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LAW BREAKERS AND LAW ENFORCERS IN THE LATE  
VICTORIAN CITY: BIRMINGHAM 1867-1877.

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## Summary

This study, based on a sample of offenders coming before the summary court in Birmingham, 1867-77, looks at the processes of ostracism, exclusion, deprivation and punishment accorded to the lowest strata of society in the late Victorian city. It is argued that the identification and labelling of a criminal class was part of the effort to deny the relevance of class conflict by insisting on the relevance of moral distinctions.

The first chapter seeks to plot the social ecology of crime through a comparison of a number of contrasting 'social areas' ranging from a high crime to a no-crime area. Differences in the social characteristics of the population living in these areas form the basis for explanations about differences in levels of reported crime, and of police attention.

The second chapter deals with the law enforcement agencies of magistrates, Watch Committee and police - describing their personnel and their different priorities and strategies.

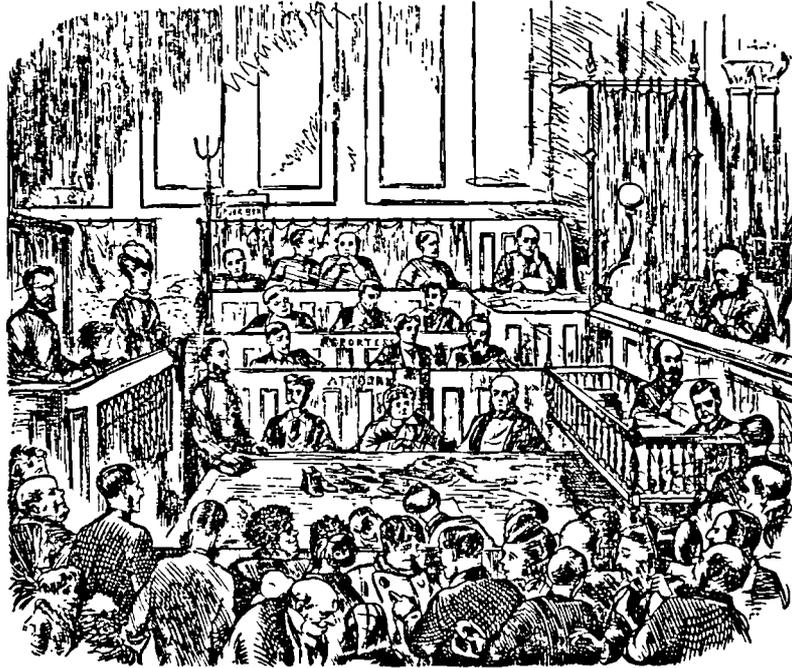
In Part II we turn for the first time to the offenders. Chapter 3 concentrates on juvenile offenders, their offences and social characteristics, and on the policy and provision made for them, as well as on sentencing practice, as carried out in Birmingham in the period.

Chapter 4 looks at the legislation for, and the definition of, the Habitual Criminal. In this section the main categories of offence under the Habitual Criminals Act are described as they occurred in Birmingham, as well as the trends in sentencing practice for these offences.

The last chapter discusses assault and other violent crimes, with particular attention to the rise in street disorders and assaults on the police.

The conclusion points out that a strategy of exclusion was implemented by the urban elite for their 'criminal class' since this class presented no real political threat, while it came to serve a diminishing economic function.

Birmingham Police Court



THE OLD POLICE COURT, MOOR STREET.

(From an engraving in the *Illustrated Midland News*, 1870.)

Source: R.K. Dent: The Making of Birmingham, Birmingham, 1893.

Law Breakers and Law Enforcers in the Late

Victorian City: Birmingham 1867-1877.

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## INTRODUCTION

This study is about the making of a criminal and outcast class in the late Victorian city.

While there is an apparent paradox in the fact that an increasingly harsh penal policy was enacted between 1850-1870 during this classic period of social peace, such a policy serves to warn the historian that a time of social peace carries no implications for deducing a state of social consensus. In no way can the period which saw the growth and culmination of the Reform agitation be described as an era of class harmony, when the 'leap in the dark' could arouse among many, if not most, of the governing classes such a profound sense of unease. Blackwood voiced the view of this majority when he wrote that "when the new Reform Bill comes into operation the working man will be on trial, and if he misconducts himself it will go hard with the country".<sup>1</sup> How to ensure his good conduct and guard against anarchy became the prevailing concern, with discipline<sup>2</sup> and education held out as the best means to convince the working class that it should not be guided in its actions by selfish sectional interests but that "each class should perform its particular work under the strong pressure of responsibility to the nation at large".<sup>3</sup> Where religion had failed to reach the great mass of the urban working class, education could offer both moral enlightenment and useful knowledge to the participants in political and productive processes, for the better functioning of both.

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1. John Blackwood, in a letter to George Eliot, November 7, 1867, asking her to write an address for inclusion in his magazine, to the Working Men on their new responsibilities, in the persona of Felix Holt. G. Eliot: Felix Holt, Harmondsworth 1972, Appendix A, p. 607.

2. The ramifications of discipline are fully presented in the sense implied above in M. Foucault: Discipline and Punish: the Birth of the Prison, Harmondsworth 1977. See especially Part II, "Docile Bodies", pp. 135-169.

3. Eliot: Op.cit.: Address to Working Men, p. 617.

Meanwhile discipline, in the form of rational, organised, regular work and leisure habits would act as a defence against the anarchic inclinations of the masses. Here, drill could serve a higher pedagogic purpose. Carlyle spelt out its benefits:

'Drill...really should be set on foot a little; and developed gradually into the multi-form opulent results . it holds for us...I believe the vulgarest Cockney crowd flung out millionfold on a Whit Monday, with nothing but beer and dull folly to depend on for amusement, would at once kindle into something human, if you set them to do almost any regulated act in common. And would dismiss their beer and dull foolery, in the silent charm of rhythmic human companionship, in the practical feeling, probably new, that all of us are made on one pattern, and are, in an unfathomable way, brothers to one another'. 4

The other side of the coin concerned how one should deal with those who were not amenable to the measures proposed for the promotion of class co-operation. Matthew Arnold argued that:

'monster processions in the streets and forcible irruptions into the parks...ought to be unflinchingly forbidden and repressed; and that far more is lost than is gained by permitting them. Because in a state in which law is authoritative and sovereign, a firm and settled course of public order, is requisite if man is to bring to maturity anything precious and lasting now, or to found anything precious and lasting for the future'. 5

In this sphere, the action of the law came to the fore. V.A.C. Gatrell has commented that the place of the law and its enforcement, among the forces holding a rapidly changing society together has been strangely neglected, even by historians sceptical of consensual explanations of later 19th century social stability.<sup>6</sup> It is the theme of the present study that an examination of the operation of the law is vital to an understanding of

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4. Thomas Carlyle: Shooting Niagara: and After? in Critical and Miscellaneous Essays, Vol. VII, 1869, p. 237.

5. Matthew Arnold: Culture and Anarchy: an Essay in Political and Social Criticism, 1869, p. 259.

6. V.A.C. Gatrell: 'The Decline of Theft and Violence in Victorian and Edwardian England' in Crime and the Law: the Social History of Crime in Western Europe Since 1500, ed. V.A.C. Gatrell, B. Lenman and G. Parker, 1980, p. 254.

how the concept of a criminal class came to serve the purpose of those who wished to present a consensual image of society. As fears of social revolution faded after mid-century attention was focussed on the threat of the dangerous or criminal classes. The outlines of this change of focus have begun to engage the attention of historians, and a clearer picture of the functional nature of the concept of a criminal class is beginning to emerge.<sup>7</sup> Earlier views of the criminal as a parasitic member of the lumpen-proletariat, or as the response to psychological or socio-economic stresses which gave rise to malfunctioning in the form of criminality, generally lacked an emphasis on the social meaning of criminal groups for the law makers and law enforcers. The view taken here is that this is a crucial aspect for any study of criminals and crime.

If one asks what purpose the idea of a criminal class served, it can be argued that this came to replace a more open acknowledgement of class conflict. Nevertheless, behind the incidents of panic concerning the criminal class in the second half of the 19th century, and giving them their emotional colouring, there lurked the residue of a fear of class insurrection. The events and debates surrounding the 1867 Reform Act brought this fear to conscious utterance;<sup>8</sup> but concessions, compromise and the exigencies of party politics enabled the government to scramble over the hurdle of reform and avoid confrontation with the unenfranchised, albeit without much semblance of good faith. But if there was a general denial of a conflict of class interests this had to be replaced by another model of the social relations between classes. Increasingly, this was

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7. M. Foucault: Op.cit.

M. Ignatieff: A Just Measure of Pain: the Penitentiary in the Industrial Revolution 1750-1850, 1978.

8. See R. Harrison, Before the Socialists: Studies in Labour and Politics 1861-1881, 1965, Chapter III.

presented as an alliance based on the acceptance of common moral values and standards of behaviour, while harsher penal measures and more rigorous methods of designating and identifying habitual criminals were enacted to encourage the idea that, unless moral reform intervened, there was a distinct dividing line separating the members of the criminal class from the rest of the working class. Divisions within the working class were certainly welcomed and encouraged by the middle class, as they were accepted and strongly maintained within the working class in this period. Independent and respectable came to characterise the position of the working class elite in its relations with employers and other members of the middle class. The criminal class were neither, with its members living a largely hand to mouth existence by their wits, and in a disreputable manner. One function of the criminal class, therefore, was that it served to maintain the boundaries in the respectable/rough continuum. It was this aspect which was to the fore in the discussions in the national press, in specialist gatherings, and in Parliament about 'What to do with our criminals' - with suggestions ranging from separate labour colonies to incarceration for life. Evidence from experts over the problems of dealing with criminals after the ending of transportation, newspaper hysteria over incidents like the 'garotting' outbreak in London in 1862, and the perceived threat from the disreputable elements in society in the Hyde Park railings affair culminated in the legislation of the Habitual Criminals Act of 1869, which gave such criminals a legal recognition and status.

However, the tone of the national debate seems totally incongruous if one looks at the treatment of crime at the local level. There (except perhaps in London) the magistrates knew that they were not dealing with members of a dangerous class. In place of the penal rhetoric and warnings of moral contamination, one gets dismissals of defendants, fines, and short prison sentences, with only a half-hearted attempt at implementing the reforming or retributive schemes of the penal and reformatory

idealogues. At the local level the idea of a criminal class, or more properly of areas containing a high proportion of criminals, had a different function. Here it served to justify the neglect and exclusion of an under-privileged section of the community by the municipal authorities, and by employers who had no use for such large numbers of unskilled and indisciplined workers. These fulfilled their main economic role as casual labour for small workshop and garret masters in the hardware and sweated trades; but in the Birmingham of the 1870's with which this study deals, the section of those trades which relied on casual labour was in decline. Structural unemployment was not a recognised phenomena at the time - nor indeed was the use of the term unemployment at all widespread. Its first usage in the modern sense, as Harrison has shown, was by the Land and Labour League from 1869 onwards.<sup>9</sup> The League, he believes, also broke with the traditional attitude of the labour aristocracy towards the unskilled and unemployed, when it placed itself at the head of the unemployed in the great demonstration the League organised in Trafalgar Square in 1870.<sup>10</sup> But moves by the working class elite in this direction did not find their counterpart in Birmingham. Here, Chamberlain's acceptance of the trades unions formed the basis for an alliance between an organised labour movement and the new liberals. Antagonisms within the working class centered not so much between skilled artisans and the unskilled, as between the unionised and organised and the rest. Unionised labour and the larger manufacturers were united in their efforts to regulate the deleterious effects of excessive competition,<sup>11</sup>

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9. Harrison: Ibid., p.245.

10. Ibid., p.221.

11. See Robert Harper: Co-operation as Contrasted with Competition: A Letter to the Working Men of Birmingham, Birmingham 1867, Birmingham Reference Library (hereafter BRL) 64260.

'To enumerate the evils of the competitive system of trading would fill volumes...If you wish to raise yourself to independence and become capitalists you must go and do (as the Rochdale Pioneers). Co-operative production is a far more effective way of bringing employers to reason than the wasteful and pernicious method by strikes...These partnerships of industry...realise

as opposed to the free trade policies and cut throat competition among the small masters and independent artisans, and their dependence on a pool of cheap casual labour. In the Birmingham of the 1870's there was no basis on which a defence of the casually employed by the working class elite could have been mounted.

In such a situation, the recourse of the under- and unemployed to crime is best seen, as Jennifer Davis has suggested, as an important form of outdoor relief, in an age when legal charity was so difficult to come by.<sup>12</sup> The Town Council, and the town's industrialists, were more interested in building up the institutions for the elevation, education and improvement of the upper layers of the working class, and in formalising their working relationship with them than in taking cognisance of a section of the population who brought them no votes, no profit, and nothing but trouble.

They were however prepared to take offenders from this population to court. And while we can learn a great deal from the court records about these prosecutors' social values and purposes, the tantalising question remains as to how far other offenders remained unprosecuted, and why. While it would seem that many people from all sections of the working class were prepared to resort to the law, there is evidence that certain members of the lumpen-proletariat rejected the legitimacy of all forms of established authority, including the police and the courts (see Chapter 5).

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11. (cont'd)... the true relations of capital and labour. The interests of the two are identical...It is only by means of co-operative manufacturing that this country can hold its own against the close competition of other nations".

12. J. Davis: 'The London Garotting Panic of 1862: A Moral Panic and the Creation of a Criminal Class in mid-Victorian England', in Crime and the Law, op. cit., p. 213. The difficulties in gaining access to charity and the strategies adopted are recalled by Arthur Harding in his account of his upbringing in an East End slum at the end of the 19th century. "My mother was a forager...she foraged all her life, that's how she brought us up. She got a good few bob off the people in the Mission...The whole thing was having your poverty well known to the people who had the giving of charity". R. Samuel: East End Underworld: Chapters in the Life of Arthur Harding, 1981, pp. 24-5.

This is hardly surprising, since they came from the most dispossessed and yet coerced part of the community. However, the question raised about unprosecuted offenders is not focussed on a fruitless attempt to assess the 'dark figure' of crime, but rather on a necessary awareness of the complexity of the levels of perception concerning the authority of the law, and its relevance to the social relationship between prosecutor and offender. The sources do not afford us more than a glimpse into the world of the unprosecuted offender and his relationship with the potential prosecutor. It may well be that unprosecuted offences, particularly within tight-knit communities, formed a sizeable proportion of the total number - but the question how far a disinclination to prosecute existed remains largely unanswerable. The chapters which follow will necessarily be concerned with what can be learnt about the social relationship between offender and prosecutor. We must remain aware, however, that this is not a total picture of the social response to 'criminals' and 'crime'.

