concepts in the book such as *laissez-faire* and collectivism. Consequently, the value of Dicey's exposition and conclusions is questionable.

Obviously, nineteenth-century legislation was supported by some social, economic, or political groupings (how else could it have been steered through Parliament?), even if such support was a pragmatic choice of one 'evil' over another; for example, government intervention in factories rather than continued exploitation of child labour in some textile concerns. The difficult, perhaps insuperable, task is to gauge the nature and extent of public support for measures such as the Factory Acts. Dicey's response is both tautological and revealing of a simplistic view of law as consensus. Hence, he argues that public opinion:

... when used in reference to legislation, is merely a short way of describing the belief or conviction prevalent in a given society that particular laws are beneficial and therefore ought to be maintained, or that they are harmful, and therefore ought to be modified or repealed. And the assertion that public opinion governs legislation in a particular country, means laws are there maintained or repealed in accordance with the opinion or wishes of its inhabitants.⁸

Dicey's view of the representativeness of Parliament and its responsiveness to popular demand is, perhaps, idealised, but there is also a logical flaw in his argument. What, in fact, does it propose but a tautology – that public opinion equals legislation and legislation equals public opinion?

If the term public opinion is taken to describe beliefs held by the majority in a given grouping, this author is sceptical about the existence of an identifiable and measurable public opinion in nineteenth-century Britain. The term public opinion, so often referred to in historical and other literature, is often the last refuge of ignorance — an ‘explanation’ obviating the need for research. However, while it may not have existed in reality, it was extensively referred to in Parliament and the press. In these contexts public opinion may have been important either as a supposed pressure on policy makers or as a justification for decisions made already.

Law enforcement is often seen largely in institutional terms, that is, through the activities of a police force or inspectorate charged with securing compliance with the law. Underlying such activity, however, is the question of the extent to which law enforcement derives from the wishes of the community. This paper looks not at the work of an enforcement agency, but at the process by which law enforcement came to be accepted as a desirable objective and implemented. More specifically, it investigates responses to the ticket-of-leave experiment introduced in Britain in 1853, and whether these produced any practical impact on legislation and administration. The reasons for approaching the ticket-of-leave issue through a public opinion perspective are, first, that traditionally the punishment of criminals has been supposed to provoke strong public reaction. It is, therefore, appropriate to consider whether and to what extent public opinion can be said to have influenced it. Second, and relatedly, it has been asserted that public dissatisfaction with the ticket-of-leave system did influence penal policy in the 1850s and 1860s.⁹ Here, therefore, we shall examine the validity of those assertions.

II

Since the early seventeenth century, with a relatively brief hiatus during the American War of Independence, transportation, first to the Americas then largely to Australia, became an important ingredient in English penal policy. During the 1840s, however, there was growing opposition from the Australian colonies to continued transportation. By 1853 only Western Australia still received convicts from the Mother Country.¹⁰ This breakdown in transportation created, or at least, greatly exacerbated, the problem, so often posed in the press and learned journals of the period, of how to dispose of the criminal population. For, as late as

1852 nearly 2,000 convicts annually left Britain (excluding Ireland) for the colonies. Despite the retention of Western Australia, Bermuda and Gibraltar as convict settlements, most of these had now to be punished and, more importantly, discharged in Britain.

The problem was met by introducing the new punishment of penal servitude. This was a classic case of the functional imperative – of reform through pressure of events rather than principle. Indeed, when introducing the bill's second reading in the House of Lords on 11 July 1853, the Lord Chancellor announced 'with very great sincerity that it is a matter of deep regret on my part that it should have been necessary at the present day to introduce a Bill of this description'.¹¹ The Act abolished transportation, except for terms of 14 years or life, and provided the punishment of penal servitude for those who would otherwise have received shorter sentences. In addition, any convict 'now under sentence of transportation, or who may hereafter be sentenced to transportation, or to any punishment substituted for transportation by this Act' would be eligible for 'a licence to be at large in the United Kingdom and the Channel Islands'.¹² Such licence could be revoked at Her Majesty's pleasure on grounds of a fresh conviction, associating with 'notoriously bad characters', leading 'an idle or dissolute life', or 'having no visible means of obtaining an honest livelihood'.¹³ The Act came into effect on 1 September 1853.

The ticket-of-leave system, though new to Britain, had been used extensively in Australia for many years.¹⁴ There is some doubt about its precise origins, though according to Sir Francis Forbes, Chief Justice of New South Wales, who gave evidence to a Select Committee on Transportation in 1837, it dated 'by local regulation, from the beginning of the settlement in Australia'. The practice followed by successive governors of New South Wales was to grant 'what are called tickets-of-leave, as the reward for good conduct, and also formerly as remuneration for extra work and labour, skill or ingenuity'. The process was formalised during Sir Thomas Brisbane's governorship and assumed almost exactly the pattern adopted in England in the 1850s:

... a regular scale of time was established, by which a convict transported for seven years, and who conducted himself well for four; or a convict transported for fourteen years, who conducted himself well for six; or for life and good conduct for eight, were respectively entitled to a ticket-of-leave. This instrument is resumable at the discretion of the government, and is forfeited upon proof of any misconduct or conviction.

A similar system was established in Van Diemen's Land.¹⁵

A ticket-of-leave system was introduced in Britain ostensibly 'to keep faith' with several thousand transportees serving sentences in government prisons with the expectation of ultimate release on licence in the colonies.¹⁶ But this was not gratuitous philanthropy on the part of the government. The virtual cessation of transportation meant that the prospect of remission, to which convicts could look forward, disappeared, with the result that prison discipline was threatened by men whose hopes of early release were suddenly shattered. In February 1853 Joshua Jebb, Chairman of the Directors of Convict Prisons, informed Horatio Waddington, Under Secretary at the Home Office, of the 'wide-spreading and prejudicial effects of any cause of discontent or sense of wrong in a large body'.¹⁷ Six months later he claimed that 'a feeling of recklessness is beginning to pervade the whole body of frustrated convicts'.¹⁸

Jebb's proposed solution to this problem was to introduce early release in England for these transportees:

I would venture to suggest that the convicts now serving would have no just cause of complaint if they were to obtain a pardon at a period somewhat short of that when, under the present regulations, they would have become entitled to it in the Colony.¹⁹

Lord Palmerston and his Home Office officials objected to such a scheme on the grounds of its generosity and its proposed application to all the convicts in question, regardless of the nature of an individual's offence.²⁰ After negotiation it was agreed that remission on the basis of a conditional pardon should be granted to all but those excluded on account of misconduct or idleness. Thus was the ticket-of-leave system introduced in England — largely at the behest of Joshua Jebb who was himself motivated by the need to maintain prison discipline. It is clear that the Home Office anticipated conferring the licensing system on some 8,000 transportees deprived of early release overseas. As late as September 1853 Waddington dismissed a more general scheme as 'highly objectionable in every respect';²¹ in November Palmerston rejected any such possibility.²² Nevertheless, the new Penal Servitude Act, already in operation by this time, countenanced the licensing of the new class of prisoners.

There was little in the Penal Servitude Act (1853) which could justly be termed innovatory. Transportation of the most serious non-capital offenders was retained. Those who would otherwise have received lesser terms of transportation were to be punished and released in the United

Kingdom, but in practice this had happened for many years before 1853. In fact, between 1834 and 1847, 3,450 transportees were discharged in Britain; in the five years, 1848-52 inclusive, 16,229 people were sentenced to transportation, of which only 10,963 were actually transported.²³ The disciplinary system established for prisoners undergoing sentences of penal servitude was similar to that which had evolved in Britain and elsewhere over the previous three decades.²⁴ Moreover, transportation, as practised before 1853, involved three distinct stages – confinement under the separate system, associated labour on public works, and removal to the colonies on ticket-of-leave. Even the idea of releasing prisoners on licence in the United Kingdom, which L.W. Fox terms ‘seminal’, was not really new.²⁵ It was a tried and tested system in Australia and since convicts had been released at home for a number of years the main significance of licensing was that release might come somewhat earlier and, possibly, involve greater numbers. Nevertheless, the establishment of a British ticket-of-leave system led to a powerful outcry against it and, it has been argued, ushered in a less liberal period of penal policy in the 1860s.²⁶

III

The authorities were almost totally unprepared to organise and administer the ticket-of-leave system. By 1856 public disquiet was such as to place the future of the experiment in jeopardy. The fundamental problem was the absence of any effective means of enforcing the terms under which convicts were released on licence. This absence of enforcement machinery may not have been a conscious decision of the executive in 1853, but in 1856 Horatio Waddington was prepared to rationalise it on policy grounds:

I think that the great good of the system is that it puts the man in the first instance in the condition of a man who has served out his sentence; he may go where he likes, and enjoy himself where he pleases; he has full notice of the consequences of misconduct, and if he does not choose to avail himself of the leniency of the Crown, it is his own fault; there is every motive for him to do so.²⁷

Waddington was ‘extremely unwilling to recommend’ police surveillance of ticket-of-leave men. However, in the absence of this or other means of identifying those who breached licence rules, the terms on which

conditional discharge were granted became, in the terms of the Recorder of Birmingham, 'a dead letter'.²⁸

Release on licence began almost immediately the Penal Servitude Act came into operation owing to the eligibility of those sentenced to transportation but not sent abroad before the new legislation. As the first ticket-of-leave men emerged from the prisons, Parliamentary and press reactions were generally sympathetic and solicitous of their civil liberties. In May, for example, Lord St Leonards informed the Upper House of the difficulties encountered by licensees seeking employment in towns in which they were known — particularly as a result of police harassment.²⁹ A letter from the chaplain of Holloway Prison, published in *The Times* in the same month, stated that it was 'a thing of frequent occurrence' for police to inform employers of the antecedents of a discharged prisoner.³⁰ In a leading article *The Times* discussed allegations of police interference with the efforts of ticket-of-leave men to secure and retain honest employment and deplored any such activity which occurred.³¹

In 1855, however, the sympathetic tone of press and Parliament towards ticket-of-leave men began to change. Why this happened is not immediately clear. One possibility is that it was in reaction to a rising crime rate. Several authors have warned of the dangers of using nineteenth-century judicial statistics to indicate the incidence and nature of crime.³² One has even gone so far as to suggest that they be ignored altogether.³³ It is true that the pitfalls are many and considerable, though for all their weaknesses the criminal statistics have one great strength — they formed part of the 'raw material' for policy formulation by contemporaries. Examination of trends in the mid-fifties proves particularly difficult because reorganisation of the statistics in 1856-7 produced a major discontinuity in time-series. The completion of the network of provincial police forces, which probably affected detection and apprehension of criminals, was also achieved at this time. Moreover, the Criminal Justice Act (1855) introduced major procedural changes in the law which greatly distort some available figures (see Table 7.1 — the drop in indicted offenders in 1856 reflects the decision to deal summarily with a variety of offences). There was a considerable leap in indictments in 1854, but it is hard to maintain that there was a significant trend towards more 'serious' crime, particularly given the population increase, as revealed by incidence of indictable committals.

Nevertheless, in March 1855 Lord St Leonards told the House of Lords that few convicts were denied release on licence because 'the whole of the conduct of these men was a sham in order to obtain their

freedom'; that 'the Government had not kept sufficient watch over the convicts, so as to enable them [the Government] to know the working of the system'; and, perhaps somewhat contradictorily in view of this last point, 'there could be no doubt that the present system of granting tickets-of-leave caused an increase in crime'.³⁴ In June, Lord Campbell told their Lordships that 'the safety of society would soon be at an end'.³⁵ Government spokesmen continued to defend the system, though by July the Earl Granville was prepared to admit that proper supervision and enforcement would be advantageous.³⁶

Table 7.1: Indicted Offenders in England and Wales, 1837-1856

Year	Indictments	Year	Indictments		Population
1837	23,612	1847	28,833	1837	15,123,804 (est.)
1838	23,094	1848	30,349	1841	15,914,148
1839	24,443	1849	27,186	1851	17,927,609
1840	27,187	1850	26,813	1861	20,066,224
1841	27,760	1851	27,960	1871	22,712,266
1842	31,309	1852	27,510	1881	25,974,439
1843	29,591	1853	27,057		
1844	26,542	1854	29,359		
1845	24,303	1855	25,972		
1846	25,107	1856	19,437		

Sources: Judicial Statistics and Census.

The Times was somewhat ambivalent in its attitude at this stage. In July a leading article argued that St Leonards ought to point 'the way to something better' rather than merely attack the present system. It went on to state that 'it seems almost impossible to put the system on a better footing'.³⁷ An editorial published in the following October, on the other hand, called the system 'a social nuisance of the worst kind' and went on to complain that:

It is impossible to take up a police report, or any other record of criminal proceedings, and not to see that the ticket-of-leave men are among the most prominent malefactors in the country . . . It follows either that the theory upon which the system rests is radically wrong or that it is badly administered.³⁸

The Times called for more rigorous administration (without suggesting how this might be accomplished), more stringent tests of reformation (without proposing satisfactory techniques), and, 'in desperate cases', imprisonment for life:

... meanwhile, we protest, in the name of the British public, against the system of turning out criminals upon society, under the name of 'ticket-of-leave men', to rob us in the public streets by day, to break into our houses at night, to assault and throttle unoffending persons – in a word, to keep the country in a state of constant alarm.³⁹

By December, however, another leading article urged that 'it would be a matter of infinite regret if these tickets-of-leave were rashly laid aside without a fair trial'.⁴⁰

By the end of 1855 there was a good deal of press disquiet about the ticket-of-leave system. The *Weekly Dispatch* complained that it 'sent ... men back to their old haunts as a reward of shamming penitence to a chaplain'.⁴¹ The *Era* denounced the principle of conditional discharge because it neutralised 'the preventive check to crime, which has hitherto existed in the knowledge that to particular crimes certain punishments were attached'.⁴² Some of the criticism attacked the ticket-of-leave principle, whilst some was directed against its administration. All of it was based on casual correlations between discharge on licence and a supposed increase in violent crime. Since there was little statistical justification for such suppositions it would appear that a small number of serious crimes involving licensees was magnified into a national crisis by newspapers which saw good copy in crime in general and ticket-of-leave scares in particular, especially in the context of the almost inevitable public concern following the loss of Van Diemen's Land for transportees.

Assessment of the value of the ticket-of-leave system was, ostensibly, an empirical question. Therefore, disquiet about its shortcomings should have been capable of being dispelled or confirmed. How many of those discharged on licence committed fresh crimes or broke the conditions of release printed on the reverse of licences? These were simple questions to which there were no simple and irrefutable answers. Since tickets-of-leave were granted 'almost exclusively' to prisoners in government gaols, responsibility for enforcement and administration rested with the Directors of Convict Prisons.⁴³ This body, consisting of three officials, was established by Act of Parliament in 1850 to oversee government prisons and hulks (as opposed to local institutions), that is, places of confinement for male offenders under sentence of transportation.⁴⁴ Its first chairman, Sir Joshua Jebb, took a sanguine view of the ticket-of-leave experiment based on his reading of the statistics. Since these statistics were seriously questioned both in and out of Parliament, it is worth examining them.

Jebb first raised the statistical issue in public in a letter to *The Times*

in which he argued that there had been 226 relapses (revocations and reconvictions) on 3,629 liberations.⁴⁵ This, he concluded, yielded a failure rate of some 6 per cent or around 3 per cent per annum – a figure which *The Times* was not alone in viewing with considerable scepticism.⁴⁶ Jebb argued for the statistical success of the ticket-of-leave system before the Select Committee of the House of Commons on Transportation in 1856. Of 5,152 convicts released on licence since 1853, he claimed, only 8 per cent or 3 per cent per annum could be classified as failures.⁴⁷ Jebb's colleague on the Board of Convict Prisons, Captain Donatus O'Brien, was slightly less optimistic, settling for a recidivist rate of 'no more than 12 per cent' which, with 'unknown relapses' he was prepared to push up to 20 per cent.⁴⁸

The validity of the statistical defence of the ticket-of-leave system undertaken by the Directors of Convict Prisons was highly questionable. It is hardly surprising that the known failure rate was low when so few licensees were ever heard of again once released. Until February 1855 a known licence-holder could be convicted without the Home Office being notified. Only after this date were the courts required to notify Whitehall of recommitments of ticket-of-leave men. But this change did not produce markedly better information about failure rates since it yielded, almost exclusively, news about licensees convicted of fresh offences. As Jebb himself stated, relatively few licences were revoked for breach of licence rules. This was partly because of the difficulty of identifying ticket-of-leave men, partly because of reluctance to recommit without trial, and partly because of 'the costly and cumbrous machinery of three warrants required for a recommittal'.⁴⁹

The one way of monitoring the conduct of those who were not reconvicted was the imperfect one of checking those who applied to a post office for payment of convict gratuities (earned by 'character and industry' in prison). These were payable on production of testimony signed by an employer, clergyman, or magistrate that after three months on licence, the licensee was earning an honest livelihood. But these gratuities were payable only to those who had earned £5 or more (it was estimated in 1856 that a first-class prisoner of industrious habits could earn 65s per annum).⁵⁰ Of more than 5,000 convicts released on licence by February 1856, over 3,000 had no gratuity to collect. Of the 1,828 entitled to payment, 586 failed to apply and 17 applications were refused on the grounds of the applicants' 'contrary character'.⁵¹ Since £5 was equivalent to, perhaps, seven weeks' wages for the average labourer in the 1850s, the most realistic explanation of why convicts failed to collect money they had earned was that they were aware of

the impossibility of securing the appropriate testimonials. It therefore seems probable, on these calculations, that at least one-third of ticket-of-leave men failed to fulfil their licence obligations.

These observations can be carried further, however, for it would be presumptuous to assume that all ticket-of-leave men who collected their gratuities were leading exemplary lives. It is, perhaps, significant that of the 1,242 applicants (to February 1856), 851 produced testimonials signed by clergymen.⁵² No doubt this large figure testifies to the Churches' domination of Victorian society and licensees' reluctance to reveal antecedents to employers, but does it also indicate that licensees felt they could 'pull the wool' over clergymen's eyes just as they had with the prison chaplain?⁵³ In any case, a testimonial was no guarantee that a licensee was not committing fresh offences or breaking licence conditions. John Adams, of the Middlesex Quarter Sessions, questioned 'the facility with which certificates of good conduct are obtained', calling them 'a mere form'.⁵⁴ Testimonials gave an imperfect sketch of life-style in the first months of release. No doubt most failures tended to occur, however, after licensees had received their gratuities and realised the absence of restraints upon them. Even the official statistics confirm this as having been the case, for, consistently, the greatest incidence of revocation and reconviction occurred in the year following the year of release.⁵⁵ Certainly, the first move of any licensee bent on returning to crime, should have been to destroy his licence on receipt of his gratuity, thus enabling him, in the event of subsequent apprehension, to masquerade as a first offender.⁵⁶

In fact, for anybody remotely acquainted with reformatory discipline, claims of a 96.7 per cent per annum success rate with 'hardened criminals' selected virtually indiscriminately (since almost all convicts gained licences after serving the minimum sentence period) required no investigation — they were patently absurd.⁵⁷ One judge, parodying the extravagant claims made for the success of the ticket-of-leave system wrote: 'Imagine if you can, 2,000 convicts let loose, and 1,996 of them immediately becoming honest men'.⁵⁸

Doubts about the success rate of the ticket-of-leave system raised questions about how rigorously the law was being enforced. In November 1855 Matthew Davenport Hill, the Recorder of Birmingham, undertook an investigation of ticket-of-leave realities in Birmingham. He requested the chief-of-police to compile a list of licensees known to reside in the city, and to scrutinise their conduct. As the list was drawn up each individual was informed that he would be under police surveillance. Six weeks after dispatching his request Hill received notice of 19

ticket-of-leave men known to be in Birmingham, though subsequent enquiry revealed that five of these were not, in fact, licensees. Although he was kept acquainted with the conduct of the 14, no further information regarding the presence in the town of additional licence-holders was forthcoming. That such a small number of licensees should be resident in a town of some 250,000 inhabitants was, Hill realised, incredible.⁵⁹ Indeed, Jebb's figures showed that 198 licensees had given Warwickshire as their county of destination on release. Since Birmingham comprised almost half the county population, it was reasonable to suppose, as Hill did, that at least 80 ticket-of-leave men resided there. Hill put this estimate to the police chief and was informed of the latter's strong suspicion that some 40 licensees were actually in the town.⁶⁰

A charitable assumption is that the majority of Birmingham's submerged ticket-of-leave men concealed their identities for honest reasons – difficulty in securing employment and police harassment were the main complaints of those whose identities became widely known.⁶¹ But any conclusions about the conduct of licensees in the town must be based on the behaviour of the positively identified 14. The police discovered that, to a man, these were in breach of licence conditions. On hearing this, Hill immediately applied to the Secretary of State for revocation of their licences – an application which was refused on the grounds of insufficient reason. Sir George Grey promised, however, that the men had only to commit the 'slightest offences' and they would forfeit their freedom.⁶² Thus the Home Office was failing to enforce ticket-of-leave rules; licensees remained at large who, technically, should have been recommitted, and Jebb remained able to point to a failure rate of under 4 per cent. Yet the futility of placing any figure on the number of reformations was exposed by a Select Committee in 1856. One of the Committee members suggested that the reformation rate of 8 per cent claimed by Captain O'Brien, a Director of Convict Prisons, was 'imaginary' – with which suggestion the latter had to agree. The failure rate, the same member hypothesised, could be as high as 88 per cent – a figure which O'Brien also confessed himself unable to rebut.⁶³ Between 1855 and 1869 a total of 20,703 convicts were released on licence of whom 1,845 had their licences revoked by the end of 1869. These figures yield an overall revocation rate of 8.9 per cent, though, obviously, those licensed in 1869 will not necessarily appear in revocation statistics for that year.⁶⁴ But the problem is the extent to which the figures reflect the reality.

For all its scepticism about the official figures on the success of the ticket-of-leave experiment, the 1856 Select Committee's conclusion

was that licensing 'has been too short a time in operation in this country to enable the Committee to form a clear and decided opinion either as to the effects which it has already produced, or as to its probable ultimate working'.⁶⁵ It endorsed the principle behind the experiment, namely, 'that of enabling a convict to obtain, by good conduct while undergoing his punishment, the remission of a portion of his sentence upon the express condition, however, that in the case of subsequent misconduct, his liability to punishment shall revive'.⁶⁶ It played down the seriousness of the ticket-of-leave scare, even questioning whether such a phenomenon were justified at all. Nevertheless, it favoured rigorous enforcement of licence conditions and, notwithstanding recognition that the major problem for discharged prisoners, whether released on licence or not, was 'procuring or retaining honest employment in the country', a system of police surveillance.⁶⁷ The Select Committee performed a valuable service in pointing out that discharged criminals and ticket-of-leave men were often confused in the public mind, thereby placing the 'menace' of the latter in perspective.⁶⁸ Nevertheless, though sympathetic to the principle of conditional discharge for convicts, it was unhappy with the system's administration, particularly the failure to enforce licence conditions. It proposed, therefore, that 'every convict, on his release with a ticket-of-leave, ought to be reported to the town or district to which he is sent'.⁶⁹

The Select Committee's balanced report did not placate disquiet. Whatever the criminal statistics proved or disproved, there was a widespread belief that 1856 and 1857 were peak years in terms of violent crime, particularly in the Metropolis.⁷⁰ Once again, it is difficult to test statistically the validity of this view owing to lack of continuity in the available figures pre- and post-1856. However, there are grounds to suppose that violent crime in London was up in 1857 at least (see Table 7.2).

In the context of the later fifties, 1857 saw a high level of indictments for offences against the person – a phenomenon which is particularly interesting given the drop in numbers for all other categories listed. However, since public outcry against tickets-of-leave was consistent throughout 1856, which appears to have been no more than an average year for crime, it is arguable that disquiet was more a matter of prejudice than a consequence of statistical study.

Considerable unease was expressed in Parliament and the press about the danger posed by ticket-of-leave men despite the fact, as *The Times* pointed out in one of its more temperate editorials, that no link was ever established between licensees and an upsurge in violent crime.⁷¹

Table 7.2: Indicted Offenders in Middlesex, 1856-1872

Year	Categories of Offence				County Population
	(1)	(2)	(3)	(4)	
1856	220	306	1,953	2,804	
1857	282	256	1,794	2,675	
1858	212	251	1,451	2,252	
1859	220	281	1,606	2,432	
1860	188	200	1,728	2,388	
1861	239	255	1,683	2,484	2,206,485
1862	329	382	1,944	3,026	
1863	396	334	2,103	3,207	
1864	444	277	2,251	3,278	
1865	407	372	2,232	3,369	
1866	364	359	2,524	3,558	
1867	299	332	2,354	3,278	
1868	409	353	2,482	3,573	
1869	358	383	2,396	3,499	
1870	319	252	2,125	3,028	
1871	273	242	1,976	2,820	2,539,765
1872	315	221	1,811	2,647	

Category 1 = Offenders against the person

2 = Offenders against property with violence

3 = Offenders against property without violence

4 = Total indicted offenders

The population in 1851 was: 1,886,576, and in 1881: 2,920,485

Source: Judicial Statistics and Census.

More plausible explanations for greater criminal activity were the end of the Crimean War and return of the regiments from overseas, the state of trade, and the formulation of new police forces (in the provinces), thereby facilitating detection. Much Parliamentary and press comment expressly alluded to a fearful public opinion. In April *The Times* suggested that 'the British public, indeed, has taken the alarm', and itself inveighed against the ticket-of-leave system in August and December.⁷² In Parliament Viscount Dungannon claimed that 'a very considerable portion' of licence-holders had returned to crime and involved themselves in 'atrocious' cases.⁷³ At a later date he called the ticket-of-leave system 'a serious and growing evil' against which there were 'almost universal' complaints.⁷⁴ The Marquess of Salisbury said: 'As chairman of quarter sessions, [he] could bear personal testimony to the consequences of the system at present pursued'. The Earl of Harrowby was a dissenting voice to this sort of casual analysis, but the Earl of Malmesbury, who called for a return to transportation, typified the views of the Upper House on the question:

At present the degree of apprehension entertained throughout the country as to the operation of the ticket-of-leave system was very great. It was not only timid persons who partook in this apprehension, but really experienced and well informed people in responsible positions were beginning to be alarmed.⁷⁵

A correspondent to *The Times* in December 1856 said that ticket-of-leave men 'are now creating terror in the public mind'.⁷⁶ Over the next weeks R. Monckton-Milnes wrote that the public was 'becoming thoroughly frightened', and 'clamouring for immediate abolition', whilst another correspondent referred to the 'almost universal impression' that ticket-of-leave men were responsible for all recent crime.⁷⁷ *The Times* of 7 January 1857 reported Sir John Pakington, Chairman of the Worcestershire Quarter Sessions, as referring to 'a panic in the public mind about the level of crime': 'Everybody was talking about outrages of ticket-of-leave men and of garotte robberies'.

Of course, it would be a considerable jump from this evidence to a conclusion that the public was reacting violently and *in toto* against a supposed epidemic of violent crime and the ticket-of-leave experiment. Nevertheless, Parliament and the national press were, on the whole, though not uniformly, inveighing against ticket-of-leave evils and, arguably in doing so, they were reflecting more general, though unquantifiable, public concern. This public concern was observed by 'experts' (under which heading Pakington might be classified) who were themselves sympathetic to the idea of release on licence. Hence M.D. Hill wrote to Lord Brougham:

Do you observe the insane outcry which is made against the ticket-of-leave system, which is sound, instead of against the ticket-of-leave administration, which is abominable?⁷⁸

A similar line was taken by Captain Alexander Maconochie, himself an exponent of licensing on Norfolk Island:

The principle is thus at once prudent and defensive; and the prejudice against it is partly unfounded altogether . . . partly only justified by the defects of [its] administration.⁷⁹

On 1 July 1857 a Penal Servitude Amendment Act⁸⁰ became law which reflected, in some degree, the recommendations of the Commons Select Committee and public concern about the operation of the ticket-of-

leave system. Some of the contributors to the debates on the bill took a somewhat intemperate view of that system. Roebuck, for example, argued that:

Society had been horrified and frightened by the uncertainty of life and property created by the ticket-of-leave men throughout the country, and the terror had proceeded so far that people had been afraid during the late winter of walking through the streets of London.⁸¹

In no way, however, was the 1857 Act a panic measure. Its limited changes reflected the view of the Commons Committee that the punishment of penal servitude had been insufficiently tested for any very drastic changes to be introduced. One of its major reforms was to equate penal servitude sentences with those of transportation, and to abolish the sentence of transportation (though this was nominal since penal servitude convicts could be sent abroad on licence). Thus, whereas four years' penal servitude had been deemed equivalent to seven years' transportation, the new equation was seven to seven. This, obviously, had the effect of extending penal servitude sentences, thereby delaying discharge, on licence or otherwise. A Home Office circular of 27 July 1857 also laid down longer minimum periods of confinement before release on licence.⁸² Another important change was in clarifying the eligibility for tickets-of-leave of convicts sentenced to penal servitude (as against transportation) — a question on which there had been doubt for several years.⁸³

W.L. Clay wrote in 1861: 'there is little fault to be found' with the Penal Servitude Amendment Act.⁸⁴ But many criticisms levelled against penal servitude and conditional discharge on licence remained unresolved. Indeed, insofar as transportation was formally abolished and the ticket-of-leave system retained, such criticism was likely to gain in strength, particularly as the Act ignored vital administrative and enforcement questions which had troubled even those who supported penal servitude and tickets-of-leave in principle, namely, police surveillance, tests of reformation, the preparation of licensees for release, photographing of offenders and the establishment of a central repository of criminal records.

IV

Notwithstanding the relatively minor reforms introduced in the 1857

Act, there appears to have been a decline in public concern, as expressed in Parliament and the press, about the ticket-of-leave threat. Nevertheless, it continued periodically to provide newspapers with thrilling news coverage and to inspire occasional condemnations of the system.⁸⁵ Over the next five years, however, the only significant move against licensing convicts was to abolish the issue of tickets to those sentenced to penal servitude for offences committed whilst free on a previous licence, and, later, to all those who had served previous terms of penal servitude.⁸⁶ Serious and sustained apprehension was only resurrected with the London garotting epidemic of 1862-3.⁸⁷

Garotting, the Victorian equivalent of 'mugging', was a form of personal physical attack, usually involving two or three assailants, whereby the victim was rendered helpless by partial strangulation and then robbed. In November 1862 *The Times* referred to 'nightly repetition of outrages' on the London streets and repeatedly, during this and the following month, blamed the ticket-of-leave men:

These men are at once wicked, fearless, and, except for the proceeds of their villainy, destitute. They will not work, and they have been trained to steal. They have felt the arm of the law once, and without any such suffering as to deter them from braving it again. They have no more respect for life than for property, and consider that murder may be a natural incident of theft . . . We hope the ruffians who thus destroy the security even of our public streets may be let loose in this fashion no longer.⁸⁸

The popular press and informed observers shared such concern. Demands for strict enforcement of licence conditions became commonplace.⁸⁹

Table 7.3: Indicted Offenders in England and Wales, 1857-1872*

Year	Indictments	Year	Indictments
1857	20,269	1865	19,614
1858	17,855	1866	18,849
1859	16,674	1867	18,971
1860	15,999	1868	20,091
1861	18,326	1869	19,318
1862	20,001	1870	17,578
1863	20,818	1871	16,269
1864	19,506	1872	14,801

*See Table 7.1 for population trend.

Source: Judicial Statistics.

Interpretation of criminal statistics, as we have seen, is difficult, but examination of the statistics indicates a significant national increase in the number of indictable committals for trial from 1861 to 1863 (Table 7.3). In February 1864 Sir George Grey acknowledged in the Commons, an 'actual increase of crime' in England and Ireland during 1861 and 1862.⁹⁰ Such an increase is apparent in the figures for indictable offences known to the police (Table 7.4). How these increases fit into long-term trends is difficult to say because of lack of uniformity in available statistics and overall shortage of information. In the Commons, Grey argued for 'a considerable decrease in crime' over the 1840s and 1850s.

Table 7.4: Indictable Offences Known to the Police, 1857-1872

Year	Indictable offences known to police	Year	Indictable offences known to police
1857	52,273	1865	52,250
1858	57,868	1866	50,549
1859	52,018	1867	55,538
1860	50,405	1868	59,080
1861	50,809	1869	58,441
1862	53,225	1870	51,972
1863	52,211	1871	45,149
1864	51,058	1872	44,191

Source: Judicial Statistics.

The garotting outbreak of 1862-3, however, was said to be largely a Metropolitan phenomenon. Table 7.2 shows a considerable increase in indictments of offenders in Middlesex in 1862 followed by a relatively large number of indictments throughout the sixties. Taking offences against the person, it is evident that indictments rose substantially in 1862 and, to a lesser extent in 1863 and 1864. Indictments for such offences were up by over 37 per cent in 1862. The corresponding increase for offences against property without violence was 15.5 per cent, and for all indictments, just under 29 per cent. In 1863 and 1864 the increase for offences against the person was also proportionately greater than for other categories of indictable offence. Table 7.2 indicates an upward trend in indictments during the sixties and a proportionately greater increase for offences against the person.

It is widely acknowledged that the best guide to actual incidence of criminal activity is provided by figures for indictable offences known to the police. Table 7.5, which presents such material for the Metropolitan Police District, confirms the trends depicted in the other tables. There were significant increases in the figures for total known crimes and

specified violent crime in 1862. This appears to have presaged a relatively high level for such statistics throughout the sixties.⁹¹ What is not clear is, first, whether these increases were of a magnitude to justify concern about increased crime, and, second, how much these increases were caused by ticket-of-leave men. Certainly, in the latter connection, there is and was no clear evidence that ticket-of-leave men and garotters were one and the same. Furthermore, since overall numbers of ticket-of-leave men discharged were small, it was unrealistic to blame them for any significant increase in crime. Nevertheless, the garotting epidemic certainly brought about change and, it has been argued, initiated a long period of harshness in penal policy in general and towards the ticket-of-leave experiment in particular.⁹²

Table 7.5: Total Indictable Crime and Totals of the Two Most Prevalent Violent Crimes* Known to the Metropolitan Police, 1857-1872

Year	Total crime	Specified violent crime	Year	Total crime	Specified violent crime
1857	7,632	N/A	1865	12,923	282
1858	10,285	156	1866	13,844	277
1859	10,253	176	1867	15,779	220
1860	10,546	105	1868	16,600	233
1861	11,203	116	1869	17,918	263
1862	12,230	193	1870	15,609	217
1863	12,824	212	1871	12,982	186
1864	12,291	281	1872	12,894	161

*These were Common Assault and 'Shooting At, Wounding, Stabbing, etc., to do Bodily Harm'.

Table 7.2 includes population figures for Middlesex.

Source: Judicial Statistics.

The first example of the new tone was the Garotters Act of 1863 (26 and 27 Vict. c. 44) which specified that any person convicted of armed robbery under s. 43 of the Larceny Consolidation Act (24 and 25 Vict. c. 96) or of garotting under s. 21 of the Offences Against the Person Consolidation and Amendment Act (24 and 25 Vict. c. 100) should, in addition to the punishments provided by these sections, receive up to 50 strokes of corporal punishment. Significantly, C.B. Adderley, the Conservative MP for Staffordshire who brought in the bill, claimed to be responding to the demands of public opinion. His opponents, on the other hand, accused him of panic legislation.⁹³

Also in 1863 and also in response to public concern about the apparent upsurge in violent crime, a Royal Commission was appointed 'to

Inquire into the Operation of the Acts . . . Relating to Transportation and Penal Servitude'.⁹⁴ The Commissioners heard evidence from Horatio Waddington that in practice licences were revoked only when fresh offences were committed, that the Home Office opposed police surveillance of licensees, and that certain licence conditions were 'a dead letter'.⁹⁵ Furthermore, Sir Richard Mayne, the Metropolitan Police Commissioner, admitted that not only did his officers not enforce licence conditions, but that the 'reverse of inspection' existed, that is, 'the police are actually directed not to interfere with "ticket-of-leave men" . . .'.⁹⁶ The Royal Commission concluded that a number of factors were responsible for burgeoning crime rates, the existence of which went unquestioned. They were:

. . . at least partly attributable to defects in the system of punishment now in force, and to the fact that there has been an accumulation of discharged convicts at home, owing to the comparatively small number sent to a penal colony since 1853.⁹⁷

The Commissioners felt that penal servitude was 'not sufficiently dreaded' by criminals and proposed that the regimen should be toughened in various ways. But, as far as possible, 'all male convicts, who are not disqualified for removal to a colony, should be sent to Western Australia during the latter part of their punishment'.⁹⁸ The Commission did not advocate ending the ticket-of-leave system but favoured considerable reduction in numbers released in Britain and 'strict' police surveillance of all who were so released. In this respect the Commissioners supported the establishment of an administrative structure which would facilitate the enforcement of the letter and spirit of licence regulations. This involved 'effective supervision' under an officer of the convict department assisted by police officers, plus improved provisions for identifying, convicting and punishing those breaking licence rules.⁹⁹

In 1864 a new Penal Servitude Act took its place on the statute book.¹⁰⁰ It specified minimum penal servitude sentences of five years (seven for second offenders)¹⁰¹ and tougher prison discipline. Discharge on licence was retained, though qualifications for eligibility were changed. This was to be dependent upon industriousness; good conduct was no longer to be rewarded – merely expected. In the longer term, however, the percentage of convicts allocated tickets-of-leave was little below the pre-1864 figure (see Table 7.6). More significantly, ticket-of-leave men were to be subject to police surveillance. This had been a contentious issue for a decade, since supervision could imply harassment

and difficulties for the prisoner attempting to fit back into society. M.D. Hill and others, however, saw no possible value in a system of conditional discharge which rendered uncheckable the future conduct of licensees. The 1864 Act saw the triumph of the latter view.

Table 7.6: The Number of Ticket-of-Leave Men Discharged from Convict Prisons, Expressed as a Percentage of all Male Prisoners Discharged

Year	Percentage	Year	Percentage
1856	92	1863	79
1857	73	1864	88
1858	14	1866	82
1859	12	1867	78
1860	19	1868	79
1861	52	1870	76
1862	86	1872	79

Source: Judicial Statistics.

Prison authorities had to be informed of a licensee's intended place of residence. The individual was then required to report to the police within three days of arriving at his prearranged destination and, thereafter, at monthly intervals. Failure to report constituted a misdemeanour and was punishable by summary licence revocation. Failure to produce a licence when charged with an offence or when accused of breaching its conditions, was summarily punishable by up to three months imprisonment, with or without hard labour. By section six police were empowered to take a licensee into custody without a warrant if he were 'reasonably suspected of having committed any offence or having broken any of the conditions of his Licence'. He could then be detained until such time as a magistrate was able to hear the case. These clauses introduced the principle of punishing failed ticket-of-leave men rather than simply making them serve the unexpired portion of a sentence.

The 1864 Act can be seen as incorporating several sound reforms within an overall framework that was repressive. Certainly, so far as ticket-of-leave men were concerned, the police acquired significant powers of interference. The Act, like the earlier Garotters Act, was largely the outcome of a perceived increase in crimes of violence and a highly dubious connection between such crime and the activities of ticket-of-leave men, and a belief held in some quarters that the penal system had become too soft. An alternative way of looking at the legislation, particularly in respect of the ticket-of-leave system, however, is in terms of providing the enforcement which had been largely absent since 1853.

The new system did not prevent those bent upon evading surveillance from doing so, but it provided a somewhat more accurate picture of the success of tickets-of-leave. Significantly, the percentage of revocations increased from just under 4 per cent in the five years, 1860-64, to just over 10 per cent for the quinquennium, 1865-69.¹⁰² But a more accurate means of evaluating the success of the system is to follow the fate of a specific 'sample' of licensees.

The following list indicates the immediate fate of 119 licensees who, between August 1864 and July 1865, left a convict prison with the expressed intention of heading for Birmingham.

- 60 Continued to report to the police and were 'doing well'.
- 10 Completed their period of conditional release satisfactorily.
- 10 Moved to other towns and continued to report and observe ticket-of-leave rules.
- 2 Emigrated.
- 24 Began reporting but disappeared.
- 5 Failed to arrive in Birmingham.
- 2 Sentenced to new terms of penal servitude.
- 2 Summarily convicted of minor offences.
- 2 Apprehended on suspicion but released for lack of evidence.
- 1 Continued to report whilst mixing with known thieves.
- 1 Committed to trial on a felony charge.¹⁰³

Clearly, some of these categories can be viewed as successes or failures, but if we take the first four as successes, in that they constitute compliance with ticket-of-leave rules, the figures yield a reformation rate of 67 per cent. In view of the limited duration of observation, it is likely that this is an over estimate. However, it is doubtful whether reformation rates are the sole or even correct criterion for evaluating the merit of conditional discharge since virtually all convicts had to be released eventually and licensing merely brought this day forward. Furthermore, licensing was not a reformatory technique — it should be seen more as a means of maintaining prison discipline by holding out hope of remission, and of controlling prison overcrowding.

Enforcement imperatives continued to influence the ticket-of-leave system during the later sixties and seventies. Hence the Habitual Criminals Act (1869),¹⁰⁴ which sought 'to make further provision for the suppression of crimes committed by convicts at large on licence or by other offenders', stated that:

Any constable or public officer may, if authorized so to do in writing by a chief officer of police, without warrant, take into custody any convict who is the holder of a licence granted under the Penal Servitude Acts, 1853, 1857, and 1864, or any of them, and whom he has reason to believe to be getting a livelihood by dishonest means, and may bring him before two or more justices of the peace or a stipendiary magistrate.¹⁰⁵

If there were 'reasonable grounds' for such a belief, the licence would be revoked and the penal servitude sentence served out. Specific breach of licence regulations was punishable in the same way. The most significant changes concerned police surveillance. Section four of the Penal Servitude Act (1864) was repealed and a register of criminals ordered to be kept by the Metropolitan Police. Police supervision, in the case of those with two felony convictions, was to persist from the date of *absolute* discharge from prison. These individuals could be imprisoned, on summary conviction, for up to one year if, a) they could not prove honest means of livelihood or, b) there were grounds for believing that they were preparing to commit a crime.¹⁰⁶

In fact, the surveillance clauses were less effective, and, consequently, less repressive than might have been expected:

... because it has been held that the Commissioner (of Metropolitan Police) must nominate the person to whom the man is to report himself ... It is practically impossible to nominate an officer, because the officers are perpetually changing; and the consequence is that we cannot enforce the provision of the Act, and it has become more or less a dead letter with regard to the men reporting themselves.¹⁰⁷

Ticket-of-leave men were 'never' charged for failing to report because of the defect in the law.¹⁰⁸ In practice, despite the difficulties of enforcing supervision rules, the majority of men did report to the police for 'fear of the consequences of their not doing so'.¹⁰⁹ Nevertheless, it is clear that the strictness of supervision of ticket-of-leave men and other convicts under the Habitual Criminals and Prevention of Crimes Acts, was greater on paper than in practice.

V

From the 1850s Britain was faced with the problem of finding an alter-

native for the punishment of transportation and dealing with its serious offenders at home. The size of this task should not be exaggerated, as it tended to be by some contemporary observers, since many transportees had, for years, been dealt with in British prisons and hulks before being released at home. Moreover, transportees constituted only a relatively small proportion of all convicted offenders. The answer was to keep things, as far as possible, as they were. The punishment of penal servitude, which was introduced in 1853, and lasted for almost one hundred years, was in many respects similar to transportation, as it had evolved by the 1840s, barring provision for release on licence overseas. Indeed, from 1864 removal overseas on licence was permissible.

One of the most significant clauses in the 1853 Act was that which allowed for early release on licence at home. In reality, however, the adventurousness of this should not be over emphasised since the numbers involved were not great and ticket-of-leave men were individuals who would, anyway, have been discharged in Britain. Nevertheless, perceived outbreaks of violent crime and apparent growth in overall crime rates, probably caused by factors other than the ticket-of-leave experiment, such as economic recession and the end of the Crimean War, led to demands, expressed in various quarters, for either abolition of the licensing system or its continuation under more rigorous controls. Those who made these demands – Parliamentarians, the press, and even ‘experts’ such as judges, policemen and penologists – often alluded to the support of ‘public opinion’ for a particular panacea. However, it is hard to determine what public opinion actually was beyond the sentiments expressed in Parliament or the pages of newspapers, where, of course, differing interpretations of public opinion were constantly expressed. The champions of public opinion were often its makers or, to go further, the term ‘public opinion’ signified a rationalisation and propagation of views or prejudices held in high places. It might be, in other words, a clarion call for action which was difficult to resist. In this restricted sense, public opinion was an important factor in nineteenth-century penal policy, as it remains of central importance in determining and justifying all public policy.

The ticket-of-leave provisions included in the 1853 Act in a sense harked back to outdated enforcement strategies in that they relied on enforcement through sanction rather than (instead of as well as) effective detection. The outcry against discharging convicts on licence – whether such outcry is equated with a groundswell of opinion, newspaper sensationalism, or Parliamentary ignorance – raised the possibilities of abolishing tickets-of-leave or retaining them with adequate enforcement

procedures. Steps towards improved supervision of licensees were taken, notably in the legislation of 1864 and 1869. But the problem was to balance priorities which, to some extent, conflicted, that is, satisfying public opinion, restricting costs – both financial and the erosion of individual liberty – and maintaining a system which provided a number of benefits. Public opinion was in some degree placated, though not by abolition of tickets-of-leave; police forces were not suddenly and dramatically strengthened, though they grew steadily in size and budgets; licensees were subjected to greater control and more risk of harassment, though not to the point at which discharge constituted no advance on incarceration. The early history of the ticket-of-leave system in Britain illustrates not only the hand-to-mouth pragmatism of the mid-Victorian authorities when faced with the problems arising from a breakdown of transportation, but also the state's grudging acceptance, even in the context of law and order, that it should fulfil a more interventionist role in society.

Postscript

It was my intention to conclude the essay at this point. However, a recently published paper by Jennifer Davis on the 'London Garotting Panic of 1862' demands a response. It is not my intention to provide a full critique of Davis's essay and I cannot in the space available here indicate the full extent of my doubts about it. It is necessary, for example, to pass over such a fundamental issue as the untenable antithesis between the principles of reformation and punishment which Davis detects pre- and post-1862. Given the proximity of the subject matter of that paper to the ticket-of-leave question, however, it is worth specifying the more important differences in interpretation and indicating why this author espouses the conclusions drawn in this essay.

Davis's concern is to rescue the 1862 garotting panic from 'its present obscure place in nineteenth-century historiography'.¹¹⁰ She seeks to achieve this by demonstrating that the panic prompted 'important changes in nineteenth-century penal policy', namely, 'the effective dismantling of the reformatory penal system . . . , and its replacement by a punitive model of convict treatment'; also that it led to 'the delineation of a distinct criminal class' which was subsequently subjected, by a number of means, to strict government control.¹¹¹ It is these generalisations that I wish to question here.

One of Davis's major errors is to build an elaborate and far-reaching

theory upon a panic which lasted but a few months and was located in one city. Yet there is little justification for placing so much stress upon the garotting outbreak as a turning point either in penal policy or in the nature of public attitudes towards crime and criminals. A far more important shock to respectable Victorian society was administered by the virtual termination of transportation in the early 1850s. From this 'end' much flowed. Initially, it led to the establishment of the new punishment of penal servitude which provided for the introduction of a ticket-of-leave system in the United Kingdom. The first Penal Servitude Act was an example of hurried legislation and several aspects of it were found to require amendment in the medium term. The feature of the new Act which most affected the public was the ticket-of-leave system, for it brought the public into contact not simply with discharged criminals, but with serious offenders of the type that were widely thought to have been hitherto shipped overseas, who had not served out the full sentences passed on them by the courts. Almost inevitably, therefore, there were calls for changes in (or abolition of) the ticket-of-leave system. The justification for such demands was increased by the casual fashion in which the system was administered and terms of licences enforced. In fact, absence of rigorous administration and enforcement reflected the nature of mid-Victorian administrative machinery, which was ill-adapted to oversee a system demanding a relatively high level of bureaucratic sophistication.

Thus what we see after 1853 is slow and hesitant progress towards effective law enforcement and administration. This progress was accelerated by a high level of concern (perhaps unjustified) in some areas of society that ticket-of-leave men were committing much crime, particularly crimes of violence. But fears about increased crime and calls for more restrictive measures were not new in 1862; indeed, as we have seen, the 1862 scare was a repetition, probably in more extreme form, of disquiet intermittently expressed over the previous decade. Similarly, proposals for proper supervision of licence-holders and other changes in the penal system predated the 1862 panic. The whole issue of penal change from the early fifties must be seen in the context of dealing with and eventually discharging the bulk of serious and persistent offenders at home. This is the crucial point to be borne in mind whether considering the Penal Servitude Acts, the Prisons Act (1865), the Habitual Criminals Act (1869), or the Prevention of Crimes Act (1871). Acceptance of it explains, in general terms, the nature of these Acts.

If the garotting outbreak should be seen as no more than an accelerator of existing trends in penal policy, the policy changes which evolved

during the fifties and sixties may be interpreted in terms of providing law enforcement (hitherto largely lacking) rather than a move towards greater reaction and the creation of a criminal class. Seen in these terms it is more helpful to consider the development of post-transportation penal policy in the context of Professor MacDonagh's characterisation of the progress of reform.¹¹² MacDonagh sees the first stage of the process as identification of an 'intolerable evil'. In this case that evil was release of serious offenders in England. It was precipitated by the virtual termination of transportation as a punishment. MacDonagh proposes that identification of the evil was followed by hasty and ill-considered legislation. The Penal Servitude Act (1853) can, to some extent, be seen in this light. In MacDonagh's model such legislation is followed by appreciation of the shortcomings in the original Act and, to telescope the process, new legislation backed with suitable and evolving enforcement mechanisms.¹¹³ This pattern, which largely fits post-1853 developments in penal policy, provides an explanation of the evolution of the ticket-of-leave system in which it is unnecessary so to order the 'facts' to accommodate an explanation dominated by the influence of social class. It also explains the nature of measures such as the Habitual Criminals Act (1869), without recourse to fanciful links between a small-scale panic and legislation passed years later.

Two further points need to be made. First, Davis treats the attitudes of the respectable classes towards the garotting scare as being unduly homogeneous. In fact, there was a considerable range of middle- and upper-class opinion. This ranged from the 'flog 'em' reaction of C.B. Adderley, to the uncritical satisfaction of government servants like Waddington and Jebb, and the practical philanthropy of Henry Mayhew who actively aided ticket-of-leave men to find jobs and effect their transition from the criminal class to the working class. Between such extremes were people like M.D. Hill — supporters of remission in theory, but critical of its practice — who sought to retain the progress effected by conditional discharge whilst eliminating its shortcomings. Such lack of consensus explains the hand-to-mouth pragmatism and hesitant progress which characterised the development of the ticket-of-leave system in the 1850s and 1860s. If the 'upper classes' had really spoken with one voice against that system, its history would have been very different from that presented here.

The final point is that development of policy at the Home Office and in Parliament was one thing, its implementation was another matter. Hence one should beware of the trap into which Davis has fallen, viz., that of confusing changes in the law with changes at street level. Not

only was the Garotters Act largely, as Davis acknowledges, a dead letter in practice, but, as we have seen, the supervision clauses in the Habitual Criminals Act and Prevention of Crimes Act imposed less effective control on recidivists than had been anticipated. Enforcement and administrative difficulties often made the 'law in action' far less onerous or significant than the 'law in books'. Overall, therefore, the evidence suggests that the answer to Davis's question as to whether the garotting panic deserves its obscure place in nineteenth-century historiography, is yes.

Notes

1. B. Norling, *Timeless Problems in History* (London, 1970), p. 1.
2. O. MacDonagh, 'The Nineteenth Century Revolution in Government: A Reappraisal', *Historical Journal*, vol. 1 (1958).
3. The two most trenchant criticisms have been: J. Hart, 'Nineteenth Century Social Reform: A Tory Interpretation', *Past and Present*, No. 31 (1965), and H. Parris, 'The Nineteenth Century Revolution in Government: A Reappraisal Re-appraised', *Historical Journal*, vol. 3 (1960).
4. J.H. Goldthorpe, 'The Development of Social Policy in England, 1800-1914', in *Transactions of the Fifth World Congress of Sociology*, vol. IV (Washington, DC, 1962).
5. A.V. Dicey, *Lectures on the Relation Between Law and Public Opinion in England During the Nineteenth Century* (London, 1905).
6. A useful modern critique is to be found in R. Tompson, *The Charity Commission in the Age of Reform* (London, 1979), pp. 4-13.
7. Dicey, op. cit., p. 1.
8. Ibid., p. 3.
9. Ibid., pp. 44-5; W.L. Burn, *The Age of Equipoise* (London, 1964), p. 181; Jennifer Davis, 'The London Garotting Panic of 1862: a Moral Panic and the Creation of a Criminal Class in mid-Victorian England', in V.A.C. Gatrell, B. Lenman and G. Parker (eds.), *Crime and the Law: The Social History of Crime in Western Europe since 1500* (London, 1980).
10. See A.G.L. Shaw, *Convicts and the Colonies* (London, 1966).
11. *Hansard*, 3rd ser., vol. 129, col. 7.
12. Penal Servitude Act, 1853, 16 and 17 Vict. c. 99.
13. Select Committee of the House of Commons on Transportation, *Parliamentary Papers* (P.P.) 1856, XVII, p. 66. For detailed discussion of the introduction of the new punishment of penal servitude see M.H. Tomlinson's essay above, 'Penal Servitude 1846-1865: A System in Evolution'.
14. L.W. Fox, *The English Prison and Borstal Systems* (London, 1952), p. 41; S. White, 'Alexander Maconochie and the Development of Parole', *Journal of Criminal Law and Criminology*, vol. 67 (1976), pp. 72-88.
15. Report from the Select Committee of the House of Commons Appointed to Inquire into the System of Transportation; its Efficacy as a Punishment; its Influence on the Moral State of Society in the Penal Colonies, and How Far it is Susceptible of Improvement, P.P., 1837, XIX, p. 13.
16. Judicial Statistics, P.P. 1857 (2), XXV, p. xxix; see correspondence in PRO, HO 12/4/362 and General Report on the Convict Prisons, with Observations

on Several Questions Connected with Management and Disposal of Convicts, Tickets-of-Leave, Supervision of the Police, Irish System, etc., P.P. 1862, XXV, p. 6.

17. PRO, HO 12/4/362, 10 Feb. 1853.

18. Ibid., 28 July 1853.

19. Ibid., 10 Feb. 1853.

20. Ibid., Undated memorandum (May 1853).

21. Ibid., H. Waddington to H. Fitzroy, 25 Sept. 1853.

22. Ibid., Memorandum of 20 Nov. 1853.

23. Select Committee of the House of Commons on Transportation, P.P. 1856, XVII, Appendix I, p. 179; see Return of the Number of Persons Sentenced to Transportation, and those Transported for the Last Twenty Years, P.P. 1847, XX.

24. See U.R.Q. Henriques, 'The Rise and Decline of the Separate System of Prison Discipline', *Past and Present*, no. 54 (1972), pp. 61-93.

25. Fox, op. cit., p. 41.

26. See Davis, op. cit., passim.

27. Select Committee of the House of Commons on Transportation, P.P. 1856, XVII, Evidence of H. Waddington, p. 25.

28. Ibid., Evidence of M.D. Hill, p. 194.

29. *Hansard*, 3rd ser., vol. 132, cols. 1034 and 1221-2 (1 and 4 May 1854).

30. 1 May 1854.

31. 29 April 1854.

32. J.J. Tobias, *Crime and Industrial Society in the Nineteenth Century* (London, 1972), pp. 18-26; V.A.C. Gatrell and T.B. Hadden, 'Criminal Statistics and Their Interpretation', in E.A. Wrigley (ed.), *Nineteenth Century Society. Essays in the Use of Quantitative Methods for the Study of Social Data* (Cambridge, 1972), p. 336.

33. Tobias, op. cit., p. 25.

34. *Hansard*, 3rd ser., vol. 137, cols. 323-5 (9 March 1859); see also his statement on 2 July 1855, vol. 139, col. 364.

35. Ibid., vol. 138, col. 1535 (7 June 1855).

36. Ibid., vol. 139, col. 365 (2 July 1855).

37. 4 July 1855.

38. 11 Oct. 1855.

39. Ibid.

40. 8 Dec. 1855.

41. 14 Oct. 1855.

42. 14 Oct. 1855; see also: *Birmingham Journal*, *Globe*, *Inquirer*, *Spectator* (all 13 Oct. 1855), *Morning Chronicle*, 15 Oct. 1855, *The Times*, 18 Oct. 1855, *Daily News*, 19 Oct. 1855, *Spectator*, 20 Oct. 1855.

43. Judicial Statistics, P.P. 1857, XXV (2), p. xxix.

44. 13 and 14 Vict. c. 39. Female prisoners later came under its jurisdiction.

45. 18 Oct. 1855.

46. See the leading article of 18 Oct. 1855 and letter from John Adams (of Middlesex Quarter Sessions), 20 Oct. 1855.

47. P.P. 1856, XVII, p. 98.

48. Ibid., p. 53.

49. Ibid., pp. 3 and 95-99; M.D. Hill, *Suggestions for the Repression of Crime; Contained in Charges Delivered to Grand Juries of Birmingham; Supported by Additional Facts and Arguments* (London, 1857), pp. 515-16.

50. Select Committee of the House of Commons on Transportation, P.P. 1856, XVII, p. 84.

51. Ibid., pp. 95-6.

52. Ibid. The other figures were 214 by magistrates and 177 by employers.

53. *The Times* continually alluded to convict 'dodges' to persuade chaplains of reformation. See, for example, the leading article of 12 Aug. 1856.

54. *The Times*, 20 Oct. 1855.

55. Royal Commission Appointed to Inquire into the Operation of the Acts 16 and 17 Vict. c. 99 and 20 and 21 Vict. c. 3, Relating to Transportation and Penal Servitude, P.P. 1863, XXI, Appendix 2, p. 153.

56. S. White, 'The Nineteenth Century Origins of Pre-Sentence Reports', *Australia and New Zealand Journal of Criminology*, vol. 11 (1978), p. 162.

57. Brougham Mss., University College, London, M.D. Hill to Lord Brougham, 25 April 1856.

58. *The Times*, 20 Oct. 1855; see M. Carpenter, *Our Convicts* (London, 1864, 2 vols.), I, p. 197.

59. Select Committee of the House of Commons on Transportation, P.P. 1856, XVII, p. 101.

60. *Ibid.*, p. 197.

61. *The Times*, 13 March 1856; H. Mayhew, *London Labour and the London Poor* (London, 1862, 4 vols.), III, pp. 430-9.

62. M.D. Hill, op. cit., p. 666; Select Committee of the House of Commons on Transportation, P.P. 1856, XVII, p. 11.

63. Select Committee of the House of Commons on Transportation, P.P. 1856, XVII, p. 53.

64. Royal Commission on the Working of the Penal Servitude Acts, P.P. 1878-9, XXVII, Appendix A15, p. 1151.

65. Select Committee of the House of Commons on Transportation, P.P. 1856, XVII, p. 399.

66. *Ibid.*

67. *Ibid.*

68. *The Times*, 19 April 1856.

69. Select Committee of the House of Commons on Transportation, P.P. 1856, XVII, p. 400.

70. M.D. Hill, op. cit.; W.L. Burn, op. cit., p. 181; Royal Commission on Transportation and Penal Servitude, P.P. 1863, XXI, pp. 21-2 and Appendix 5A, p. 179.

71. 19 April 1856; see the Earl of Harrowby's statement in *Hansard*, 3rd ser., vol. 140, cols. 1402-3 (26 Feb. 1856).

72. 19 April, 12 Aug. and 5 Dec. 1856.

73. *Hansard*, 3rd ser., vol. 140, col. 1401 (26 Feb. 1856).

74. *Ibid.*, vol. 142, col. 254 (9 May 1856).

75. *Ibid.*, vol. 140, cols. 1401-2 (26 Feb. 1856); see also J. Roebuck's speech, vol. 145, col. 149 (11 May 1857).

76. 9 Dec. 1856.

77. 16 and 24 Dec. 1856, 1 and 8 Jan. 1857.

78. Brougham Mss., M.D. Hill to Lord Brougham, 4 Dec. 1856; R. and F. Hill, *A Memoir of Matthew Davenport Hill* (London, 1878), p. 198.

79. A. Maconochie, *Prison Discipline* (London, 1856), p. 21.

80. 20 and 21 Vict. c. 3.

81. *Hansard*, 3rd ser., vol. 145, col. 149 (11 May 1857).

82. Royal Commission on Transportation and Penal Servitude, P.P. 1863, XXI, p. 12.

83. *Ibid.* For a discussion of this point, see Peter W.J. Bartrip, op. cit., pp. 331-34.

84. *The Prison Chaplain. A Memoir of the Rev. J. Clay B.D.* (London, 1861), p. 417.

85. See *Daily News*, 16 June 1860 and *The Times*, 23 Aug. 1862; M. Carpenter,

op. cit., I, p. 164; *Observations on the Treatment of Convicts in Ireland: By Four Visiting Justices of the West Riding at Wakefield* (London, 1862).

86. Royal Commission on Transportation and Penal Servitude, P.P. 1863, XXI, p. 16.

87. See Davis, op. cit., passim.

88. 7 and 28 Nov., 1 Dec. 1862.

89. M. Carpenter, op. cit., I, p. 175; J.R. Fowler and M. Ware (eds.), 'The Transportation of Criminals. Being a Report of a Discussion at a Special Meeting of the Association' (London, 1863); W.R. Miller, *Cops and Bobbies. Police Authority in New York and London, 1830-1870* (Chicago and London, 1977), p. 111.

90. *Hansard*, 3rd ser., vol. 173, col. 724 (18 Feb. 1864).

91. My interpretation of the statistics differs somewhat from that of Davis, op. cit., p. 190, where it is argued that the increase in London street violence in 1862 followed rather than preceded the garotting panic. This is an interesting point, though too much should not be made of it since street crime statistics were increasing from July 1862 and it is hard to push back the onset of the panic much before this month. In any case, as my tables show, certain statistical trends could justify a belief that a mini-crime wave had begun in 1861.

92. See Davis, op. cit., passim.

93. *Hansard*, vol. 169, col. 786 (24 Feb. 1863) and cols. 1661-4 (11 March 1863).

94. M. Carpenter, op. cit., I, p. 196.

95. Royal Commission on Transportation and Penal Servitude, Minutes of Evidence, P.P. 1863, XXI, pp. 316-328.

96. *Ibid.*, p. 433.

97. *Ibid.*, pp. 22-3; see Royal Commission on the Working of the Penal Servitude Acts, P.P. 1878-9, XXVII, p. ix.

98. Royal Commission on Transportation and Penal Servitude, P.P. 1863, XXI, p. 72.

99. *Ibid.*, pp. 32-3.

100. 27 and 28 Vict. c. 47.

101. The Commissioners favoured seven for all, but Parliament was forced to bow to Australian pressure against any increase in the number of convicts sent to Western Australia. Royal Commission on the Working of the Penal Servitude Acts, P.P. 1878-9, XXVII, p. 25.

102. Royal Commission on the Working of the Penal Servitude Acts, P.P. 1878-9, XVII, Appendix A15, p. 1151.

103. Brougham Mss., M.D. Hill to Lord Brougham, 8 July 1865; M.D. Hill, 'Charge to the Grand Jury of Birmingham Quarter Sessions, July 1865'; *Midland Counties Herald*, 6 July 1865.

104. 32 and 33 Vict. c. 99.

105. *Ibid.*, Pt. I, s. 3.

106. *Ibid.*, Pt. 3, s. 8. This built on the Vagrancy Act (1824) (5 Geo. IV, c. 83); see also Prevention of Crimes Act (1871) (34 and 35 Vict. c. 112). See A Ticket of Leave Man, *Convict Life; or Revelations Concerning Convicts and Convict Prisons* (London, 1879), pp. 214-15.

107. Royal Commission on the Working of the Penal Servitude Acts, P.P. 1878-9, XXVII, p. 428; see PRO, HO 45/9320/16629D, Correspondence on the Prevention of Crimes Act, 1871 and the Police Supervision of Licence Holders.

108. *Ibid.*, P.P. 1878-9, XXVII, p. 439.

109. *Ibid.*, p. 429.

110. J. Davis, op. cit., p. 190.

111. *Ibid.*, p. 191.

112. O. MacDonagh, op. cit.

113. Ibid., pp. 58-61.

8

GRINDING MEN GOOD? LANCASHIRE'S
PRISONS AT MID-CENTURY

Margaret E. DeLacy

In recent years, beginning with the appearance of Gertrude Himmelfarb's 'The Haunted House of Jeremy Bentham' in 1965, historians have presented a new view of nineteenth-century prison reform.¹ In place of the traditional respectful accounts of such reforming heroes as John Howard and Elizabeth Fry, these writers have suggested that most prison reform was misconceived and manipulative, designed to increase the 'social control' that members of the 'middle class' could exercise over the dangerous classes. In place of the squalor and capricious cruelty of early-modern sanctions, they suggested, prison reformers created a systematic and pervasive 'machine for grinding men good', a design for controlling not merely the body but the mind. The Panopticon, with its 'big brother' inspection system, its exploitative work, its codified rules, its fertile inventions for altering men's bodies and minds, has entirely eclipsed as a cautionary symbol those two great 'gothic' monuments to royal arbitrariness and official neglect, the Bastille and Newgate; our progress towards 1984 has become more important than our retreat from the Dark Ages.²

Before the many theoretical objections to the theory of social control can be aired, it seems reasonable to enquire whether it has in fact accurately described the phenomenon it seeks to explain. Just who did this controlling and who was controlled? Were these measures in fact applied and, if applied, did they work? The radical historians have tended to rely on the writings and speeches of the very men they are so anxious to discredit: middle-class reformers, for their depiction of prison conditions in the mid-nineteenth century. On the whole, however, these reformers neither ran the prisons nor inhabited them. It is time for a closer examination of the evidence available from all sources if the debate is to progress.