CHAPTER 1Social Areas

## 1

In 1837 Thomas Finigan, missionary worker for the Birmingham Town Mission, was assigned a district consisting of nine contiguous streets in the centre of town. He wrote in his journal that "I think there is no question - but this my appointed district is the very worst part in all Birmingham".<sup>1</sup> Thirty years later opinion about the character of this district, which was largely given over to low lodging-houses, remained unchanged.<sup>2</sup> One of its roads (Thomas Street) stood out by its long held reputation among the police as the town's criminal headquarters. In 1850, Detective Inspector Glossop (later to become the second Chief of Police in Birmingham) told a county policeman investigating a robbery that he would show him where the thieves in Birmingham lived, instructing a constable to take the man to Thomas Street.<sup>3</sup> And when two returned convicts being tried for robbery used thieves cant in court and the clerk inquired "What dictionary do you find that in?" a policeman replied "A dictionary that is published in Thomas Street".<sup>4</sup>

The feature held in common for most criminal quarters in large urban centres in late 19th century Britain was their longevity, Dorothy George, when writing of the criminal parts of the City of London, found it curious that the bad character of certain streets should persist so long,

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1. The Journal of Thomas Finigan, Missionary with the Birmingham Town Mission, 1837-8. August 7, 1837. BRL 312749.

2. See the evidence of Councillor White, Chairman of the Improvement Committee of the Birmingham Council, where he describes the delapidation of Thomas Street and other streets in the same area. (p.44). Birmingham Council Minutes, October 6, 1875.

3. Birmingham Watch Committee Minutes, Sept. 24, 1850 (Hereafter BWCA).

4. Birmingham Gazette, January 9, 1868. (Hereafter B.G.)

and she cited the case of Saffron Hill as a den of iniquity in the time of Dickens which had already been notorious for its brothels in the reign of James I.<sup>5</sup> But such persistence is not really unusual in centres where there had been little change in the methods or type of employment. Petty thieves, like the rest of the urban poor, needed to be near their areas of work - in their case, the town's main streets, shops and warehouses - and needed also to be able to make a quick getaway from the scene of their thieving to the densely packed courts and back alleys of the central slums. Such areas served the criminal, employment and housing needs of their resident population; or, to put it another way round, such areas attracted those who could not afford the housing costs anywhere else. Unless redevelopment intervened, slum areas persisted in all centres where a demand for casual labour persisted also; and wherever there was a fluctuating demand for labour there was bound also to be a population whose ability to pay the rent was unreliable.<sup>6</sup> Landlords in such areas responded by subdividing the units being let to recover their costs, and had no incentive to maintain the fabric of their buildings, since no more rent could be derived from the poorest stratum by raising the standard of the accommodation. Once a house or street had descended to the level of slum landlord and casually or criminally occupied tenants, its reputation - in the absence of any positive interventions - clung tenaciously. The precise location of slums can be simply described, as Dyos has argued, in terms of the supply and demand for housing, with the slums as the residue of dead-ends and backwaters left on the market. Booth's maps,

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5. M.D. George: London Life in the 18th Century, Harmondsworth, 1976, p. 98.

6. E. Gaudie: Cruel Habitations: a history of working-class housing, 1780-1918, 1974, p. 89.

he says, show how often these introspective places were seized on by the 'criminal classes' whose professional requirements were isolation, an entrance that could be watched, and a back exit kept exclusively for the getaway.<sup>7</sup> If one requirement for those seeking to avoid the broad public gaze was a distinct physical boundary in the shape of narrow alleys and entrances separating their living quarters from the public thoroughfares, another was the safeguard of internal crowding in the slums, which offered criminals protective cover. Both these requirements were supremely well-met in the Thomas Street area: of the Gullet, an alley which had its exit in Thomas Street (see Rate Maps p55) Finigan had written "I find as many openings, dark passages, and back courts be in this Gullet as probably there is in the Gullet of a shark";<sup>8</sup> while the many lodging houses, in a street of 73 houses, raised the population density to six people (aged ten years or older) per house<sup>9</sup> in Thomas Street.

Most 19th century towns of a certain size could point to criminal enclaves in the central area.<sup>10</sup> How and why did such enclaves arise and persist? A well-established and extensive literature on the subject has

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7. H.J. Dyos: 'The Slums of Victorian London', Victorian Studies, Vol. II, 1967.

8. Finigan: Op.cit. August 3, 1837.

9. Census enumerators sheets for Thomas Street, 1871 Census.

10. For a comparison with a 19th century rookery in the East End of London in the same period, see Jerry White: Rothschild Buildings: Life in an East End tenement block 1887-1920, 1980, pp. 7-8. White writes of the Flower and Dean Street rookery: More than anything else it was the area's common lodging houses and their roving population which were responsible for its notoriety. There were more common lodging house beds here than in any other quarter in London...Although the area was known as a 'thief preserve' where pickpockets and thieves of all descriptions could find shelter, it was most notorious for its relationship with street crime...it was largely because of this area that Whitechapel had the highest number of assaults on police in London.

been concerned with three distinct sorts of interpretation, offering social disorganisation, the development of subcultures and of labelling procedures as explanatory models. Of these, social disorganisation was the earliest interpretation. It was with the emergence of the Chicago school of urban sociologists in the 1930's that a fully elaborated ecological theory of crime first came to the fore in the work of Shaw and McKay.<sup>11</sup> To validate their concept of social disorganisation they proposed that delinquency areas arose through the processes of city growth whereby the city naturally divided into socio-economically differentiated zones, under the pressure of economic competition for land. This forced the most recent and economically weakest immigrants into the least attractive areas where rents were lowest. Such areas were characterised by physical deterioration, poverty, lack of facilities for maintaining community organisations and high residential mobility. In such zones of transition, a socially disorganised community had no common set of values or standards of behaviour to counteract that of the delinquent or criminal, and here delinquency flourished.

Although this approach has been criticised,<sup>12</sup> its value continues to be confirmed in recent work, where similar correlations of high delinquency rates with substandard housing, rooming houses, poverty, foreign born population and high levels of mobility are found.<sup>13</sup>

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11. C.R. Shaw & H.D. McKay: Juvenile Delinquency and Urban Areas, Chicago 1942. See their Introduction for their overview of the ecological studies of crime in the 19th century. Also T. Morris: The Criminal Area, 1957, Chap.III. Delinquency Areas: A Study of the Geographic Distribution of School Truants, Jevvenile Offenders & Adult Offenders in Chicago, Chicago 1929. Juvenile Delinquency and Urban Areas, Chicago 1942.

12. J.B. Mays: 'Delinquency Areas; a reassessment', British Journal of Criminology, 3 1963. H. Zehr: Crime and the Development of Modern Society 1976. In the Introduction, Zehr reviews the objections to the social disorganisation model, which are basically rejections of the assumption that lower-class urban areas and ghettos lack social organisation and established value systems of their own.

13. D. Timms: The Urban Mosaic, Cambridge 1971. In an analysis of rooming houses in Luton, Timms found that 5% of the adult population produced 30% of the town's criminals. p.29. J. Baldwin & A.E. Bottoms:

The persistence of high crime rates in certain areas over long periods of time despite a total turnover in local population which has been established in a number of studies lends weight to the conclusion that the delinquency producing factors are inherent in the physical features of these areas which attract the population who gravitate to them. The question is how these factors operate in relation to the incidence of criminality. For Shaw and McKay, the concept of social disorganisation provided the key, delinquency being the consequence of the normative confusion arising from rapid population movements. They distinguished two main types of delinquency area - precisely corresponding to the ones found in 19th century Birmingham - where juvenile delinquents are concentrated in slum districts and near large industrial areas, while adult offenders are primarily concentrated in the rooming house areas on the fringe of the central business district.<sup>14</sup> Shaw and McKay lay less stress on subcultural than on social disorganisation aspects as important for the continuity of a criminal area. It was subcultural explanations which were the ones most favoured by mid-19th century observers, who took for granted the existence of a criminal underworld - most graphically described in the works of Mayhew and Dickens - with its own territory, institutions, customs and language. They saw the solution to the problem of crime in the dispersal of these criminal communities, whether through slum clearance or through long prison sentences for habitual criminals.<sup>15</sup> However, criminal enclaves continued to exist, or

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13. (cont'd)... The Urban Criminal, 1976. D.T. Herbert: 'Urban Crime: a geographical perspective, Table 7.1, in Social Problems and the City, ed. D.T. Herbert and D.M. Smith. Oxford 1979. J. Rex and R. Moore: Race, Community and Conflict, 1967, confirms the causes for and features of, a zone of transition.

14. Shaw & McKay in Timms: Op.cit. p. 15.

15. The persistence of crime despite such interventions gave credence to Lombrosian theories of the psychological and genetic correlations with criminality towards the end of the century.

re-form, despite such measures. A large literature on the theme of delinquent sub-cultures has since been published, usually in connection with juvenile gangs,<sup>16</sup> which American writers see as providing an alternative opportunity structure. British writers doubt whether anything as well-developed and articulated has existed in England, and they account for differential crime rates by social class differences, whereby a working-class culture offers not so much a deviant as an alternative model.<sup>17</sup> This amounts to a view that the scale and extent of deviance from establishment norms and values in England has not been as great and impenetrable as in the States. While this is debateable, such a view is also not sufficient to explain the different levels of crime in different working class areas, which requires an analysis of the processes of differentiation between different strata in the working class.<sup>18</sup> Increasing

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16. A. Cohen: Delinquent Boys, New York 1955. R. Cloward & L. Ohlin: Delinquency and Opportunity, 1961; E.G. Sutherland & D.R. Cressey: Principles of Criminology, Philadelphia, 1960.

17. J.B. Mays: Crime and the Social Structure, 1967, p.96. T. Morris, Op.cit.

18. R. Roberts: The Classic Slum, Manchester 1971, p.1. Roberts writes: 'Inside the working class as a whole there existed, I believe, a stratified form of society whose implications and consequences have hardly yet been fully explored.' Thomas Wright, the journeyman engineer, offered one of the rare contemporary accounts from the viewpoint of a labour aristocrat. He objected to the generalised use of the term "working classes" as totally misleading. 'There are characteristics marking considerable sections (of the working class), which are altogether inapplicable to others' he wrote. 'There is an educated and a really intelligent section, and an uneducated and ignorant section; a political section...and a non-political section; a trade-unionist, and a non-trade-unionist section; a sober, steady, saving section, and a drunken, unsteady, thriftless section; and with the labour market habitually overstocked there is fast arising a sectional difference of mode of life and feeling between the regularly and irregularly employed classes. Between all these sections there is difference, and in most instances antagonism of feeling. Between the artisan and the unskilled labourer a gulf is fixed.' Thomas Wright: Our New Masters, 1873, pp. 4-5.

spatial segregation of the rough from the respectable working class, as 19th century towns continued to grow, as well as the hardening of the social barriers between them<sup>19</sup> contributed crucially to the continued existence of criminal areas in the towns. Where the mechanics of the housing market consigned the economically weakest to a transient and socially disorganised existence in the lodging houses, so the sub-divisions within the working class ensured that the ostracised lowest strata would congregate together in streets reserved for themselves, where they shared a distinct culture and tradition.<sup>20</sup> More recent approaches to the ecology of crime have also come to emphasise the importance of labelling for the criminal reputation that certain areas acquire, whether through agencies such as the police or the press, or through word of mouth of nearby residents, where such labelling

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19. The evidence for status distinctions within the working class and for social distancing between the sub-groups is abundant; and as respectability grew as a value among the skilled working class so its expression grew more nuanced. A working class man wrote of his youth in Birmingham that:

To be a union man was a distinction. Lower-paid work might be more arduous and equally important, but as men in these jobs had no organised status, they were classed as labourers and were definitely in an inferior position. In fact a sort of industrial snobbery arose out of the distinction, which graded the workers after the manner of soldiers, of whom the major ranks paraded in bowler hats and collars and ties, and the minor in mufflers and caps. If the union man showed more contentment and conservatism in outlook than the labourers, this was as much due to the social advantage of having a parlour and a piano as to the possession of a union card.

V. Garrett: A Man in the Street, 1939, pp.79-80. Cadbury, Matheson and Shann also found great status distinctions between women working in the different branches of the metal trades at the turn of the century, and reported that one factory had abandoned the idea of providing a dining room because the female lacquerers would not eat in the same room as the dippers. E. Cadbury, M.C. Matheson & G. Shann: Womens Work and Wages, 1907, p.70.

20. For a recent account of the subculture of such a community see J. White: 'Campbell Bunk: a lumpen community in London between the Wars', History Workshop, No. 8, Autumn 1979.

serves to act as a self-fulfilling prophecy.<sup>21</sup> Given that the spatial distribution of crime is only the outcome of a complexity of social processes, each of the three perspectives has something to offer an ecological analysis of crime. The social disorganisation viewpoint highlights the way in which a low status, transient population allows a high local crime rate to flourish; explanations invoking subcultural differences are concerned with how and why delinquency is sustained through the transmission of subcultural values; while the labelling perspective emphasises the long-lasting influence of stigmatisation on the reputation of an area through what may be generations of inhabitants.

It is in the light of these three orientations that we shall be looking in detail at the social composition of a high crime street in Birmingham in the third quarter of the 19th century, and comparing it with a number of others. The purpose of such a comparison will be to try and highlight those factors which distinguish the 'criminal' street from others in the town, and to provide background information on its social and economic makeup. For if crime is the result of certain typical living conditions, a study of these conditions is necessary for an understanding of comparative rates of involvement in crime of different categories of people.<sup>22</sup>

To this end, a number of central streets were selected for detailed analysis. The indices used to select these streets were two-fold. Firstly, they varied according to the number of offenders residing there who appeared before the courts in the years covered by this study, to provide a ranking

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21. S. Damer: 'Wine-Alley: the sociology of a dreadful enclosure', Sociological Review, 22, 1974. D.T. Herbert: 'The Study of Delinquency Areas: a social geographical approach', Transactions of the Institute of British Geographers, N.S.], 1976. J. Lloyd: 'The Labelling of Small Heath: the role of the Press', Unpublished thesis, City of Birmingham Polytechnic, 1975.