The purpose of this essay is to examine the evidence on one prison system – the county system of Lancashire – to see what qualifications it may suggest to the 'social control' theory. I do not intend either to demolish the theory or to erect a new one, but merely to see how well it describes the actual circumstances of nineteenth-century prison life and to suggest areas in which it needs to be qualified in the light of

further investigation. Lancashire's system is appropriate for this examination because it was a very large system: by mid-century the four county prisons together contained an inmate population second only to that of Middlesex. Together with the borough gaols, they contained about one-fifth of England's total prison population. Moreover, Lancashire was the heart of that industrial capitalism which has drawn so much radical criticism. Preston's Gradgrinds and Manchester's economists epitomised, both for contemporaries and for their descendents, the economic, political and social values of the utilitarian state.³

This analysis covers the middle of the century because radical historians have chosen that period to represent the apotheosis of the strictly regimented prison. To Michael Ignatieff, 'the opening of Pentonville in 1842 represents a point of culmination in the tightening up of social controls underway since 1820'.⁴ Michel Foucault, with unwonted precision, fixed the 'date of completion of the carceral system' on 22 January 1840, the day when Mettray opened.⁵ Nevertheless, since every prison was different and since each changed at a different rate, the choice of period is neither simple nor unimportant. Similar arguments could take place over an earlier period or several later ones.

At mid-century, Lancashire had four large county prisons: Lancaster Castle, the County Gaol dating back to Norman times, and three County Houses of Correction, Preston, rebuilt and reopened in 1789, the Salford New Bailey, extensively remodelled in 1790 and Kirkdale, near Liverpool, opened in 1820. Liverpool had its own borough gaol, as did Manchester for a time after 1849.⁶

These four county gaols and the legal apparatus that supported them were administered by the County Bench. By no stretch of the imagination can this Bench be called middle class; it was bourgeois only by the most tortured extension of that word. It was aristocratic almost by definition since a long tradition barred anyone remotely connected with 'trade' from the magistracy, though well-born professional men did serve. This tradition was beginning to break down by mid-century, but the businessmen who were admitted had less time to spare for county affairs than their colleagues.⁷

The County Bench had a mind of its own. Its members were not merely reactionaries, nor were they the pawns of the Parliament in which many of them sat. They were not necessarily hostile to reform; they had themselves initiated most of the major changes in Lancashire's prisons at the turn of the century. They hired its governors and guards and they sentenced its offenders. They tended, however, to be conservative in both politics and religion and were rarely carried away by the

utopian schemes of zealous reformers. Moreover, they had to confront hostile ratepayers who disliked expensive capital projects and preferred punitive to reformatory imprisonment. Under their guidance the county tended to resist the radical innovations suggested by the more eager and evangelical national campaigners.⁸

The social dislocations caused by population growth, immigration, urbanisation and industrialisation greatly complicated the problems of administering Lancashire's prisons. Whether the increase in the crime rate was real or whether it was the creation of men frightened by the anarchy they sensed around them, its result was the same: a rapid and constant increase in the numbers of prisoners. Total criminal committals (before and after trial, including summary committals) rose in Lancashire from a few hundred a year in the mid-eighteenth century to over forty thousand a year by 1858, the first year for which complete figures have survived.⁹ The causes of this increasing resort to institutional solutions to social problems can be debated; its existence cannot. What is less clear is the nature of these institutions. Even if, however, social anxiety lay at the root both of the increasing committal rate and the demand for a more rigorous prison discipline, these two results to some extent cancelled each other out. It was simply not possible for Lancashire's prisons to cope in any coherent way with this constant and constantly increasing flood of humanity.

While many went to prison, however, few stayed for long. Average term of confinement in the 36 largest English county prisons between 1838 and 1842 was 46 days. In all English and Welsh prisons in 1854 it was 48 days.¹⁰ Salford was slightly below the national average, the other three Lancashire prisons a little above. It was difficult to provide rudimentary health care, classification, education and training in six to seven weeks; it was difficult for the staff even to visit the prisoners and learn their names, let alone either 'reforming' or 'institutionalising' them. The short average term, combined with free medical care and adequate if unappealing food, made imprisonment attractive to some segments of Lancashire's population, particularly in the winter months. 'One of the most serious and increasing obstacles to good discipline,' complained the prison inspector William John Williams in 1837,

is the common practice of tramps and prostitutes, when infected with foul diseases, (not admitted into the public infirmaries), committing some slight offence for the purpose of obtaining medical treatment in prisons. Their committals are generally for one or two months to hard labour, which they seldom or never undergo, often-

times passing the entire of the term in hospital; and many of the females are scarcely discharged a month, ere they return again for surgical care. Such prisoners are more disorderly in behaviour, more pernicious in example, and more difficult to control, than any other class.¹¹

Few prisoners equalled the record of the woman who had been committed to the New Bailey more than 200 times by 1836 and 'comes here generally to recruit her health', but contemporary sources provide many examples of such 'voluntary commitments', testifying as strongly to the old lag's ability to manipulate the system as to the anxiety of the justices to mend his ways.¹²

The chronically overcrowded prisons could only cope with the rapid turnover of a frequently diseased population by imposing a programme of scrupulous cleanliness bordering on sterility. Many writers have recently deplored some of the public health measures this entailed, such as shaving prisoners' heads on their admission and replacing their clothing with uniforms. Although some contemporary commentators did extol the advantages of such practices in humiliating prisoners, necessity remained the motive behind them and most prisoners themselves probably preferred six weeks of embarrassment to the prospect of dying before their release. The surviving accounts complain far more bitterly about encounters with dirt than about a harshly imposed cleanliness. The justices had adopted even these measures only slowly and reluctantly.

The fear of epidemic disease and especially of typhus, the dreaded 'gaol fever' which threatened directly both magistrates and the general public, had been a major, perhaps the major, cause of the decision to build new prisons on a cellular plan at the end of the eighteenth century, when the incidence of typhus had suddenly increased.¹³ The healthiness of the 'reformed' cellular gaols remained a major argument in their favour in the eyes of justices more preoccupied with physical than with spiritual contamination. The battle that was being lost in Liverpool's slums was won in Lancashire's prisons where typhus deaths declined to a low level though they were not completely eliminated.¹⁴

While the death rate in prisons declined, however, the success was not complete. Prisons were not entirely effective even in imposing cleanliness, the most straightforward of the 'reforms' and the one in which administrators had the most direct interest, since their own lives were at stake. Lancaster Castle and Preston, the two best run of Lancashire's prisons, escaped the cholera in 1832 and maintained a relatively low death rate (Preston's, the lowest of any prison in the country, was five

per thousand between 1838 and 1842, at a time when the mortality in the town was about thirty per thousand). Salford and Kirkdale were less successful, though still below the average for English prisons. William John Williams, visiting Kirkdale in 1837, found treadwheel prisoners in 'a most filthy state, their legs and feet encrusted with dirt'.¹⁵

Aside from cleanliness, the 'reformed' prisons stressed a strict routine, intended, according to contemporary enthusiasts and radical historians, to render prisoners more malleable and perhaps convert them to a new sense of values while protecting them from the moral contamination of prison life. This usually included adoption of the separate system developed in Philadelphia and established at Pentonville. In *A Just Measure of Pain* (the title itself an ironic quotation) Michael Ignatieff gave a vivid account of the solitary and regimented life of a Pentonville convict, comparing it by implication with the freer communal life of the eighteenth-century prisoner. The comparison was not entirely a justified one, since Pentonville was a national convict prison, built to hold men who in the eighteenth century would have been executed or transported; however unpleasant Pentonville's regime, most presumably preferred it to hanging.

Many elements of the Pentonville regime, however, existed also in the county institutions, which were now holding increasing numbers of felons. All the Lancashire prisons claimed to follow a daily routine similar to that at Pentonville: at daylight in winter or at a fixed hour in summer, a bell would ring. After ten minutes, allowed for making beds and dressing, the cells were unlocked and the prisoners went down to wash. They then worked until breakfast. After breakfast, they went to chapel for about 30 minutes and then returned to work until lunch. A period of exercise followed lunch, then labour again, then supper. After supper, some prisoners were locked up, some took exercise and some had a period of relative liberty.¹⁶

Such a routine sounds rather forbidding in the official reports, but entries in the Governors' journals and the perpetual complaints of the inspectors suggest that the prisons often failed to live up to their strict schedule. On the whole, prisoners probably suffered more from boredom than overexertion. The hours of labour were often very short; the Lancashire prisons were not well enough provided with artificial light to allow prisoners to work late in the workrooms although some Lancaster sleeping cells had light. Lancaster claimed a winter workday of seven hours, but in midwinter it was probably closer to five. Even at Preston after conversion to the separate system, many convicts continued to work in large communal shops and suffered similar restrictions

of their hours. Prisoners working alone in their cells, while they could in theory have worked longer hours, were notoriously even less productive than those working in groups. Williams pointedly quoted the comment of a hatter in Lancaster Castle at the time of his discharge, 'I must now work a great deal harder than I have been doing here.'¹⁷ Any remaining impression of strict discipline is dispelled by such entries as the following in the Lancaster Gaoler's journal:

The female crown prisoners reported for having returned their cotton unpicked. I am quite sure this is the result, not only of idleness, but of misapplication of time, for when I yesterday visited the penitentiary, the women were playing at blindman's buff in one shop, while those in the other were dancing.¹⁸

Lancaster Castle's old buildings, which on the whole were comfortable while making supervision very difficult, and its humane but not strict government, made it by far the most popular of Lancashire's institutions among seasoned criminals. Williams persistently demanded the imposition of silence, the abolition of payment to convicts for work and compulsory instruction at the Castle in order to clear it 'from the moral obloquy of being preferred by the criminal population to the other prisons of the county'.¹⁹ When his successor Frederic Hill asked prisoners at random what they thought of the prison in 1847 he received comments such as 'we are all very comfortable', 'we are well attended to' and, at greater length, 'my bedding is very clean. It is cleaner and better than I could get outside the prison . . . If I was to work hard from Monday morning to Saturday night, I could not keep myself and my boy in the same comfort that I am kept in here. I do not know any just cause of complaint among the prisoners. The officers are all nice well-behaved men.'²⁰ 'The prisoners', Williams complained, 'are frequently heard to declare themselves a great deal worse off out of the prison than within.'²¹

While the other three county prisons were less comfortable, their discipline also left a good deal to be desired. Despite the praises of many visitors to Preston, it seems evident that by 1820 its keeper had become rather corrupt and had taken to playing cards with his charges. Later keepers did little to tighten up the discipline until the chaplain, John Clay, finally succeeded in persuading the justices to adopt in part his radical suggestions in 1843.²² In 1839 Williams had written that he regretted that

some endeavours have not been made to place this prison in a more creditable state of discipline. The defects and improprieties . . . are still unsupplied or unchecked, and are quite independent of the question whether this or that system of discipline should be introduced, being such as ought not . . . be tolerated under any. If I am not greatly mistaken, there is a disposition to employ physical rather than moral means in the government of this establishment . . . I am persuaded that, in many instances, imprisonment here is looked upon as the reverse of a punishment.²³

Lancashire, which had been in the forefront of reforming counties in the late eighteenth century, was growing tired, its prisons were growing shabby and their management was overwhelmed by the tide of bodies.

At Salford, where the overcrowding was worst, the discipline, in Williams's eyes, was vestigial:

From the variety of employments carried on in various parts of the prison, and their want of concentration, it is quite impossible that any effectual supervision can take place. During the day prisoners of both sexes are continually traversing the yards. The men are carrying coals or bringing bobbins from the women's side; the women are fetching provisions, or passing to and from the hospital on the men's side; gardeners are digging by themselves in the keeper's garden. The matron states — 'I have found a great inconvenience in the number of the male prisoners who come to the female side . . . I am very troubled by the males of the vagrant class calling to the females after they are locked up of a night' . . . When I was visiting them a male prisoner was engaged in painting the exterior window sashes, women being at work within, without an overlooker. Tobacco in large quantities is thrown over the walls . . . In the midst of one of the most crowded thoroughfares of Manchester prisoners, under the charge of an old man of seventy, were painting the outside wood-work of the prison.²⁴

As late as 1850, Hepworth Dixon was writing that the New Bailey, once a monument to John Howard, was 'thoroughly *bad*'.²⁵ Silence was enforced only partially, prisoners were not even classified, the labour was unproductive, little instruction was offered and the discipline was 'loose, irregular, and unsatisfactory'.²⁶ The New Bailey was probably the least popular county prison with the inmates themselves; the cells were overcrowded and uncomfortable and prisoners were especially likely to prey on one another.

In the eyes of the inspector, however, Kirkdale was the worst managed of all. On his early visits to Kirkdale, Williams found treadwheel prisoners talking loudly to each other without proper supervision. Tobacco was everywhere; it was thrown over the walls, found in the cells, discovered in prisoners' pockets and lying around loose in the turnkey's lodge. The workrooms were untidy and neglected. A group of prisoners in one of the day rooms was brewing coffee that had come over the wall. Thefts were frequent; one of the turnkeys admitted that 'there is an idea among the prisoners that they can obtain offices in the prison, such as that of cook, for money'.²⁷ Breaches of discipline were rarely reported to the Keeper. At least one of the monitors, a prisoner, carried a leather thong for punishing boys under his charge.

Williams concluded that

the general discipline, and entire system of management in this prison is . . . most faulty, and calculated rather to encourage crime than repress it. Scarcely any of the penalties awarded by the law are inflicted with due severity . . . Imprisonment here generally, from the prettiness of the garden, the temporal advantages, and the constant communication which takes place between all classes of prisoners, is little more than nominal. The chaplain . . . states 'that a female prisoner . . . appeared greatly distressed at coming in, but upon passing through and seeing the garden her grief vanished, and she exclaimed with astonishment, "Dear me, what a pretty place!"'²⁸

The real problem at Kirkdale was the reluctance of the justices to discharge the Governor and the Matron who had grown too old and frail to carry out their duties. When Williams returned the following year, no improvements had been made. Again he commented on the 'absence of energy and conduct in the officers or something worse. I again . . . solicit the attention of the visiting justices to the state of this prison'.²⁹ Williams, however, had little influence with the justices. In his eighth report he was still writing of the lax discipline at Kirkdale, this time including the prison surgeon in his charge of neglect. It was not until his tenth report, written in 1845, that he finally had the satisfaction of noting that a general improvement had taken place in the management of Kirkdale since the replacement of the Gaoler and Matron.³⁰

It is difficult to escape the conclusion that Lancashire prisoners were only rarely strictly regimented during the day. The prison buildings were too old or too poorly designed, the prison staff too small, the justices too anxious to save money by assigning prisoners to maintenance work

or trades they already knew, for the constant vigilance that was needed. This is a common situation; life is very similar in many modern prisons.³¹ Only at Preston, for a brief period, was there an order imposed which Hepworth Dixon found 'admirable; in fact too admirable', because the prisoners' eyes never wandered from their work.³²

While prison days offered many diversions, however, prison nights were long. In the winter prisoners might be locked in for as many as 17 hours at a time. Legislation had prohibited the assignment of two prisoners to any cell; they could hold one prisoner or three or more. When prisoners were alone they suffered intense boredom. Even when they could read, they often lacked light; most cells were provided with a window but usually it was unglazed. Cells were cold and prisoners habitually stopped up the windows with rags to prevent a draught. When three or more prisoners shared a cell they could talk but the arrangement was uncomfortable: the cells were too small, the inmates got on each other's nerves and they were often afraid of one another.

Serious assaults were comparatively rare in the prisons although they did take place occasionally; an insane prisoner at Preston kicked a fifteen-year-old boy to death in 1842.³³ The Lancaster Gaoler had once gone in constant fear of the gangs of desperate convicts who perpetually plotted to overpower or injure their guards. Escape attempts had become less common by Governor Hansbrow's day; aside from occasional episodes of pushing, turnkeys were seldom assaulted although they were often threatened.

Entries in the Governors' journals and the occasional comments of prisoners themselves, suggest that the communal life they led was not always idyllic or co-operative. Three prisoners from Lancashire testified before the Select Committee on Gaols and Houses of Correction when it was considering conversion to the silent system in 1835. One from Lancaster Castle testified that he shared a yard and day-room with 20 to 30 others. No officer was present. At night they slept either one or three to a cell and there was

noise and singing for Two or Three Hours . . . some of all Sorts were there; much Talk about Crime; much swearing and indecent Talk; some had been in Prison before, some had been transported before, and some who seemed to take a Delight in telling what they had done . . . a wretched bad Place altogether . . . worse before Trial than after Trial . . . for Contamination; nothing to do, and always contriving Mischief . . . Had rather be in a Place by himself, or in total Silence, than be amongst such a rough Set; it is the biggest Punishment to

be amongst such; always quarrelling and fighting, and no Peace.

The eighteen-year-old thief who had spent ten weeks at Kirkdale before his trial and 20 weeks after 'spent the day in Idleness . . . there was very bad Talk; the longer a Man stops in such a Place the worse he is'. The third stated that at Preston there was no officer present in the ward to keep order and protect prisoners from their companions. He blamed his 'Downfall' on a previous sentence at the New Bailey and said he would prefer transportation or solitary confinement. These prisoners may have been chosen to reflect the Committee's views but they still suggest that some convicts shared the 'middle-class' values of the society that imprisoned them and wished to 'go straight'.³⁴

Even among those prisoners who were cynical to begin with or had become 'hardened' by frequent internments, there were many sources of fear or tension. Even after the establishment of county lunatic asylums, prisoners who were insane or 'half crazed' posed a constant hazard to their companions and a persistent conundrum to their harassed gaolers. Lunatics remained common in the houses of correction which continued to serve as convenient dumping grounds for problem cases which, for one reason or another, were not suited to more specialised institutions. 'Every tour of inspection', wrote Williams in 1839, 'affords me fresh examples of the inconvenience of retaining in prisons individuals acquitted of crime on the ground of insanity, but ordered to be detained during pleasure . . . They can be set to no labour or employment, are often restless and uncertain in temper, dissatisfied with their situation, and unsafe even to be trusted with the execution of menial offices.'³⁵ Seven of the 13 visits made by the visiting justices to Kirkdale in 1844-5 were to see insane prisoners.³⁶

Lancaster Castle was by this time supposed to be free of lunatics, but they frequently appeared nevertheless. Juries were often reluctant to acquit even distinctly eccentric offenders on the grounds of insanity. Official ineptitude accounted for the presence of others, much to Governor Hansbrow's annoyance. In 1846 he wrote that he had received a 'perfectly insane' convict from Preston. 'I am quite at a loss', he added, 'to understand why . . . the Preston authorities have not effected his removal to an Asylum . . . and . . . avoided the painful exposure of an unfortunate and irascible being in a Court of Justice.'³⁷

Other prisoners became insane after their committal; a condition which was not improved by the common punishment for their misbehaviour: confinement in the refractory cells. At least two prisoners during the period covered by Hansbrow's journal later attributed their

violent conduct to the knowledge that they had been unjustly imprisoned in the first place. Prison life could undoubtedly give the final push to men whose mental health was already in a precarious state, but there is little evidence that any of the Lancashire prisons increased insanity in the way that Pentonville did.³⁸

The insane, and prisoners subject to sudden fits of violent behaviour, posed the most dramatic threat to the tranquillity of the prisons and to the safety of their fellow prisoners, but they were not the only discordant element in prison life. Less visible but more pervasive was the effect of what has been called the 'inmate subculture', organised around the bartering of food and contraband, such as tobacco, writing paper and opium. The extent of such trading depended on the conditions in the prison and the vigilance of the staff but it was present everywhere. At Lancaster, the chief source of trouble among the criminals was the boys, who gave their bread to some of the older men in exchange for protection from the other prisoners. The head turnkey told Williams in 1843 that 'the boys give their food to some of the men, and those men side with them. No man dare complain of the boys, for he is sure to be beaten or annoyed.' Two of the monitors confirmed this and a prisoner asked to be put into solitary because 'I am ruptured, and the boys are always jeering me about it'.³⁹

That summer the boys were more fully segregated in a silent shop of their own, which partly alleviated this source of irritation. Hansbrow vigorously attacked the sale of food by assigning suspected offenders to a special 'traffickers mess' for their meals; this was closely superintended by a turnkey and all uneaten food was returned to the kitchens. The barter of food continued to take place sporadically at Lancaster but neither there nor at Preston, where the diet was generous, did the problem attain the proportions it reached at Salford, where there was apparently less food and the huge size of the population precluded superintendence by the inadequate staff. A misdemeanant reported to Hansbrow for possessing money told him that he had smuggled it in with him from the New Bailey to buy food, 'under the impression that the diet of this Gaol would be as meagre as that of Salford . . . but . . . he found *he had no use for his money*'.⁴⁰

Quarrels over food, barter and loans were a frequent source of tension between prisoners, who often felt they had received the short end of the bargain but did not dare to complain. Another source of unhappiness was the hostility prisoners showed as a group to someone who did not fit in because he was too 'religious', feeble-minded or deformed, or because he came from the countryside, Ireland or a foreign country. In

1844 a felon came to Hansbrow 'under apparently very excited feelings' to complain that the schoolmaster 'in correcting his spelling and pronunciation, was in the habit of referring to his being an Irishman, which brought down upon him the ridicule of his comrades'.⁴¹ Two years later Hansbrow reported that a Jew named Philip Lipman had been sent to him for speaking in the silent shop.

He explains that, just as [he] was entering the shop after dinner somebody struck him on the back which caused him to utter an exclamation. He tells me he has been obliged to quit school, owing to a sort of persecution he undergoes from some of the other prisoners . . . I fear there is too much truth in his complaints — because he is a foreigner.⁴²

The communal feeling which sometimes led prisoners as a group to turn on the misfits in their midst also enabled them to act with some solidarity to protect their interest. As in the industrial world which surrounded the Lancashire prison walls, prisoners seem to have co-operated to restrict the amount of work exacted of them. Hansbrow wrote in 1845 that 'Felon John Norbury complains that potatoes have been thrown at him once or twice, and that he has been threatened by two of his fellow-prisoners because "he does *too much* work!" as a Weaver! I really am at a loss to understand the meaning of this.'⁴³ Four months later a felon refused to continue power-loom weaving because his companions threatened him for working too hard. The army-trained Governor was incredulous when he heard such tales, but the practice was a part of life for the weavers coming from the textile towns.

Prisoners also occasionally banded together to air a grievance. Food was the most common complaint. In 1843, for example, the Lancaster prisoners refused to work because they felt they had been given bad potatoes. After a visiting justice promised to try to obtain a better supply, they returned to work. They were reprovved but not punished. On another occasion prisoners refused their dinners because they wanted Hansbrow to dismiss the cleaners for their ward and appoint others. Perhaps the most serious incident of this sort in the period covered by Hansbrow's diaries occurred in 1848 when a prisoner named William Eccleston was taken sick during the night. He was taken to the prison hospital where he died about two hours later. The next morning all the convicted felons gathered in the chapel yard and refused to work until they saw the governor, the surgeon and a magistrate.⁴⁴ When they appeared, a spokesman accused the turnkey on duty of being dilatory

in answering their calls for assistance. Others complained that prisoners were deterred from going to the hospital and reporting themselves sick by fear of being put on a reduced diet. The turnkey denied that he had been slow to respond. Hansbrow supported him by reminding the prisoners that the officers on night duty were constantly disturbed by false alarms and that he himself had repeatedly warned them of the consequences. He promised that any prisoner who had something to say would be allowed to testify at the inquest and they all returned to work. The next day there was further trouble with the prisoners in three wards, led by a man named Buck who complained that their potatoes were bad. After this, however, the protest petered out. The only person punished during this incident was Buck, who had called Ecclestone's death a 'bloody murder' and had told the taskmaster to go to hell. (Buck was clearly an excitable man; elsewhere in the journal, Hansbrow describes him as 'weak-minded', 'crazy' and 'half-crazy'.) Although prisoners were always reprimanded for such concerted protests, there seems to have been a tacit understanding that they would not be punished as long as they behaved in a peaceable manner and returned to work once they had made their point.

Prisoners were punished, however, for a wide range of other offences. Evidence about the frequency of such punishments appears in Table 8.1, taken from Parliamentary returns. As always, the accuracy of such returns is open to some question; different gaolers defined punishment differently. For example, Hansbrow considered assignments to the traffickers' mess a non-punitive measure but prisoners considered it to be punishment. Turnkeys sometimes punished offenders informally; this was probably especially common on the women's side of the prisons. Some officers simply resented making returns and made up suitable numbers; something of the sort probably caused the suspiciously round numbers given for solitary confinement at the New Bailey between 1826 and 1834.⁴⁵

Despite the drawbacks, however, punishment records should provide a useful guide to the nature of life in an institution. The extent to which a particular system is enforced is as important as the original choice of system. Punishment figures should provide a direct and objective measure of discipline. If prisons were really, as Foucault and his followers have suggested, imposing a harshly regimented system designed to control the body and break the spirit, we would expect evidence of this to appear in the number and kind of punishments imposed. Unfortunately, such figures are extraordinarily difficult to interpret because institutional punishment rates have the same ambiguity as crime rates: one

can never be clear whether they are reflecting the level of forbidden behaviour or the level of detection. Does a large number of punishments in a single institution suggest an extremely orderly and repressive institution in which no one can hope to escape detection for the most trivial offence or does it imply a highly disorderly one, in which hundreds of inmates are constantly committing offences, only a minority of which are punished? Nevertheless, punishment records can be useful and revealing when read carefully, comparatively and in conjunction with other information about the institutions that created them.

Table 8.1: Recorded Disciplinary Actions, Lancashire, 1823-1847

Year	Total committals	Whipped	Ironed	Solitary	Other	Total
1. LANCASTER CASTLE						
1823	853	—	3	64	290	357
1824	826	3	—	111	169	283
1825	854	3	—	142	301	446
1826	1,241	—	2	181	263	446
1827	1,219	3	—	223	82	308
1828	815	1	—	134	38	173
1829	931	2	—	234	—	236
1830	992	—	—	349	—	349
1831	1,032	2	7	197	77	283
1832	999	—	—	178	19	197
1833	901	—	—	267	14	281
1834	900	—	—	253	—	253
1835	918	—	—	517	91	608
1836	843	—	—	354	108	462
1837	1,064	—	—	138	24	162
1838	1,095	—	—	276	73	343
1839	887	—	1	393	36	430
1840	1,150	3	1	553	—	557
1841	1,225	—	3	566	—	569
1842	1,474	—	3	509	—	512
1843	1,291	6	3	399	17	425
1844	1,065	1	—	247	14	262
1845	376	—	—	179	24	203
1846	618	5	—	135	—	140
1847	766	—	—	209	82	291
2. PRESTON						
1823	695	—	4	26	—	30
1825	806	—	1	145	115	261
1826	2,008	4	2	221	163	390
1827	1,415	5	6	414	82	507
1828	726	6	6	119	60	191
1829	1,066	—	1	293	70	364
1830	1,138	—	1	204	34	239

Year	Total committals	Whipped	Ironed	Solitary	Other	Total
1831	1,219	—	—	247	—	247
1832	1,223	—	—	274	—	274
1833	1,124	—	—	325	—	325
1834	1,110	—	6*	252	—	258
1835	948	—	—	304	7	311
1836	914	—	—	310	—	310
1837	1,237	—	—	471	36	507
1838	1,206	—	—	290	29	319
1839	1,575	—	—	332	—	332
1840	1,812	—	2	297	24	323
1841	1,804	—	—	334	29	363
1842	2,291	—	—	142	316	458
1843	1,987	—	—	518	2,571	3,089
1844	1,471	—	—	345	2,435	2,780
1845	1,103	—	—	76	4,469	4,545
1846	1,266	—	—	126	7,143	7,269
1847	1,299	—	—	197	6,241	6,438

3. KIRKDALE

1823	1,864	—	—	43	—	43
1824	1,813	17	6	111	—	134
1825	2,109	2	16	107	—	125
1826	2,523	1	20	109	1	131
1827	2,713	4	10	27	71	112
1828	2,691	3	1	64	17	85
1829	3,138	—	3	42	6	51
1830	3,313	—	1	33	—	34
1831	3,348	6	—	53	—	59
1832	3,052	1	27	52	—	80
1833	3,202	—	2	37	—	39
1834	3,673	—	3	61	—	64
1835	3,543	—	2	127	—	129
1836	2,234	—	11	57	—	68
1837	1,796	—	2	38	—	40
1838	2,140	—	—	71	58	129
1839	1,676	—	3	67	160	230
1840	1,898	—	1	108	139	248
1841	2,501	—	17	169	427	613
1842	2,629	—	—	216	652	868
1843	1,643	—	2	242	277	521
1844	1,410	2	—	455	2,453	2,910
1845	1,196	1	—	897	2,896	3,794
1846	1,183	2	—	844	2,393	3,239
1847	1,295	—	—	351	3,022	3,373

4. SALFORD NEW BAILEY

1823	2,729	4	—	47	—	51
1824	2,769	3	—	242	—	245
1825	3,020	1	—	193	—	194
1826	3,202	4	—	100	—	104

Year	Total committals	Whipped	Ironed	Solitary	Other	Total
1827	3,527	2	—	80	—	82
1828	6,145	2	—	100	—	102
1829	2,576	—	—	120	—	120
1830	3,462	1	—	80	—	81
1831	4,042	—	—	100	—	100
1832	3,800	—	—	70	—	70
1833	4,328	—	—	90	—	90
1834	5,304	1	—	105	—	106
1835	5,407	—	—	373	—	373
1836	6,353	1	—	543	1,825	2,369
1837	7,013	2	—	693	3,486	4,181
1838	5,587	9	—	357	4,001	4,367
1839	5,628	20	—	840	4,641	5,501
1840	5,805	3	—	1,180	4,761	5,944
1841	5,689	18	—	1,451	4,674	6,143
1842	6,218	7	—	1,517	4,068	5,592
1843	5,668	8	—	1,819	5,183	7,010
1844	5,099	14	—	2,178	4,464	6,656
1845	4,961	32	1	2,117	4,759	6,909
1846	4,703	6	—	1,552	4,690	6,248
1847	4,941	7	—	2,143	6,257	8,407

*Soldiers

The records make it evident that in Lancashire's prisons the harshest penalties, particularly the corporal punishments of whipping and ironing, were relatively infrequent. Irons were nearly always reserved for men who attempted escape; their use is probably a better indicator of the security which any given prison maintained than the severity or gentleness of its discipline. Whippings, however, are another story. They were usually reserved for prisoners who had committed serious offences and who had remained unmoved by other penalties. A large number of whippings in a single year, such as those at the New Bailey after 1838, suggests that the Gaoler was anxious to reimpose discipline in an essentially disorderly institution. It suggests that the prison has failed, but the staff is not yet ready to admit defeat. It is a sign of the New Bailey's decline into a despotic anarchy, which should be compared with the consistent minor punishments and lack of whippings at Lancaster, suggesting the relatively gentle maintenance of order, and the very small number of punishments at Kirkdale before 1844, suggesting that the Keeper had simply given up altogether.

A disciplinary whipping was a harsh and painful punishment, administered only after a formal hearing by the visiting justices. Every Lancashire prison possessed a 'cat-o-nine-tails'. The culprit stood facing a

large triangle, with his feet strapped to the base and his hands in cuffs drawn tight by a pulley overhead. Isaac Smith, who served as a warder in Lancaster in 1861, witnessed some of these floggings and found them a 'sickening and degrading spectacle'. 'The first few strokes', he wrote, 'usually draw blood, or rather, cut right into the flesh, and only the strongest and most callous can stand the full number of 36 lashes.'⁴⁶

Few convicts ever experienced a whipping. Except at the New Bailey after 1838, there were rarely as many as six in a year. The milder punishments, however, were much more common. Gaolers had the right to imprison offenders on their own authority to up to three days' confinement on bread and water in a dark cell. They also administered a number of smaller penalties of which the most important was the stoppage of all or some of a prisoner's meal. Early reformers had approved the use of dietary penalties, often reserving the good Sunday dinner for the well-behaved. As a result of several well-publicised scandals, including one at Manchester borough gaol in 1851, dietary penalties were eventually banned officially, though some gaolers continued to use them.⁴⁷

Surviving volumes of the Lancaster Gaoler's journal show the relative infrequency of serious, life-threatening offences and the mildness of most discipline. Violence usually occurred in the course of fights between two or three men and the most dangerous weapons used were the clogs they wore at work. Homosexual rape was unknown, or at least unrecorded. In most cases the Gaoler imposed some penalty on a reported offender but the penalty was usually small: an hour or a few hours in the lockup (rarely more than a day), or the loss of part of a meal. Hansbrow's predecessor, John Higgin, went so far as to forgive a man who had threatened to kill him with a piece of iron. Inspector Frederic Hill, who read Hansbrow's journal, commented that while it contained 'scenes of gross misconduct on the part of some of the prisoners, implying a very imperfect state of discipline, several entries in the journal show a habit of patient investigation by the governor, an anxious desire on his part to avoid inflicting unmerited punishment, and a general willingness to render friendly services to the prisoners.'⁴⁸

Except at Lancaster Castle, where the incidence of punishments remained relatively stable throughout the period from 1823 to 1847, despite a change of gaolers in 1832, there was a striking increase in the incidence of minor punishments towards the end of this period. This seems to have been due as much to accident as to the consistent application of a new policy. The rise at Preston corresponds with the period of Clay's ascendancy and with the completion of a wing of separate cells and the enforcement of the silent system in 1843, when a new

Governor also arrived. The increase of penalties at Kirkdale in 1844-5 corresponds with the appointment of a new Governor there who was attempting to correct the very lax administration of his predecessor. At both these institutions, the adoption of the silent system brought an immediate increase in the numbers of penalties, since speaking became a punishable offence. It was this irritating proliferation of minor punishments for natural infractions that was the chief complaint of the silent system's critics.

The New Bailey had four different governors in the 1840s, but the significance of any changes in the number of punishments there is obscured by the patent unreliability of the returns before 1836. Nevertheless, the returns for the 1840s are interesting, because they show a relatively high incidence of minor penalties in an institution that was making only a lacklustre attempt to enforce silence. Hepworth Dixon, who visited the prison in the late 1840s (probably 1848) commented that the number of punishments had reached 8,407 a year. He blamed this 'monstrously high' figure on the poor design and bad discipline of the gaol.⁴⁹

It seems evident that the general level of punishment was really quite low at all three houses of correction until the Pentonville era. What happened thereafter is less clear, but as eyewitness accounts show, a relatively large number of punishments was compatible with a very old-fashioned regime. Even if they had wished to, the New Bailey staff could hardly have enforced discipline on a Pentonville scale; in 1843, there was a total staff of 27 and only ten full-time turnkeys who tried to maintain order among about 700 inmates. By the time of Hepworth Dixon's visit the number of staff members had risen, but only to 42.⁵⁰ The other county prisons were similarly short-handed. In 1843, Lancaster had a total staff of 28 men and women, including 14 'monitors' and only five turnkeys.⁵¹ Kirkdale, in 1836, had a staff of 23 including ten turnkeys and Preston, in the same year managed on a staff of only 16, including five turnkeys.⁵² Even Manchester's eventual complement of 42 seems ridiculously small by modern standards.⁵³ Even allowing for the fact that modern prisons contain a more dangerous group of prisoners and that prison guards now work shorter hours than their Victorian predecessors, the vulnerability of Lancashire's turnkeys is clear. It makes the relative scarcity of serious assaults and murders even more impressive; it is obvious that nineteenth-century turnkeys could only keep order because they had the co-operation of a large proportion of the prison community.

The efforts of reformers and, in particular, the introduction of the

silent and separate systems constituted a sustained attack on this prison community. However lax Lancashire's other prisons had become, Preston symbolised for the whole nation the fluctuating currents of reform, from 'benthamite' labour regimes to 'evangelical' isolation. The chief local proponent of the separate system and a figure of national importance was the Reverend John Clay, Preston's chaplain, whose social theory and apparent success in implementing it make Preston central to the case for a social control approach during the Pentonville era. We will examine the implementation of Preston's new regimes in some detail; if they were limited there, they are unlikely to have been more fully enforced in most other local prisons.

Eighteenth-century reformers had been unanimous in calling for the more thorough imposition of labour in the prisons. They frequently referred to the success of the Dutch *rasphouses* in setting their inmates to work and lamented the relative idleness of the English prisoner even in the bridewells established to teach habits of industry. They continued to complain about the lack of work throughout the first decades of the nineteenth century. Lancashire was relatively successful in finding work for its inmates because the growing textile industry provided steady employment at least until the 'hungry forties', although there was never a time when profitable labour was successfully imposed in all four prisons at once in an efficient manner. At Preston, however, it served as the cornerstone of prison life for some years. Its eventual failure is a story of clashing ideologies exemplified by conflicting personalities.

Preston's industrial policy was largely the work of William Liddell, its Keeper, who successfully introduced profitable labour shortly after his appointment in 1817 in order to provide prisoners with a trade on their release. Three Preston textile firms employed the Preston inmates to weave cotton shirting, cotton cloth for print dresses and cambric. Prisoners wove about a cut (24 yards) a week, encouraged by an allowance of one-fourth the gross value of their work and the occasional offer of an extra noggin of gruel. Only those with terms of six months or more, or previous training, became weavers; the others were employed in batting and picking cotton or other simple tasks.⁵⁴

The looms of Preston soon became a national symbol of industrious imprisonment. Liddell was called to testify before the Select Committee on Gaols of 1819 as an expert witness. Elizabeth Fry and Joseph Gurney who visited Preston at about the same time praised his efforts. 'The Governor', Gurney wrote, 'has met with great success in two respects. He has, by his kindness, gained the hearts of his prisoners, of which we observed some very interesting instances: and he has contrived to provide

them all with full employment. The consequence is, that he governs with comfort to them, and facility to himself . . . One thing seems wanting; – namely, more religious care and instruction.’⁵⁵

Liddell agreed with Gurney: in answer to questions put by the Select Committee he acknowledged that the chaplain only came to hold the Sunday service and that prisoners received no instruction although the vicar of Preston provided religious books for their use. When asked whether his system had any good effect on their moral character he said, ‘I think a little more religious instruction would be better for them.’ This suggestion was soon carried out; under the provisions of Peel’s Act, the justices appointed schoolmasters to provide instruction for the illiterate boys. More important, in 1821 they had replaced the aged and ineffective chaplain with a zealous and energetic young man: John Clay. It was this appointment that was to bring about Liddell’s downfall.

By the early 1820s, many Englishmen were beginning to have second thoughts about the desirability of industrial prisons. The policy was being attacked from two sides. On the one hand, the ‘evangelicals’ maintained that labour regimes were ‘hardening’ prisoners and failing to bring about that creative anguish which alone could transform the spirit and reform the mind. On the other hand, the ‘common-sense school’ regarded with dismay the many improvements in the physical comfort of prisoners that the reforms had created. Prisoners, they pointed out, were now better fed, clothed, sheltered and doctored than many free labourers, they worked shorter hours and weaving was not an arduous task. Imprisonment was becoming attractive to the poor.

Writing in the *Edinburgh Review* in 1822, Sydney Smith took special exception to the Preston regime, in a peroration that has become famous:

We would banish all the looms of Preston gaols, and substitute nothing but the tread-wheel, or the capstan, or some species of labour where the prisoner could not see the result of his toil – where it was monotonous, irksome, and dull as possible, – pulling and pushing, instead of reading and writing, – no share of the profits – not a single shilling. There should be no tea and sugar, – no assemblage of female felons round the washtub, – nothing but beating hemp, and pulling oakum, and pounding bricks, – no work but what was tedious, unusual, and unfeminine . . . Mrs. Fry is an amiable excellent woman . . . but hers is not the method to stop crimes. In prisons . . . there must be a great deal of solitude; coarse food; a dress of shame; hard, incessant, irksome, eternal labour; a planned and regulated and unrelenting exclusion of happiness and comfort.⁵⁶

Lancashire magistrates, sensitive to increases in the rates and surrounded by manufacturers anxious to find more labour, were never enthusiastic about demands that they convert profitable prison manufactories into places of worthless and unpleasant activity merely to make prisoners more uncomfortable. After a certain amount of campaigning by zealous reformers, led locally by Clay, they did introduce treadwheels into all four county prisons in the 1820s, but the power which the wheels provided was applied to useful objects and their use often depended on the power requirements of the prison rather than the number of inmates deserving hardship. For example, the Kirkdale wheel ground grain into flour. The Lancaster wheel ran the power looms; a system used nowhere else in England. When crank labour was introduced into Kirkdale's separate cells in 1851, it pumped water for the prison.⁵⁷

To the disgust of William John Williams, the Lancashire prisons continued throughout the period to employ prisoners as needed in miscellaneous tasks in the buildings and grounds and to pay them a little extra for such work. At Preston, for example, on 15 August 1836, only 21 felons and 35 misdemeanants were on the treadmill (used to grind wheat) out of a total population of 161. Forty-three prisoners were weaving, winding or picking cotton, three were cooking, one was acting as a personal servant to the matron and 12 were serving as 'constables'. A joiner, a painter, a barber, a flour carrier, a miller's assistant, two whitewashers and six labourers pursued their trades. Four chapel singers and four men who worked in the gardens received an extra allowance of food. Williams complained that 'the remunerating of prisoners for such employments is bad enough of itself, but paying them with an extra allowance of food, when the diet is more than ample, appears quite preposterous and likely to encourage the very opposite to habits of frugality.'⁵⁸ He objected even more strongly to the use of prisoners to maintain the very large and beautiful ornamental garden just within the Kirkdale gates. Williams's successor, Frederic Hill, however, was a strong proponent of industrial labour who co-operated closely with the Lancashire justices and encouraged the introduction of a variety of trades.⁵⁹

Prison officers had initially greeted the treadmills with enthusiasm. Convicts, it was said, loathed them, and were staying away from prison in droves. John Clay reported that news of the hated machines was being spread through the poorer classes by means of broadside ballads.⁶⁰ Prison surgeons reported that the increased exercise, imposed in intense, 20-minute spells, improved prisoners' health and that, when women were put on the wheel, complaints of dysmenorrhea dropped. The enthusiasm quickly waned. Outside the prison system, humanitarians began to rally

against the 'common-sense school'. Treadmills, they claimed, were cruel and harmful to health. They stunted growth, overheated the body, caused hernias and brought on miscarriages. In the meantime, ironically, prison officers discovered that treadmills, when used moderately, were not all that unpopular with their charges. A fat man often endured agonies climbing the 'endless staircase', but old lags soon mastered the art of sliding their feet from one rung to the next with a minimum of effort and used the opportunity to converse with their friends.⁶¹ As late as 1850, Hepworth Dixon wrote that 'a strong proof of the want of more and harder work in the castle [Lancaster] is — that prisoners *desire* to go on the wheel: they say they are starved in the winter months, and want heavier labour to keep them warm!'⁶² Humanitarians never believed these reports and succeeded in prohibiting treadwheel labour for certain groups, particularly women and boys, but it continued in use in a desultory way, especially in those prisons where its power was useful.

John Clay soon became disillusioned about the deterrent effect of treadmill labour. He began to seek other solutions to the problem of crime and became utterly opposed to Preston's emphasis on profitable labour and its disregard of the sinfulness and spiritual needs of its inmates. In his view, Liddell merely managed the prison cheaply and, though kindhearted, was a coarse and violent-tempered man.⁶³ Liddell's failure to discipline his staff had become evident shortly before Clay's appointment. In 1820, the Preston Sessions dismissed two turnkeys for misconduct. Disgruntled, they in turn preferred charges against the gaoler, surgeon and chaplain, claiming that the bodies of prisoners dying in confinement had secretly been given to Lancaster surgeons to dissect. Two justices, Thomas Hesketh and E.R. Travers, investigated this and found that the practice had indeed existed, although they cleared the surgeon and other officers of participation or knowledge. While some irregularities may have existed, they wrote, the main problem was the lack of adequate rules and regulations.⁶⁴

After Clay's arrival, he and Liddell co-operated for some time, but it became more and more clear that the two men had incompatible ideas about the governance of the prison. The matron appointed under the act of 1823 was a friend of Clay's and he supported her against the Governor. Clay's son wrote that her appointment 'considerably embarrassed' Liddell's 'household arrangements' and that Clay's reforms 'began to trench on his own privileges'. For his part, Clay was disgusted by the 'open riot and blasphemy' in the yards, where prisoners stole, gambled, swore, boxed and smoked with impunity, and even more distressed by

the more covert 'vile practices and disgusting profligacy, to which the turnkeys were suspiciously blind'.⁶⁵

About five years after his appointment, Clay wrote to the justices charging Liddell with misconduct. At first, they rejected his charges and publicly censured him for making them. The matter rested there for some time until newspaper reporters published a story that Liddell had 'tortured' an inmate by putting her in a scold's bridle.⁶⁶ The fact that this alone was considered scandalous and newsworthy is a sign of the quiet change that had been taking place in public sentiment over the past generation despite a great deal of criticism about 'coddling criminals' on the surface; at the end of the eighteenth century, scold's bridles had been used to curb the tongues of blaspheming women without arousing any interest or comment.⁶⁷ The Home Office enquired into the matter and an embarrassed Hesketh wrote Hobhouse that 'an Instrument called a Bridle has been kept at Preston for many years, but . . . they were not aware that it had been used in modern Times — it appears however upon Enquiry that it has been used . . . once during the last seven years and that was about ten Months ago.'⁶⁸

Once again the justices initiated an enquiry into Liddell's conduct, urged on by the newspapers and, according to Walter Lowe Clay, by the 'fatal suspicion that he was too lenient to poachers'.⁶⁹ After three days of hearings, the justices dismissed Liddell on charges of intoxication, neglect of duty, neglect of classification and cleanliness, gambling, improper delegation of authority, failing to discipline staff, speculation and improper and unkind behaviour to the matron.⁷⁰ Oddly enough, Walter Lowe Clay wrote that Liddell's dismissal was rather harsh on the basis that no better conduct was expected of the gaolers of the time. Perhaps Liddell seemed better in retrospect, for Clay and the new Governor, Captain Anthony, were almost immediately at odds over Anthony's opposition to the 'introduction of educational and religious influences', and the imposition of 'Quarterdeck discipline, rough, capricious and tyrannical'.⁷¹

This recurrent conflict at Preston can be seen in several perspectives. In one way it was purely a battle for power between the Governor, who officially ran the prison, and the Chaplain, who thought he knew how it should be run. On another level, it was a confrontation between the 'reformers' and the 'unreformed prison'. Many people were not as convinced as Clay that swearing and smoking should be stamped out at any cost. The Preston justices had never been great reformers; they had trailed the field in the late eighteenth century and had been prepared to overlook many admitted 'irregularities' in the prison in 1821. Nor was

their resistance necessarily a sign of inhumanity; Clay was complaining that the prison was too attractive to malefactors. On a third level, it was a conflict between two competing systems of reform rather than between reform and tradition. Liddell, after all, was considered a reformer by his contemporaries, although apparently the passage of years had relaxed his energy and honesty. He had undoubtedly succeeded in making his charges industrious, but the 'evangelicals' were no longer prepared to agree that that was sufficient to render them honest.

Yet however one looks at the conflict, two things are clear. One is the importance of an uncensored press in prison affairs. The other is the growing importance of the prison staff. Reform had increased the power of the governor without increasing the control exercised by the justices in prison affairs. The justices exonerated Liddell in two separate investigations before evidence of his misconduct was positively forced on them – by other staff members. The provision of paid professional staff members was the most important contribution of progressive waves of legislation between 1776 and 1823 and the qualities of those actually chosen was the most important determinant of prison life. As a result, prisons varied enormously depending on who governed them. By the 1840s, Clay and Anthony's replacement, Col. Martin, were ready to make Preston a model of the separate system. Ironically, this resulted from a fundamentally liberal view of penal policy.

Clay had arrived at Preston with traditional views on the nature of crime. He saw penal policy as a matter of providing general deterrence, although as a clergyman he could not help worrying about the effects of 'evil communication' on his charges. If anything, his early reports reveal a rather retrograde attitude. While Bentham deplored the use of hard labour, Clay helped introduce the treadmill and praised it highly in his second report in 1825.⁷² In the same report he commended the effects of a sound whipping on juvenile criminals. Even more extraordinary, at a time when most prison governors were working to abolish 'kangaroo courts' among prisoners, was his complacent remark that the convicted felons' ward, containing the 'worst characters in the prison', had established a set of rules against swearing and irreligious conduct. They were enforced by mock trials in which the oldest man present sat as judge and could sentence the accused to be thoroughly whipped on his naked back. Further experience and the failure of the treadmill forced Clay to reconsider his theories and to try to discover the causes of crime in the hopes of developing more effective punishments.⁷³

Clay began to interview convicts and to collect statistics almost as soon as he took up his duties at Preston. His first report to the visiting

justices in 1824 included a table of commitments and recommitments to Preston for the previous five years and the hope that crime had not increased, given the increase in population. By 1827, he had carried out a more subtle investigation into the relationship between industrial development and crime. He concluded that crime was a product of individual weakness, that industrial occupations tended to lessen rather than increase crime and that the temporary economic depressions which caused severe suffering in Preston witnessed a fall rather than an increase of crime.⁷⁴

Despite initial difficulties with the Preston bench, Clay managed to convert its new chairman, Thomas Batty Addison, a prominent lawyer, the Recorder of Preston and a frequent chairman of Lancashire's annual executive session. In 1827, Addison summarised Clay's ideas in his own general report on Preston. He wrote that because factory labour provided its own discipline, few factory workers committed property crimes. It was the pieceworkers 'who are under no restraint as to the Regularity of their Employment, or the Hours of Labour' who filled the prisons. Industrialisation itself should reduce the need for other institutions of control.⁷⁵

Clay's most important evidence for the contention that industrial growth did not cause crime rested on his belief that there was a direct correlation between the crime rate and the business cycle. When times improved, the crime rate rose. This happened because most detected crime resulted from drink rather than the fundamental dishonesty of the offender. When times got hard, fewer working men could afford alcohol and the resulting drop in drink-related offences more than compensated for a slight rise in need-related crimes.⁷⁶

Clay soon abandoned his original belief that the end of imprisonment was deterrence. He argued that deterrence offended against natural justice on two grounds. First, that it was unfair to 'A' to punish him harshly in order to deter 'B' because 'A' then suffered not for his own criminal propensities but those of 'B' which 'A' could not control.⁷⁷ Second, that the criminal was not wholly responsible for the enfeebled morals that had led to his crime.⁷⁸ Not only was it unjust, deterrence was ineffective, since criminals lived for the moment and never expected to be caught, while those who actually were caught were merely hardened by brutal punishment.⁷⁹ At the same time, however, he complained that Preston had become so undeterrent under Liddell that the poor actually committed crimes for the purpose of being gaoled.⁸⁰

As early as 1827, Clay began to campaign for the 'American system'. Neither the separate nor the silent system was by any means new and

Clay cannot claim any role in the development of the ideas behind them, but he was quick to seize on their possibilities.⁸¹ *Encellulement* offered the hope of an end to the inevitable corruption of prisoners which had made the prisons less a remedy for than a cause of crime. At the very least, cellular confinement would not make prisoners worse. More than that, it might even bring about their reform. Clay did not, like some of his more enthusiastic contemporaries, believe that solitary confinement and private meditation alone would reform criminals, perhaps because he did not believe that man was naturally good. His experience, however, showed him that it 'softened' men's minds and made them more receptive to the active programme of religious teaching and education he wanted to establish. Since prisoners were, almost by definition, men of weak minds and wills, once separated from their bad companions they could be influenced to do good rather than ill.⁸²

Clay seems to have adopted the 'American system' originally out of despair. As he campaigned for it, however, it took on more positive aspects. Since it offered the hope of reformation, imprisonment could be justified, not by deterrence or vengeance, but by rehabilitation.⁸³ Clay began to refer to the 'self-adjusting' nature of the separate system; since in his view the only way it imposed suffering was by leaving the criminal alone with his conscience, the minute the prisoner reformed and his conscience ceased to bother him, he was no longer undergoing punishment.⁸⁴ Until that time, however, no punishment could be more severe than the self-reproach of a guilty man with few distractions and no hope for a better future. Moreover, such treatment was the right of the criminal, since however terrible his crime or however pure his innocence, he was entitled to protection from contact with other offenders. Finally, although mild enough to be used even for untried prisoners, it was yet sufficiently severe to deter offenders. Such logic reveals Clay's own ambivalence; since he could not really resolve the problem of who was responsible for crime he was compelled to argue for a system that at one and the same time provided for punishment and non-punitive treatment.⁸⁵

Like many prison chaplains, Clay preferred the separate to the silent system, arguing against the latter because it did not produce 'that deep and earnest self-examination which is the necessary prelude to self conviction and conversion'.⁸⁶ After Crawford's visit to the American prisons in 1834, he began an intense and prolonged effort to persuade the Preston justices to adopt the separate system, or the silent system as second best. In 1834 he persuaded the Bench to agree to the adoption of a 'modified American system' but the agreement was not implemented.⁸⁷

In subsequent reports he continued to hammer at the subject. In 1840 he could report some progress. A number of solitary cells had been made, though they were only certified for one month's confinement, and the silent system was in use in much of the rest of the prison. In 1841 he noted that after another year's trial the system seemed to be working. In 1843, a year after Pentonville opened, a corridor of separate cells appeared at Preston. In the report for that year Clay commented on the continuous improvement in the discipline of Preston in the years since 1828 (the year of Liddell's departure) and a dramatic improvement over the last 18 months. The silent system was now 'fully enforced'. In 1845 the treadwheel was removed and for the first time all prisoners before as well as after trial were separated. By 1848 Clay proudly pointed to a decrease in committals and of crime in North Lancashire that was greater than that in any other county over the past five years and attributed the trend to the introduction of the new system at Preston.⁸⁸

Although Clay referred to the discipline he introduced as the 'separate system' and argued vigorously for its advantages over the silent system, in fact the separation was so modified that it is difficult to assign it to either category. Clay was appalled by the high suicide rate at Pentonville although Crawford was prepared to write off a few extra deaths as the cost of more effective reformation. Accordingly, Clay altered the system to permit a good deal of silent contact between the prisoners. They exercised together, took their lessons together, gathered together in an open chapel and often worked together in large shops.⁸⁹

Clay had originally opposed the imposition of prison labour on prisoners sentenced to short terms and was later to argue against Maconochie's mark system (differing for once from M.D. Hill, the Unitarian Recorder of Birmingham) on the basis that it devoted all its efforts to making men industrious. Preston's convicts, according to his figures, were already industrious. By 1851, however, he changed his mind and argued that industrial occupation was essential to preserve mental health and prevent depression.⁹⁰

Like Hill, Clay began to think of prisons as 'moral hospitals' where prisoners would come to be cured of the moral aberrations brought about by a lack of religious training and education.⁹¹ If prisons were reformatory rather than punitive and if crimes were symptoms of a diseased state, then clearly the answer was to send more people to prison earlier in order to nip the evil in the bud and to protect these convalescents while there from any further contamination. Clay originally expressed doubts about the value of incarcerating offenders, juveniles in particular, because it just made them worse. As Preston more and more

nearly conformed to his ideal, however, by preventing prisoners from corrupting each other, he felt able to recommend incarceration as a universal panacea.

Since imprisonment was no longer imposed as a sort of social vengeance, the idea of simple justice, of a fitting of the punishment to the crime, became less relevant. Clay believed that only a long spell of reformatory imprisonment could truly rehabilitate the criminal and break him of his bad habits, so he advocated ever longer sentences. He was perfectly willing to countenance sentences which, had they been imposed merely for punishment, would have seemed utterly disproportionate to the original offence. The culprit would remain until he had undergone a complete cure. It is possible, though it cannot be proved, that Clay's success in convincing the justices that imprisonment was beneficial increased their readiness to sentence offenders to gaol for petty offences such as public drunkenness – especially since the number of drunken offenders already in gaol proved the seriousness of the problem. (Lancashire had the highest commitment rate for drunkenness in the country, amounting to approximately half of all county commitments.)⁹² This was the danger from reform that Sir George Paul had feared in the late eighteenth century.

It was probably owing to Clay's growing influence that the separate system was also partially introduced into Kirkdale and Salford. William John Williams strongly supported the silent system, which had the additional recommendation of cheapness. Frederic Hill, an adamant opponent of silence, also disliked the complete imposition of separation.⁹³ Several local leaders believed, in the words of the chaplain of Kirkdale, that gaol reform was hopeless 'as long as the state of society remains what it is outside'.⁹⁴ Nevertheless, old cells were altered and new ones built in order to make at least partial separation possible.

At Lancaster, where architectural barriers made large-scale adoption of the separate system impracticable, Captain Hansbrow was converted by his experiments with his more quarrelsome and difficult charges. He began 'putting apart' offenders against prison rules on full diet in their cells as a way to evade the rule that restricted gaolers' punishments to three days of solitary. Hansbrow frequently found the justices' decisions frustrating; on one occasion a prisoner repeatedly and brutally kicked another, splitting his lip and knocking out a tooth, but the justices refused to punish him on the grounds that he had committed only a single offence, while their jurisdiction was limited to *repeated* infractions of the prison rules.⁹⁵ Several of these isolated offenders came to thank him for the period of reflection. By 1849 he was noting in his journal

that Crown prisoners improved 'rapidly and perceptibly' in health and appearance when put apart, attributing the change to the absence of irritation and the inability of prisoners to part with their food. In 1850 he wrote with regret that a felon newly released from solitary had begged to be put apart but that he had no space to do so.

The Home Office was increasing its pressure on the local prisons to tighten their discipline and introduce separation. The prison inspectors for the Home District had long since agreed that the separate system should be enforced throughout England, but it is difficult to know what effect they had since they and the Surveyor General were on very bad terms with Williams.⁹⁶ Nevertheless, it seems likely that it was Clay's work that was decisive in persuading the Committee of Justices appointed in 1846 to adopt the separate system completely in Kirkdale and Preston and to convert Lancaster into a women's and debtors' prison. No immediate plans could be made for Salford because the Borough of Manchester and the Hundred had not come to an agreement about city prisoners. It was on the basis of the Committee's work that the county embarked on a building programme that soon aroused loud protests from the ratepayers. By 1851, the county was firmly committed to a policy of separation.⁹⁷

The official adoption of separation by the government, the commitment of the magistrates and the triumph of the reformers, should not be allowed to obscure the limited way in which the separate system was actually implemented. The storm of controversy over the idea has concealed its tenuous existence in fact. The expense of total conversion and the ratepayers' revolt acted as important brakes on its introduction, as did the delay common to all governments and especially those dependent on committees of amateurs. By the time Lancashire was actually prepared for conversion, the separate system was again falling out of fashion, replaced by the mark system. Another difficulty was the unpredictability of prison populations: in 1851 Preston contained 168 cells certified for separation, 108 cells which could not be used for separation and 34 cells too dilapidated for use. Since Preston's average population in that year was 367, it is difficult to see how more than about two-thirds, at most, could have been separated even at night. Only 168 prisoners could have been separated by day as well.⁹⁸ While the municipalities of Manchester and Liverpool were able to introduce separation into their newly-completed prisons in the 1850s, matters changed little in the county prisons. In 1863, Preston still had only 168 separate cells. Kirkdale, despite much building, had only 162 and Salford, with a population of nearly 500, had 101. The new inspector,

Herbert P. Voules, now responsible for half of England, supported separation only at night; by day he encouraged industrial labour and open schooling. Lancashire prisoners spent up to five hours a day in associated schooling even when they were nominally separated.⁹⁹

Lancashire was not atypical in this lacklustre approach to prison reform. Only one prison in all Wales had any separate cells at all. The Committee of 1863 complained that 'there are so many interruptions to the regularity of prison discipline, instruction is given at such various times, and the communications which pass between prisoners and other persons are so frequent, that separation, though it exists nominally in many, is really to be found in few gaols.'¹⁰⁰

Lancashire was both the industrial and the ideological heart of the new order, yet with the partial exception of Preston for a short period, Lancashire's prisons bore no more resemblance to the highly regimented model of Pentonville than Lancashire's Poor Law did to the rigorous visions of the New Poor Law commissioners. As with the New Poor Law, Lancashire's foot-dragging suggests that the theory that links the development of industrialisation with the rise of repressive institutions is in need of some qualification.

This is not to suggest that change and reform did not take place. It did. The prisons of 1845 were very different places from their predecessors of three to six decades before. They were larger, more highly and formally organised, more firmly controlled by a professional staff headed by a more powerful governor. On the whole, reformers won their most important battle; after a reverse in the late teens and early twenties they succeeded in improving conditions far enough to reduce the death rate. While prisoners paid for these changes in loss both of freedom and of community life, the prisons never quite became those 'machines for grinding men good' that the reformers have claimed and the critics have charged.

Notes

1. Himmelfarb's essay, which originally appeared in *Ideas in History*, was reprinted in *Victorian Minds* (New York, 1970), pp. 32-81.

2. See e.g., L.J. Hume, 'Jeremy Bentham and the Nineteenth-Century Revolution in Government', *Historical Journal*, vol. 10, no. 4 (1967), pp. 361-75 and idem., 'Bentham's Panopticon, an Administrative History', part one, *Historical Studies*, vol. 15 (1973), pp. 703-21; part two, *Historical Studies*, vol. 16 (1974), pp. 36-54; Barbee-Sue Rodman, 'Bentham and the Paradox of Penal Reform', *Journal of the History of Ideas*, vol. 29 (1968), pp. 197-210; Robin Evans, 'Bentham's Panopticon: An Incident in the Social History of Architecture',

Architectural Association Quarterly, vol. 3, no. 2 (1971), pp. 21-37, and idem., 'Panopticon', *Controspasio*, vol. 10 (1970), pp. 4-18; William C. Bader, 'Jeremy Bentham: Businessman or "Philanthropist"?'', *Albion*, vol. 7, no. 3 (1975), pp. 245-54. See also Gordon Hawkins, *The Prison, Policy and Practice* (Chicago, 1976), ch. 1; David J. Rothman, *The Discovery of the Asylum* (Boston, 1971); Michel Foucault, *Madness and Civilization* (London, 1967) and *Discipline and Punish* (London, 1977); Michael Ignatieff, *A Just Measure of Pain* (New York, 1978); and Rod Morgan, 'Divine Philanthropy: John Howard Reconsidered', *History*, vol. 62 (1977), pp. 388-410. For a more extensive discussion of this interpretation see my thesis, 'County Prison Administration in Lancashire, 1690-1850' (Univ. of Princeton, Ph.D. thesis, 1980), pp. 1-33, 207-11 and 467-9. See also, Ursula Henriques, 'The Rise and Decline of the Separate System of Prison Discipline', *Past and Present*, 54 (1972), pp. 61-93.

3. For Lancashire's committal rate see V.A.C. Gatrell and T.B. Hadden, 'Criminal Statistics and their Interpretation', in E.A. Wrigley (ed.), *Nineteenth-Century Society* (Cambridge, 1972), pp. 336-96. On Preston's Gradgrinds see Philip Collins, *Dickens and Crime* (London, 1965) and Norris Pope, *Dickens and Charity* (New York, 1978). For Manchester's economists see Michael J. Cullen, *The Statistical Movement in Early Victorian Britain* (Hassocks, 1975); Asa Briggs, *Victorian Cities* (Harmondsworth, 1968); and V.A.C. Gatrell, 'The Commercial Middle Class in Manchester, c. 1820-1857' (Univ. of Cambridge, Ph.D. thesis, 1971). For Lancashire, see Eric C. Midwinter, *Social Administration in Lancashire, 1830-1860* (Manchester, 1969) and John Foster, *Class Struggle and the Industrial Revolution* (London, 1974).

4. Ignatieff, op. cit., p. 193.

5. Foucault, op. cit., p. 293.

6. The Liverpool Borough gaol was replaced by Walton gaol in 1855 and the Manchester gaol by Strangeways in 1864. Records of the county gaols can be found in the Lancashire County Record Office at Preston, though there is some material at the Public Record Office. One or two documents are still in the possession of the Home Office, Prison Department. Unfortunately, some records were damaged during the war.

7. David Foster, 'The Changing Social and Political Composition of the Lancashire County Magistracy, 1821-52' (Univ. of Cambridge, Ph.D. thesis, 1971) and idem., 'Class and County Government in Early Nineteenth-Century Lancashire', *Northern History*, vol. 9 (1974), pp. 48-61.

8. On the behaviour of the bench see my thesis, op. cit., *passim*, and D. Gregory, 'Rates and Representation: Lancashire County in the Nineteenth Century', *Northern History*, vol. 12 (1976), pp. 158-71.

9. Gatrell and Hadden, op. cit., pp. 387-96.

10. William Baly, 'On the Mortality in Prisons and the Diseases most Frequently Fatal to Prisoners', in *Medico-Chirurgical Trans.* (Royal Medical and Chirurgical Soc. of London), 2nd ser., vol. 10 (1845), pp. 113-272. I would like to thank Miss Valerie Johnstone for this reference. Thomas Rogers Forbes, 'The Crowner's Quest', *Trans. of the American Philosophical Society*, vol. 68, pt. 1 (1978).

11. Second Report of the Inspector for the Northern and Eastern District, *Parliamentary Papers* (P.P.), 1837, vol. 32. Frederic Hill echoed his complaint in the Sixteenth Report, P.P. 1851, vol. 27.