22. J.R. Lambert: Crime, Police and Race Relations, 1970, p.91.

from 'high crime' to 'no crime' streets.<sup>23</sup> Secondly, they varied according to those characteristics which supposedly distinguished a criminal area from the rest: these were social class, occupation, ethnic origin and housing tenure. On this basis, the selected streets were grouped into what will be termed social areas, for brevity and convenience. In all, eleven streets were analysed, and five social areas distinguished.<sup>24</sup>

The most unambiguously criminal of all the areas was the Lodging House area, represented by Thomas Street. Before any other features are examined the evidence on numbers of offenders in the sample living in the street which made up the five social areas are presented in Tables 1 and 2<sup>25</sup>

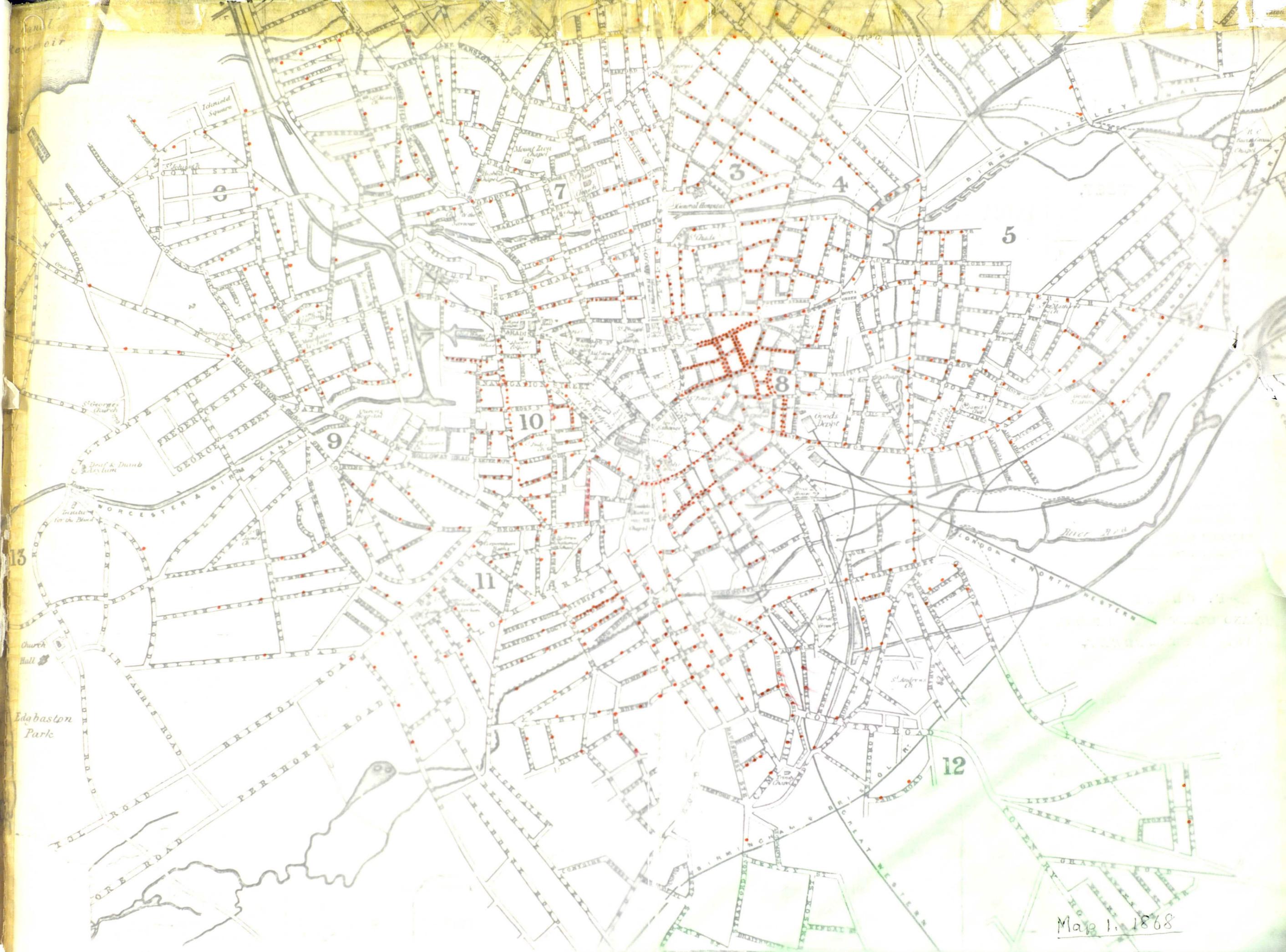
23. All offenders coming before the courts in Birmingham were asked to give their home address and this, together with other vital statistics, was reported in the newspaper. Their distribution over the decade 1867-77 shows a few centres of persistent clustering amidst a widespread scatter, forming an arc around the city centre. See Maps 1 - 4. p.55.

24. The streets, grouped into social areas on the basis of their selected defining characteristic are as follows:

<u>Lodging House Area</u>	<u>Irish Area</u>	<u>Gun Area</u>	<u>Jewellery Area</u>	<u>Middle Class Area</u>
Thomas Street	Allison Street	Whittall Street	Caroline St.	Easy Row
		Bath Street	Vyse Street	Gt. Charles St
		Princip Street		Newhall Street
		Weaman Row		

See Map 5 for the location of these streets, which are marked in red on the map. (p.16). Streets marked in green are the additional 'rough area' street listed in Table 2.

25. The sample of 5,437 cases on which this study is based was drawn from the accounts of police court proceedings which were reported daily in the Birmingham Gazette, and is made up of every case reported for four years in the decade 1867-1877. The starting point for each year was taken from the opening of the Michaelmas Quarter Sessions, so that the years selected run from October 1867-October 1868; October 1870-October 1871; October 1873-October 1874; and October 1876-October 1877.

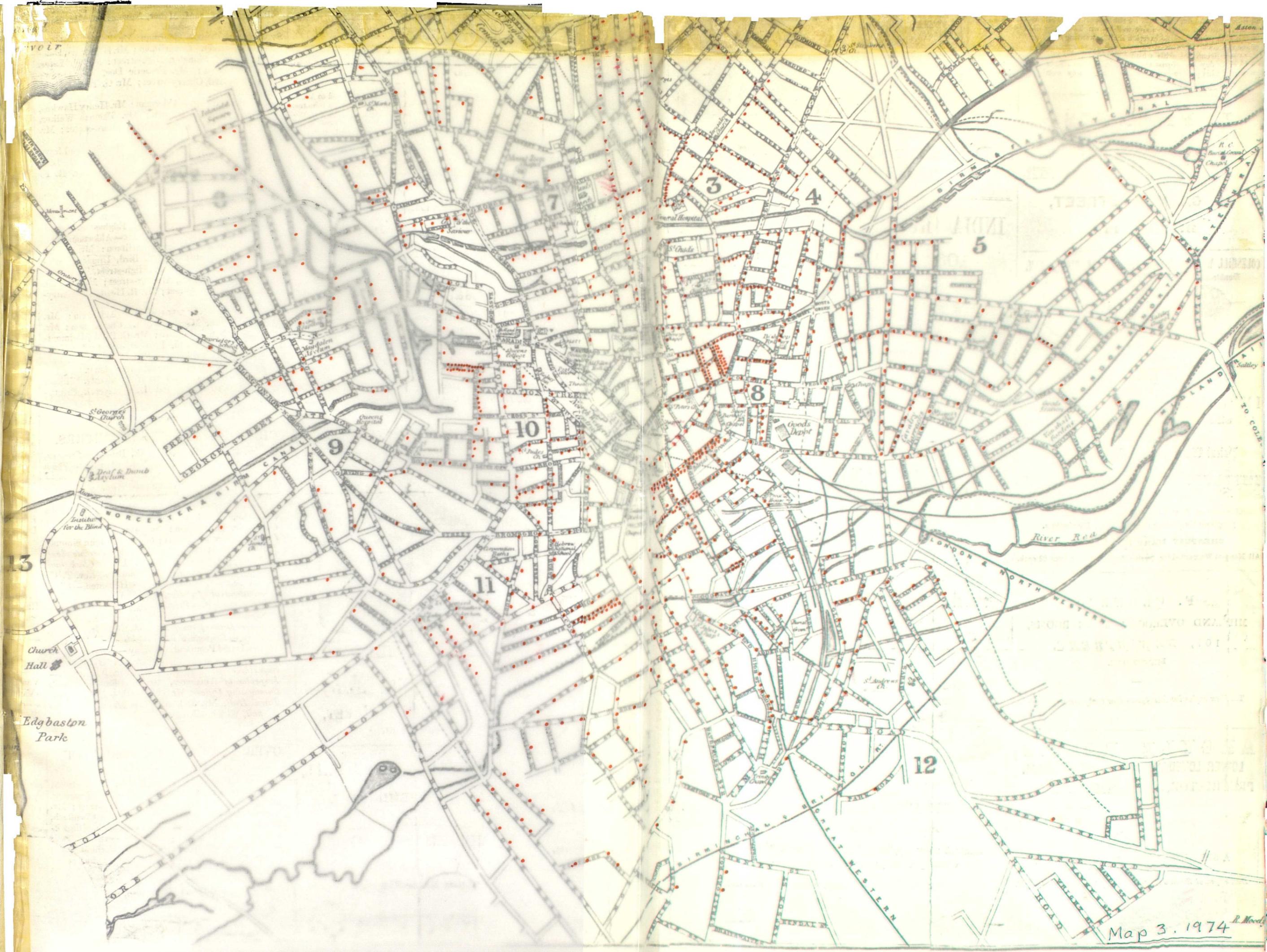


Map 1. 1868



Map 2. 1871

R. Hooley



VOLT

13

Church Hall

Edgbaston Park

GEORGE STREET

Institute for the Blind

Deaf & Dumb Asylum

Worcester Canal

9

10

11

3

4

5

8

12

River Rea

LONDON & NORTH WESTERN

Map 3. 1974

R. Wood



Table 1.1. Numbers of Offenders appearing in Court from eleven named streets in 1868, 1871, 1874 and 1877.

	<u>1868</u>	<u>1871</u>	<u>1874</u>	<u>1877</u>	<u>Area Total</u>
<u>Lodging House Area</u>					
Thomas Street	30	37	37	44	148
<u>Irish Area</u>					
Allison Street	18	10	21	15	64
<u>Gun Area</u>					
Weaman Row	0	0	0	0	
Bath Street	2	1	1	1	20
Whittal Street	0	0	2	1	
Princip Street	5	2	3	2	
<u>Middle Class Area</u>					
Newhall Street	1	0	0	0	
Easy Row	0	0	0	0	7
Great Charles Street	3	0	2	1	
<u>Jewellery Area</u>					
Caroline Street	0	0	0	0	0
Vyse Street	0	0	0	0	

An examination of Maps 1-4 confirms the evidence in Table 1.1: no other street in Birmingham in the decade housed as many known offenders as Thomas Street. In 1871, 476 people over ten years old were living in this street, which gives an offence rate for that year of 8% (which, if calculated for males only would rise to 13%). This signifies a substantial percentage of offenders in Thomas Street since the number of cases reported in the newspaper was only a fraction of the total - amounting in 1871 to 10% of cases. Even so, the Thomas Street rate is nearly double the offence rate of 5% for the whole town in 1871, calculated for the population aged over ten.

In order to demonstrate how distinctive Thomas Street was as a criminal enclave, the numbers of known offenders from three rough areas in the town have been tabulated. Table 1.2 shows that in four years, and eleven streets, there was only one occasion when more offenders were drawn from any street

other than Thomas Street, and this was from a street (Park Street) which had a much greater population. The first group in Table 1.2 includes the streets immediately adjacent to and parallel with Thomas Street, in order to assess how far the criminal area extended. These each contained some lodging houses, but far fewer than in Thomas Street. Lichfield Street was also a shopping street. The second group was situated in what was known by contemporaries as the Irish quarter, and includes Park Street - famous locally as the site of the anti-Irish 'Murphy' riots of June 1867.<sup>26</sup> This area, shows up in Maps 1-4 in a rash of red spots; and so to a lesser extent does the canal-side area with its wharves and warehouses, and many brothels (which were said to be the best paying properties in town).<sup>27</sup> Out of an estimated total of 188 brothels, one hundred were allegedly to be found in the canal-side neighbourhood.<sup>28</sup> Finally, Summer Lane has been included because it contained a Model Lodging House with over a hundred beds, one of the few large lodging houses for working men in the town outside the Park Street and Thomas Street neighbourhoods, and where charges were the same as in the common lodging houses.<sup>29</sup>

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26. In "The Narrative of the Murphy Riots and the Demolition of Park Street, June 16th and 17th, 1867" the writer noted how 'the Irish located in Park street and their numerous courts poured forth their hordes during the disturbance'. BRL: 64698.

27. Micalah Hill (Secretary to the Birmingham Town Mission): The Dark Side of Town: facts and figures taken from official documents, Birmingham 1880. BRL.67134.

28. B.G.: May 16, 1877. This was the figure quoted in court by a brothel owner who had houses in Wharf Street and Fordrough Street.

29. The Times, September 1870 reported the opening of this Lodging House. Charges for 3rd class beds were 3d a night.

Table 1.2. Offenders Appearing in Court from Rough Streets in 1868, 1871, 1874, 1877; and as Percentage of each street's population (1871).

	1868	%	1871	%	1874	%	1877	%	Population over 10 in 1871
Thomas Street	30	6.3	37	7.7	37	7.7	44	9.2	476
John Street	14	2.0	12	1.7	26	3.8	8	1.1	672
London Apprentice St.	14	4.8	8	2.7	7	2.4	4	1.3	291
Lichfield Street	27	3.7	28	3.9	16	2.2	13	1.8	717
	85	3.9	85	3.9	86	3.9	69	3.2	2,156
Park Street	27	3.5	28	3.6	42	5.4	24	3.1	765
Allison Street	18	4.1	10	2.3	21	4.8	15	3.4	429
Bordesley Street	6	0.7	7	0.8	8	0.9	11	1.2	852
Fazeley Street	8	3.2	4	1.6	10	4.0	9	3.6	249
	59	2.5	49	2.1	81	3.5	59	2.5	2,294
Wharf Street	9	5.3	4	2.3	22	13.0	7	4.1	168
Fordrough Street	4	0.9	3	0.6	10	2.2	9	2.0	440
Navigation Street	3	0.5	1	0.1	3	0.5	4	0.7	501
Suffolk Street	19	4.3	10	2.2	7	1.5	8	1.8	438
	35	2.2	18	1.1	42	2.7	28	1.8	1,547
Summer Lane Lodging House	0		1	0.9	5	4.6	4	3.7	107

The figures in Table 1.2 confirm that Thomas Street was a consistently and outstandingly high crime street. Not only did it house more offenders than other streets but in contrast to the three streets adjacent to it where there was a tendency for the number of offenders to drop rather than rise over the decade, Thomas Street became more concentratedly criminal.<sup>30</sup> The reasons for this are complex. It will be suggested here that Thomas Street had such a high criminal population because of the combination of a number of factors:

30. Table 1.2 makes clear how greatly offence rates between contiguous

streets could vary. This underlines the great need for care in drawing area based conclusions concerning the individuals who live in them, if the 'ecological fallacy' is to be avoided and the researcher is not to become a victim of his own labelling procedures. One must be constantly aware of how far regional data may mask local differences, and local data differences between individuals. See, W.S. Robinson: 'Ecological Correlations and the Behaviour of Individuals', American Sociological Review 15, 1950.

1. Firstly, corroborating the social disorganisation viewpoint, the lodging houses did attract the rootless and homeless, the casually employed and unemployed, and the social misfits. And such a milieu was tolerant and conducive to criminal activities. Common lodging house keepers were not particular over whom they gave a bed to for the night, and were conveniently placed to act as receivers. Nearly half (46%) of the Thomas Street population in 1871 lived in the lodging houses. This is a larger proportion than for any other street in Birmingham at that date, and is the single most important factor making for and sustaining the criminal reputation of the street.

2. In the eyes of the police, the common lodging houses sheltered a generally socially undesirable and suspect population, who had no fixed address. Police powers of search under the Common Lodging Houses Act of 1853<sup>31</sup> enabled them to enter and search these houses without a warrant. This was an encouragement to the police when conducting inquiries, to go first to look where access was easy. Thomas Street inhabitants were thus doubly vulnerable, externally to the police and internally through their lack of community cohesion, because of the nomadic habits of the majority of the inhabitants.

The other 'high crime' areas had a different character. In the Irish quarter, ethnic differences were crucial, and a largely defensive Irish subculture offers an explanation for the areas' criminality, expressed in confrontations with the police and in gang warfare - both of which aspects were largely absent in Thomas Street. Labelling, in the form of police prejudice, was also in evidence.

The canal-side area forms an interesting contrast to the other two high-crime areas, in that it was neither socially disorganised nor distinctive

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31. 16 & 17 Vict. c.41.

ethnically. But with its own criminal institutions in the form of brothels and its isolated location backing on to the wharves and warehouses by the canal, it is the only area where some form of organised crime may have flourished in the period.

The evidence to substantiate these views is presented in Table 1.3 which compares the nature of the offence, and the type of sentence passed on offenders from the three rough areas (as shown in Table 1.2) with that of all offenders for the relevant years, as published in the Judicial Statistics.

Table 1.3: Type of Offence, Arrest on Suspicion, Type of Court and Sentence per Offenders from 3 rough areas, and the Judicial Statistics for all four years.

<u>Type of Offence</u>	<u>Lodging Hse Area</u>	<u>Irish Area</u>	<u>Canalside Area</u>	<u>Judicial Statistics</u>
	%	%	%	%
Larceny	68	58	71	12
Assault	20	31	19	15
Misdemeanour	12	11	10	73
<u>Arrest on Suspicion</u>	4	3	3	
Thomas St. only (n=148)	7			
<u>Court</u>				
Petty only	54	56	54	64
Sent to QS/Assizes	19	21	31	2
Remand	9	7	5	
Discharge	8	6	10	34
Discharge Thomas St. only	4			
n =	335	253	128	60123

It will be readily apparent from this Table that the Birmingham courts believed they were dealing with a largely criminal population in the offenders who came from the three rough areas. Not only were the majority brought to court for larceny offences rather than the misdemeanours which occupied the court in nearly three-quarters of all cases brought; but their offences were also viewed far more seriously, in that a very much greater proportion

were sent on to the higher courts and a smaller proportion discharged than was generally the case. Differences between the areas are also of interest in that they tend to corroborate the view expressed earlier that the criminality of the Irish quarter expressed itself, because of subcultural differences in the form of conflict: by far the highest proportion of assault cases originating in this quarter. Again, the higher percentage of larceny, and of more seriously regarded cases in the canal side area suggests that a more organised or professional type of crime originated there; while the typical offences of lodging house offenders came somewhere between the two. But this area appears less criminal than the canal side, in that there were more minor offenders and the smallest proportion sent on to the higher courts. Given its bad reputation, especially of Thomas Street, this is highly revealing of the stigmatisation both by the police and the courts, which must have occurred to reinforce that reputation. It is most clearly revealed in the high proportion of Thomas Street offenders arrested on suspicion, and the low proportion discharged from court, when compared with offenders from the other 'criminal' streets.

## 2

In order to place these streets in their context we return now to the analysis of five social areas, as set out in Table 1.1. After explaining how these were selected, the discussion will focus on town development and population trends, on land use and land-holding, and on the distribution of occupations.

According to ecologically based theories of delinquency, areas with high delinquency rates vary from others in the socio-economic position, immigrant status and housing tenure of their inhabitants. Streets most representative of each of these aspects were therefore selected for further study in order

that consistent variations between households in the different areas could be assessed in relation to variations in the offence rate. A 1% sample of those aged ten years and upward was also drawn from the 1871 Census to provide a standard of comparison with the borough as a whole. All addresses in the five areas, drawn from the 1871 Census, were later checked against the same addresses in the 1861 Census to establish the degree of population change. Rate maps, available for all the streets except the Irish area, and rate books dealing with most addresses for 1860, 1871 and 1876 provided additional information on area and population change. The basic socio-economic data is presented in Table 1.4 overleaf.

The defining characteristic for the first area was high social class on the assumption that the higher the social class level, the lower the offence rate of the residents. It proved difficult to discover streets in the central part of town largely inhabited by the middle class. By the 1860's the residential segregation of the classes was well under way, and as the commercial development of the town proceeded the middle class increasingly withdrew to the suburbs, particularly to the Edgbaston estate, which went through a period of almost uninterrupted growth from 1845 to 1880.<sup>1</sup> Most of the middle class families who remained in town were professional people such as doctors, lawyers and headmasters, for whom a combined business and private residence at a central address remained an advantage. Three-quarters of the middle class households in the 'middle class area' of this study were families connected with the professions. They lived in unostentatious terraced town houses, often with artisans or clerks as neighbours.<sup>2</sup> There was little that

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1. D. Cannadine: 'The Aristocracy and the Towns in the 19th Century: a case-study of the Calthorpes and Birmingham 1807-1910. Oxford D.Phil., 1975, p. 223.

2. See photographs, and rate maps, with the occupation of household head in 1871 pencilled in. P.55.

was exclusive about their residences, except that more of these houses had attached stables than in the other areas.<sup>3</sup> (over)

Table 1.4: Social Characteristics of Population over 10 in Five Social Areas, and Census Sample, 1871.

	Middle Class	Jewellery	Gun	Lodging House	Irish	Census
	%	%	%	%	%	%
<u>Sex</u>						
Male	48	39	44	61	48	52
Female	52	61	55	39	52	48
<u>Marital Status</u>						
Married	39	36	44	37	54	50
Single	53	57	49	51	39	42
Widowed	7	6	6	10	7	8
<u>Age</u>						
> 15	13	14	14	10	19	15
15 - 20	17	16	13	13	11	13
21 - 25	10	14	10	14	8	13
26 - 49	41	38	44	48	47	42
50 plus	19	18	19	15	15	17
<u>Birthplace</u>						
Birmingham	55	67	51	42	40	51
Contiguous counties	19	16	15	19	17	23
Elsewhere - England/abroad	25	16	23	29	19	22
Ireland	1	1	10	8	24	4
<u>Living as Lodgers</u>						
Institution	1	0	6	0	0	)
With family	4	6	9	6	8	10 )
Lodging House	0	1	0	46	0	)
<u>Occupation</u>						
Labourer/char	1	0	4	16	9	4
Hawker/carter/ boatman	2	0	1	16	8	4
Tailor/Shoemaker	6	2	4	7	6	5
Gunmaker	0	0	14	5	1	3
Jeweller	2	13	0	0	0	2
Other metal trades	8	8	12	14	14	21
Other semi skilled	3	4	2	6	9	4
Artisan	4	2	3	2	1	4
Building trades	2	0	1	4	1	2
Servant	17	13	5	2	1	5
Clerk/shop asst/ wrhse	5	3	2	0	1	3
Shopkeeper/ services	5	2	4	3	3	4
Agent/dealer	1	3	1	1	4	2
Professions/ manufacturer	7	5	5	0	0	2
Women/children/ n.k	33	43	38	19	41	33
Other	2	1	3	2	0	2
n =	446	405	412	476	429	2515

The middle class families who remained in town in 1871 were not the forward looking businessmen and industrialists who set the social tone and directed Birmingham's municipal affairs, but an ageing group of non-business people who stayed on at their residences in the face of encroaching commercial development until most of their leases fell in in the 1870's. The fact that a quarter of the heads of these middle-class households were widowed (compared with the Census town average of 8%), and that 42% of them were aged over fifty (Census average 17%) underlines how untypical this group was in its residential choice and how far the middle class generally had abandoned living in town by this period.

The streets of the second and third areas were selected on the basis of occupation. Since the metal trades were the staple trades of the town it was decided to select two such trades, known for their spatial concentration but having dissimilar trade and employment patterns. These trades were located in areas commonly referred to as the gun and the jewellery quarters.<sup>4</sup> The gun trade near to the centre of town was situated in one of the most densely populated wards. Gun making had been established there since the middle of the 18th century. While the interdependence of the many branches of gun making meant that special concentration was an advantage, Vance believes that leasehold restrictions also confined the trade to its traditional location as few landowners would build housing for the industrial working class.<sup>1</sup> However, since this applied to the whole of the town's

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3. (p.24) There were 25 stables in the middle class area of which 15 were attached to private residences. In the jewellery quarter there were six stables of which only one was attached to a private house. The three stables in Thomas Street, four in Allison Street and two in the gun quarter were all connected to pubs, shops or warehouses.

2. D.J. Wise: 'On the Evolution of the Gun and Jewellery Quarters in Birmingham', Trans. Institute of British Geographers, 15, 1950. Wise refers to Whittal Street as the principal gun making street, and to Vyse Street as the principal street of the jewellery quarter. See also A. Briggs: History of Birmingham II, 1952, Fig.1, p.12, for these quarters.

5. J.E. Vance: 'Housing the Worker: determinant and contingent ties in 19th century Birmingham', Economic Geography, 43, 1967.

working class engaged in workshop production, the constantly fluctuating economic prospects in the gun trade would seem a better reason why an increase in the production of guns was secured largely by an intensification of land use in the years of high demand by the small gun-masters of the quarter. The trade was liable to extreme fluctuations and this, together with the semi-skilled nature of many of the work processes was reflected in its organisation. The relatively simple job operations encouraged quick entry into the trade at peak periods, while the lack of fixed machinery or large scale capital investment gave great flexibility to the gun master in minimising his risks. He seldom possessed a factory or a workshop and usually merely owned a warehouse in the gun quarter. His chief function was to acquire the semi-finished parts and give these out to specialised craftsmen, who were independent manufacturers executing the orders of several gun masters.<sup>6</sup> It was these craftsmen who would employ extra hands as and when they were needed to execute an order. But while the 1860 Trade Census showed that 6,840 workmen were engaged in the gun trade, it was said that not two-thirds were constantly engaged in the trade, and of the genuine gun workers, not a third had been engaged full-time or regularly for some years.<sup>7</sup> Herein is revealed a major reason for the continuation of the trade on its dilapidated and congested site. It was next to, and dependent on, the pool of cheap casual labour available in the lodging house area. The gun quarter's share of the market was in decline from the early 1860's onwards, because of competition from the military arms factories established at Small Heath

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6. G.C. Allen: The Industrial Development of Birmingham and the Black Country 1860-1927, 1929, p. 116.

7. 'Artifex' and 'Opifex': The Causes of Decay in a British Industry, 1907, BRL 199556.

and at Enfield.<sup>8</sup> Without access to a cheap labour market, the gun quarter could not have survived at all.<sup>9</sup>

While the jewellery trade was also highly specialised it was less liable to fluctuations in demand. The period 1867-1877 was a time of great prosperity for the jewellers.<sup>10</sup> Until the mid 1870's, the greater part of all jewellery was made by hand, one man usually making the complete article.<sup>11</sup> The high level of skill required and the steadier level of demand meant that a reserve pool of semi-trained labour was of no advantage to the jewellery masters. Given the low costs of entry, rising demand was met by an increase in the number of artisans entering the trade on their own account, most masters having themselves once been workmen.<sup>12</sup> The jewellers could thus afford to, and did, distance themselves to a remarkable degree from the unskilled and semi-skilled in their area of residence, with dramatic consequences on the offence rate - not one offender from the jewellery quarter appearing before the courts in the sample years.<sup>13</sup>

The jewellery trade had its traditional area of settlement, referred to as the 'jewellers city' where nearly every door had the name of a master jeweller over it.<sup>14</sup> The jeweller's factories were described as the closest

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8. A. Briggs: Op.cit. p.49. The Small Heath factory was the first local plant to turn out finished products by mass production methods.

9. A deputation of Birmingham gun makers to John Bright denounced the Government factory as unjust and unfair to the gun trade of Birmingham. The Times, November 12, 1868.

10. J.C. Roche: History, Development and Organisation of the Birmingham Jewellery and Allied Trades, Birmingham, 1927, p.27. BRL. 348353.