12. Second Report, op. cit. See also S. Peter Bell, 'A Social History of Salford New Bailey Prison 1823-1865' (Univ. of Salford, M.Sc. thesis, 1972), p. 55. See also the *Preston Chronicle*, 26 Nov. 1814; Lancashire County Record Office (LCRO), Reports of the Chaplain of the Preston House of Correction (The Rev. John Clay), especially reports for 1838 and 1839; PRO, PCom. 2/443-45 (Lancaster Gaoler's Journals), entries for 13 July 1843, 'the poor fellow wept bitterly

at being put out of gaol', 27 Dec. 1846, 'This poor creature expressed sorrow at leaving the Gaol', 13 Aug. 1849, "Sir, if I only had such food outside as I have here, you would never see me in a prison", 7 Sept. 1849, 'I have . . . asked her if she wished to petition . . . for her liberation; but she answered she was better off where she was'. Evidence given to the Poor Law Committees of 1833 and Poor Law Inspectors' reports, 1848, cited in W.E. Passey, 'Houses of Correction in England and Wales' (Univ. of Liverpool, MA thesis, 1936) — (vagrants committing offences in order to be imprisoned); W.A. Miles, *Suggestions for the Formation of a General Police* (London, 1836), quoted in J.J. Tobias, *Crime and Industrial Society in the Nineteenth Century* (Harmondsworth, 1972); University College, London, Chadwick Mss., box 15 (?1850); Thirteenth Report of the Inspector for the Northern and Eastern District, evidence of the governor of Liverpool, 'It is well known that, in some instances, the Irish have committed offences with the express object of getting into prison', P.P. 1847-8, vol. 36; Sixteenth Report, P.P. 1851, vol. 27.

13. For the incidence of typhus in gaols see my thesis, op. cit., pp. 233-41 and 507-23. I originally argued that typhus was very rare in English prisons until the late eighteenth century. Miss Joanna Innes has been kind enough to give me national evidence which suggests that the argument needs to be modified though not abandoned.

14. See Baly for a detailed analysis of the incidence of prison disease. Additional figures collected by Baly can be found in the Second Report of the Surveyor General (of prisons), P.P. 1847, vol. 29.

15. Third Report of the Inspectors for the Northern and Eastern District, P.P. 1837-38, vol. 31.

16. Tenth Report, P.P. 1845, vol. 24.

17. Second Report, op. cit.,

18. Fourth Report, P.P. 1839, vol. 22.

19. Ibid., and see also the Second Report, op. cit.

20. Thirteenth Report, P.P. 1847-48, vol. 36. This was Frederic Hill's first report on the Lancashire prisons. He had previously been inspector of the Scottish prisons.

21. Second Report.

22. See below, pp. 203-9.

23. Fourth Report.

24. Second Report.

25. W. Hepworth Dixon, *The London Prisons* (London, 1850), p. 310.

26. Ibid., p. 311.

27. Third Report.

28. Second Report.

29. Third Report.

30. Eighth Report, P.P. 1843, vols. 25 and 26.

31. E.g., Green Haven prison in New York described by Susan Sheehan in *A Prison and a Prisoner* (Boston, 1978).

32. Dixon, op. cit., p. 338.

33. Eighth Report.

34. P.P. 1835, vol. 11, Appendix.

35. Fourth Report.

36. Tenth Report.

37. PRO, PCom 2/444, 2 March 1846. See also the Tenth Report.

38. For a more extended analysis of the problem of insane prisoners see Janet Saunders' essay below (ch. 9), 'Magistrates and Madmen: Segregating the Criminally Insane in Late-Nineteenth-Century Warwickshire'.

39. Eighth Report.

40. PRO, PCom 2/443, 7 Aug. 1843. Emphasis in original.
41. Ibid., 14 Sept. 1844.
42. PRO, PCom 2/444, 11 March 1846.
43. PRO, PCom 2/443, 19 Aug. 1845. Emphasis in original.
44. PRO, PCom 2/444, 19, 20 Aug. 1848.
45. P.P., Returns pursuant to Acts 4 Geo.IV, c. 64 and 5 Geo.IV, c.12.
46. Lancaster City Library, PT 445 (A), Isaac Smith, *A Warder's Experiences in Lancaster Castle* (Blackburn, n.d.), p. 25.
47. See Margaret Heather Tomlinson, 'Victorian Prisons: Administration and Architecture' (Univ. of London, Ph.D. thesis, 1975), pp. 168-70. Inspector Voules remonstrated with the Governor of Manchester borough gaol because of his use of dietary penalties to enforce crank labour in 1852, Seventeenth Report, P.P. 1852-3, vol. 52.
48. Thirteenth Report.
49. Dixon, op. cit., p. 312.
50. Ibid., p. 311, and Eighth Report. Cf. U. Henriques, *Before the Welfare State* (London, 1979), p. 192.
51. Eighth Report.
52. Ibid.
53. E.g., Stateville prison near Chicago now has about 400 guards, exclusive of other staff members, for an inmate population of about 1,500. In Minnesota in 1968 there was a total staff of about 280 for a prison population of 900-1,000. Charles Silberman, *Criminal Violence, Criminal Justice* (New York, 1978), pp. 393-4. Both the Webbs, in *English Prisons under Local Government* (London, 1963), and J.E. Thomas, in *The English Prison Officer since 1850* (London, 1972), argue that the introduction of the separate system increased the security of the staff and reduced the need for guards. The separate system, however, was rarely fully enforced (see below), and even when enforced with some determination was usually coupled with the silent system which increased the need for guards. Moreover, the number of guards appears to have increased in the period which is usually seen as marking the apogee of separation, although it remained very low.
54. LCRO, Evidence taken before the Select Committee on Gaols (also in P.P. 1819, vol. 7).
55. Joseph John Gurney, *Notes on a Visit Made to Some of the Prisons in Scotland and the North of England in Company with Elizabeth Fry* (London, 1820), p. 419.
56. Collins, op. cit., p. 79. This is also quoted in part by the Webbs, op. cit., p. 88.
57. Second Report.
58. Ibid.
59. Frederic Hill, *Crime: Its Amount, Causes and Remedies* (London, 1853) and *Prison Labour* (London, 1872). Hill also discusses productive labour in several of his reports.
60. LCRO, Clay, Second Report of the Chaplain of Preston to the Preston Quarter Sessions, 1825.
61. John Mason Good, *A Letter . . . on the Mischiefs Incidental to the Tread-Wheel as an Instrument of Penal Discipline* (*The Pamphleteer*, XXIII, no. 45, 1924); P.P. 1824, vol. 19; P.P. 1831-2, vol. 7 (Amount of Labour performed by Prisoners sentenced to work on the Treadwheel); P.P. 1837, vol. 32 (Second Report of the Inspectors of Prisons, Digest of Returns). See also LCRO, QGR 3/14, Report of the Chaplain of Kirkdale (W. Horner) (1825) and George Laval Chesterton, *Revelations of Prison Life* (London, 1856), vol. I, pp. 222-3.
62. Dixon, op. cit., p. 253.
63. Walter Lowe Clay, *The Prison Chaplain* (Montclair, 1969), p. 113.
64. LCRO, QSZ/1 (Annual General Session reports, 1821).

65. *The Prison Chaplain*, pp. 110-11.
 66. *Ibid.*, p. 114.
 67. Home Office, Prison Department, Manchester Mss., Register of Felons, January 1796. I am grateful to the Home Office for making it possible for me to see this register and for other assistance. Where it will be deposited has not been determined.
 68. PRO, HO 20/2, 3 March 1827.
 69. *The Prison Chaplain*, p. 114.
 70. LCRO, *The Preston Pilot*, 15 Sept. 1827.
 71. *The Prison Chaplain*, p. 115. The dispute grew so bitter that Williams hinted that one of the parties should resign.
 72. John Clay, Second Report to the Preston Quarter Sessions, 1825. Clay's reports were published and widely distributed, but some have vanished. Reports for 1824, 1825, 1828, 1829 and 1846-58 are available in LCRO (QGR/2). *The Prison Chaplain* has copious extracts from many. After 1837 they were reprinted in full in the schedule B returns to Parliament. The reports of the prison inspector give extracts from Clay's journal, which I have been unable to find. J.J. Tobias includes excerpts from some reports in *Nineteenth-Century Crime: Prevention and Punishment* (Newton Abbot, 1972). Clay was not an evangelical in doctrine.
 73. Clay, Third Report.
 74. T.B. Addison, General Report on the House of Correction (Preston, Michaelmas, 1827). Clay's report for that year has disappeared, but he quotes from it in his report for 1850.
 75. *Ibid.*
 76. Clay, 'On the Effect of Good and Bad Times on Committals to Prison', *Journal of the Royal Statistical Society*, vol. 17 (1855), pp. 74-9 and vol. 20, pp. 378-88. See also 'Criminality promoted by distress', an unsigned critical article in *The Economist*, vol. 14 (21 June 1856), pp. 672-3.
 77. *The Prison Chaplain*, pp. 217-8.
 78. *Ibid.*, p. 212.
 79. *Ibid.*, p. 210.
 80. *Ibid.*, pp. 115-6. Reports for 1838 and 1839.
 81. For the early history of separation see Robin Evans, 'A Rational Plan for Softening the Mind: Prison Design, 1750-1842' (Univ. of Essex, Ph.D. thesis, 1975). See also Collins, op. cit., ch. V, 'The Separate System', Rothman, op. cit., ch. IV, 'The Invention of the Penitentiary', and Henriques, op. cit. The silent system permitted prisoners to work in groups ('associated labour') during the day, but forbade any communication between them. It was often enforced by prisoners acting as 'monitors'. The separate system or 'Philadelphia system' kept prisoners entirely apart in single cells but, unlike 'solitary confinement', allowed them books, light, work, full diet and frequent visits from the prison staff. 'En-cellulement', used by W.L. Clay, is a better description of the Preston system than 'separation'.
 82. See e.g., the report for 1840 and *The Prison Chaplain*, p. 196.
 83. Report for 1829.
 84. Report for 1838. See also *The Prison Chaplain*, p. 211.
 85. Reports for 1829 and 1842.
 86. Report for 1842.
 87. *The Prison Chaplain*, p. 120.
 88. Reports for years named in text.
 89. Report for 1849; *The Prison Chaplain*, p. 196.
 90. Report for 1851. See also *The Prison Chaplain*, pp. 311 and 396-8.
- Alexander Maconochie, *General Views Regarding the Social System of Convict Management* (Hobart Town, 1839). Maconochie's 'mark system' allowed a convict

to work his way out of prison by assigning him so many 'marks' each day for industry and good behaviour. When he accumulated enough marks he was released. In the later stages of their sentences, convicts worked and earned their marks in groups. This system became popular with educational reformers such as Dickens and M.D. Hill, who brought Maconochie to Birmingham prison where his experiment failed tragically. See Peter W.J. Bartrip, 'The Career of Matthew Davenport Hill' (Univ. of Wales, Ph.D. thesis, 1975); Collins, *op. cit.*, ch. VII; Webbs, *op. cit.*, pp. 165-74.

91. *The Prison Chaplain*, p. 211. For the implications of this belief see Steven L. Schlossman, *Love and the American Delinquent* (Chicago, 1977); Silberman, *op. cit.*, ch. 9; Bartrip, *op. cit.*; and David J. Rothman, *Conscience and Convenience* (Boston and Toronto, 1980), ch. 1.

92. Gatrell and Hadden, *op. cit.*

93. Third and Thirteenth Report of the Inspectors for the Northern and Eastern District.

94. LCRO, QGR/3/45, Richard Appleton, Chaplain's Report for Kirkdale, 1850. See also S. Greg, 'Notes on Criminal Statistics', ms. copy of a paper read before the Manchester Statistical Society, sess. 1837-8, Manchester Central Library, ms. F. 310. 6. m5. I am grateful to the City of Manchester Cultural Services, archives dept., for providing me with copies of this and other Statistical Society papers. Kay-Shuttleworth also believed that environmental improvements and education were the only solution to the problem of crime: James Phillips Kay-Shuttleworth, *The Moral and Physical Condition of the Working Classes employed in the Cotton Manufacture in Manchester*, 2nd ed., reprt. (Didsbury, 1969).

95. PRO, PCom 2/444, 17 June 1847.

96. PRO, HO 20/4, Williams to Lord John Russell, Wakefield, 18 Nov. 1837 and 14 Dec. 1837. For Jebb, see Eric Stockdale, 'The Rise of Joshua Jebb, 1837-1850', *British Jour. of Criminology*, vol. 14 (1976), pp. 164-70. I am grateful to Judge Stockdale for providing me with a copy of this article.

97. LCRO, QGR/5/1, *Report of the Committee on Prison Accommodation and Discipline* (1853).

98. *Ibid.*

99. Report from the Select Committee of the House of Lords on the Present State of Discipline in the Gaols and Houses of Correction, P.P. 1863, vol. 9.

100. *Ibid.*

9

MAGISTRATES AND MADMEN: SEGREGATING THE CRIMINALLY INSANE IN LATE-NINETEENTH-CENTURY WARWICKSHIRE

Janet Saunders

I

Offenders who are also mentally disordered have always posed problems for legal and penal systems. Historically the central issue was a legal one, that of determining the responsibility of such offenders for their crimes, but in modern times this has become less important in the face of deciding whether offenders should be dealt with penally or psychiatrically.¹ It was in the mid-Victorian era that the rise of psychiatry and a system of public asylum care provided the initial impetus for this separation of the question of disposal from that of responsibility. Although by mid-century some provisions existed for the recognition and special detention of insane offenders, the superintendents of the new asylums and a growing number of prison medical officers began to realise that many of their ordinary charges might easily have found their way into either institution.² Yet change in the treatment of mentally disordered offenders came only slowly. It was not until 1889 that the Home Secretary issued specific instructions to magistrates that such offenders need no longer be sent to prison but direct to an asylum, while no recognition of the problem was made by the legislature until 1913, when the Mental Deficiency Act included provisions to end the sending to prison of mental defectives who came before the courts.³

The theme of this essay is why, in what has been termed the era of 'great incarcerations', change in the treatment of the criminally insane was so belated.⁴ The case of criminal lunacy demonstrates that the march of institutional detention in the nineteenth century was a far from homogeneous development. We discuss how the early stages of the debate about insane offenders produced few results, because asylum doctors who led the campaign possessed only a narrow appraisal of the problem. The stereotype of the violent criminal madman which they fostered still played some part in Home Office policy in the 1880s. More important, however, in the last three decades of the century, when new knowledge and ideas about disordered offenders were being generated by experience in the prisons, was the role played by the magistracy in

holding back the tide of indeterminate incarceration. Our study of the disposal of mentally disordered offenders at the local level demonstrates how the Victorian magistrates' attitudes towards sentencing and desire for administrative expediency, ensured that emerging ideas about habitual criminals and feeble-minded offenders made only minor inroads into policy.

In the early part of the nineteenth century a number of legal and custodial provisions had been introduced which related to mentally ill offenders. Insanity had been successfully used as a defence in the courts since well before 1800, but it was in that year that James Hadfield's attempt to assassinate King George III led to the first specific provisions for the custody of insane offenders.⁵ The Criminal Lunatics Act of 1800 laid down that anyone charged with murder or felony who was found unfit to plead or acquitted, on the grounds of insanity, was to be detained as a lunatic in a suitable place, 'until His Majesty's Pleasure be known', or in other words indefinitely. The first state asylum for these criminal lunatics was incorporated into the new Bethlem Hospital, completed in 1815, and an Act in the following year made it possible for prison authorities to transfer convicted criminals who became insane during their sentence to an asylum, on obtaining a warrant from the Home Secretary.⁶ A further Act in 1840 extended this provision to include unsentenced prisoners and prisoners awaiting execution. Prisoners transferred under the 1816 and 1840 Acts were to be certified as insane by two of the magistrates of the gaol, assisted by two medical men, and could only be returned to prison or discharged when it was certified to the Secretary of State that the prisoner was of sound mind.⁷

These provisions, however, alleviated the plight of only a minority of the mentally disordered who had committed offences against the criminal law. The majority of them were not people who had committed spectacular offences, such as Hadfield's, but more mundane criminals sentenced by magistrates' courts and Quarter Sessions to serve short terms in the local prisons. Only a few of them exhibited the more severe and unequivocal forms of mental illness and deficiency, which at trial might call in question the responsibility of the accused. Moreover, the meaning of insanity itself was confused throughout this period, for it included not only the terms 'lunacy' and 'of unsound mind', but also mental deficiency or 'idiocy' and a less severe designation, 'imbecile'.⁸ To certify a pauper lunatic, any 'medical man' could provide the medical certificate of insanity which accompanied papers signed by a justice of the peace, or a clergyman and a relieving officer of the poor. So the criteria constituting grounds for certifications of insanity were largely

at the discretion of the medical profession. Yet to stand as a test of responsibility, the criminal courts required something more than the opinion of a 'medical man' or even of a psychiatric authority. In 1843, following the case of Daniel McNaghten, the judges of England were asked to state criteria, upon the basis of which a jury was to decide the criminal responsibility of offenders. Their answers, soon acquiring the status of 'Rules', centred on what was known as the right-wrong test of insanity; that the accused, because of a disease of the mind, must either have been unaware of what he was doing, or have been unaware that what he was doing was wrong.⁹ The problem with this legal definition of insanity was that only the most incapacitating forms of mental disorder or the most specific kinds of delusion were likely to qualify an offender to pass such a test. It was fortunate for some offenders that alternative loopholes were provided by certification after conviction and the facility under the 1800 Act for finding the obviously insane unfit for trial.¹⁰ Nevertheless, the right-wrong test meant that a whole range of disordered persons who, as non-offenders, could be certified as insane and sent to asylums, did not qualify for a finding of insanity by the criminal courts. The rules themselves were applicable only in cases where the crime was serious enough to be brought before a jury, but while this test of responsibility was the official yardstick of the higher courts, petty offenders could scarcely expect special consideration. In the majority of cases the magistrates had little option but to commit mentally disordered or deficient offenders to prison.

If the insanity of these people was then recognised, they would be sent not to one of the specially designed state establishments for criminal lunatics that existed at Bethlem from 1815, at Fisherton House Asylum from 1849 and at Broadmoor from 1863, but to the local county pauper asylum. It was thus on the level of the local prisons and county asylums that the problem of the mentally disordered offender was most keenly felt, and much of our source material relates to their experience. County and borough asylums were the major receivers of offenders found insane in the local prisons. Following an Act passed in 1867, they had also to receive from state asylums and convict prisons, criminal lunatics whose sentences had expired and who could only be further detained as pauper lunatics. Taken together, therefore, the public asylums housed over 50 per cent of all criminal lunatics detained in the latter half of the century. In 1863, 419 of the 877 criminal lunatics in custody were in county or borough asylums; nearly 20 years later, in 1880, when the total number of criminal lunatics and ex-criminal lunatics was 1288, 720 were in such public asylums.¹¹ We were able to examine the case histories of the 146

criminal cases admitted to Warwick county asylum between 1852 and 1890, which constitutes the full record of that asylum's experience of certified mentally disordered offenders over these years.¹² We were, moreover, able to supplement this local material by using the less complete case records of the Birmingham borough asylum, together with the annual reports of both institutions and records of Quarter Sessions.¹³

By examining closely what kinds of disordered offenders were certified as criminal lunatics from the local prisons and the factors prompting their certification, we have attempted to assess the sentencing policy of the magistracy, and to evaluate the standpoints of the three bodies concerned with the criminal lunacy problem: the asylum doctors and Lunacy Commissioners; prison doctors and administrators; and the Home Office. We were able to trace how the everyday experience of local prisons and asylums gradually forced official opinion to recognise the lesser types of mental disorder and the issue of disposal, and led to a more flexible use of psychiatric definitions within the judicial framework.

II

When official and public opinion turned towards the question of the mentally disordered offender, it was initially concerned with spectacular cases of the kind that forced themselves on the attention of prison and asylum staffs. Asylum superintendents were the first to campaign for some change in the provisions applying to criminal lunatics, but their primary aim was to expel from their 'moral treatment' asylums the difficult cases received from the prisons. In 1852 the Lunacy Commissioners sent out a circular to local asylum authorities requesting their opinions on the question of associating criminal and ordinary lunatics in asylums. The replies can be summarised: such association was degrading to non-criminal patients; the behaviour of the criminal lunatics was morally offensive, insubordinate and caused dissatisfaction among the other inmates; the presence of criminals necessitated greater security in asylums than would otherwise be needed and deprived ordinary patients of their fair share of staff attention; while criminal patients themselves resented that they could not gain discharge in the same way as ordinary lunatics.¹⁴ These complaints were clearly confined to the administrative needs of the moral treatment asylum. In the 1850s the psychiatric interest was trying to establish the reputation of county asylums as therapeutic institutions of first resort modelled, at least in theory, on the new methods of non-restraint pioneered by Tuke at the 'York

Retreat'.¹⁵ Obviously, having to accept cases which the prisons could not manage was an embarrassment to such institutions. While the Commissioners occasionally conceded that minor offenders and pauper lunatics differed little and that the former presented few problems,¹⁶ the mainstay of the psychiatric lobby on criminal lunatics for the rest of the century remained the segregation of criminal from ordinary patients, because of the former's special character as jailbirds. 'Lunatic criminals' who had become insane while serving their sentence were described by the superintendent of Broadmoor as 'dangerous . . . and depraved . . . characterised by their tendency to combined acts of violence and by the secrecy and cunning displayed in their assaults on officers'.¹⁷

Our study of the Warwickshire criminal lunatics confirmed that security was certainly one of the problems that county and borough asylums encountered with such patients. One-twentieth (12 cases) of those criminal lunatics sent to Birmingham and Warwick asylums between 1852 and 1890 made successful escapes, but the success rate of escape bids by ordinary lunatics was negligible, most of them being easily brought back to the asylum.¹⁸ Nor were riots unknown. In October 1862 at Warwick asylum two criminal patients – one a poacher and the other a labourer imprisoned for setting fire to a shed – staged a riot nicely planned to coincide with a round of the wards by the asylum's General Committee. The case-book records that 'both men became violently excited, broke windows and attacked the committee, using violent and abusive language to them and throwing stones'.¹⁹ While spectacular outbreaks such as this helped support the doctors' insistence that criminal lunatics were an especially violent type of patient, their claim that asylums were not designed to cope with dangerous cases was less convincing.²⁰ Some asylum doctors indeed saw criminal lunatics as only one example of a whole range of dangerous and difficult patients who were out of place in county asylums. In 1854 Dr Bucknill wanted special institutions to be established for 'lunatics of criminal disposition . . . whether they have committed overt acts or not'.²¹ Psychiatrists arguing from this woolly standpoint found themselves trying on the one hand to emphasise the differences between criminal and ordinary patients, while on the other stressing that in individual cases the similarities between them could be so great that a subjective definition based on the character of the inmate rather than the mere fact of a criminal conviction was what was needed.

Following the awakening of public interest in the mentally disordered offender through Hadfield's case, Bethlem's notorious Criminal Department, and McNaghten, something of a stereotype of the criminal lunatic

as a violent dangerous maniac was elaborated, on which the superintendents were able to rely for support. This image of criminal lunacy was further enhanced by the legal fraternity's obsession with establishing links between insanity and violent crime. The majority of nineteenth-century studies of insanity as a cause of crime, particularly those of the Howard Association and others advocating reform of the law, concentrated on the question of criminal responsibility and the unsuitability of the death penalty for insane murderers.²² The press reportage of murder trials, in which the plea of insanity was raised and psychiatrists gave their opinions,²³ together with a popular market for psychiatric literature and prison memoirs, helped to perpetuate the image of the violent criminal madman.²⁴

A survey of the criminality of our Warwick asylum criminal patients indicates that this image was somewhat of an exaggeration when applied to the kinds of cases county asylums had to receive. Only 26 out of the 146 admissions had committed serious crimes against the person, such as murder, assault and wounding, while a further nine had been charged with less fearful offences, like maternal infanticide and indecent exposure. Sixty-three of the Warwick cases were offenders against property, mostly petty thieves, while the remaining 48 cases were convicted of disorderly rather than violent or dangerous crimes, such as vagrancy, breach of the peace and travelling without a railway ticket. Nor do these cases seem to have been so 'depraved' or dangerous that fewer of them than ordinary lunatics could be eventually cured and set free. The recovery rates of criminal lunatics were at least no worse than those of ordinary patients. At Warwick 37 per cent of all the male patients admitted between 1852 and 1890 were discharged recovered, compared to 39 per cent of the criminal male patients admitted over the same period, and at Birmingham the recovery rate of men in both groups was 45 per cent.

It seems that in their attempts to purge difficult cases from their asylums, the superintendents had seized on the simplistic stereotype of the violent criminal lunatic at its face value. Criminal lunatics in county asylums seem to have been a special group of inmates solely because in terms of security they were more difficult to handle than other patients and not by any differences in their brand of insanity or the violent offences they were supposed to have committed. Yet while this emphasis on violence remained the central tenet of the medical lobby's argument for more adequate care of the criminally insane, it is hardly surprising that little more was offered in the way of improvement than the opening of Broadmoor in 1863 for the worst cases, while superintendents

were left to deal with violent non-criminal cases and most short-sentence criminal lunatics as best they might.²⁵ The concentration of the legal and medical profession on spectacular cases only served to slow down and detract from the growth of concern for the less interesting majority of the mentally disordered in prisons.

III

From the early 1870s, however, we can discern a growing shift in the emphasis of professional discussion, away from the concentration on the seriously disordered criminal lunatic, towards a more general concern with the weakminded and other members of the less spectacular but more numerous group of mentally disordered offenders. Much of this new attention was focused by the entry into the debate of prison doctors who, since 1865, had been required to carry out regularised medical inspections of the inmates of local prisons. Prison surgeons and governors began to put forward their own interpretation of the criminal lunacy question. They saw the problem as one of a stage-army of habitual and weakminded offenders who repeatedly incurred punishment for petty offences yet never exhibited enough insanity, under the requirements of existing legislation, to precipitate their removal from prison, or to prevent them from being sent there in the first place.²⁶ No doubt the prison authorities were anxious to demonstrate that a high proportion of offenders were insane or weakminded on reception, to counter accusations that the separate system and harsh discipline fostered mental deterioration,²⁷ but the interest of the prison doctors was firmly rooted in their daily experience and they produced studies and statistics to prove it. In 1869 the Howard Association quoted an estimate that one in every nine prisoners was 'more or less insane', and a year later Dr James Bruce Thomson of Perth prison estimated 12 per cent of prison inmates to be 'mentally weak in different degrees'.²⁸

Much of this new perspective was bound up with developments in criminological theory. Using Morel's concept of 'progressive degeneracy', in which ever worsening moral and physical defects could be passed from one generation to another, the psychiatrist Henry Maudsley and Scottish prison doctor, James Thomson, proposed that there was a class among criminals of 'born-criminals', lacking in intelligence and 'moral instinct' and often with physical deformities, or conditions such as epilepsy or insanity. Thomson's work in particular was supported by statistical observations and family studies drawn from his prison experience,

and made quite an impression on his contemporaries.²⁹ Such 'born-criminal' theories were eventually to culminate in the broader question of the care of the feeble-minded which became prominent at the turn of the century, but in the 1870s and 80s eugenic aims were only rarely articulated.³⁰ Many, however, were convinced that weak-minded offenders could only be prevented from recidivism by some form of indeterminate detention. Dr William Guy, no doubt to the annoyance of asylum superintendents, suggested in 1869 that the number and size of lunatic asylums should be increased as 'a truly economical substitute . . . for the workhouse, the hospital and the prison'.³¹ Ten years later, Edmund Du Cane, the Chairman of the Prison Commission, was in agreement that 'it would be to the interests of society if these people [weak-minded habitual offenders] were confined and taken care of'.³²

IV

Whatever prison surgeons and Commissioners would have liked to see happening, the classification and disposal of mentally disordered offenders was not their responsibility. The initial prosecution and committal of offenders was in the hands of the police and magistrates' courts, while the visiting justices of local prisons remained responsible for the certification and removal of lunatic prisoners, even after losing control over general prison administration in 1877. Despite the circulating theories about 'born-criminals' and fears of the increase of insanity through the lack of control of alcoholics, mental defectives and other 'degenerates',³³ these authorities seemed reluctant to speed the process of segregation and control by sending offenders to asylums. Our Warwickshire study corroborated contemporaries' claims that people whose violent or eccentric behaviour or feeble-mindedness were widely admitted by psychiatrists as indications of lunacy, were being brought before the courts, sent to prisons and being left there. In Warwickshire not only offenders with the less spectacular or obvious mental disorders, but also fairly severely disordered 'lunatics' and the obviously mentally deficient were being sent to prison. Evidence is given in the Warwick asylum case-books as to whether patients appeared to be congenitally subnormal, were imbecile or suffering from general paralysis, and whether they were 'known' to have been mentally ill, weak-minded, epileptic or merely eccentric, for some time before committing an offence, or had previously been in asylums. From these we can estimate that at least half of the 110 criminal lunatics who had been sentenced to imprisonment were

'insane' enough at the time of their committal to have been certified as lunatic. As many as 15 of them were noted on their admission to the asylum to be 'congenital idiots' or 'idiot in appearance', persons described in this way being sentenced to terms of imprisonment, sometimes as long as 12 months, even in the 1880s when police and magistrates had had nearly 30 years' experience of a public lunatic asylum in the county. Other typical cases included a 53-year-old man suffering from general paralysis sentenced to one month for misbehaving in the work-house; and a youth who had been invalided out of the army because of alleged insanity, who was prosecuted for riding on a train without paying the fare.³⁴

In theory the 'insanity' of an offender could be diagnosed at two points: before conviction, by the police or a magistrates' court, or after committal to prison, where the prison medical officer and visiting justices were responsible for drawing attention to the case and arranging for certification and transfer. For the numerous petty offenders this latter stage was the more important one (for the question of legal responsibility could only be raised where an offence was serious enough to be tried by a higher court) and they first saw a medical authority only on committal to prison. The cases we were able to examine in Warwickshire's asylum records represent only those who eventually gained the designation of 'criminal lunatic'. Those offenders whose mental disorder was not recognised or not considered sufficiently serious to warrant removal were not accessible to us, but the details of those cases who had gained transfer indicated that special circumstances had prompted their removal from prison, usually the onset of spectacular or violent behaviour.

Prisons were designed to cope with some amount of difficult or unruly behaviour, and the Warwick case-notes show that aberrant behaviour and other symptoms of possible mental breakdown might be dealt with for weeks by the prison medical officer before certification was turned to as a last resort. Case 075 from the asylum case-books, a man serving an 18-month sentence for burglary, who was sent to the asylum after 16 months in prison, demonstrates how the authorities attempted to handle such cases in the gaol:

His first attack began nine months previously when he had begun to pick at the windowsill of his cell but his conduct was otherwise good. Two months later he began to pull his things to pieces and talked strangely. However, he was not violent and obeyed orders. Afterwards he became depressed and grew thin. He was moved to the

kitchen to work and worked well for the next three months when he became excited and would not go into his cell until the Governor was called. He was moved to the reception ward where, once again he worked usefully for a few weeks until he was again noticed strange and smashed his table . . . He was certified that week and removed here.

As far as we can make inferences from this kind of material, this example shows that a considerable degree of difficult behaviour was tolerated in the prison. Another case of an epileptic prisoner who had had fits every time he had been previously imprisoned, but was only sent to the asylum after having a fit accompanied by violent destructive behaviour, suggests that it was the violent expression of mental 'disorder' that was most likely to lead to the certification of a prisoner. Warwick prison acquired a padded cell in 1868 specifically for treating epileptic cases, but it was also used to quieten refractory or uncontrollable prisoners. Such innovations made it easier for the prisons to deal with lunatic cases for longer before transferring them to the asylum, extending the threshold of tolerance of the staff which prisoners needed to break through in order to be certified as insane.³⁵

It would be wrong to suppose that the visiting justices of the prison had no expertise in the matter of lunacy. Frequently, as in Warwickshire, the same magistrates acted as members of the asylum committee of visitors and most of these seem to have inspected the wards regularly.³⁶ It is inconceivable that they were unaware of the certifiability of some of the inmates of their prisons, and in any case they had to arrange for independent medical examination before forwarding certificates of insanity to the Home Office. A number of possible reasons for the slowness of the prison doctors and magistrates to certify were noted by contemporaries; others emerged from our study.

As members of asylum visiting committees, prison justices knew that county asylums had neither adequate staffing, security nor space properly to accommodate large numbers of lunatics from the prisons, and they were reluctant to provide such facilities, arguing that it would be detrimental to the moral treatment of lunacy if asylums were approximated to prisons.³⁷ Could it be that the cost of caring for offenders in asylums, compared to keeping them in prison, acted as a disincentive to magistrates to create more lunatics out of the prison population? Officials at the Home Office certainly thought that relative costs played a part in magisterial reluctance to transfer offenders after 1877, when the ratepayers ceased to finance prisons but continued to pay for lunatics

and criminal lunatics.³⁸ In the period before the 1877 Prison Act, though, it is unclear how far financial considerations might have influenced the visiting justices. Figures of expenditure per head were available to Quarter Sessions in the reports of both prisons and asylums, but on the basis of these there seems to have been little difference between the cost of prisoners and lunatics, and in fact prisoners appear to have been slightly more expensive. In the late 1860s and 70s at Warwick gaol, prisoners cost around £30 each per year, and at Birmingham slightly less at £24. Patients in Warwick asylum cost £25 per year and at Birmingham asylum only £22.³⁹ Yet in terms of absolute expenditure, asylums did cost the ratepayers more than prisons, simply because the number of resident inmates was larger and asylum standards had to be maintained under the Lunacy Commissioners' watchful eye. By the early 1860s the annual costs of both Birmingham and Warwick asylums exceeded those of their neighbouring prisons, and by the late 1870s Warwick asylum spent in the region of £15,000 annually, over twice as much as the county prison.⁴⁰ It must also have been obvious to county magistrates that, while lunatics in gaol ceased to be a charge on the rates once their sentence ended, 'criminal lunatics' in asylums were likely to remain a public burden long after their sentence had expired. Yet, in the absence of unequivocal policy statements, we can do no more than speculate as to how calculating the magistrates were in the matter of comparative costs of different institutions. One aspect of expenditure which probably influenced them more, and which contemporaries complained of, was that the certification and removal of criminal lunatics was itself a time-consuming and costly procedure. It took time for the Home Office to issue the warrant needed to transfer a prisoner to an asylum, and in the case of short-sentence prisoners this might not arrive before the sentence was over. The Lunacy Commissioners suggested in 1860 that this system kept down the number of certifications made of short-term prisoners, but nothing was done to improve the procedure until 1884.⁴¹

The asylum superintendents' dislike of criminal patients may also have provided some incentive to the prison authorities to cope with disordered prisoners within the gaol rather than certify them. Because superintendents could not be compelled to accept a patient, the certification of a prisoner could involve the gaol authorities in much trouble if they had to seek accommodation for a criminal lunatic in other than the nearest county asylum. Asylum doctors were often the experts called in to assist with the examination of lunatic prisoners and it seems likely that sometimes their opinion of whether a prisoner was certifiable was coloured by thoughts of the difficulties of coping with criminals in their asylums.

Our local study pointed to one other factor which may have deterred prison doctors and county magistrates alike from too hasty a response to insane prisoners: their fear that prisoners feigned insanity in order to obtain softer treatment and association with other prisoners, or removal to an asylum where life was more comfortable and security was sufficiently lax to allow escape.⁴² The evidence that Victorian society's outcasts have left behind them in institutional records suggests that they were more than merely the passive recipients of the decisions and definitions of the authorities.⁴³ There is one Warwickshire case of a workhouse inmate sent to the prison for three months for 'wilfully injuring workhouse property', who was moved within a week from prison to the asylum, said to be incoherent and tearing all the clothes he could get hold of. Whether this case and others like it were masterpieces in 'working the system', the protests of frustrated people, or simply the destructive symptoms of insanity, is difficult for us to say and Victorian experts themselves hesitated to make decisions in such matters. Although it could never be proved conclusively that feigning was widespread, contemporaries certainly believed so and acted accordingly, to the disadvantage of genuine cases of mental disorder. A prison matron wrote in 1864 that doctors were so reluctant to risk a medical reputation by too hasty a verdict 'that many really mad are regarded with suspicion . . . and are treated like the rest of the prisoners if their conduct be not too glaringly outrageous'.⁴⁴ The prison authorities claimed that much of the insanity shown by prisoners under the 'separate' system of prison discipline was in fact feigned; in Millbank prison convicts were reported to have 'feigned' even suicide in the hope that they would be considered weakminded and allowed a relaxation of discipline.⁴⁵ Our Warwick asylum records yielded eight cases of supposed feigned insanity, according to the opinion of the asylum staff. One of the more successful of these was that of a tailor who was serving a 16-year sentence for burglary. A month after his trial he 'became irrational in conduct, at times excited and violent, at others tranquil with no recollection of anything and making use of incoherent language, thrusting food into his mouth in large masses and [he was] in and out of bed at night'. Despite some suspicions of feigning he was admitted to the asylum, where he 'began running backwards and forwards looking watchful and with great determination at the surrounding objects. When spoken to he appeared in a hurried and excited state, and when asked how he was, said his carriage was ready and he was going'. 'Go' he did, escaping two weeks later (case 026).

Even if escape was unsuccessful, the asylum was undoubtedly a more

comfortable place than prison in which to spend a sentence. A 'weak-minded' vagrant who said he had smashed the windows of his cell because 'he thought he had been there long enough and wanted to get away', thought the asylum was 'a capital place' and said he never wanted to leave it (case 063). Most criminal lunatics, though, expected to be discharged from the asylum at the end of their sentence as they would have been had they remained in gaol, and realisation of this mistake was frequently a source of angry and violent protests. R.L., who had plastered excrement over the walls of her prison cell because 'they did not treat her well and she was determined to give them all the trouble and annoyance she could', protested in a similar way when she was not discharged from the asylum at the end of her sentence, and refused to eat for five days saying she would never again eat 'lunatic food'. Criminal lunatics had less respect than most of the paupers for the authority of the asylum doctors and tended to see the asylum as merely a more comfortable kind of prison.⁴⁶ The problems they caused and the practice of feigning insanity encouraged prison staff to raise progressively the high level of disordered behaviour needed to break their toleration point and precipitate removal.⁴⁷ Together, the prejudices of superintendents, the inadequacy of asylum facilities, the troublesome process of certifying short-term prisoners and the suspicion that insanity was feigned, all combined to keep down the numbers of convicted prisoners who were certified as lunatics.

V

We should return to where the initial problems lay, however, in the magistrates' courts and in the action of the police in arresting and charging with offences people who were mentally disordered. Magistrates not involved with the running of the asylum or the prison admittedly had less direct contact with lunacy than those who did the regular rounds of the institutions, but were nevertheless expected to have some lay knowledge of mental disorder, since they were involved in the certification of ordinary lunatics. It had long been part of police duty to ensure the control of disordered vagrants or 'wandering lunatics' by apprehending them and bringing them before a justice,⁴⁸ so they also must have had considerable experience of the mentally disordered. Why then, in spite of this reservoir of experience among police and magistrates of the nature of mental disorder, were so many cases charged with offences and sent to prison, when, if the criminal process were not involved,

they might have been certified and sent to asylums?

For most of the century the law was unclear concerning how much discretion magistrates were allowed with regard to insane offenders. An Act of 1838 permitted justices to certify and send to asylums 'persons discovered or apprehended under circumstances denoting a derangement of mind and a purpose of committing some crime for which such person would be liable to be indicted'.⁴⁹ Where a crime *had* been committed, however, there were no guidelines as to how justices might act, and the power to dismiss charges in summary courts was not given to magistrates until 1879. Even here no official word that this power might be used in cases of mentally disordered offenders came until ten years later, when the Home Office reluctantly issued a circular to that effect.⁵⁰ Moreover, police attitudes seem, at best, to have been ambivalent. In Warwickshire, cases eventually categorised as congenitally idiot or weak-minded by the asylum staff had been passed through the courts and prison frequently before, without having been certified. One young labourer described as congenitally idiotic when he finally reached the asylum had had at least four previous convictions for housebreaking, theft and vagrancy (case 136). But from Stratford-on-Avon in 1873 we have an arsonist who 'had always been looked on as a man of weak intellect' and was taken into custody by a policeman 'who did not know him and supposed from his manner that he was drunk'. The implication is that if the policeman had known him he would not have been charged with the offence of attempting to set fire to a hay rick (case 071). A man who had been well known to the Leamington police for the previous three years as 'a very eccentric character walking about the streets in a vacant and sometimes excited state', was committed to the prison for 14 days for striking the workhouse schoolmaster (case 029). It seems likely that police discretion in such cases varied from place to place and according to the individual case. Our Birmingham sources enabled us to make some measure of the relative frequency of referrals to the asylum by the police, compared to the number of patients admitted via the prison. Between 1852 and 1877, the period available to us, Birmingham's force appears to have been moderately active in initiating certification; about half as many cases were sent to the asylum from police cells as were sent from the gaol as criminal lunatics.⁵¹ But we cannot say how typical this record was; in 1883 the Metropolitan Police were reported to have been charging persons known to be of unsound mind with some offence 'in order to make the proceedings regular from the police point of view', in cases where enlightened London magistrates committed people to prison for observation.⁵²

Once a mentally disordered offender had been brought up on a charge, the magistrates in petty sessions faced considerable difficulties in the question of disposal. They had to make an immediate decision whether to commit to prison or to take other action, but had no facilities available, such as a pre-sentence medical report, to help them. That magisterial reluctance to reach a quasi-medical decision was part of the problem is indicated by the initiative outlined above taken by some London magistrates in the 1880s, in remanding offenders to prison for observation. The prisons undoubtedly had facilities for the temporary containment and observation of the insane, and the Home Secretary believed that magistrates were sending insane offenders to prison because 'the opportunities for observation enjoyed by the prison doctor will result in a more satisfactory decision with respect to the disposal of the patient than their own hasty diagnosis'.⁵³ Even at this time, magisterial and Home Office policy was still swayed by the violent image of the criminally insane. In the interests of supposedly threatened public safety the Home Office was prepared to tolerate the sending of lunatics temporarily to prison. If lunatics were dangerous and apt to commit crimes, then the best place for them, as far as the Home Secretary was concerned, was not a county asylum, but Broadmoor, and if one way of getting them thus 'comfortably stowed away' was by committal to prison, there seemed nothing wrong with the magistrates' policy.⁵⁴

On the whole it seems likely that the magistracy was happy with its restricted options in dealing with mentally disordered petty offenders. Radzinowicz and Hood have discussed the Victorian magistracy's deep-seated faith in 'just proportions' in sentencing policy and their 'revulsion to long sentences, out of proportion to the gravity of the crime, whatever the offender's past record or future prognosis'.⁵⁵ To sentence an offender to detention in an asylum rather than a prison amounted to handing out an indeterminate sentence. There was clear opposition to such extension of the courts' power in the campaign to send habitual drunkards to inebriate reformatories.⁵⁶ The Home Office explicitly gave its blessing to magisterial policy when in 1875 the Home Secretary stressed his unwillingness to extend detention to an ambiguous class between criminals and lunatics;⁵⁷ disordered offenders fell into this category as surely as did habitual drunkards. No doubt petty offenders and their relations were happy to comply with such sentiments. Non-capital offenders with psychological problems would be locked up for shorter terms if found criminal than if found lunatic, so offenders may well have preferred to hide their mental problems from the courts if they had committed minor offences, and on at least one occasion were

advised to do so by the judge.⁵⁸ It seems that the stigma of lunacy was so great that 'incarceration in one of the criminal lunatic asylums would be a worse fate socially than mere committal to prison for an ordinary theft'.⁵⁹ In a similar vein, some writers have argued that the Victorians' sensibility to wrongful confinement in lunatic asylums was so pronounced in the 1870s and 1880s that it deterred doctors from certifying ordinary lunatics, so that many were left at large and fell foul of the law.⁶⁰ This seems unlikely, however. Fears of wrongful confinement were most heightened in cases involving propertied lunatics; not the poor and destitute who furnished the majority of criminal lunatics and prison inmates.⁶¹ It is hardly likely that such would-be pauper lunatics were wandering at large because some doctor had been afraid of accusations of wrongful confinement for ulterior motives.

Although it is clear that the belief in 'just proportions' was an important part of magisterial policy with regard to the less spectacularly mentally disordered offender, there are some indications that the magistrates were not blameless in their neglect of the mentally disordered. Justices knew that certifying lunatics was a time-consuming and costly business; a great deal of clerical work was involved in making out the certificates and the doctors' fees had to be paid. Besides this it was necessary to find out the settlement of the lunatic so that an order could be made for his maintenance.⁶² In 1864 the Governor of Stafford prison told the Lunacy Commissioners that the gaol authorities were of the opinion that insane persons and idiots were frequently committed to prison in order to get rid of the responsibility and trouble of sending such persons to the lunatic asylum, particularly if there was any difficulty as to settlement — as there often was in the case of the mentally disordered picked up by the police as vagrant.⁶³ After 1877 there was even more incentive to commit to prison if the label of lunatic could thereby be altogether avoided, as the Prison Commission paid for the maintenance of prisoners in gaol, but not for the cost or maintenance of any subsequent transfer to an asylum. The Prison Commissioners, indeed, soon became convinced that magistrates' interest lay in convenience rather than in the correct treatment of the insane. The campaign which asylum superintendents and visiting committees resumed after 1877, to have criminal lunatics removed out of the county asylums, only confirmed their suspicions.⁶⁴

VI

It was, in fact, largely these suspicions about the magistracy's motives that sparked off the changes in the treatment of mentally disordered offenders which finally began to be made in the last two decades of the century. The process by which change was brought about was not the result of any revolution in ideas nor a sudden drive to legislate for the control of the marginally insane, but rather a combination of circumstances which enabled the prison medical service to get its view accepted over the claims of other interest groups. The first moves in the story came, however, from the asylum superintendents, whose hopes of getting rid of dangerous patients had been unfulfilled by the opening of Broadmoor. Encouraged by the government takeover of the local prisons in 1877, they began again to campaign for the establishment of state asylums for lunatic criminals, this time with the novel idea of using recently discontinued prisons as ready-made secure asylums. In the summer of 1879 a petition signed by representatives of 37 public asylums was sent to both Houses of Parliament and the subject taken up by sympathetic MPs. Although suspicious that part of their motive was to 'transfer the charge from the local authority to the State', Home Secretary Cross was convinced that a full enquiry would be justified.⁶⁵

The Departmental Commission on Criminal Lunacy, which sat from 1880-81, was set up as a direct response to the lobbying by the magistracy and by asylum doctors, and included representatives of both the asylum and prison interests.⁶⁶ Yet although a great deal of evidence was heard on the new question of the habitual 'imbecile' or 'weakminded' offender, as well as the hoary topic of associating criminals with ordinary lunatics, the Commissioners shied away from the former issue. For the evidence collected by the Commission, particularly a memorandum sent in by Dr Guy, the Medical Inspector of Prisons, had revealed the possible magnitude of this category of offenders, which Guy now proposed could only be catered for by creating an entirely new class of institutions for the weakminded.⁶⁷ The Commissioners wisely recoiled from the task of acting on such a potentially costly scheme and the 1884 Criminal Lunatics Act, which followed the investigation, therefore dealt mainly with the consolidation of the law and financial questions to do with the old category of criminal lunatics.

Earlier studies have largely dismissed the Act because of this,⁶⁸ yet its provisions had unforeseen effects on magisterial practice, which, in turn, acted as a catalyst for further action on the part of the Home Office. In an attempt, at last, to simplify the process of removal of

insane prisoners from gaol, the Act provided that any prisoners who had been certified insane but not yet removed by a Home Secretary's warrant to an asylum, could be detained as lunatics on the *expiry* of their sentence, merely by an order signed by a justice of the peace. Now, in cases where it was possible to charge a lunatic with some offence, it was obviously easier for the magistrates to send certifiable offenders through the prison to the asylum, rather than using the facility granted to them in 1879 of dismissing charges and initiating ordinary certification procedures. The whole process of declaring such an offender insane could be avoided by using section seven of the new Act to issue a justices' order for detention, at the end of a short prison sentence, or leaving it to the prison authorities to pay for certification as a criminal lunatic proper. One of the Warwick cases demonstrates clearly the way the new Act was misused. A youth who had been epileptic for some years and boarded out in Warwick became unmanageable, threatened to kill children in the neighbourhood and tried to jump the River Avon. He was sentenced to 14 days hard labour for assault, and when received at the gaol was described as not able to give a rational account of himself, as having a childish vacant expression, and as being generally debilitated. At the end of his sentence he was removed under a justices' order to the asylum where he remained for the rest of his life (case 138).

In 1888 the Medical Inspector of Prisons, Dr Gover, found that the number of prisoners who were insane on reception into local prisons had been increasing from a maximum of 11.9 per thousand in the period before 1882, to 18.4 per thousand in 1884-5. A fierce correspondence ensued between the Prison Commission and the Home Department. Home Office officials preferred to believe that the increase was not a direct result of the Act, but merely the heightened sensitivity of the prison medical service to the problem, and countered that the increase had dated from well before 1884. To a suggestion that the justices needed reminding that they could send insane offenders straight to asylums, the Home Secretary replied that he could 'hardly think that the Justices have abstained from exercising their power of dismissal with a view that prisoners should be made criminal lunatics and the expense thrown on the prison vote'.⁶⁹ The Prison Commissioners were determined, however, to use the increase in insane offenders to persuade the Home Office that the magistrates were taking advantage of the new financial arrangements and became more specific in their representations. Du Cane insistently pointed out that the magistrates had every inducement to send such persons to prison 'because it saves them the trouble and responsibility which attends declaring them lunatics as well as the expense of their

maintenance'. Even more condemning was Dr Gover's remark that since 1884 magistrates' clerks had actually been advising them to send lunatic offenders to prison so that they could be dealt with as criminal lunatics, merely in order to save themselves the clerical work involved in certifying them as ordinary lunatics.⁷⁰ In the face of such assertions the Home Office could procrastinate no longer. In November 1889 a circular was issued reminding magistrates that in the case of less serious offences it was open to them to dismiss the charge and deal with the prisoner as an ordinary lunatic, emphasising that it was 'unjustifiable that persons of suspected insanity should be sentenced to imprisonment in order that the prison may be used as a place of observation'.⁷¹

That the Home Secretary had been forced to serve such an instruction, marks an important break with traditional policy. For the first time it was officially stated that in the case of less serious offenders, the primary issue was one of appropriate disposal in the interests of the disordered offender, regardless of their legal responsibility under the law for their crimes. Here the evidence from Home Office files does not entirely accord with Walker and McCabe's suggestion that this about-face 'took place . . . under the pressure of circumstances, and in particular the increasing numbers of disordered offenders who were indiscriminately pumped into the prison system since the middle of the nineteenth century by that more or less new creation, the magistrates' court'.⁷² The Criminal Justice Act of 1855 gave magistrates the power to deal summarily with large numbers of cases. Yet it took almost a further 30 years of representations to the Home Office by the Lunacy and later the Prison Commissioners to bring about some change in official policy over the arbitrary ways in which disordered offenders were sent to prisons or asylums. We have shown how the Home Office persisted in upholding the validity of the magistrates' discretion throughout these years, giving way only when the evidence provided by the 1884 Act made it all too obvious that such discretion might be concerned as much to save time and expense as with the appropriate treatment of lunatic offenders.

What was happening during this time was a gradual growth of knowledge about disordered offenders and the supplanting of the traditional stereotype of the violent criminal madman, by that of the weakminded habitual offender as an administrative priority. In 1889 the prison authorities were able to force some admission of this viewpoint from the Home Office, yet in practice there was little long-term effect on the supposedly crucial factor of the numbers of insane committed to prisons. In 1893 the Medical Inspector observed that 'the number of lunatics proportionately to [prison] population was larger than that of

any year on record'.⁷³ In the absence of more concrete action than the 1889 reminder, the prisons were by now making their own provision for the weakminded offender and in the 1890s Parkhurst was designated as the prison for all weakminded men whose sentences were long enough to make transfer worthwhile.⁷⁴ It was not until 1913 that the suggestions upon which the Commission on Criminal Lunacy had felt unable to deliberate (about the care of feeble-minded offenders) were finally incorporated into the Mental Deficiency Act: with the creation of a new category of deviant liable to incarceration, the mentally defective, to be transferred to new institutions direct from the courts. Even here, the legislators' aims were to be thwarted by the magistracy, who proved both unwilling to invest money in expensive new institutions,⁷⁵ and reluctant to sentence people to such long-term incarceration.⁷⁶

VII

The story of the treatment of the mentally disordered offender in the nineteenth century demonstrates how great a divergence existed between developing criminological theories and the everyday practice of police and magistrates in the control of crime. The debate about the criminally insane and weakminded had been the focus for a steady accumulation of evidence to support the 'born-criminal' theorists. The problems which disordered offenders caused for prison administrators were enough to convince Sir Edmund Du Cane, the Chairman of the Prison Commission, that simply as a question of the repression of crime, special provisions should be made to keep such offenders in restraint. This conviction was strengthened, however, by his belief that when outside institutions, criminal lunatics and imbeciles bred others like themselves to supply the next generation of criminals.⁷⁷ Yet throughout this period of emergent eugenic theories, opposition to the use of incarceration to control such offenders remained strong. Although this opposition came from various quarters,⁷⁸ the most effective and determined came from the magistracy, who, for reasons of purse as well as of principle, were unwilling to extend the scope of indeterminate detention. Although the chief concern of many Victorian writers was merely to prevent the criminally insane and weakminded from committing crimes and being troublesome as vagrants and petty offenders,⁷⁹ we have seen how little enthusiasm there was either at the Home Office or among the magistracy to use the idea of criminal lunacy in even this limited way.

The case of criminal lunacy, indeed, presents something of a paradox

for interpretations of social policy which stress the role of institutionalisation in the nineteenth century to control marginal sectors of the population.⁸⁰ That some groups like mentally disordered offenders were left out of the custodial 'solution' to deviance, demonstrates the complexity involved in attempting to ascribe motives of therapy or incarceration to the actions of reformers and practitioners in the history of institutionalisation.⁸¹ Incarceration may have been initially adopted as a means of isolating and controlling marginal elements in the population, but the case of criminal lunacy shows the degree of reluctance which still existed in the late Victorian period to extend the asylum idea beyond lunacy, to control greater numbers of these 'elements'.⁸² Indeed, the Victorian magistracy succeeded in retarding for decades the effects of developing ideologies on the extent and scope of institutionalisation.

Notes

1. For the fullest treatment of the history of crime and mental disorder, and of the change from penal to psychiatric disposition, see N. Walker, *Crime and Insanity in England*, vol. 1 (Edinburgh, 1968) and N. Walker and S. McCabe, *ibid.*, vol. 2 (Edinburgh, 1973). More recent discussions of present-day problems with mentally disordered offenders can be found in R. Buglass, 'Regional secure units and interim security for psychiatric patients', *British Medical Journal* (1978), pp. 489-93; and J.H. Orr, 'The Imprisonment of Mentally Disordered Offenders', *British Journal of Psychiatry*, vol. 133 (1978), p. 194.

2. E.g., J.C. Bucknill, *Unsoundness of Mind in Relation to Criminal Insanity* (London, 1854), p. 142.

3. N. Walker and S. McCabe, *op. cit.*, pp. 24 and 59.

4. S. Cohen, 'The Punitive City: Notes on the Dispersal of Social Control', *Contemporary Crises*, vol. 3 (1979), pp. 341-2, refers to 'the "Great Incarcerations" of the nineteenth century'.

5. N. Walker, *op. cit.*, pp. 74-80.

6. P. Allderidge, 'Bethlem to Broadmoor', *Proc. Roy. Soc. Med.*, vol. 67 (1974), pp. 897-99.

7. D.H. Tuke, *Chapters in the History of the Insane* (London, 1882), p. 265 and *passim*.

8. Lunacy Act (1845), 8 and 9 Vict., c. 100, s. cxiv: 'Lunatic shall mean every person being an Idiot or Lunatic, or of Unsound Mind'.

9. Walker, *op. cit.*, p. 100.

10. *Ibid.*, pp. 219-39; P. Allderidge, *op. cit.*, pp. 902-3.

11. Lunacy Commissioners (L.C.), 17th Report, Parl. Papers (P.P.), 1863, vol. 20 (331), p. 12; Report of the Departmental Commission on Criminal Lunacy, P.P. 1882, vol. 32 (841), App. A(1), pp. 109 and 111.

12. The 146 cases represent almost all the criminal lunatics certified in the county of Warwickshire. All the admission forms of patients to Warwick County Lunatic Asylum between 1852 and 1890 were examined, from which we extracted criminal admissions; these were then followed up in the case-notes. We estimated that around 20 persons found lunatic by special court verdicts were sent to state asylums, rather than to the county asylum, while a smaller number found their

way into the lunatic wings of Millbank and Woking prisons, having been declared insane while serving time in the government convict prisons. Some of these missing cases were picked up again when they were returned to the county asylum on the expiry of their sentence. But for the purpose of studying the problem of criminal lunatics in local institutions, our 'sample' is a complete one. Warwick County Lunatic Asylum, at Hatton, was an asylum of average size (453 patients in 1869, 653 in 1879 and 650 in 1889) in a county which included the urban centre of Coventry, several smaller market towns, with hinterlands of rural and mixed economies.

13. Various Warwickshire Quarter Sessions papers in Warwickshire County Record Office were consulted. Classes QS/26: Calendars of Prisoners; and QS/21/1: Files arising on detention orders made in respect of criminal lunatics 1856-72, were used to supplement some of the case-notes of criminal patients. Classes QS/2/1: Reports of visiting justices of the county prison to Quarter Sessions 1843-97; and QS/43: Printed Orders of court 1852-1905, were used to provide information on the treatment of criminal lunatics in the county prison.

14. L.C., 7th Report, P.P. 1852-3, vol. 49 (285), p. 1.

15. L.C., 8th Report, P.P. 1854, vol. 29 (339), p. 45: 'We think it very important that ordinary Asylums should be, in fact and character, considered and managed simply as hospitals for the medical and moral treatment of insanity . . . this enlightened and humane policy is now carried out in all well-conducted asylums which, on that ground amongst others, are wholly unfit for the purpose of the due security of criminal patients'. For an account of moral treatment at the 'Retreat' see K. Jones, *History of the Mental Health Services* (London, 1972), p. 45.

16. E.g., L.C., 14th Report, P.P. 1860, vol. 34 (338), pp. 100-101.

17. J. Campbell, *Thirty Years Experience as a Medical Officer in the English Convict Service* (London, 1884), pp. 86-7, 102.

18. Warwick County Lunatic Asylum (WCLA), Superintendent's Journal, 17 Feb. 1856.

19. Cases 022 and 023. For reasons of confidentiality, these are my own case numbers, not those to be found in the records themselves. See also WCLA, Report for 1862, p. 10.

20. Cases designated as 'not dangerous' were frequently retained in work-houses, rather than sent to the asylums: R.G. Hodgkinson, 'Provision for Pauper Lunatics 1834-71', *Med. Hist.*, vol. 10 (1966), pp. 144-54.

21. Bucknill, *op. cit.*, p. 141.

22. E.g., J.R. Reynolds, 'Criminal Lunatics - Are they Responsible?', *J. Mental Science*, vol. 3 (1856-7), p. 134; W.A. Guy, 'On Insanity and Crime', *J. of the Statistical Society*, vol. 32 (1869), pp. 182-3; W. Tallack, *Humanity and Humanitarianism* (London, 1871), p. 27; Howard Association, *Capital Punishment and Criminal Lunacy* (London, 1872), p. 3; *idem.*, *Annual Report* (1876), p. 309.

23. N. Walker, *op. cit.*, ch. 6. The submission of expert testimony by psychiatrists, at trials where the plea of insanity had been raised, became so common that the profession became concerned that courtroom situations might damage their prestige as 'scientists': D.H. Tuke, *Chapters in the History of the Insane* (London, 1882), p. 283.

24. E.g. J.H. Brenten, *The Tragedy of Life* (London, 1861) contains four short stories and one novelette, all dealing with violent lunacy, or death caused by the insane or deficient. F. Robinson, *Female Life in Prison* (London, 1863), pp. 239-45, is one example of a prison memoir with a section devoted to 'insanity'.

25. One strategy was to find alternative accommodation for such patients, like that provided at Fisherton House Asylum, which after 1863 began to specialise in the care of dangerous pauper lunatics: WCLA, Report for 1869, p. 9.

26. W. Guy, op. cit., p. 169: 'There are to be found among the population which supplies us with . . . criminals . . . about 28 in the thousand of men of weak mind not yet recognised as proper objects for the lunatic asylum'.

27. From their introduction, separate and solitary confinement were criticised on the grounds that they caused insanity. Such accusations continued to be made: Gutsch, 'Insanity among criminals in solitary confinement', *J. Mental Science*, vol. 8 (1862), p. 556; Report of the Departmental Committee on Prisons, P.P. 1895, vol. 56, pp. 33 and 48. See also U.R.Q. Henriques, 'The Rise and Decline of the Separate System of Prison Discipline', *Past and Present*, no. 54 (1972), p. 86.

28. Howard Association, 'A Plea for a Royal Commission on Criminal Lunacy', *Annual Report* (1869); J.B. Thomson, *The Hereditary Nature of Crime* (London, 1870), p. 8.

29. For a summary of the 'born-criminal' theory, see L. McDonald, *Sociology of Law and Order* (London, 1976), pp. 81-2. J.B. Thomson, *ibid.*, seems to have been the most widely read of these writers, and most of the others were influenced by his research: H. Maudsley, *Body and Mind* (London, 1870), p. 65; W. Tallack, op. cit., p. 18; L.O. Pike, *History of Crime in England* (London, 1875), p. 668; E. Du Cane, 'Address on the Repression of Crime', *Transactions of the Nat. Assoc. for the Promotion of Social Science* (1875), pp. 300-302.

30. E.g. L.O. Pike, op. cit., p. 579. W. Guy, who had the most clearly constructed scheme, showed some concern about the reproduction of imbeciles — 'a constantly increasing check would be placed on the increase of the imbecile population by the seclusion of adult males and females of this class' — but his chief aim was their restraint in the present: Commission on Criminal Lunacy, Report, op. cit., p. 162.

31. W. Guy, op. cit., p. 187.

32. Report of the Commission on the Penal Servitude Acts, P.P. 1878-9, vol. 38 (2368), p. 42; Public Record Office (PRO), HO 45/71439.

33. E.g. L. Forbes Winslow, *Recollections of Forty Years* (London, 1910), pp. 376-7; E. Du Cane, op. cit., pp. 300-305.

34. Cases 092 and 079.

35. Reports of visiting justices of Warwick Prison to Quarter Sessions 1868, Warwick County Record Office, QS/2/1; Walker and McCabe, op. cit., pp. 39-41.

36. WCLA, Visitors' Books, 1852-89.

37. J.M. Granville, *The Care and Cure of the Insane* (London, 1877), p. 189; PRO, HO 45/71439, Report of Committee of Visitors of Surrey Lunatic Asylum in 1879: 'An asylum is not a prison and there are no really effective means of preventing a clever person from escaping. Greater precautions than those already taken . . . would be mischievous to the ordinary use of the place'. They had decided in 1877 to admit no more criminal lunatics.

38. PRO, HO 45/71439/60 and 62.

39. The figures are taken from the Annual Judicial Statistics, the annual reports of the Lunacy Commissioners, and the reports of the Birmingham and Warwick asylums.

40. *Ibid.*

41. L.C., 14th Report, P.P. 1860, vol. 34 (338), pp. 100-101. It was suggested that the prison justices be enabled to take immediate action in cases of lunatic prisoners, without having first to obtain the Home Secretary's warrant. This suggestion was finally incorporated into section seven of the Criminal Lunatics Act of 1884, which is further examined in the text at p. 234.

42. For the associating together of prisoners suspected of insanity, see Howard Association, *Annual Report* (1884), p. 12; *Lancet* (1859), p. 497.

43. D.J.V. Jones, '"A Dead Loss to the Community": The Criminal Vagrant in Mid Nineteenth-Century Wales', *Welsh History Review*, vol. 8 (1977), pp. 332-8;

M. Ignatieff, *A Just Measure of Pain* (London, 1978), pp. 10-11; Hodgkinson, op. cit., pp. 147-8.

44. F. Robinson, op. cit., p. 239.

45. Report of the Directors of Convict Prisons for 1859, P.P. 1860, vol. 35 (2713), p. 471.

46. E.g. case 1012, who was 'sullen and angry at being sent here instead of discharged, considered it part of the system of passing him from place to place and would not believe this was an asylum unconnected with the Government prisons or asylum'. See also J.M. Granville, op. cit., p. 78; PRO, HO 45/71439/62.

47. W.A. Guy, *Results of Censuses of the Population of Convict Prisons in England taken in 1862 and 1873* (London, 1875), p. 12, refers to the increasing experience and rigour in the detection of feigning.

48. Under the Criminal Lunatics Act (1800), 'wandering lunatics' in danger of committing some crime could be committed to gaol, and by 1 and 2 Vict. c. 14 (1838), sent to asylums; and it was part of police duty to apprehend such persons: Walker and McCabe, op. cit., pp. 253-4.

49. Ibid., p. 254.

50. Ibid., p. 59. See also Note 71 below.

51. More research on the police diagnosis of insanity would be useful. In 1860 the police were reported to have been showing greater vigilance in providing for the safekeeping of lunatics: Judicial Statistics for 1860, P.P. 1861, vol. 60 (2860), p. 477.