11. Ibid., p.26.

12. G.C. Allen: Op.cit. p.120.

13. See Table 4 for the occupational distribution in the jewellery streets, the only unskilled workers being servants.

14. Childrens Employment Commission, 2nd Report XXII 1864, ¶.613, p.128.

and worst arranged workplaces in Birmingham,<sup>15</sup> with many simply continuing to operate from the kitchens or bedrooms of their dwelling houses. But the jewellery quarter was not as constricted overall as that of the gun makers, the prosperity of the trade having enabled the better class jewellers to move northwards on to the Vyse estate when this was developed in the 1860's.<sup>16</sup> Where the gun trade typically employed an ever-changing force of semi-skilled and juvenile labour, some of the better jewellers would only employ skilled adult labour, or if they did employ juveniles, would expect them to have reached a good standard of education.<sup>17</sup> And where the gun master could exercise little direct control over his workforce, employees in the jewellery trade worked under the eye of the jewellery master. The question to be considered therefore in relation to these two areas is how far the offence rates reflected differences between an educated and skilled workforce in a prosperous and stable trade, and a large semi-skilled and transient workforce in an unstable trade and declining area.

The fourth area for detailed study was selected because of its high proportion of Irish born residents. According to Shaw and McKay, a concentration of low status immigrants into an area is associated with the social disorganisation which allowed delinquency to flourish. The Irish quarter had such an influx of low status newcomers where this view could be tested - although the percentage of Irish was not as high as in some areas in other British towns, the Irish being more intermixed with the general

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15. Ibid., p.54.

16. Vance: Op.cit.

17. Messrs. T. & J. Bragg's, jewellers: "We employ as far as possible only skilled adult labour ... The boys we employ are generally chosen from those having a good character at a good day school ... and we also take no one whose parents will not enter into a written engagement to keep him at a night-school of art till he is 21." Childrens Employment Commission, ¶.555, p.120. Messrs. J. Aston & Sons, jewellers and silversmiths: "With scarcely any exceptions, the boys had been at no previous place of work, but come here straight from school, some at 12, 13 or 14. Ibid., ¶.561, p.121.

population in Birmingham than was the case in towns like Manchester or Liverpool.<sup>18</sup> It was not possible to find a street where more than a quarter of the population were Irish-born; nevertheless the street selected was popularly thought of as part of the Irish quarter, which was situated not where one might have expected it near the Roman Catholic Cathedral in the gun quarter, but in a poorer part of town intersected by railway lines and sidings and near the iron foundries. Towards the end of the century, the Reverend T.J. Bass wrote of this area, in which he had his parish, that "St. Lawrence is not only probably the poorest parish in Birmingham, but one of the very poorest in England".<sup>19</sup>

The last area was selected on the basis of housing tenure. The connection between crime rates and housing tenure continues to be affirmed by research. Rex and Moore's housing class hypothesis suggests that crime rates are lower among owner-occupied than rented tenure groups. Baldwin & Bottoms found that for adult male offenders, the link between tenure and offence rates remained when social class differences were controlled. They concluded that when considering the pattern of such rates it was essential to bear in mind the type of tenure area in addition to social class.<sup>20</sup> The lodging house area, represented by Thomas Street, offers an opportunity to examine the relationship between tenure, class and crime rate.

Table 1.5 provides a summary of the distribution of selected characteristics in the five areas, and the extent to which each area was distinguished by its defining characteristic, compared with the overall average for the town.

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18. J. Denvir: The Irish in Britain, 1892, p.415.

19. Rev. T.J. Bass: Everyday in Blackest Birmingham, 1898, p.6. BRL 239996.

20. Baldwin & Bottoms: Op.cit. p.111. Cf. the crime rate and skilled manual status of most of the Summer Lane lodgers, p.26.

Table 1.5: Distribution of Defining Characteristic in Five Areas, and town average, 1871.

<u>Defining Characteristic</u>	<u>Areas</u>					
	<u>Middle<sup>21</sup> Class</u>	<u>Jewellery</u>	<u>Gun</u>	<u>Lodging House</u>	<u>Irish</u>	<u>Census</u>
	%	%	%	%	%	%
Middle Class	<u>11</u>	10	8	2	4	8
Jewellers	2	<u>13</u>	0	0	0	2
Gun trade	0	0	<u>14</u>	5	1	3
Lodgers	5	7	11	<u>54</u>	10	10
Irish-born	1	1	10	10	<u>24</u>	4
n =	446	405	412	476	429	2515

The proportion of the population in each area characterised by the selected indices varied considerably, from a third more to over six times the town average, with the greatest concentration in the lodging house area and the lowest in the middle class area. There must indeed be great doubt whether the latter can be said to constitute a social area at all - many features being shared by the jewellery quarter inhabitants - but there are some aspects which support the evidence for at least a strong middle class influence in the area.<sup>22</sup> One is the very low offence rate itself at just under two cases a year. Another is the number of servants, who made up by far the largest occupational group (17%), which is commonly accepted as a very reliable indicator of class position.<sup>23</sup> In addition, more stables and a greater number of service occupations such as milliners, hairdressers, butchers and bakers points to a sector with a more affluent life-style, and another who catered to their needs.

21. Middle Class: the classification used here is that outlined in W.A. Armstrong: 'The Use of Information about Occupation' in 19th Century Society, ed. E.A. Wrigley, Cambridge, 1972, Appendix A. All those classified as Social Class I and II in 1921 are included as middle class.

22. Most of the middle class in the 'middle class area' were professionals, especially physicians, where elsewhere they were clerks or shopkeepers. The higher proportion in the gun quarter was largely due to the effect of one institution on the statistics. This was a teacher-training school in Whittal Street, with 16 resident teachers and 7 pupil teachers.

23. P.A. Tansey: 'Residential Patterns in the 19th Century City: Kingston upon Hull 1851', Ph.D. Thesis, University of Hull 1973, p.230.

The most segregated group spatially were the jewellers. Gun makers showed a much lower degree of segregation, with nearly a quarter of the total living in the lodging house area, whereas the only jewellers living elsewhere were found residing in the middle-class area. This had been part of the jewellers early area of settlement (on the Newhall estate) from the end of the 18th century, prior to the opening up of the Vyse estate to the north,<sup>24</sup> so that these jewellers should be seen as continuing a residential tradition rather than as newcomers seeking to draw closer to their middle-class neighbours.

Two thirds of all lodgers lived in the lodging house area; this proportion would have been nearer 100% if only lodgers in lodging houses had been selected. All lodgers from the five areas were included, because lodgers all shared a similar position in the housing market, although it could be argued that lodging house lodgers were distinctive by virtue of their numbers, which added a dimension of disorganisation, missing when only one or two were living with a family. However, it was decided to include all lodgers, and to view lodging house lodgers as extreme examples, rather than as a different category of this tenure group. Finally, nearly half of all the Irish-born in the area sample lived in the Irish quarter, with the rest distributed evenly between the gun and lodging house area.

What are the implications for the rate of crime? The jewellery quarter was distinguished by its non-existent crime rate. It also housed the most homogeneous population as far as occupation and birthplace was concerned, and a very high proportion of women - at a full third above that of the lodging house area. Apart from servants, there were no representatives from unskilled occupations living in the area. By comparison the second low

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24. Vance: Op.cit.

crime area showed a greater occupational mix and a lower percentage of the Birmingham born and of females, but both housed a similar low proportion of Irish and of lodgers. The low crime rate in both areas may have something to do with the absence of sizeable groups of low-status immigrants or of a transitory population of lodgers. But it would seem, in addition, that a cohesive occupational group, made up of labour aristocrats and jewellery factors and their servants, with established roots in the town, as well as a high proportion of women, was more conducive to a low crime rate than was a more socially (and sexually) mixed area, despite the presence of a considerable group of high-status middle class inhabitants.

The gun quarter, closer to the middle class and jewellery quarters in its crime rate than to the other two areas, nevertheless had a distinctly higher rate than the former. It exhibited none of the occupational or social exclusiveness of the jewellery quarter. The broad range of typical Birmingham metal trades were well represented, as were the unskilled occupations. A higher proportion than in the middle class area were female and married, and only a slightly smaller percentage were born in Birmingham or belonged to the middle class. Something other than these factors must have exerted an influence on the crime rate. What distinguished the area was the economic instability of its staple trade, and the greater presence of the Irish and of lodgers.<sup>25</sup> However, these three aspects were distinct, in that only two Irishmen were living as lodgers, and only six lodgers were working in the metal trades in 1871. The Irish were also largely excluded from the metal trades, whereas they made up 3% of the area's unskilled workforce. If the unskilled among the lodgers are included, nearly the whole

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25. The rate for lodgers in the gun quarter is once more inflated by the numbers in the teacher training school.

of the unskilled workforce in the area was supplied by Irishmen and lodgers (4%). The Irishmen could be described as the guest-workers in the area, while lodgers seem to have been taken in, not to provide a reserve pool of labour for the metal trades, but in order to supplement a family income precariously dependent on the economic vicissitudes of the gun trade. Unstable employment prospects in this trade, rather than lodger status covering a range of occupations would seem more likely to have had an effect on the area's crime rate. The Irish, largely restricted to unskilled occupations, may also have contributed to this rate.

While the Irish quarter itself had a crime rate three times greater than the gun quarter, this was still less than half that of the lodging house area. Compared with the gun quarter, the Irish area housed a similar proportion of lodgers, over double the proportion of Irish and three times the proportion in unskilled occupations. Ethnic origin and low status occupation seem to provide a key to the area's high crime rate.

In the lodging house area the proportion of Irish-born was no greater than in the gun quarter, and 60% of the population had been born in Birmingham or the surrounding area. But here there were many more males, single people, unskilled workers and lodgers, and in these respects the area showed the most extreme deviation from the census average. In combination, this added up to a very unsettled population, and one which lacked a large presence of women to reduce the crime rate (since women were strongly under-represented in the criminal statistics). Compared with the Irish quarter the lodging house area had over double the crime rate, double the percentage of unskilled, more than five times as many lodgers, and less than half the percentage of Irish-born. Here, lodger status appears to have outranked Irish origin as a crime indication. If we turn to another lodging house population - the Summer Lane lodgers (Table 12) - we find that a population of skilled artisans, with only 10% unskilled among them but with an immigrant

level not far below that of the Irish quarter also produced a comparatively high crime rate. Not too much weight can be placed on such scanty numerical evidence, but it does help to confirm the significance of both immigrant status and lodging house tenure in the high crime areas of the town. It was largely the unskilled, the immigrant, the rootless and the deviant who gravitated to such areas, excluded by cost and reputation from settling elsewhere.<sup>26</sup>

Their employment prospects were equally restricted, and perhaps restricted by, their areas of residence. A comparison of the occupational choices between lodgers, the Irish and juveniles in the gun, lodging house and Irish areas highlights the impact of these factors on the economic prospects of these groups.

Table 1.6: Occupational, Distribution of Lodgers, Irish and Juveniles aged 11-19 in the Gun, Lodging House and Irish Areas

<u>Occupation</u>	<u>Gun</u>			<u>Lodging House</u>			<u>Irish Area</u>		
	<u>Lodgers</u>	<u>Irish</u>	<u>Juv'les</u>	<u>Lodgers</u>	<u>Irish</u>	<u>Juv'les</u>	<u>Lodgers</u>	<u>Irish</u>	<u>Juv'le</u>
	%	%	%	%	%	%	%	%	%
Labourer/char	8	25	0	25	26	10	14	22	5
Hawker/carter	2	2	0	15	29	17	26	15	4
Tailor/shoemkr	8	2	0	8	13	4	11	5	2
Gun trade	6	5	19	6	5	6	3	0	0
Other metal	2	9	15	14	3	11	3	5	19
Other semi sk.	6	7	5	12	5	10	14	4	17
Artisan	3	0	4	2	0	0	0	2	0
Building trade	0	0	0	4	3	0	0	0	1
Servant	8	5	1	2	0	6	0	1	1
Clerk/wrhse	5	2	7	0	0	0	3	2	0
Shop/services	5	0	1	1	3	0	3	2	4
Agent/dealer	0	2	0	0	0	0	0	4	0
Professional	40	14	5	0	0	0	0	0	0
Juvenile	3	0	4	3	0	2	0	0	0
Women/child'n	3	25	15	9	13	22	23	37	29
Scholar	0	0	21	0	0	12	0	0	15
n =	62	43	72	250	38	83	35	102	97

26. For the residential segregation of the unskilled and the Irish see P.A. Tansey: Op.cit. pp. 53, 100.

Table 1.6 brings out some of the disadvantages under which lodgers and the Irish laboured. To begin with both formed a disproportionate percentage of the unskilled, especially the Irish, in whatever area they found themselves in. The Irish were also excluded from the metal trades to a greater extent than lodgers, and were engaged in a very restricted range of occupations. Only in the gun quarter did they gain some access to white collar jobs. Juveniles were strikingly more successful in gaining jobs in the metal trades than the Irish in all areas, and more successful than lodgers, except in the lodging house area - demonstrating the extent to which the hardware trades relied on cheap, semi-skilled juvenile labour. Many of the processes in the small metal trades did not require high levels of skill; but the use of juvenile assistants was also encouraged by the organisation of labour around a system of sub-contracting on a piece-work basis.<sup>27</sup> Many juveniles worked at very specialised tasks and rarely acquired all the skills of a particular trade, as no comprehensive apprenticeship system existed. Boys easily filled many jobs, and could earn quite well until their late teens, when employers found it more profitable to dismiss them in favour of younger, cheaper hands.<sup>28</sup> The contribution to the metal trades made by the lodgers in the lodging house area (as opposed to lodgers elsewhere) points once more to the importance for these trades of an easily accessible pool of casual labour. This was the major economic function of the area. Supply was facilitated not only by the unceasing flow of adults to the lodging houses, but by the arrival of unattached juveniles in the area. Since work was more easily available to them than to adults, it became relatively simple

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27. G.C. Allen: Op.cit. pp. 168-9.

28. E.P. Duggan: 'The Impact of Industrialization on an Urban Labour Market: Birmingham 1770-1860', Ph.D. Thesis, University of Wisconsin, 1972, p. 170.

for young people to leave home and set up in lodgings. Table 1.4 shows that the proportion of juveniles in the lodging house area was near to the census average; and since over half the population there was not living in family units, this means that many adolescents had left home to live in the area and work on their own account. In the hardware trades the average wages for boys ranged from 5/- to 9/- per week, and for girls from 4/- to 8/- per week.<sup>29</sup> Those earning at the top end of this scale would have been able to afford board and lodging of between 5/- and 7/-, the same price they would have had to pay if living at home.<sup>30</sup> Clearly there were juveniles who preferred the freedom of living in the lodging house area.