52. E. Du Cane, 'Memorandum on Insanity in Local Prisons', Report of the Departmental Committee on Prisons, P.P. 1895, vol. 56, App. VII, pp. 589-90; Walker and McCabe, op. cit., p. 51.

53. PRO, HO 45/9955/V10698.

54. Ibid.

55. L. Radzinowicz and R. Hood, 'Judicial Discretion and Sentencing Standards: Victorian Attempts to Solve a Perennial Problem', *University of Pennsylvania Law Review*, vol. 127 (1979), p. 1,327.

56. R.M. MacLeod, 'The Edge of Hope: Social Policy and Chronic Alcoholism 1870-1900', *J. Hist. Med.* (1967), pp. 236-9.

57. Ibid., p. 223.

58. J.C. Bucknill, *J. Mental Science*, vol. 8 (1862), p. 263.

59. Dr. Granville (ed.), *Dr. Wynter's Borderlands of Insanity* (London, 1877), p. 58.

60. Walker and McCabe, op. cit., p. 52. Dr R.M. Gover, Medical Inspector of Prisons, thought the increasing number of insane prisoners was partly due to the reluctance of doctors to certify people as insane: Twelfth Report of the Prison Commissioners, P.P. 1889, vol. 41, App. 12, p. 38.

61. P. McCandless, 'Liberty and Lunacy: the Victorians and wrongful confinement', *J. of Social History*, vol. 11 (1978), p. 369.

62. It is difficult to discover exactly how expensive it was to certify and determine the settlement of ordinary lunatics. Two cases in the *Leamington Courier* in February 1860 give some indications: to get an order for admission in each case, and to remove the lunatics to nearby Warwick asylum cost £1 12s 10½d and £1 11s 10d (compared with the weekly maintenance cost of lunatics at Warwick asylum of about eight shillings per inmate). In 1881 the cost of obtaining an order of settlement was around £7, while the cost of a medical certificate and removal was £3: Report of the Commission on Criminal Lunacy, op. cit., pp. 170-71.

63. L.C., 18th Report, P.P. 1864, vol. 23 (389), p. 84.

64. PRO, HO 45/71439/60.

65. Ibid.

66. E.g. Sir Edmund Du Cane, Chairman of the Prison Commissioners; William Guy, Medical Inspector of Prisons; Dr A. Mitchell, Superintendent of Woodilee Asylum, Glasgow.

67. Report of the Commission on Criminal Lunacy, op. cit., App. B(1), p. 163.

68. Walker and McCabe, op. cit., p. 22.

69. PRO, HO 45/9955/V10698/1 and 2.

70. Ibid. Dr Gover's point is referred to in Du Cane, 'Memo on Insanity in Local Prisons', op. cit., p. 590.

71. Printed in Thirteenth Report of Prison Commissioners, P.P. 1890, vol. 37 (6191), App. 24, p. 167.

72. Walker and McCabe, op. cit., p. 238.

73. Sixteenth Report of Prison Commissioners, P.P. 1893-4, vol. 47 (7197), p. 6. In Warwickshire, the number of patients admitted to Warwick asylum, who were certified as criminal lunatics while spending a term in Warwick prison as convicted criminals, increased after 1889: 1878-81, 13 cases; 1882-85, 9 cases; 1886-89, 10 cases; 1890-93, 23 cases; 1894-97, 23 cases. Cases certified as insane while awaiting trial, or by special verdict at the trial, were omitted from these calculations.

74. Walker and McCabe, op. cit., p. 42. Arrangements for the care of weak-minded prisoners with sentences of over two months in selected prisons had been in existence since 1884: Eighth Report of Prison Commissioners, P.P. 1884-5, vol. 37 (4567), p. 14.

75. H.G. Simmons, 'Explaining Social Policy: The English Mental Deficiency Act of 1913', *J. of Social History*, vol. 11 (1978), pp. 399-400.

76. Radzinowicz and Hood, op. cit., p. 1,326.

77. PRO, HO 45/71439, Du Cane to Home Secretary, August 1879.

78. There was mistrust of such measures even among the medical profession, e.g. A. Mitchell, 'Notes on Dr. Guy's Memorandum', Report of the Commission on Criminal Lunacy, op. cit., App. B(2), pp. 164-6: 'Dr. Guy's scheme creates a new class of persons and a new class of establishments, as well as a new and a dangerous procedure . . . I should myself greatly regret any such widening of the term lunatic, and I do not advocate the sequestration, under the jurisdiction either of a Lunacy or a Prison Board, of any class of persons, whether weak-minded or not, who are fit for penal discipline'.

79. E.g. W.A. Guy, see Note 30 above; J. Campbell, op. cit., p. 50: 'I have always thought it desirable, for the sake of the public at large, to have them [invalid and weakminded prisoners] secluded, that they might be prevented from pursuing their evil careers'.

80. A.T. Scull, in particular, presents such an interpretation: 'Madness and Segregative Control', *Social Problems*, vol. 24 (1977), pp. 337-8; idem., *Museums of Madness. The Social Organisation of Insanity in Nineteenth-Century England* (London, 1979), p. 17.

81. G.N. Grob, 'Rediscovering Asylums: the unhistorical history of the mental hospital', *Hastings Center Report*, vol. 7 (New York, 1977), pp. 35-6.

82. Our work bears out Walton's conclusion that the asylum and the label of 'lunatic' were not used in the nineteenth century to control the mental deviant: J.K. Walton, 'Lunacy in the Industrial Revolution: a study of asylum admissions in Lancashire, 1848-50', *J. of Social History*, vol. 13 (1979), p. 11.

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GALEN BROEKER

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PREFACE

THE PRIMARY PURPOSE of this work is twofold: to investigate organized peasant opposition to the existing economic and religious systems in Ireland between 1812 and 1836, and to examine the methods developed by the authorities to deal with the violence used by the peasants to make this opposition known. In addition, the work fills certain gaps in the knowledge of the early career of Robert Peel, and makes some contribution to the history of the catholic emancipation crisis of 1828-9.

Since it was rural violence that made it difficult for the governing classes to ignore the poverty of the majority of the Irish people, and that convinced some of the more perceptive politicians that the traditional coercive instruments alone would never 'civilize' Ireland, this work is not concerned with the cities and larger towns. In comparison with the countryside, the cities and towns presented only minor problems for those responsible for law and order during this period.

Throughout, the word *banditti* is used to identify members of the agrarian secret societies. It is an honourable word, meaning 'one who is proscribed', and was used by the officers of the Irish military establishment, who found it very difficult to identify the secret societies by their chosen titles.

I wish to acknowledge the assistance given me by the staffs of the libraries and record offices in England and Ireland in which I did much of the research for this work. I am grateful to the American Council of Learned Societies for a grant in the early stages of my research, and to the University of Tennessee for a leave of absence to complete the research and for a generous grant in aid of publication. Special thanks are due Professor T. W. Moody of Trinity College, Dublin, for his valuable

Preface

editorial advice. Finally, mention must be made of the invaluable advice and assistance provided by my wife.

A portion of the material in the early chapters of this work appeared in an article of mine in the *Journal of Modern History* in 1961, and is used with permission of the editor.

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ABBREVIATIONS

B.M., Add. MSS	British Museum, Additional Manuscripts.
<i>Hansard 1</i>	<i>Hansard's parliamentary debates</i> , 1812–20.
<i>Hansard 2</i>	<i>Hansard's parliamentary debates</i> , new series, 1820–30.
<i>Hansard 3</i>	<i>Hansard's parliamentary debates</i> , third series, 1830–36.
H.C.	House of commons.
H.L.	House of lords.
H.O.	Home Office.
n.d.	no date.
N.L.I.	National Library of Ireland.
P.R.O.	Public Record Office of England.
S.P.O., C.S.O.	State Paper Office of Ireland (Dublin Castle), Chief Secretary's Office.
W.O.	War Office.

Note: For other abbreviations used in footnotes see 'Rules for contributors to *Irish Historical Studies*', second edition, by T. W. Moody, in *Irish Historical Studies*, supplement I (Jan. 1968).



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I

THE TORIES AND IRELAND, 1812-30

IRELAND FROM 1812 to 1830 was the despair of the governing and the governed – threatening, gloomy, stubborn, too disturbed to respond effectively to civil government, not disturbed enough to justify full-scale military occupation. The act of union which combined the parliaments of Ireland and England had not united the peoples. To the Irish peasants, the economic, religious, and political system inflicted by an alien, protestant minority seemed to threaten their very existence. To many Englishmen, the Irish were clearly inferior beings and potential traitors, automatically suspect on grounds of religion and history. The politicians and administrators who governed Ireland, confronted by the baffling intricacies of the ‘Irish problem’, faced a situation imperfectly understood by all concerned. Year after year a procession of men considered capable, even brilliant, in other areas of government found themselves determining policy and administering Irish affairs in an atmosphere of anger, fear, and perpetual frustration.

Lord Liverpool, tory prime minister from 1812 to 1827, described Ireland as ‘a political phenomenon – not influenced by the same feelings as appear to affect mankind in other countries’.¹ Robert Peel, closely associated with Irish affairs during

¹ Lord Liverpool to Robert Peel, 28 Jan. 1816 (Peel papers, B.M., Add. MS 40181).

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these years, determined the cause of continual disturbance in Ireland to be 'that natural predilection for outrage and a lawless life which I believe nothing can control'.² Such exasperation is understandable. Both Liverpool and Peel were able and conscientious leaders in the tory government that successfully guided England through the difficulties of 1812-27; both sincerely desired a peaceful and prosperous Ireland, and gave their best efforts to achieving it. But the policies they supported in England – efficient and economical government, the firm maintenance of public order, moderate reforms – failed dramatically when applied in Ireland.

The Irish peasants did not settle down to cultivate their very modest gardens. Bound together by oaths, armed with stolen weapons, sometimes decked out in crude uniforms, a considerable portion of the population continued to accept 'agrarian outrage' as a legitimate weapon in the continuing struggle against those who represented authority – landlords, magistrates, policemen, and soldiers. In 1829 the tories approached the end of their long period of domination still seeking 'a system of measures for the permanent civilization' of Ireland.³

The basic cause of agrarian unrest was the abject poverty of the great number of Irishmen who tried to make a living from the soil. Irish agriculture was backward and wasteful, thwarting progress and fostering dissension. Irish industry, concentrated in the north-east, had little significance in the total Irish economy. As the nineteenth century progressed, the number of people who looked to the soil for their livelihood increased. In spite of sporadic famine, disease, and emigration, the population rose from not quite five and a half million in 1804 to over eight million in 1841. In most areas, about 75 per cent of the families depended on agriculture.⁴

Were there less abundant evidence of the state of the Irish in these years, it would be difficult to believe the traditional description of the stark misery of rural Ireland. The potato, which allowed the peasant to feed his family from a small

² Peel to Liverpool, 15 Oct. 1813 (Liverpool papers, B.M., Add. MS 38195).

³ Peel to Lord Francis Leveson Gower, 30 July 1829 (Peel papers, B.M., Add. MS 40337)

⁴ Black, *Econ. thought & Ir. question*, p. 3.

acreage, provided the means of bare subsistence, but a crop failure, a rise in rent, or an economic fluctuation that lessened chances of employment could mean beggary and starvation. Population pressure and a lack of alternative employment created a desperate demand for land, which in turn raised rents and made tenure uncertain. High rents encouraged subdivision by the landlords and subletting by the tenants: between the landlord and the man who actually cultivated the soil, there could exist a hierarchy of agents, middlemen and under-tenants. By the 1840s, the average square mile of improved land was occupied by sixty families.⁵

Over the years, witness after witness arrived at Westminster from Ireland to testify before parliamentary commissions and committees on Irish social and economic problems. These experts were not particularly successful in suggesting viable solutions for the problems under investigation, but their testimony did help to reveal the extent and depth of rural poverty and to create the image of a class of villains – the landlords and their agents. Holdings were fragmented in an effort to squeeze as much rent as possible from every estate; tenants were evicted in order to extract a higher rent from others; estates were packed with forty-shilling freeholders who, under threat of eviction, voted in county elections as the landlord directed. These and similar practices form part of the historical record of early nineteenth-century rural life. But Ireland's faulty economic structure and expanding population were not the exclusive creations of landlords and agents. The major contribution of these men to the conditions of the time lay in the intensification, by their actions, of an already existing situation.

The province of Ulster provided an exception to the dreary pattern of Irish agrarian misery. Domestic linen manufacture gave many rural families a higher and more certain income than farming alone could do. Tenant right, which meant that a tenant could not be evicted without compensation for his interest in the farm, made tenure more secure and encouraged better farming. Over a large area of the province, landlords and tenants alike were protestants of British ancestry, so that common religion and a shared dislike for the native Irish may

⁵ T. W. Freeman, *Pre-famine Ireland, a study in historical geography* (Manchester, 1957), p. 35.

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have made for better relations between classes. Not all of Ulster, however, shared in the relative prosperity, and the areas along the boundaries were at best marginal.⁶ Bad relations between landlords and tenants were far from unknown and hostility between the catholic and the protestant populations was an established fact of the Ulster way of life. But beyond doubt better social and economic conditions prevailed in Ulster than in the other three provinces.

The religious division of Ireland into protestant 'conquerors' and catholic 'savages' deepened and aggravated the bitterness stemming from the economic plight of the peasants, and accentuated the differences between the governing class and the governed. The great majority of landlords, magistrates, and office-holders were protestant, as were the clergymen who received the tithe paid by all Irishmen, protestant and catholic, towards the maintenance of the clergy of the established church. Prior to the 1830s, opposition to the tithe appeared most frequently as but one item in the programme of the disaffected. But an overly zealous incumbent could trigger a local tithe 'war'. For example, around 1823 the Rev. Mr Morett of Castle-owen attempted to 'screw up the natives' by increasing the income of his benefice. Those who protested were charged with 'Whiteboyism' and imprisoned. Only the 'vigilance of the gentry and the admonitions of the clergy' prevented serious trouble. It is worth noting that banditti programmes occasionally included opposition to the payments requested of the peasants by the catholic clergy.⁷ The tithe as a cause of agrarian discontent appears to have been basically more economic than religious, but by its very nature the tithe problem when it arose assumed a religious character.

To the peasants, the religious aspect of the Irish problem was quite elementary; to them, there was no distinction to be made between protestant and 'Saxon oppressor'. Before the 1820s, the long, often emotional catholic emancipation controversy meant little to the average Irishman, who was too concerned with his more immediate problems to worry much about the question of

⁶ Ibid., p. 270.

⁷ M. Collins to Brigade-major Mahoney, 26 July 1823 (Surrey Record Office, Goulburn papers, II/14); Richard Willcocks to Peel, 23 Mar. 1814 (P.R.O., H.O. 100/177).

catholic parliamentary representation. During the early decades of the century, there were scattered 'revolts' against candidates of the landlords, perhaps triggered by politically conscious priests, but it was not until about 1824, when O'Connell and the catholic clergy began to teach the peasant to oppose the disabilities, that the struggle for catholic emancipation became in itself a threat to the authority of the government.

The controversy over catholic emancipation did, however, have an influence on the Irish countryside prior to 1824. An extended debate on any controversial topic involving Ireland would sooner or later reach the rural areas. In places where both catholics and protestants lived, the emancipation debates might provide for a triumphal parade or a show of strength by one of the two religious groups, and the opposing group could always be relied upon to take exception. In 1815, an 'information centre' was established in Armagh, where religious factions posted resolutions containing a list of fairs where catholics and protestants might meet to fight it out.⁸ Year after year, reports of these sectarian clashes arrived at the seat of the Irish administration, Dublin Castle, and were conscientiously forwarded to London, there to become part of the home office records. Some of the more diligent magistrates tried to prevent the outbreaks, but unless the temper of the area involved seemed to threaten more than a purely local affray, the clashes were often allowed to run their course. Few participants were arrested, and the usual attitude of the local authorities was that indicated in a report from a magistrate in Maghera, Londonderry. Somewhat whimsically, he had set about determining responsibility for a riot following a fair by counting the number of broken window-panes. Evidently the responsibility was almost evenly divided, for 605 'protestant windows' and 615 'catholic windows' had been smashed.⁹ Not only did these outbursts strengthen and perpetuate local hatreds, but since protestantism and the government of Ireland were so closely connected, they also helped to extend and intensify resentment against the government itself, thus sustaining the habit of violent opposition to the protestant ascendancy.

⁸ State of the country, Aug. 1815 (P.R.O., H.O. 100/184).

⁹ Enclosure in William Gregory to Henry Hobhouse, 3 July 1823 (P.R.O., H.O. 100/209).

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Over the centuries, rebellion had played a prominent role in the history of Anglo-Irish relations. The pattern was familiar to the men of Westminster and Dublin Castle: England, involved in a war of sufficient magnitude and duration, would find its leading adversary working with Irish malcontents to add another front to the conflict. It was also part of the pattern for foreign aid to be tardy and insufficient, leaving the Irish rebels to do most of the fighting and to bear the consequences of defeat. Britain's success in dealing with Irish insurrections caused certain officials to view the prospect of rebellion with limited approval, as a means of clearing the air, of forcing the disaffected out into the open where they could be more readily dealt with. As the lord lieutenant of Ireland observed in 1813, another revolution might be good for Ireland. It would lead to an unfortunate loss of life, 'but the results would be favourable to the tranquillity of the country'.¹⁰

In the early years of the nineteenth century, however, certain changes began to appear in the traditional pattern of opposition to British rule. The necessary conditions for revolution seemed to be present: an economic situation that threatened the existence of a majority of the people; a governing class alienated from the same majority and unwilling or unable to help them; and, until 1815, England's involvement in a Continental war. From 1800 to 1823, there were altogether only about five years free from serious agrarian disturbances in various sections of the country. But open rebellion did not materialize. The memory of the bloody suppression of the rebellion of 1798 and the might of British sea power, which made further French intervention unlikely, no doubt contributed to the absence of open revolt. But of equal importance was the dearth of leadership capable of moulding an effective revolutionary force. The radical movement, which had sought to unite the discontented during the second half of the eighteenth century, had all but disappeared. The small but growing Irish catholic middle class was still seeking its place in society and was widely separated from the masses by income, education, and interest. Leadership of a sort was provided by the catholic clergy in their efforts to check the growing tendency towards rural violence, but with very

¹⁰ Lord Whitworth to Peel, 18 Nov. 1813 (Peel papers, B.M., Add. MS 40187).

limited success. Thus during the early decades of the nineteenth century, until Daniel O'Connell gained prominence, the Irish peasant was left alone to work out his own economic and social salvation. The result was the rise of agrarian secret societies and the spread of terrorism, designed to enforce peasant-made law over the law of the state. The activities of the peasant organizations presented the Irish government with a problem that demanded a major portion of its time and kept the authorities in a state of nervous apprehension for many years. All too frequently the arrival of autumn brought a fresh series of outbreaks of rural violence which Dublin Castle anxiously investigated for signs of 'insurrectionary activity of a political nature' or evidence of 'leadership by respectable people' which might indicate, not the usual agrarian disturbance, but the beginning of a revolution.

It is difficult, probably impossible, to separate and identify the many peasant organizations – Whiteboys, Carders, Rockites, Caravats, and others – which helped to create the rural chaos of this period. Different local officials in the same area might designate a single organization by several names. A degree of order can be introduced by ignoring problems of regional distribution and identification by name and attempting instead to classify the groups by organization and purpose. So classified, they fall into three categories: agrarian secret societies, religious societies, and local factions. The categories, however, tend to overlap. On occasion the Ribbon society, a catholic protection organization, might turn away from its major concern and pursue economic goals similar to those of the agrarian secret societies. Local factions, formed to perpetuate peasant feuds by gang-fighting at markets and fairs, often resembled the Ribbonmen in their enthusiasm for clashes with protestants. Where both agrarian secret societies and local factions existed in the same area, it is quite possible that the former drew part of their members from the latter. Nevertheless, the separate groups that comprise any one of the three major categories were committed to certain basic and long-established purposes that make classification relatively easy: the agrarian secret societies were most concerned with the economic problems of the peasants, the religious societies with the protection of those of one faith from the depredations of those of another, and

local factions with whatever residual sources of violence the countryside might contain.

The agrarian secret societies had originated around 1760 among the peasants of Munster, when an organization known as the 'Whiteboys' started a campaign of violent opposition to eviction, low wages, and the tithe. Similar organizations then appeared in other provinces, and quickly developed the structure, policies, and tactics that were to characterize them for decades to come. The period of rebellion and repression at the end of the eighteenth century destroyed the secret societies or drove them underground, but by 1806 they had reappeared, stronger and more militant than before. Cornewall Lewis, writing in the 1830s, describes the secret societies as a 'vast trades union for the protection of the Irish peasantry'.¹¹ A present-day authority characterizes their efforts as 'a crude form of politics, by which the will of the community was enforced and evils ignored by the legislature redressed'.¹² An Irish landlord in 1815 designated them more succinctly as 'midnight legislators',¹³ and the harassed authorities lumped the societies together as organizations of an 'insurrectionary nature'. To the officers of the Irish military establishment, despairing of identification of the societies by their chosen titles, they were the 'banditti'. To the general public, they remained the 'Whiteboys'.

The agrarian secret societies formed the 'standing army' of the disaffected, and seem to have had a continuous existence in Tipperary, Limerick, Westmeath, and Kildare from around 1806 to the 1840s. The names changed, but the same or similar organizations continued to make their presence known to the authorities.¹⁴ There is no way to determine the size of any of these societies at all accurately, for numbers varied as local conditions changed. During quiet periods, active membership was probably limited to a small leadership group who served as the collective conscience of the peasant community and as custodians of the few firearms that had escaped seizure by the

¹¹ Sir G. C. Lewis, *Local disturbances in Ireland* (London, 1836), p. 99.

¹² McDowell, *Public opinion & govt policy*, p. 59.

¹³ Arthur Vesey to Lord Norbury, 15 Sept. 1815 (P.R.O., H.O. 100/185).

¹⁴ See *Returns respecting crimes and outrages in Co. Limerick*, H.L. 1841. (40), xviii.

authorities. Most surprising is the speed with which the societies could be reactivated if rents were raised, a zealous tithe-proctor appeared, outsiders were hired as labourers, or other evils seemed to threaten the peasants. The state of the country report for October 1817 showed Ireland to be for the first time in years free of disorder; yet by November secret societies were active throughout Sligo and were beginning to appear in Mayo, after landlords had begun an attempt to raise the already high rent-level in these counties.¹⁵

This ability to disappear and reappear suddenly was implicit in the organization of these societies. The members were drawn from the local peasantry, men who were farmers by day and banditti by night. They were bound together by an oath, which was the most potent weapon they possessed. The oath not only insured the obedience of the active members, but also was used to enlarge and strengthen the society. It could be imposed by threats of force upon reluctant members of the community, who would then become subject to the terrible punishment meted out to the oath-breaker. Thus a considerable portion of the community, by choice or by coercion, either belonged to secret societies or were neutralized by the oath to prevent their assisting the authorities in any way. An oath, even one extorted by fear, was not taken lightly by the Irish peasant.

From the earliest appearance of the agrarian secret societies in the eighteenth century, their operations tended to conform to a recognizable pattern. The announcement that, for example, rents were to be raised might be followed by the posting of a proclamation, written in a kind of pseudo-legal jargon and signed 'Captain Rock' or a similarly fanciful name, ordering the peasants not to take land under the new terms. The banditti programme might be rounded out with a warning against paying the tithe and hiring outside labourers and, on several occasions prior to the end of the Napoleonic wars, with some kind of pro-French statement. There is no evidence of ties between the peasants and the French, but the mere mention of the emperor's name could cause near hysteria in ascendancy circles. As late as September 1815 a magistrate solemnly informed the Castle that he had received information that there were French officers in Tipperary, that some of the banditti now

¹⁵ State of the country, Oct. and Nov. 1817 (P.R.O., H.O. 100/193).

wore 'Napoleonic' uniforms, and that their French associates were in contact with St Helena.¹⁶

Aside from opposition to the tithe for primarily economic reasons, the role of religion in formulating banditti goals seems to have been minor. Local protestants might be threatened, protestant merchants might be boycotted (tradition required it), but the protestant who was visited by the banditti was usually marked for attention by his failure to honour the demands of the secret society rather than for religious considerations. The homes of the landlords were relatively immune from attack. Cattle might be maimed, pasture turned up, and crops destroyed, but well-armed servants with policemen and soldiers in reserve were more than a match for peasants armed with rocks, farm tools, and perhaps a few worn-out guns. Thus most of the victims of rural terrorism were Irish catholic peasants. Those who failed to heed the warnings of the society were visited by its members and threatened with terrible reprisals unless they yielded. If opposition continued, the rather pathetic efforts of the banditti to preserve elements of dignity and respectability faded away as torture, murder, rape, and the destruction of property were used to enforce the orders of the leaders. When the inevitable counter-attack developed, the banditti might take to the hills and wage guerrilla warfare against the soldiers and policemen sent against them. Not infrequently, the efforts of these partisans were rather surprisingly successful. Between 1813 and 1816, and between 1819 and 1823, considerable portions of the south and west were under the domination of peasant 'armies'. Landlords fled, magistrates abandoned their posts, dispatch riders and mail coaches had to be provided with escorts, and armed policemen might be forced to operate under the protection of soldiers. In 1820, an officer writing from the village of Hampstead near Kilconnel in Galway described the tenuous position of the army in that area:

... we occupied a slate house belonging to Mr Evans which had been very much injured, while the proprietor was assisting in the defence of Hampstead . . . about a month ago. The house . . . is situated about a quarter of a mile from town upon a gentle declivity, there is no ground near it that can have been built up and I have ordered

¹⁶ Thomas Westropp to Gregory, 17 Sept. 1815 (P.R.O., H.O. 100/185).

loopholes to be made and other steps taken which will completely cover it from any attack. . . . It is perfectly adequate to contain Captain Mill and his party, but they have no bedding, nor do I see how it can be procured.¹⁷

To the men responsible for Irish affairs, a source of understandable concern was the possibility of local secret societies combining with similar organizations in other parts of Ireland. But despite reports of banditti 'emissaries' operating in parts of the country, it seems that efforts to form effective larger combinations, including more than a handful of agrarian secret societies, proved futile during this period. On several occasions, the Castle claimed to have uncovered headquarters of conspiracies involving numbers of societies, but on examination these claims appear to have been false or exaggerated.¹⁸ When the relative calm of a province was disrupted by widespread outbreaks of violence, all taking place during a brief period of time, it was logical for the authorities to assume that co-operation between the societies was involved. However logical, evidence of such co-operation is unconvincing, and once a society 'came out' it pursued its own destiny with little apparent concern with what was happening elsewhere. Apparently there were few local leaders capable of creating and then keeping together the larger organizations. Suspicion of all outsiders, even those bearing the credentials of other societies, was a normal attitude among the banditti.

From union to the famine, Tipperary and Limerick were the most consistently disturbed counties in all Ireland, but just why this area should have become a kind of banditti epicentre is uncertain. A long history of bad relations between landlord and peasant did exist in parts of the two counties; on a number of occasions the Castle criticized the treatment of peasants on the Courteney estate in Limerick. Poverty and land-hunger were causes of much hostility, but the two counties were not the most poverty-stricken or overpopulated parts of the country. According to Cornewall Lewis, agrarian secret societies had greater continuity and were most active in areas where the soil was fertile, the population relatively dense, and the peasantry 'one

¹⁷ Col. George Grey to the lord lieutenant, 3 Mar. 1820 (P.R.O., H.O. 100/198).

¹⁸ See pp 63-4 below.

degree removed above the lowest poverty'.¹⁹ It would seem that such conditions prevailed in both counties.²⁰ Well-established traditions of peasant violence, land-hunger, population pressure, a level of poverty which allowed the peasant to concentrate less on his stomach and more on hatred of his 'betters' – all were present and provide an interim explanation for the consistently disturbed condition of Tipperary and Limerick.

The second group of peasant organizations, the religious societies, are the most difficult of all to categorize. Little reliable information exists about the leading catholic organization, the Ribbon society: it was a secret organization, the authorities were wildly indiscriminate in the use of the terms 'Ribbon' and 'Ribbonmen', and it sought somewhat different aims in different areas. In Ulster, where membership was concentrated, the society was a catholic protection organization, a counter-force against the ultra-protestant Orange order. Its immediate concern was the protection of the catholic peasant against economic abuse by protestant landlords and physical attack by Orangemen. During periods of 'tranquillity' the members might amuse themselves by faction-fighting, preferably against protestants, and by attacking Orange processions. But during periods of deep unrest, Ribbonmen activities might become indistinguishable from those of the banditti in other parts of the country. In Dublin, Ribbonism was both religious and political, and apparently was associated with trade unionism. In other parts of Ireland, Ribbon influence was limited to the years around 1820 during which the leadership may have attempted to make the organization country-wide. In other instances, reports of Ribbonism occurring outside of Ulster and its environs probably represented a misuse of the term by the authorities.

At least as early as 1814, attempts were made to exercise some control over local Ribbon groups by committee,²¹ and around 1820 the Ribbonmen of Dublin and the rural areas were apparently tenuously connected in 'a kind of proletarian underground'.²² At this time, Ribbonism grew rapidly in a

¹⁹ Lewis, *Local disturbances*, p. 90.

²⁰ Freeman, *Pre-famine Ireland*, pp. 211-24.

²¹ See Peel to Sir George Hill, 16 Jan. 1814 (P.R.O., H.O. 100/176).

²² McDowell, *Public opinion & govt policy*, p. 63.

considerable portion of rural Ireland, and may have been associated with outbreaks of violence in the central, western, and south-western parts of the country. Early in 1821, 'swearing' was reported in all parts of the country. The centre of activity seemed to be at Kilbeggan in Westmeath, and the disaffected may have had ties with Dublin Ribbonmen. The purpose of the plotters (described by the authorities as 'indefinite') was far more sophisticated than that of the average agrarian secret society: the exclusion of foreign produce, in order to provide ample work for the population and stop emigration.²³ But attempts at centralization were not successful. Quarrels were common, local groups failed to obey orders, and beyond general agreement on the desirability of revolution and the hatred of protestants, policy seems to have been vague and uncertain. And while the men of Dublin might strive to co-ordinate the activities of all the disaffected in preparation for England's next involvement in a war,²⁴ the peasants remained most concerned with tithes, land tenure, and other immediate threats to their existence. Perhaps the relatively elaborate structure of the Ribbon society helps to explain its frequent penetration by the authorities, which in turn led to arrests, spread suspicion, and may have made the peasant leaders reluctant to accept Ribbon leadership. For example, in 1813, a man named Toland was able to join the 'headquarters' of a Ribbon group. He marked the mail sent from there so that it could be opened and read at the post office, learned where the organization was purchasing guns, and marked each weapon for future identification.²⁵ When the central organizations were broken by the authorities, the ties between them and the local societies proved so weak that little effect could be noted on the activities of local groups, which apparently continued to function as before.

The leading protestant society, the Orange order, was both political and religious. Founded in 1795, it remained exclusively and militantly protestant and politically ultra-conservative in its opposition to any measure which might lessen the favoured protestant position. Just how many Orangemen there were

²³ Ibid., pp 63-5; Charles Grant to Lord Sidmouth, 2 Jan. 1821 (P.R.O., H.O. 100/200).

²⁴ Lord Talbot to Sidmouth, 9 Jan. 1821 (P.R.O., H.O. 100/200).

²⁵ Gregory to Heyland, 11 Dec. 1813 (P.R.O., H.O. 100/175).

during the early nineteenth century remains uncertain: the movement was a secret one, and both the leadership and the opposition seem to have claimed a far greater membership for the lodges than actually existed.²⁶ But at any time during the first twenty-five years following union, total Orange membership in Ireland would have been in the tens of thousands. Most of the lodges were in Ulster, but a number could be found wherever there were concentrations of protestants, and the organization could make itself felt in almost every level of society. The Castle, the magistracy, the military, the courts, the landlords, the clergy, and the peasantry were represented in the order. It is not surprising that to the catholic peasant of the north, 'Orangeism', 'protestantism', and 'authority' seemed synonymous.

The very existence of Orangeism was certain to promote bad feeling. Not only did it tend to make Ribbonism seem necessary to the catholic minority of rural Ulster, but also the insistence by the rank and file of the lodges that any sign of overt catholic activity called for an Orange reaction occasionally had tragic results. An example of the troublemaking potential of the lodges, even outside Ulster, is provided by the results of an investigation conducted by Dublin Castle in 1814 into the outbreak of agrarian violence which had spread over part of Ireland during the winter of 1813-14. It appeared (though proof was lacking) that the disturbances in Meath and Dublin counties had been precipitated by the appearance of anti-catholic handbills distributed by the local Orange lodges. Rumour among the catholic peasantry interpreted the handbills as an attempt to goad them into violence, thereby giving the government an excuse to 'conquer' the area and destroy them. The peasants evidently felt that their hopes lay in an association with disaffected groups in other counties, and in this way they were caught up in the violence of that winter.²⁷ Year after year, reports arrived at Dublin Castle of attacks by one religious faction and retaliation by the other. In 1815 the Orangemen were driven from a fairground in Derry, only to return with firearms and in turn drive out the Ribbonmen. This affray was

²⁶ See Senior, *Orangeism, 1795-1836*, pp 162, 230-31.