The Irish appear to have operated largely at the level of a subsistence economy, with their main economic activity revolving around unskilled work, or the hawking of goods to scratch a living. A strong characteristic of this group was the very high proportion of women without paid employment. This may have been partly due to the larger families of the Irish, and the longer stage in the family's developmental cycle when wives were confined to the home. As Lees points out, married women's work moved to a different rhythm from that of men and single children. For wives with dependant children, taking in lodgers was the means to an alternative source of income to paid work outside the home; and Lees found that taking in lodgers varied inversely with wives' regular participation in the labour force, with wives deferring re-entry into the labour market until at least half of their children were at work.<sup>31</sup> Certainly taking in lodgers will have served the same function for the Irish in Birmingham, since there was only one household

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29. Childrens Employment Commission, p.58.

30. E. Cadbury, M.C. Matheson & G. Shann: Op.cit. p.175. This would be for lodgers with a family and not the lodging houses. Many of those lodging with a family in this area were adolescents.

31. L.H. Lees: Exiles of Erin: Irish Migrants in Victorian London, Manchester, 1979, p.113.

in the sample where the wife was at work and took in lodgers. However, taking in lodgers was not a pronounced feature in the area, perhaps because the court houses with their three rooms were too small to allow this with any frequency at the stage when the family needed it most, but was also at its largest.<sup>32</sup> But wives may also have stayed at home because their access to jobs was as restricted as for the men, while the work that they did get was of the most menial kind, chiefly as chars, washer women and hawkers. Where the presence of young single men in the lodging house area, as the most crimogenic group, raised the area's contribution to the criminal statistics, the presence of a large group of women outside the labour force depressed the contribution from the Irish quarter - since those without employment (of either sex) are less rather than more likely to commit, or be charged with, a felony.

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32. Burnett describes the lowest type of working class house in late 19th century Birmingham as consisting of a living room and two bedrooms in a 3 storey house, without internal water or drainage. John Burnett: A Social History of Housing 1815-1970, Devon, 1978, p. 163. See photograph for such a three storey house in an Allison Street court in the 1880's. (P.55).

Town Development and Population Trends.

In the classical theory of the Chicago School,<sup>1</sup> the dynamics of city growth give rise to zones of specialised land use. The city centre evolves into the central business district, with commercial and municipal functions drawing out the residential. Close to the centre, a service area of wharves, railway sidings and warehouses develops, and it is in the interstices of land between and around these that the zone of transition or slum area develops. Beyond is the zone of working men's homes, and beyond this again is the residential zone. Something corresponding to this ground plan existed in late 19th century Birmingham, although the process of development did not exactly correspond to the idealised Chicago model. What was different in Britain, and specifically in Birmingham, as Cannadine has shown, was the early segregation of the upper middle class from residence in town, which was well under way prior to the redevelopment of the town centre. Edgbaston's golden age as a suburban retreat began in the 1830's,<sup>2</sup> and its continuing success bears witness to the strong desire of a commercial and industrial urban elite for residential exclusiveness, despite the town's famed close collaboration between the social classes.<sup>3</sup> It was the opportunity uniquely afforded by the pioneering development of this high class suburban estate close to town which enabled this group to enjoy residential segregation while keeping in close touch with public life in the town.<sup>4</sup> Such a residential choice was relatively independent of industrial change. Although by mid-century Birmingham contained both large and small scale units of production,

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1. R.E. Park & E.W. Burgess: The City, Chicago 1925.

2. D. Cannadine: 'Victorian Cities: how different?', Social History 4, January 1977.

3. A. Briggs: Victorian Cities, Harmondsworth 1968, p.186.

4. D. Cannadine: thesis, p.205.

existing in often antagonistic relationship,<sup>5</sup> in contradiction to the traditional view that Birmingham 'pre-industrial' economic structure was retained until well into the second half of the 19th century,<sup>6</sup> yet small scale workshop production did continue to dominate the scene; the larger producers being chiefly distinguished by the scale of their enterprises rather than by their more advanced production methods.<sup>7</sup> Nor were there pronounced social differences between industrialists. At this time, the historian of Birmingham, J.T. Bunce recollected, there were very few possessors of large fortunes in the town. The position, he believed, had been accurately summed up by R. Rawlinson in his report of 1849 where he stated that "there are few, if any, 'millionaires' connected with trade in or near Birmingham, if we except the Staffordshire ironmasters; there are few who occupy the position of the cotton lords of Manchester or the merchant princes of Liverpool; but there is a numerous class of master tradesman whose wealth tends to comfort rather than to ostentatious show".<sup>8</sup> Nevertheless, these men exhibited a distinct preference for residential exclusiveness.

City centre redevelopment also largely preceded industrial change, and was initiated by the building of the two railway passenger termini, of which one alone involved the clearance of seven acres of slums in the town centre in the early 1850's.<sup>9</sup> Ecological change here brought social change

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5. A.F. Hooper: 'Mid Victorian Radicalism: Community and Class in Birmingham 1850-80', Ph.D. thesis, University of London 1978, pp.17-18; 295-6.

6. Cannadine: 'Victorian Cities', footnote 54.

7. M. Berg notes the existence of several large scale firms in the toy trades in Birmingham by the end of the 18th century, and comments that generally the scale of the firms was dictated more by the social than the technical division of labour. Maxine Berg: 'Technology and the Division of Labour in the Age of Manufactures: Theory and Reality in the Birmingham Toy Trades', Discussion paper, Centre for the Study of Social History, Univ. of Warwick, April 1981.

8. J.T. Bunce: 'Recollections of Birmingham Life', Birmingham Weekly Post, April 29, 1899, BRL.150134. Rawlinson's report was based on an inquiry, initiated by a ratepayer's memorial, on the passing of the Public Health Act of 1848.

9. J.R. Kellett: The Impact of Railways on Victorian Cities, 1964, p.141.

in its wake, and was both the cause and the expression of commercial expansion which had its effect on small businessmen and artisans who had operated in the centre of town. Hooper believes that many small businesses were destroyed by redevelopment in the 1850's, and that this period also saw the geographical separation of the better-off artisans and those reduced to the rank of garret masters or labourers.<sup>10</sup> He describes how the environment of the eastern wards deteriorated as the area became the focus of the town's railway network and larger industries.<sup>11</sup> But this area was already industrial before the coming of the railway, with works to the south and east springing up along the line of the canals.<sup>12</sup> The location of the Irish quarter was already blighted by industrial development before mid-century, and was equally already well settled by the Irish.<sup>13</sup> The railway had destroyed slums in the town centre, but here it enhanced them. Elsewhere the better-off moved away from congested sites or sites undergoing redevelopment. In the gun quarter, the poor physical fabric of this already densely occupied site deteriorated further as the better off inhabitants moved out; leading J.M. Brindley to comment in the 1880's that no part of town had experienced a more remarkable change than this area with a loss of manufacturers and respectable artisans, leaving behind many poor in wretched delapidated buildings.<sup>14</sup> The better-off jewellers also seized the chance to move to a more spacious environment when the Vyse estate was developed adjacent to

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10. A.F. Hooper: Op.cit. p.14.

11. Ibid: p.15.

12. C. Gill: History of Birmingham, Vol. 1, 1952, p.190. Kellett notes that there was a marked tendency in Birmingham to superimpose railway routes upon the old canal pattern, and for railway companies to absorb the central canal warehousing and wharfage area. Kellett: Op.cit. p.131.

13. The 1841 Census shows a concentration of 23% Irish-born in Allison Street.

14. J.M. Brindley: Church Work in Birmingham, Birmingham 1880, BRL. 44927.

their traditional site. Thus the social distribution of the population, under the impact of ecological development changed from its pre-industrial pattern to one of increasing social segregation.

Between 1850 and 1880, Birmingham was the fastest growing city in England,<sup>15</sup> but where some areas grew, others declined in population. While the total numbers living in the five central wards of Market Hall, St. Marys, St. Peter, St. Phillip and St. Paul fell between 1851-71 as railways, warehouses and offices replaced houses and workshops, this conceals the increase in population which took place in certain streets in these wards, as the central area housing supply fell. The effect is shown in the following Tables on the changing rent and population levels in the five social areas.<sup>16</sup> The first, setting out the rent levels in these areas in 1871, provides a standard of comparison for the differing land and housing values; while the next shows how these values changed between 1861-1876. The last two Tables show the population density per house in 1871 and the population change per area between 1861-1876.

Table 1.7a: Average Annual Rent levels in Five Social Areas, 1871.

<u>Rent (£)</u>	<u>Middle</u>	<u>Jewellery</u>	<u>Gun</u>	<u>Lodging House</u>	<u>Irish</u>
	<u>Class</u> %	%	%	%	%
> 4	7	3	10	44	39
5 - 9	23	6	56	27	46
10 - 24	1	21	10	24	11
25 - 49	23	52	13	4	2
50 - 74	21	15	1	0	2
75 plus	25	3	4	0	0
n =	126	111	90	73	113

15. B.J. Howe: 'Clubs, Culture and Charity: Anglo-American Upper-class activities in the late 19th century', Ph.D. thesis Temple Univ. 1976 p.X.

16. Rents have been derived from the rate books for the streets concerned. They refer to an estimated gross rental per house, not individual, and seem rather low for some of the court houses in Thomas and Allison Street. On the rate book evidence a large proportion rented at 1/6d a week (excluding rates) which works out at less than a bed for the night in the lodging houses.

Table 1.7b: Changing Rent levels between 1861-1876.

	Middle Class	Jewellery	Gun	Lodging House	Irish
	%	%	%	%	%
Rent higher 1871 than 1861	64	66	14	16	9
Rent lower 1871 than 1861	30	19	55	76	82
Same rent both dates	2	8	1	4	4
Rent not available	2	6	30	3	3
Rent higher 1871 than 1876	4	9	5	0	6
Rent lower 1871 than 1876	1	11	8	6	6
Same rent both dates	15	75	85	71	87
Rent not available	80	3	1	22	0

Table 1.8a: Nos. of Inhabited Houses and average population  
Density per house, 1871

Av. pop. density	3.5	3.5	4.5	5.8	3.7
No. inhabited houses	126	111	90	73	113

Table 1.8b: Population change in five social areas 1861-1876

Same occupant, 1861-1871 (census)	12	16	15	4	10
Same occupant 1871-1876 (ratebooks)	3	28	19	19	16
Same 3 times	5	18	2	1	2
Different 3 times	5	22	8	11	11
Same occupant, April and Oct. 1871	92	87	62 17	63	70
% population change from 1861 to 1871	-	+ 3%	+ 10%	+ 14%	+ 8%

The preceding Tables show how distinctive the social areas were in their land values and population trends in the period. Not only were land values and rents (from which the rateable values were derived) high, and rising to

16. (cont'd)... But this figure was used to arrive at the rateable value of the property, so is likely to be accurate. See J.T. Bunce: History of the Corporation of Birmingham, Vol. II, 1885, p.40.

17. October 1871 occupants only available for two thirds of addresses in the gun quarter.

1871 in the middle class and jewellery quarter but this was in marked contrast to what was happening in the other areas where rents were falling. After 1871 redevelopment on the Colmore estate for municipal buildings wiped out most of the private residences in the middle class area; but where rent levels are available for 1876 the majority had stabilised at the 1871 level indicating that the social adjustment to the initial period of town development was over. Between 1860 and 1870 city centre land ripe for redevelopment increased in value, as did the new jewellers' estate which was being settled at this time; but the consequence for the remaining central residential streets was a fall in rent levels and a rise in population - a clear indication of a deteriorating environment - with more of the population in the gun and lodging house areas being accommodated as lodgers.

Some idea of the extent of area change and population mobility can be derived from a comparison of the 1861 and 1871 Census, and from the rate books for 1860, 1871 and 1876. Although in the short term, the middle class population was the most stable, with 92% of the occupants listed in the April 1871 rate book still living at the same address six months later (compared with only 63% in the lodging house area)<sup>18</sup> change was extremely drastic here: only 23 out of 125 residences listed in 1871 were still in existence in 1876. Elsewhere the area changed less than the population. The jewellery quarter was the most stable over the period as a whole with only a 3% increase of population. But in the other areas population increased by 10% in the gun quarter; 14% in the lodging house area and 8% in the Irish quarter. The crowding of newcomers to the town and of the urban poor displaced from the centre into the run-down streets and courts in these areas intensified throughout the decade. The least settled was the lodging house area, even excluding the floating population of

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18. N.B that 'occupant' entered in the rate book means head of household, and so excludes lodgers.

lodgers. Out of the seventythree occupants of court houses, and of lodging house, pub and shopkeepers listed, only one remained at the same address between 1861 and 1876; while in the six months between April and October 1871, over a third of this group had moved. Mobility was also high in the gun and Irish quarter, especially in the short term, but the extent of the move often meant going no further than a few doors away.<sup>19</sup> It is well known that the urban poor in the 19th century moved frequently, but in a very confined radius.<sup>20</sup> Lees refers to such a pattern among the London Irish, which she characterises as neither free floating and nomadic nor residentially stable.<sup>21</sup> A similar pattern can be observed in Birmingham: between April and October 1871 six instances of household moves to adjacent houses in the same court were noted in the Irish quarter, with three such moves noted in the lodging house area and one in the gun quarter. The social character of the areas also altered during the decade, as shown in the following Table.

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19. See M.S. Pember: Round About a Pound a Week, 1913, p.39. "A family who have lived for years in one street are recognised as people to be helped in time of trouble ... a family which moved two miles away is completely lost to view".

20. S. Meacham: A Life Apart: The English Working Class 1890-1914, 1977, pp. 42-3. The very poor moved most often. "We had so many addresses. We couldn't pay the rent. We had to keep moving. We came home from school to find bits and pieces slung out in the road; or passed over the wall to the next bloke to look after ... until we found a place". Quoted from P. Thompson and T. Vigne interviews.

21. L.H. Lees: 'Patterns of Lower Class Life: Irish slum communities in 19th century London' in 19th Century Cities, ed. S. Thernstrom and S. Sennett, 1969, p.67.

Table 1.9: Social Class of Heads of Households, 1861 and 1871

Social Class	Middle Class		Jewellery		Gun		Lodging Hse		Irish	
	1861	1871	1861	1871	1861	1871	1861	1871	1861	1871
	%	%	%	%	%	%	%	%	%	%
I & II	53	45	45	37	16	14	18	10	12	13
III	20	20	33	46	44	38	23	16	25	17
IV	11	16	8	13	23	27	18	21	26	28
V	4	8	6	2	10	13	35	42	31	35
Women/n.k	11	10	8	10	7	7	6	5	5	6
n =	45	49 <sup>22</sup>	98	111 <sup>23</sup>	82	103	93	83	93	116

The loss of middle class households and rise in the percentage of semi and unskilled was quite marked in the middle class area, with many of the less skilled employed as warehousemen, bank messengers and porters, as more of the area was given over to commercial enterprises. Changes in the class composition of the jewellery quarter are mainly a function of the size of the jewellery undertakings: in 1861, just over a fifth of the jewellers listed employed several hands, compared with only 14% in 1871.<sup>24</sup> The better-off jewellers may have been moving out of the jewellery quarter altogether, although there is no clear evidence of this. In the gun quarter, the manufacturers and artisans who left were replaced by semi and unskilled workers; the quarter also gained 5% more lodgers, and 4% more Irish-born. In the Irish and lodging house area, the defining characteristic of each became more pronounced. The Irish quarter gained more Irish (2%) and lost 4% of its lodgers, while the lodging house area

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22. The comparison in the middle class area is incomplete since it proved impossible to locate all the addresses in the 1861 Census.

23. Increases in the number of households in the jewellery quarter is due to infilling in the 1860's on the Vyse estate. The heads of the new households were chiefly in skilled and semi-skilled occupations.

24. This has the effect of upgrading this group from Social Class III to Social Class I or II.

gained a staggering 25% of lodgers while losing 6% of the Irish.<sup>25</sup> In 1861 Thomas Street contained fewer lodging houses, and many of the lodgers in them had lived in family groups of one family to a room. At that date the area had contained 6% more Irish. But as the number of lodging houses in Thomas Street increased and beds in them were offered to individuals rather than to families, the Irish tended to gravitate away, and in to the Irish quarter. Lees found that Irish immigrants had a strong tendency to organise themselves into family units, and that very few Irish chose to live alone or in lodging houses.<sup>26</sup> In Birmingham, they largely lived in Irish family households even when they lived as lodgers: there were only fourteen Irish among the Thomas Street lodger population of 217 people in 1871. In the Irish quarter the proportion of skilled workers fell as the percentage of Irish rose; in the lodging house area, the percentage of both Irish and of skilled households declined. As the street was increasingly given over to lodging houses it ceased to cater for families or for newcomers with certain levels of skill (these went to the gun quarter or Summer Lane lodging house). Instead it became a home of last resort for those unwilling or unable to maintain one for themselves. To a large extent these were the unskilled and the semi-skilled. The period thus saw the increased spatial segregation of this group, and of the unskilled Irish, which found its reflection in the criminal statistics.

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25. In 1871 Thomas Street had 17 registered lodging houses. This formed 15% of all the registered lodging houses in the town in 1877, when there were 116 such houses. Report of the Health Committee, Borough of Birmingham, March 5, 1878. BRL: 67004.

26. L.H. Lees: Op.cit. p.377.

Land Use, Land Holding and Environmental Conditions

We have seen that the development of the town centre led to increased population densities in some adjacent streets. The typical housing solution to this problem in Birmingham took the form of courts leading off the main streets and thoroughfares. This form of infilling was traditional in the town, dating back over a century when the practice began of paving over gardens and lining them with workmen's cottages and workshops.<sup>1</sup> By the third quarter of the 19th century these courts had in some areas proliferated into a dense maze, with the courts off the main street leading to yet more inaccessible courts behind them. While they hardly existed in the jewellery quarter (2% only) they accounted for nearly a quarter of the houses in the middle class area in 1871, and around half in the other three areas. Their advantage was that they enabled families to occupy a house on their own; their disadvantage lay in the sanitary conditions in the courts which bred disease and brought high death rates. The courts contained communal ash pits, privies and wash houses, with a single water tap serving the whole court.<sup>2</sup> The privies were inadequate, and refuse collected in heaps in the courtyards which were rarely cleaned. The Medical Officer of Health reported that the death rate of St. Marys Ward, where the lodging house area was situated was twice as high as that of Edgbaston.<sup>3</sup> While there is only fragmentary evidence for death rates on a street by street basis, some exists which singles out three streets in the gun quarter as having particularly high death rates.<sup>4</sup> But it

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1. S.D. Chapman & J.N. Bartlett : 'The Contribution of Building Clubs and the Freehold Land Society to Working-Class housing in Birmingham' in ed. S.D. Chapman: Working Class Housing, 1971 pp. 223-225.

2. V.W. Garratt: Op.cit. 1939 p. 64. Garratt was born in a Birmingham slum court in 1892 and described the conditions.

3. D.O.H. report of the Insanitary Area, surveyed for the Improvement Scheme, 1875. In Bunce: Op.cit. p.458.

4. Ibid: p.116. The streets are Weaman Row, Whittall Street and Princip Street.

was not only conditions in the courts which aroused the concern of those involved in the survey of the insanitary area for Chamberlain's improvement scheme. Thomas Street was also singled out as a street where, Councillor White reported, there was little else to be seen but bowing roofs, tottering chimneys, tumble-down and often disused shopping, heaps of bricks, broken windows and coarse rough pavements. The area reminded him of Strasburg after it had been bombarded.<sup>5</sup> However, even in such conditions, a living could be made by the landlords of the lodging houses. The number and range of commercial undertakings in the five areas is shown below.

Table 1.10: Commercial/Industrial Property in five areas, 1871  
as % of all property in the Area.

	<u>Middle</u> <u>Class</u> %	<u>Jewellery</u> %	<u>Gun</u> %	<u>Lodging</u> <u>House</u> %	<u>Irish</u> %
Pub/beer house	-	3	7	4	1
Lodging House	-	-	-	20	-
Retail Shop	2	5	8	3	6
Workshop	9	27	15	1	3
Office/Warehouse	13	7	4	-	-
Manufactory	5	1	3	-	-

Table 1.10 shows how far industrial and commercial undertakings were encroaching on the residential in the middle class area. The value of the land was rising and some of these enterprises commanded high rents - higher than most people were prepared to pay for a private dwelling. By 1871 only two out of fifteen properties renting for over £100 p.a. were exclusively residential in character here. In the gun and jewellery quarters, workshop production was a strong

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5. Councillor White's evidence to the Town Council, October 6, 1875. In Bunce, p.461.

feature; but while 16% of household heads in the jewellery quarter were employers, only 1% in the gun quarter employed others. The structure of the industry, which was based on sub-contracting, has a great deal to do with the lack of employees. Nevertheless the almost total lack of enterprises with steady employees suggests a much less buoyant industrial climate in comparison with the jewellers. The lodging house and Irish quarter catered almost exclusively for the lodging rather than the employment needs of the inhabitants; despite low rateable values, they were not attractive to industrial investors. A court house could be rented for as little as 1/6d a week, excluding rates. Rents over £12 p.a. were exceptional and referred to pubs or houses with workshops attached; whereas shop rents, particularly in the Irish quarter, were often little higher than those of court houses. Their level of trade could not have been much greater than that of street hawkers. Such shops were said to

occupy many women ... and are often carried out in an adapted kitchen which may be the family living room as well. Trade is chiefly among immediate neighbours and is often in farthings or half-pennys. One frequently finds a woman with an empty shop and with business in abeyance because she cannot buy anything to put in the windows. In very low streets, the contents of the shop ... are taken up to the bedroom at night for fear of theft ... When there is a counter and a bell ... the average profit comes to 11/- per week. 6

There were seven shops of this type in Allison Street, their number and low rents being indications of the small scale of these enterprises. Pubs were more profitable and their rents were correspondingly higher - but at an average rent of £25 p.a. this was well below the average of £36 p.a. for a pub in the gun quarter, and an additional reflection of the poverty of the slums.

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6. E. Cadbury, M.C. Matheson & G. Shann: Op.cit. pp. 176-7.

Properties were held by hundreds of small lease-holders, the only large lease-holder in the centre of town being the Colmore estate - holding half the leases in the middle class area in 1871. Owner-occupation was unusual in Birmingham, as it was generally throughout Britain at this period, and most of the owner-occupiers lived in the newer parts of the jewellery quarter. There were 18 such owners here, compared with only six in both middle class and gun areas, and none in the other two. Owner-occupiers sometimes bought the house next door, possibly for business purposes (eight instances in all). In the middle class and jewellery areas the average holding, excluding the Colmore estate, was two dwellings per lease-holder; in the gun quarter the average was three dwellings; the average in the lodging house area was four, and in the Irish quarter, five. But these are insignificant differences. Overall, the pattern of land-holding accords with the industrial pattern, both combining to form a totality made up of small scale, fragmented and specialised units which gave 19th century Birmingham its special character.<sup>7</sup> Unlike Manchester, Leeds or other factory towns with their rows upon rows of back to back housing, Birmingham had no need for huge concentrations of workers to man its factories. Social segregation took place, but it was more localised. The town's slums, while no better than their northern counterparts (and some said they were worse)<sup>8</sup> were less visible and accessible to observers, being hidden away in back courts and alleys dotted all over town. The shock and surprise as these slums were periodically rediscovered down to the end of the century was therefore all the greater.

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7. Compare this with the average number of tenancies per landlord in Manchester (av. 8 tenancies in the period). P. Rushton: 'Housing Conditions and the Family Economy in the Victorian Slums: A Study of a Manchester District 1790-1871', Ph.D. thesis, Univ. of Manchester, 1977 p.104.

8. An 'expert' gave as his opinion that there was no city in England where the slum question was so big and so deep as in Birmingham ... and that while Manchester, Glasgow and Belfast had their slums, Birmingham had more and worse. Reported in Scenes from Slumland, published by the Birmingham Daily Gazette, 1901, p.19. BRL: 156671.

The first shock came with the inquiry set in train by Chamberlain's proposal that the Council undertake an improvement scheme in the centre of town, under the provisions of the Artisans Dwelling Act of 1875. The M.O.H. and members of the Improvement Committee reported with horror on the conditions they found existed in the central slums. Although the Council had been aware, from the reports of the Sanitary Committee and from casual remarks made by various Council members, of the conditions in many parts of the town,<sup>9</sup> they had taken no real cognisance of the facts. Now the M.O.H. gave notice that a very large portion of the proposed improvement area was in such a state of dangerous dilapidation that it was unfit for human habitation.<sup>10</sup> Then at the end of the century, the Rev. Bass published a pamphlet concerning the conditions in his parish, which led to a series of investigative reports by the Birmingham Daily Gazette.<sup>11</sup> Bass had written that

one may casually pass for a lifetime along the Saltley tram route and never become acquainted with the awful character of the neighbourhood. 12

Surprise over the existence and nature of the slums led one of the Gazette's informants to conclude that such an awful state of affairs must have been deliberately concealed or it would never have reached such a state.<sup>13</sup>

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9. Councillor White's evidence (Chairman of the Improvement Committee): Proceedings on the Adoption by the Council of a Scheme for the Improvement of the Borough. October 12, 1875. BRL. 31066.

10. Representation of the M.O.H. (Dr. A. Hill). Report of the Improvement Committee presented to the Council, October 6, 1875. BRL: 67003.

11. Scenes from Slumland, 1901.

12. Bass: Op.cit. p.8. See also J.A. Fallows: Facts for Birmingham: The Housing of the Poor. Birmingham Socialist Centre pamphlet, Birmingham 1899. BRL: 150067; who wrote that "Everyone who has lived in Birmingham for a few years laughs at the idea that it is the best governed city in the world - let the visitor dwell upon the scene at Duddeston and Bordesley - upon the dingy, malodorous overcrowded dens, reeking streets and filthy alleys."

13. Scenes from Slumland, p.19.

The exclusion of slum dwellers from public knowledge and civic life was not of course confined to Birmingham, but was common to all 19th century towns of any size, and above all to London.<sup>14</sup> But the expressions of horror when the slums were penetrated are best interpreted as expressions of bad faith or conscience on the part of the governing urban middle class, since very little was offered, aside from moral reform, even as a palliative.

The Improvement Scheme provides the outstanding example in Birmingham for the elite's attitude to the slums and slum dwellers, and the measures proposed to deal with the problem. Chamberlain's grand vision of a revitalised Birmingham included driving a wide boulevard through the centre of town, thereby demolishing some of the town's worst slums. But although he made full propaganda use of the advantage which his scheme would confer in getting rid of an insanitary area, this was only incidental to his purpose, since he took no account of, and made no provision for, the population his scheme was to displace. His motive was entirely one of civic pride and financial advantage for the local authority. As he put it, the scheme would

run a great street, as broad as a Parisian boulevard, from New Street to Aston Road; it might open up a street such as Birmingham had not got and was almost stifling for the want of ... Having obtained the freehold of the land (the Council) were no longer bound to sell what they did not want for their improvement. They might lease it for years, and consequently secure for future generations the advantages hitherto secured by a few large landowners in town. 15

The scheme would displace 9,000 people, but Chamberlain envisaged that 'by a re-arrangement of the blocks of building' they would be able to re-house in good dwellings at least 18,000 people. This would of course cost money, and they would have to teach poor people that they must pay more for their

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14. G. Stedman Jones: Outcast London. Oxford 1971, Ch. 16.

15. Statement by the Mayor (J. Chamberlain). Proceedings on the Adoption by the Council of a scheme for the Improvement of the Borough.

homes, and less on their drink. But Chamberlain did not believe that low rents were in the long run advantageous to the working classes, since low rents often meant low wages.<sup>16</sup>

The scheme proved more expensive than originally envisaged. The cost of compulsory purchase was raised by the many cases which went to arbitration, and subsequent lettings were also lower than anticipated. Despite the advantages which the scheme conferred on the town it was not until 1937-8, according to Briggs, that the income from rents was sufficient to meet capital charges as well as current expenses and a net profit made.<sup>17</sup> But it was not Council provision for the poor which had raised the cost of the scheme. Nor was private capital attracted into building town centre accommodation for displaced slum dwellers.<sup>18</sup> The land was far too expensive for such an unprofitable investment. Meanwhile, despite Chamberlain's original assurances, the Council rejected any suggestions that they should act as landlords in this instance, claiming they were legally disbarred under the Artisans Dwellings Act from themselves building workmen's dwellings. But the issue was a sensitive one which laid them open to charges of disingenuousness. Henry Hawkes, the Birmingham Coroner, charged them with using Dr. Hill's report on the health of the borough, with its street by street death rates,

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16. Ibid.