²⁷ Lt.-col. T. Marlay to Gregory, 15 June 1814 (P.R.O., H.O. 100/176).

the culmination of a series of fights which had gone against the catholics, who now determined on revenge. Emissaries were sent throughout Londonderry, Tyrone, and Donegal, and 'ten thousand' Ribbonmen prepared to meet at the Dunnemanagh fair. The Orangemen were more than willing to meet them, and only after the more level-headed protestants of the area asked the military authorities for protection did a strong military force arrive to close the fair and disperse the 'multitudes' on the surrounding hills.²⁸

During the Wellesley administration of the 1820s, there was a flurry of anti-Orange activity, leading to the suppression of the movement between 1825 and 1828, but, with this exception, open hostility between government and Orangeism was kept in check until the 1830s. The Castle was fully aware of the dangerous part the lodges played in keeping a sizeable portion of the country in ferment. But, supported by powerful interests in England and Ireland, dedicated to the maintenance of the protestant constitution, the order could not be labelled 'insurrectionary', nor did most members of the Irish government wish to place it in that category. The consensus was to applaud the 'loyalty' of the Orangemen and to condemn their traditional methods of expressing it. Thus despite the temporary success of the Wellesley administration, and other attempts to limit Orange activity by proclamation, legislation, and occasional threats of more drastic action, about all the Castle did was to keep Orangeism at a minimum in the government and the military, and to forbid some of its more deliberately provocative activities.

The third group of peasant organizations, the local factions, can perhaps best be characterized as social organizations. Factions were formed to meet similar groups at fairs and market towns, where the contending parties could make a test of strength; motive, beyond the desire for a fight, was seldom important, though quarrels over the occupancy of land seem to have provided added incentive. In some areas, the selection of opponents was made easier by already-existing family feuds, and some of the factions – like the Ryans and Dwyers of Tipperary – were formed on a family basis. Other factions were apparently organized on a geographical basis, while still others drew on

²⁸ Hill to Peel, 2 Sept. 1815 (P.R.O., H.O. 100/185).

several areas – the famous Caravat and Shanavest factions, for example, were scattered throughout five counties of south-west Ireland.²⁹ Again, the attitude of authority towards these faction affrays seems to have varied. It was quite common to ignore them as long as the participants confined their activities to fighting with one another and did no damage to the 'better class' elements of the neighbourhood.³⁰ It was not uncommon to withdraw police and military detachments from fairs to avoid clashes with the rioters, and it was not until 1836 that any instructions were given to the local authorities on the course to follow in such circumstances. There were occasions when conscientious magistrates attempted to stop the incidents, but the usual procedure was to 'let them fight it out'.³¹

Like the religious riots, these factional fights provided training in violence and contempt for the law. But their existence provided an even greater problem for the Irish government in another way, for during periods of extensive agrarian disturbances these local factions either provided men for the agrarian secret societies or operated as groups in loose co-operation with them. In this way a relatively small secret society could conceivably double its strength when the need arose. This is what happened in Tipperary in 1815, when the Ryans and Dwyers forgot their differences and joined their efforts with those of the 'Whiteboys' against the tithe proctors. In 1811 the Caravats and Shanavests in Tipperary, Waterford, Kilkenny, and Limerick agreed to forget years of bitter feuding and joined their efforts in an attempt to stop tenants from paying higher rents or the tithe. But their hatred for each other proved stronger than their hatred for the landlord or the tithe proctor, and the attempt at joint action collapsed.³² The pursuit of essentially economic goals by co-operating factions marked such a departure from normal behaviour that banditti involvement seems likely.

In its efforts to cope with rural violence, the Castle was severely handicapped by a lack of reliable information from the

²⁹ Report, Whitworth to Sidmouth, 5 June 1816 (P.R.O., H.O. 100/189).

³⁰ Thomas Davenport to Gregory, 4 Sept. 1815 (P.R.O., H.O. 100/185).

³¹ Testimony of Thomas Drummond, *State of Ireland in respect of crime, part iii*, H.L. 1839 (20), xx, 967.

³² Report, Whitworth to Sidmouth, 5 June 1816 (P.R.O., H.O. 100/189).

countryside. Attempts to buy or extort information from the peasantry were seldom successful since fear of the peasant societies and the vengeance they could inflict was usually greater than greed or fear of the law. But paid informers abounded – 'I have very little scruple in the encouragement of treachery of this nature,' wrote Peel.³³ The Castle had little direct contact with these faceless men; instead local police officials and magistrates recruited their own informers and forwarded the information to the proper authorities. The future of the informer was at best uncertain. In 1815 a police official reported that he had found a possible informer, but that the man refused to talk until he had collected all money owed him. After talking, he planned to leave the area in a hurry.³⁴

The intelligence provided by these 'villains' was recognized by castle authorities as having little worth,³⁵ but tales of French agents, seditious priests, and imminent uprisings all had to be investigated. Under-secretary William Gregory wrote to Peel in 1814,

A most absurd report was brought yesterday evening from some of the alarmed magistrates in the town of Naas that a rising was certainly to take place during the night in the county of Kildare. This was sent to commander of the forces . . . in consequence of which strong patrols were sent forward and every precaution used as if the story had been believed. . . . Tho' I attached no credit to the story, yet I remembered Emmet and the Castle caught napping.³⁶

The considerable number of anonymous letters reaching the civil and military authorities during periods of unrest added to official confusion. Incompetent police and military officials and corrupt magistrates were favourite subjects of the letter-writers: ' . . . do not consider from the appearance of this letter that it is written by a person moving in a low situation, the writer having disguised his hand and stile', wrote a 'constitutional and loyal subject' in his attack on the 'most corrupt and

³³ Peel to Hill, 16 Jan. 1814 (P.R.O., H.O. 100/176).

³⁴ Edward Wilson to Peel, 4 Nov. 1815 (P.R.O., H.O. 100/187).

³⁵ See Gregory to Henry Goulburn, 13 June 1822 (Surrey Record Office, Goulburn papers, box C, part 1).

³⁶ Gregory to Peel, June 1814, in *Mr Gregory's letter-box, 1813-1830*, ed. Lady A. Gregory (London, 1898), p. 50.

unfit' magistrates of Limerick.³⁷ Since the authorities were aware of flaws in the instruments at their disposal, considerable effort was expended investigating anonymous letters that might conceivably have been founded on fact.

As long as the peasant organizations were strong, they were seldom penetrated at the local level. It was next to impossible for outsiders to enter an organization whose members were all known to one another. And when individual members were arrested and brought to trial, most of them remained silent, or apparently gave false information to their interrogators. Thus reports and letters from police officials, army officers, magistrates, and others associated with the ascendancy were the major sources of intelligence. Over the years, a seemingly endless number of documents relating to Irish disorder were deposited in the official repositories of London and Dublin. Much of the material still exists; collectively it constitutes the history of a war compiled from the records of only one of the combatants.

In fairness to the ministers, members of parliament, and administrators responsible for Irish affairs from 1812 to 1830, one must ask just what they could have done towards measurably improving the condition of Ireland. It is completely unrealistic to blame the tory leadership for failing to launch a major overhaul of the land-tenure system. Its evils were so deeply entrenched that it was vulnerable only to full-scale assault, and the mere suggestion that government might attack the fundamentals of property rights would have aroused only horror and disbelief in the governing classes. It is equally unrealistic to fault a nineteenth-century government for its failure to provide the massive infusion of capital needed to provide alternative employment.

The tories of the Liverpool-Wellington era were not indifferent to Ireland's plight. Between 1812 and 1830, they effected a series of reforms: they further improved the administrative system, tried to eliminate corrupt and inefficient local government and to make the tithe less iniquitous, strengthened the administration of justice, and established a countrywide police organization, operating under a degree of government control.

³⁷ Anonymous, n.d. (S.P.O., C.S.O., Official papers, ser. 2, 581/534/15).

In the tradition of the toryism of the period, these 'improvements' were attempts to make existing institutions more efficient, and timid and inadequate as they may seem they represented part of the growing realization that Ireland was different from England, almost colonial in status, and that the magnitude and complexity of its problems justified the more extensive use of government resources. A case in point is the subletting act of 1826, a rather drastic item of legislation which went appreciably beyond the level of government interference acceptable in England.

It seems obvious, nevertheless, that the tories could have given Ireland better than it got. The separation between the Irish people and the English executive resulted in a notable lack of understanding and an atmosphere of continuing suspicion and dislike. At best, the average Irishman was treated with an amused, almost Kiplingesque toleration; at worst, he was treated as a member of an inferior and suspect race – dirty, ignorant, and prone to violence. Furthermore, Liverpool and his colleagues made major contributions to the prolongation of the catholic emancipation controversy, a dreary debate that exacerbated feelings in both islands and eventually brought Ireland to the brink of rebellion. And if the tories can hardly be blamed for their failure to halt the march of Malthusian mathematics, the tory ministers might stand in higher repute today had they shown a greater willingness to deal even with the periphery of basic problems. All too often, areas that might have been improved by legislation (primary education and the need for a poor law, to mention two of the more obvious) were tentatively considered, only to be shelved or dropped completely: prejudice, tradition, current economic dogma, and considerations of practical politics provided cogent arguments against new ideas and methods. And in Ireland, even more than in England, tory government could become severe and occasionally brutal when confronted with problems beyond its understanding.

II

THE PROBLEM OF LAW- ENFORCEMENT, 1812-13

THE IRISH GOVERNMENT¹ in the early nineteenth century was similar to other Irish institutions – simple in theory but clumsy and perplexing in operation. At its head was the lord lieutenant, a peer of sufficient prestige to hold such an important position and to exercise the considerable powers granted the viceroy by statute and patent. He was assisted by an Irish privy council and a ‘cabinet’ consisting of the Irish lord chancellor, attorney-general, and solicitor-general. While the home secretary exercised a vague supervision over Irish affairs, matters of importance were frequently settled by correspondence between the lord lieutenant, residing in Ireland, and the prime minister. The lord lieutenant’s assistant, the chief secretary, was a key figure in both the executive and the administrative branches of the Irish government. A member of parliament, he was the leading exponent of official Irish policy and worked in close association with the cabinet; an able chief secretary at Westminster during the parliamentary session could exercise an influence on policy at least equal to that of his absent superior. During the parliamentary recess, he managed the domestic affairs of the Irish government from Dublin Castle, aided by a civil and a military under-secretary. In 1819, the military

¹ On departments of government in Ireland, see McDowell, *Ir. administration*.

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under-secretaryship fell vacant and was not filled, its few remaining duties going to the civil under-secretary.

The complexities of Ireland's many problems made the chief secretaryship an ideal testing ground for an aspiring young politician. In parliament, debates involving Ireland were certain to cause varying degrees of acrimony and criticism of the government. As William Gregory, civil under-secretary from 1812 to 1830, observed, 'The house of commons may, if game is scarce this season, amuse themselves by unbagging an under-secretary, Ireland being the principal scene for parliamentary sport.'² And the chief secretary had still to keep a close supervision over a wide range of domestic affairs, even during parliamentary sessions ('I would not on any account be made responsible for withholding a water-closet from the head magistrate of police', wrote Peel in 1814).³ At Dublin Castle during the recess, the process was reversed. The chief secretary conferred with the lord lieutenant and other officials, compiled information from various sources, dealt with the backlog of problems requiring his direct attention, and attempted to keep the prime minister and home secretary *au courant* by correspondence.

In September 1812, Robert Peel arrived in Dublin to assume the office of chief secretary for Ireland – the first important appointment for the young tory member for Cashel. From the beginning of his tenure as chief secretary, the high level of ability shown by Peel at Westminster and Dublin Castle increased the prestige of both the incumbent and the office: one of his biographers was guilty of only slight exaggeration when he wrote that 'successive lords lieutenant reigned, Mr Peel governed'.⁴

Professor Gash, surveying Peel's long political career, observes that 'his lifework was to fashion a viable compromise between the system he inherited and the pressing necessities of the changing world in which he found himself'.⁵ The chief

² Gregory to Goulburn, 28 Feb. 1824 (Surrey Record Office, Goulburn papers, box C, part 2).

³ Peel to Gregory, 20 Apr. 1814 (Peel papers, B.M., Add. MS 40286).

⁴ *Sir Robert Peel from his private papers*, ed. C. S. Parker (London, 1899), i, 35 (hereafter cited as Peel, *Private papers*).

⁵ N. Gash, *Mr Secretary Peel* (Cambridge, 1961), p. 13.

secretaryship made important contributions to Peel's preparation for that great accomplishment, for it was in Ireland that the comfortable assumptions of his brand of conservatism were given their first serious test. His industrialist father, the first Sir Robert Peel, had schooled him in the toryism of the younger Pitt, with its respect for established institutions combined with acceptance of the need for cautious, careful adjustment of these institutions to meet changing circumstances. But with the young Peel of 1812, respect for established institutions came close to veneration. Sensitive, rather shy, apparently somewhat embarrassed by his family's mercantile background, he had been fashionably educated at Harrow and Christ Church, Oxford, then plunged into the heady atmosphere of parliament. The result was that Peel, anxious to identify with the old-established leadership group, adopted a rather romanticized view of the worth of British institutions and the 'natural order' of society.

If Peel can be said to have had an Irish policy during his years as chief secretary, beyond a desire for good, resolute government, it was founded on the belief that in Ireland the traditional system of local leadership had broken down. The 'country gentlemen' who were expected to provide magistrates and grand jurors from their ranks and thus dominate the machinery of local government, were failing to perform what Peel and others considered the functions of their class. The result of this failure was the crime, agrarian outrage and near-revolution that made government by ordinary processes almost impossible. As Peel saw the situation, the leaders of Irish society had to be persuaded, if necessary coerced, into the proper performance of their traditional duties, after which much of the Irish problem would solve itself. From this belief originated Peel's angry feud with the Irish magistrates, which provided one of the major themes of his period as chief secretary and led directly to the first of his police reforms. That Peel had undertaken no easy task was noted in 1814 by Abbot, the speaker of the house, who cautioned:

. . . we must not flatter ourselves that such a work can be speedily accomplished. Putting down the turbulent and encouraging the well-affected are the first and indispensable steps towards a durable system, which perhaps can only be established beneficially and effectually by an improvement in the habits of the country gentle-

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men, a work in itself beyond all legislative reach, and attainable only by an increase of their intercourse with other persons and parts of the United Kingdom.⁶

The struggle between the Castle and the Irish magistracy was to continue in some form for the next twenty-two years, and prove to the Irish government that the traditional system of maintaining order, centred on the magistrates and their constables and reinforced by the military, could no longer function effectively. In its place there gradually emerged a system based on a new concept of police, which after years of trial and error could in its final shape be characterized as 'the most valuable boon conferred by imperial legislation upon Ireland'.⁷

Whether at Westminster or at Dublin Castle, two facets of Irish domestic affairs dominated all others and made inordinate demands upon the time and patience of those responsible for the direction of the government: the administration of patronage, by which the support of the influential was 'bought', and the always present and always exasperating problem of public order.

From the time of the union, there had been a series of rather feeble public attacks on patronage. The number of jobs at the disposal of the government had been somewhat reduced, but the practice of placing county and borough patronage at the disposal of pro-ministry members of parliament remained. Thus even the remote outposts of government were part of the system of political bribery. The system was generally deplored by those charged with its administration; as the lord lieutenant observed in 1813, 'I quite agree with the French minister who expressed his dislike at having a place to bestow, as the only effect it produced was to make six discontents and an ingrate'.⁸ Frequent attempts were made to control the worst abuses of the system, but as another lord lieutenant wrote in 1829, 'Favours must be conferred, solicitation must be yielded to, influence must prevail. This is the natural course of things and we must submit to it.'⁹

⁶ The Speaker to Peel, 17 Oct. 1814, in Peel, *Private papers*, i, 157.

⁷ Lecky, *Eng.*, viii, 501.

⁸ Duke of Richmond to Peel, 5 June 1813 (N.L.I., Richmond papers, vol. 14).

⁹ Duke of Northumberland to Peel, May 1829 (Peel papers, B.M., Add. MS 40327).

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As for the problem of public order, Lord Lieutenant Whitworth informed Peel in 1813 that this was 'a brand of warfare' to which he was 'not yet accustomed',¹⁰ and placed the task of tranquilizing Ireland into the hands of the chief secretary.

Peel had arrived in Ireland during a period of 'peace', one of the brief and increasingly less frequent lulls, relatively free from agrarian outrage. Perhaps 'truce' would be the better term, for although no signal fires burned on the hills of southern Ireland and no banditti emerged from the darkness to terrorize the countryside, the atmosphere in Dublin Castle was tense and uneasy. Throughout 1811 and early 1812, Tipperary, Waterford, Kilkenny and Limerick had been terrorized by the local Caravat and Shanavest factions bent alternately on forcibly lowering rents and regulating tithes and on destroying each other. The outbreaks had followed a pattern Peel would soon know all too well: murder or mutilation of those who took lands at higher rent or paid the tithe, use of the secret oath, and night raids for arms. Arrests had been made, followed by the inevitable executions and sentences of transportation, but the example thus offered to the lawless apparently had produced only a temporary effect. Now the government was anxiously awaiting the onset of winter and an almost certain renewal of trouble.¹¹ Nor was the tension in Dublin Castle created by agrarian disorder alone. The first months of 1812 had witnessed a series of alarms growing largely out of rumours reaching the cabinet late in 1811, concerning a French scheme to invade Ireland.¹² But by June, when Napoleon turned his armies against Russia, fear of invasion by a French army had evaporated. Now concern came from rumours of increased activity of French agents in Ireland. The Irish government was convinced that, while no insurrection could possibly succeed without foreign aid, any outside assistance to the disaffected could easily spark an uprising, which even if abortive would cause the government serious trouble.¹³

¹⁰ Whitworth to Peel, 12 Sept. 1813 (Peel papers, B.M., Add. MS 40187).

¹¹ See above, p. 16; Report, Whitworth to Sidmouth, 5 June 1816 (P.R.O., H.O. 100/189).

¹² W. W. Pole to R. Ryder, 22 Nov. 1811 (P.R.O., H.O. 100/165).

¹³ See Gregory to Peel, 10 Mar. 1813 (Peel papers, B.M., Add. MS 41195).

Entangled with these potential threats to the peace and surpassing them in the minds of castle officials, was the ever-present issue of catholic emancipation. In June 1812, Canning's motion to place the catholic question under consideration in the ensuing session had been passed by a respectable majority, and the Liverpool cabinet had decided to treat the matter as an open question; it appeared that remaining restrictions on His Majesty's catholic subjects soon would be considerably weakened, if not entirely removed. Such a course was strongly opposed in the upper echelons of the Irish government, for the lord lieutenant, the duke of Richmond; William Saurin, the attorney-general; and William Gregory, the under-secretary, were staunch opponents of emancipation. Thus to the attorney-general, 'resistance to the catholic claims is not only essential to the stability of the present administration, but what is of far greater importance, to the safety of our establishments, and to the connection of Great Britain and Ireland'.¹⁴ And the duke of Richmond wrote in March 1813, '... we shall probably have a little fighting, but that is not of much consequence. We shall lose a few valuable lives, and hang a good many that richly deserve it'.¹⁵ Peel heeded the anti-catholic sentiments of his superior, Richmond, and endorsed the views of Saurin. In 1816 the chief secretary was able to write:

It is quite impossible for anyone to witness the remorselessness with which crimes are committed here, the almost total annihilation of the agency of conscience as a preventive of crime, and the universal contempt in which the obligation of any but an illegal oath is held by the mass of the people, without being satisfied that the prevailing religion of Ireland operates as an impediment rather than an aid to the ends of the civil government.¹⁶

Grattan's emancipation bill of 1813 was dropped in May, after the clause allowing catholics to sit in parliament had been rejected in the commons by the narrow margin of 251 to 247. But the margin of victory was too slight to bring more than momentary relief to Dublin Castle.

Thus the first months of Peel's chief secretaryship were plagued by anxiety over renewal of agrarian disturbances and

¹⁴ Saurin to Peel, 30 Sept. 1812 (Peel papers, B.M., Add. MS 40211).

¹⁵ Richmond to Peel, 3 Mar. 1813, in Peel, *Private papers*, i, 75.

¹⁶ Peel to Abbot, 25 Dec. 1816, in Peel, *Private papers*, i, 236.

possible French encouragement to the disaffected, and by the catholic emancipation struggle in parliament. The first indication of renewed trouble appeared in Westmeath in February, 1813. This time the raiders, styling themselves the 'Carders', were intent on forcing a policy of controlling rents, protecting tenants from eviction, and regulating the fees payable to the catholic clergy. Within less than a month, raids were reported in Waterford, Roscommon, King's, Tipperary, Limerick and Kilkenny. As disturbances increased in number and intensity, the general programme of the disaffected was soon replaced by a more specific one, and this time the banditti concentrated their efforts against those who took leases at rents higher than those paid by the previous tenants, and against those who gave information to the authorities. The disturbances of early 1813 provided one of the rare instances of the small farmers and other members of the 'lower orders' combining to resist the threats and attacks of the banditti. Aided by the exertions of local magistrates and a strong reinforcement of troops, their efforts were successful, and the raids were momentarily halted.¹⁷ But the following month brought a tragic demonstration of the futility of peasant resistance against groups of organized terrorists. One Gahagan, a farmer who had successfully defended his home against arms raiders, was shot and killed as he stood talking with friends in a crowded churchyard on Palm Sunday. None of the people present attempted to stop the assassin, and later no one remembered who he was. The priest denounced the crime from the altar, only to have his own life threatened, and vengeance promised against anyone who attended his church.¹⁸

By the end of March, the banditti had recovered the initiative to such an extent that it was impossible to persuade victims to testify against their attackers. Informers' reports reaching Dublin told of a 'mature organization', complete with 'signs of fraternity' and an oath of allegiance to Bonaparte, sending delegates from Dublin, Kildare, Wicklow and King's counties to a meeting in Westmeath. Under-secretary Gregory (who had held his position only since October 1812) discounted the reports

¹⁷ Willcocks to Peel, 23 Mar. 1814 (P.R.O., H.O. 100/177); Report, Whitworth to Sidmouth, 5 June 1816 (P.R.O., H.O. 100/189); Gregory to Peel, 13 Feb. 1813 (Peel papers, B.M., Add. MS 40195).

¹⁸ Gregory to Peel, 17 Apr. 1813 (Peel papers, B.M., Add. MS 40195).

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of organization, deputations, and oaths to Bonaparte, but had to admit that the situation was potentially dangerous.¹⁹

As was often the case, the number of disturbances lessened with the approach of summer and wider opportunities for employment. But by October, the areas disturbed during the spring of 1813 were once again in turmoil. This time 'midnight legislation' to redress agricultural grievances was noticeably absent, and the emphasis seemed to be almost entirely on arms raids. In Limerick, the Palatine yeomanry corps were left 'without arms' following a series of quick raids by banditti, and the Kerry yeomanry corps lost an unspecified number of guns. In November, a detachment of regulars at Ballymahon was robbed, and Lord Granard's yeomanry lost twenty 'stands' of arms within a few days.²⁰ A prominent Kilkenny magistrate warned the government that the disaffected were 'in possession of every musket, fowling piece, pistol, etc., that were held by farmers, poachers, and servants' and Peel was cautioned that 'if something is not speedily done, you will have the country completely disciplined – the law as it now stands is not equal to meet the evil'.²¹

Notices appeared in Armagh, Sligo, and Westmeath forbidding catholics from dealing with protestants, and a magistrate in Sligo reported that a local faction was offering a twenty-pound reward for an 'Orangeman or protestant' delivered into its hands.²² The Irish government was completely unable to determine the causes of the rapidly spreading discontent. Richard Willcocks, the Castle's leading investigator, gave his views a few months later on the situation in Westmeath, reporting that the entire lower class, including some of the better farmers, had been put under oath by the banditti, many

¹⁹ Report, Whitworth to Sidmouth, 5 June 1816 (P.R.O., H.O. 100/189); Gregory to Peel, 23 Mar. 1813 (Peel papers, B.M., Add. MS 40195).

²⁰ General Darby to Peel, 13 Oct. 1813, and William Hull to Peel, 18 Oct. 1813 (P.R.O., H.O. 100/173); Major D'Arcy to Peel and Lord Granard to Peel, 7 Nov. 1813 (P.R.O., H.O. 100/174).

²¹ Gustavus Rochfort to Gregory, 7 Nov. 1813 (P.R.O., H.O. 100/174); Lord Castlemaine to Peel, 25 Oct. 1813 (P.R.O., H.O. 100/173).

²² Reports of the brigade-majors of the yeomanry, 15 Oct. 1813; Wilson to Gregory, 3 Oct. 1813; G. Atkinson to Peel, 9 Oct. 1813 (P.R.O., H.O. 100/173).

of them by coercion. To Willcocks, it could not be coincidence that the identical problem was appearing in many different areas. Some of his informants had blamed French influence and cited an oath 'to be true to Bonaparte' to underline their point. Although he did not give too much credence to the reports, Willcocks did not deny the possibility of such a link.²³ By November, the raiders were no longer waiting for darkness, but were attacking the houses of 'respectable individuals' in daylight.²⁴ The magistrates of Westmeath saw in the depredations of the Carders part of a

scheme long laid and artfully conducted by men capable of combining and arranging their plans with art, regularity, and secrecy. Captivating the favourable regards of the lower orders by insidiously pretending that the object of their association was to lower rents and serve the poor.

The real goal of the Carders, the magistrates seemed to believe, was contained in a clause added to the secret oath, 'to assist the French and Bonaparte, and to plant the tree of liberty in the centre of Ireland'.²⁵ The lord lieutenant, Lord Whitworth, in a letter to the home secretary, commented on the mounting frequency of the outrages with considerable insight:

They afford a proof of a very general disposition among the lower orders to attempt by force and intimidation, the redress of what they consider to be their grievances, they excite the utmost alarm among the peaceful and well disposed, for the safety of their persons and property, and if suffered to gain a degree of strength and consistency, they become engines which the designing and disaffected can readily employ in the furtherance of their political views.

But the only immediate measures he could suggest were 'a vigorous exertion of our present powers and . . . the co-operation of the military force'.²⁶

During Peel's first year as chief secretary, his duties in parliament had kept him in England for all but a few months, and it was to this apparently dangerous state of affairs in Ireland that

²³ Willcocks to Peel, 23 Mar. 1814 (P.R.O., H.O. 100/177).

²⁴ Report, Whitworth to Sidmouth, 5 June 1813 (P.R.O., H.O. 100/189).

²⁵ Magistrates of Westmeath to Whitworth, 29 Nov. 1813 (P.R.O., H.O. 100/174).

²⁶ Whitworth to Sidmouth, 15 Jan. 1814 (P.R.O., H.O. 100/176).

he returned late in 1813. In August, the duke of Richmond had resigned the lord lieutenantcy and had been replaced by Viscount Whitworth. Ex-soldier, diplomat, a relative by marriage of the prime minister, Whitworth has been characterized as a 'not unpopular' lord lieutenant, dominated by his wife, a woman of great vanity and greater ambition.²⁷ Whitworth and Peel were able to work together quite effectively. They held similar views on the catholic question and shared a common suspicion of things Irish. The new lord lieutenant also possessed a willingness to experiment and to take an occasional chance which made him receptive to his subordinate's occasional departure from accepted practice. But Whitworth, 'past sixty and somewhat bored',²⁸ was quite content to place the major burden of governing Ireland upon the shoulders of his chief secretary. When he returned to Ireland, Peel turned his attention to those institutions traditionally responsible for maintaining order, in the hope of discovering the causes of their failure and the means of strengthening them.

By the beginning of the nineteenth century, each county had its own police force, or baronial constabulary. The 'barnies' were appointed by the grand jury, took orders from the magistrates, and as an organization were considered so inefficient as to be generally worthless: the onset of trouble was often signalled by the departure of the 'barnies' from the scene. Apparently it was not uncommon for influential landowners to 'retire' employees by having the grand jurors provide them with jobs as sub-constables, and the pay was so poor that most of them held other jobs as well. During the troubled years following 1812, the baronial constabulary was generally ignored by the government in its attempts to muster forces to aid in the pacification of the rural areas.

Most pressing were the problems connected with the Irish military establishment, consisting of regiments of the British army stationed in Ireland and, until 1816, various militia units on 'actual' service. Traditionally the Castle's major weapon against rural violence, the military establishment was headed by the commander of forces who took his orders from London and,

²⁷ C. O'Mahoney, *The Viceroy's of Ireland* (London, 1912), pp 217-18.

²⁸ *Ibid.*, p. 217. For a more favourable view of Whitworth, see Gash, *Peel*, pp 130-3.

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at least in theory, was required to co-operate with the lord lieutenant in the defence of Ireland. The number of men at the disposal of the commander of the forces varied, but from 1800 to 1805 it seems that the establishment's strength averaged around 50,000 effectives, of whom an estimated 20,000 were members of the militia.²⁹ As Britain's military participation in the Napoleonic wars increased, heavy demands were made on the Irish establishment. More and more regular regiments were withdrawn until at the end of 1813 the strength of the establishment had diminished to around 35,000 men, of whom only about 11,000 were regulars.³⁰ Nor does the total figure present an accurate indication of actual military strength, for as regulars were withdrawn for duty on the Continent they were replaced (when possible) with militia units, and it was assumed that the efficiency of the establishment had been weakened by an increase in the number of inferior men. As early as August 1813, Richmond warned the home office that the Irish establishment was growing too weak to 'afford the military assistance that is called for in various quarters in aid of the civil power'. And by December, Peel was protesting against the 'stripping of the forces from Ireland'. But the only help forthcoming was a promise of additional militiamen (from England) and an expression of considerable official sympathy.³¹

By late 1813, it was obvious that unless something were done to strengthen the government's forces for maintaining order, large sections of the countryside would have to be abandoned to the banditti. As the situation in Ireland grew more critical, the military authorities in London became increasingly concerned over the possible destruction of the weakened Irish establishment if a fully developed uprising should occur. For in an attempt to provide some protection for a wide area of the Irish countryside, much of the establishment had been divided into small units which, in the event of a serious disturbance, might

²⁹ Return of the effective men in the British army stationed in Ireland to 1806, n.d. (P.R.O., H.O. 100/176). In 1803, the militia numbered 18,315, and in 1809, 21,000. See Sir H. McNally, *The Irish militia, 1793-1816* (Dublin, 1949), pp 176, 230.

³⁰ Regulars in Ireland in 1813, 14 Jan. 1814; Statement respecting the military force in Ireland, n.d. (P.R.O., H.O. 100/176).

³¹ Richmond to Sidmouth, 24 Aug. 1813 (P.R.O., H.O. 100/171); Sidmouth to Whitworth, 9 Dec. 1813 (P.R.O., H.O. 100/175).

be destroyed piecemeal. The use of the army in a police capacity in Ireland had long been an accepted practice, but seldom had so few troops been scattered over so large an area. One gentleman, living in a town that had had a regimental headquarters for twenty-three years, complained in 1815 that a detachment of militia recruits were the only soldiers around: two were on leave, two were sick, and four were guarding the barracks.³² Regular and militia units were stationed in the larger towns, and magistrates applied to these centres for troops to assist them in maintaining order. The result was division and subdivision of militia and regular units, until in at least one instance (at Castletown) a corporal and two privates were sent to answer the request of a magistrate.³³ Peel admitted his intention of turning these military detachments into police groups, 'to appropriate them to the objects of the civil government and to convert them from a military body to a body of police (for from the numberless detachments into which they are divided they can hardly be considered in any other point of view)'.³⁴

Given the war with France and the existing belief that an Irish insurrection was possible, it is easy to understand the opposition from the military and the cabinet to such a plan. By December 1813, Peel and Whitworth were under strong pressure to withdraw the small units and combine them into groups capable of defending themselves. Sidmouth, the home secretary, wrote to Peel that he had been particularly charged by the cabinet 'that the measure of dividing the army . . . into small detachments for the purpose of police will never be resorted to except under the pressure of an undisputed and urgent necessity'.³⁵ But criticism by the military of the practice of using regulars as police went beyond the issues of the current controversy. The job of harrying ragged peasants around the countryside was considered beneath the dignity of the British army and interfered with its main duty, the defence of Ireland. The officers and men of the regular units must have resented operating under civilian orders when performing police duties; in most instances, police functions were carried out under the supervision of a

³² P. Lloyd to the chief baron, 6 Sept. 1815 (P.R.O., H.O. 100/185).

³³ Langton to Gregory, 16 Oct. 1813 (P.R.O., H.O. 100/173).

³⁴ Peel to Sidmouth, 5 Jan. 1815 (P.R.O., H.O. 100/176).

³⁵ Sidmouth to Peel, 19 Jan. 1814 (P.R.O., H.O. 100/176).