17. A. Briggs: History of Birmingham, Vol. II, Oxford 1952, p.81.

18. Despite the sanguine hopes of the supporters of the Improvement Scheme. One such supporter wrote in 1876 that the Council had secured an excellent site within easy reach of any part of (the improvement) area ... "which was in every way adapted for the more or less experimental erection of artizans houses that must now very shortly take place". Frank R. Heath: Artizans Dwellings and the Birmingham Improvement Scheme, 1876. BRL.63683. The Minutes of the Birmingham Improvement Committee do not record the sale of this land to developers for the erection of artizans houses. Part of the Summer Lane Estate was offered on building leases by auction in November 1879, but the bidding did not reach the reserve; the Committee then sold the land to a private builder. This transaction may possibly refer to the site mentioned by Heath, since he specified Summer Lane as forming a part of it. Minutes of the Birmingham Improvement Committee Vol. 2 (June 12, 1878 - February 11, 1880). November 26, 1879.

for their own purposes - by applying it only to the area where they wanted to run their new thoroughfare and not to other insanitary areas of the town:

Hence you have this Artisans Dwelling Act, which is to give you the means of eradicating disease, only operative as regards the contemplated main street ... In those places - which I can hardly get my always admirable jurymen to enter - 19 I find no Councillor White legislating for their improvement. 20

Hawkes also accused the Council of contravening the Act, which said that workmen's houses should not be demolished until others had been built to replace them.<sup>21</sup> Councillor Tangye replied that there was no reason to waste the ratepayer's money building artisans houses since there were hundreds of vacant houses in the same district as those demolished which they had been unable to let.<sup>22</sup> Although 14,250 square yards of land had been bought for private working class house building, no houses were built until 1890.<sup>23</sup> Chamberlain contented himself with the hope that the removal of the slums would automatically remove the problems of the people who lived in them.<sup>24</sup>

It is no more the fault of these people that they are vicious and intemperate than it is their fault that they are stunted, deformed, debilitated and diseased. The one is due to the physical atmosphere - the moral atmosphere as necessarily and surely produces the other. Let us remove the conditions, and we may hope to see disease and crime removed. 25

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19. Allison Street among them.

20. Speech by H. Hawkes: Birmingham Landlords and Ratepayers Mutual Protection Society. Proceedings of the Association, May 29, 1878. BRL. 72363.

21. Ibid.

22. Speech by Councillor R. Tangye: The Improvement Scheme and the Coming Elections. 1878. BRL. 44890.

23. The Improvement Committee had 22 workmen's cottages constructed, followed by 82 more the following year. For an account of this part of the Improvement Scheme, see Briggs: Ibid, pp.82-84.

24. C.M. Green: 'The Growth of Conservatism in Birmingham 1873-1891', B.A. Dissertation, University of Birmingham 1971 pp.33-4. Green states that by the 1880's, working class discontent with the Improvement Scheme began to make itself felt, and that the non-appearance of artisan's dwellings became a major issue in every working class ward.

25. Chamberlain's address to the Council, in: Bunce: Ibid, p.465. Thomas Street was not demolished until 1891.

But the slums did not owe their existence to defects in town planning, and were not so easily eradicated. Neither was their association with crime. A description at the turn of the century of a thieves' run in one of the city's slums points to the persistent siting of such slums in the most unattractive areas as well as their accepted function as a thieves' retreat.<sup>26</sup> The segregation of the slums served the criminal who knew that he was tolerably safe from arrest there; the police who knew where he was; and the general public who were thereby insulated from the sight and experience of much criminal and disorderly behaviour, and the unaesthetic manifestations of a life of poverty. It would take more than an 'Improvement Scheme' to remove them.

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26. Scenes in Slumland, No. 11, p.19. The run was sited in a region of factories, and in one of the most crowded parts of Birmingham, starting with a hole in the wall at the back of a lodging house. "Do you think if I were chasing a man, I dare follow him through the hole in the wall" said a police officer. "I should be felled like an ox the moment my head appeared ... If I jumped after him the people in the houses would swarm out and not only help him, but make it hot for me. We don't often catch a man when he's got a 'run' like this".

Easy Row, 1890



Newhall Street, 1870's

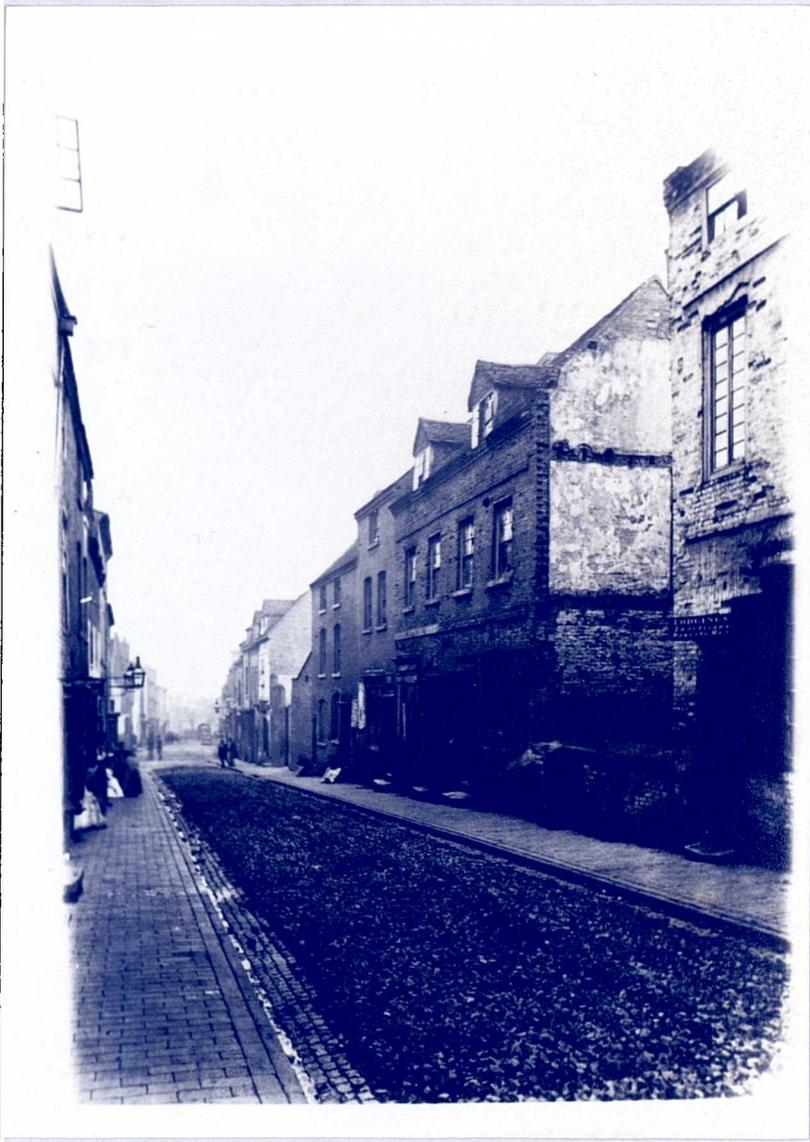


Price Street (Gun Quarter) 1874

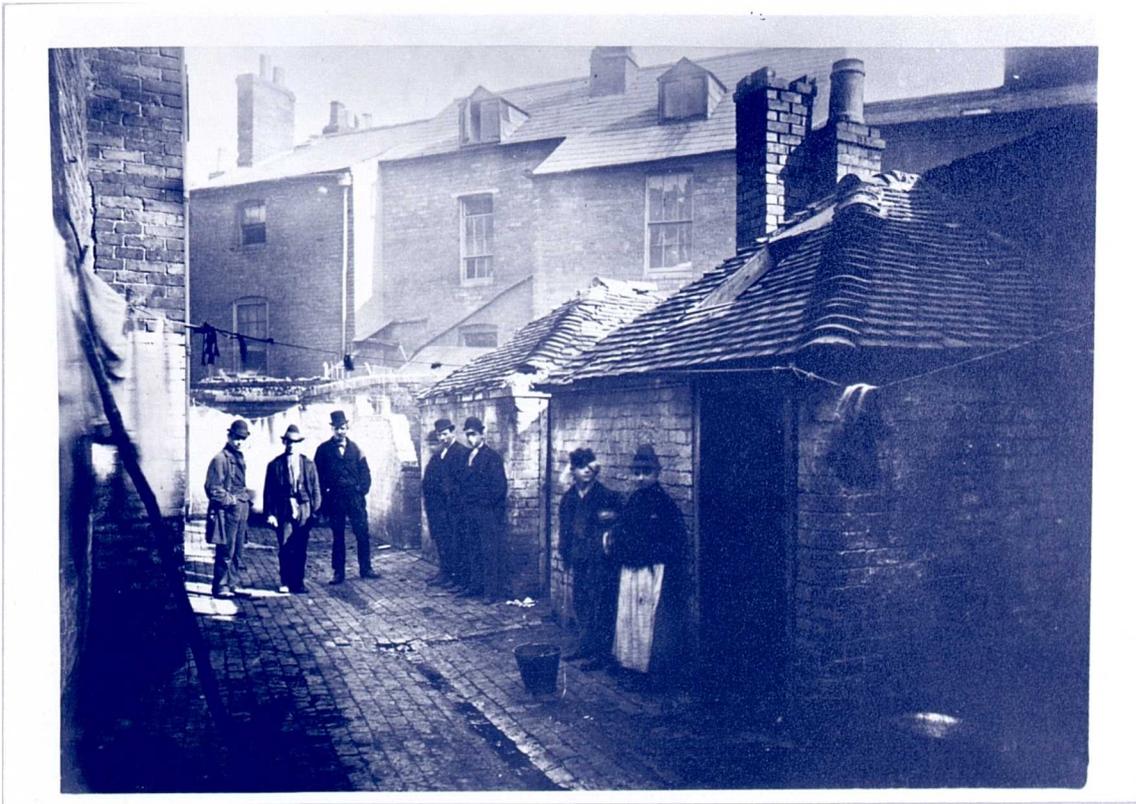


Allison Street, 1880's

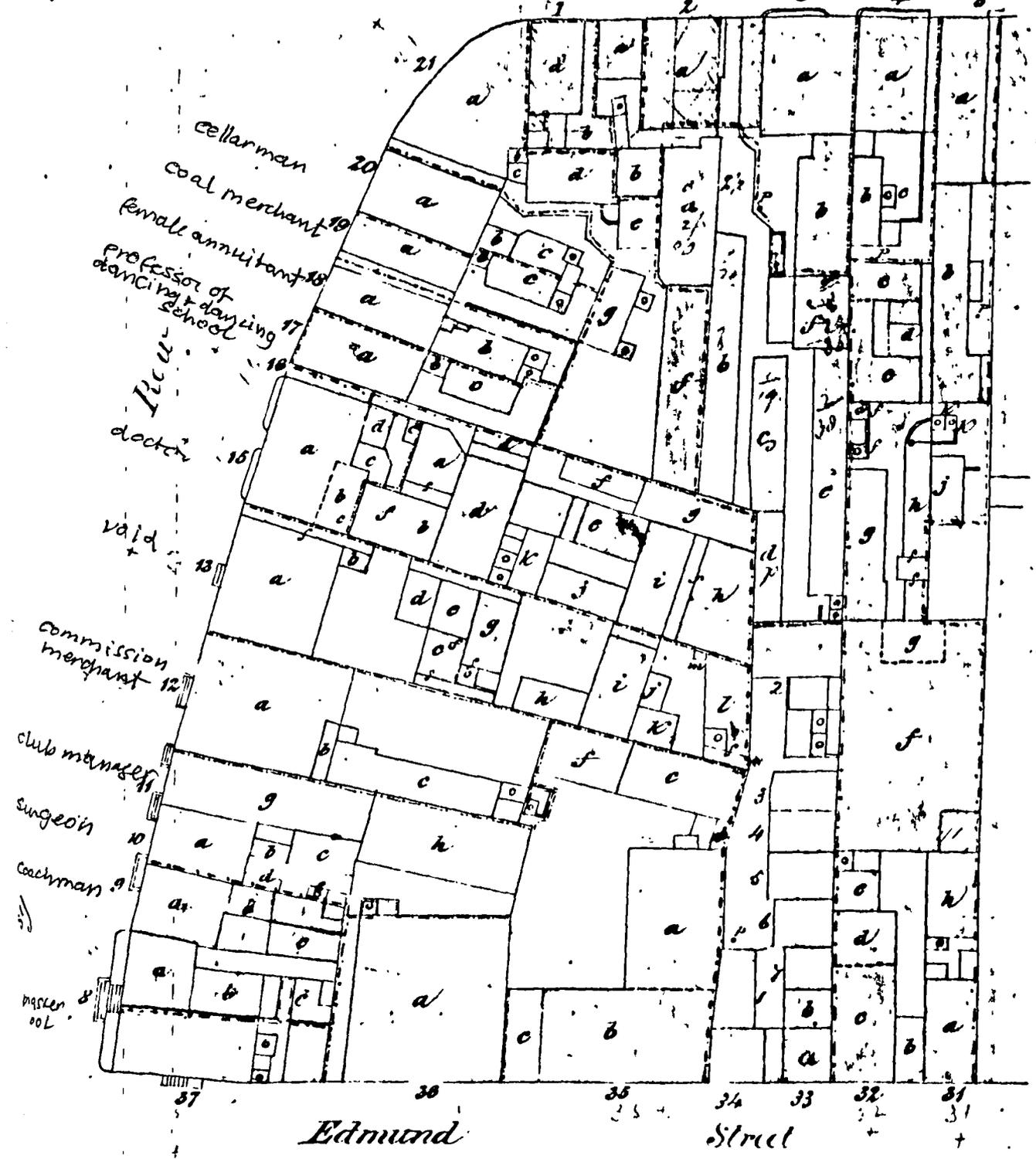




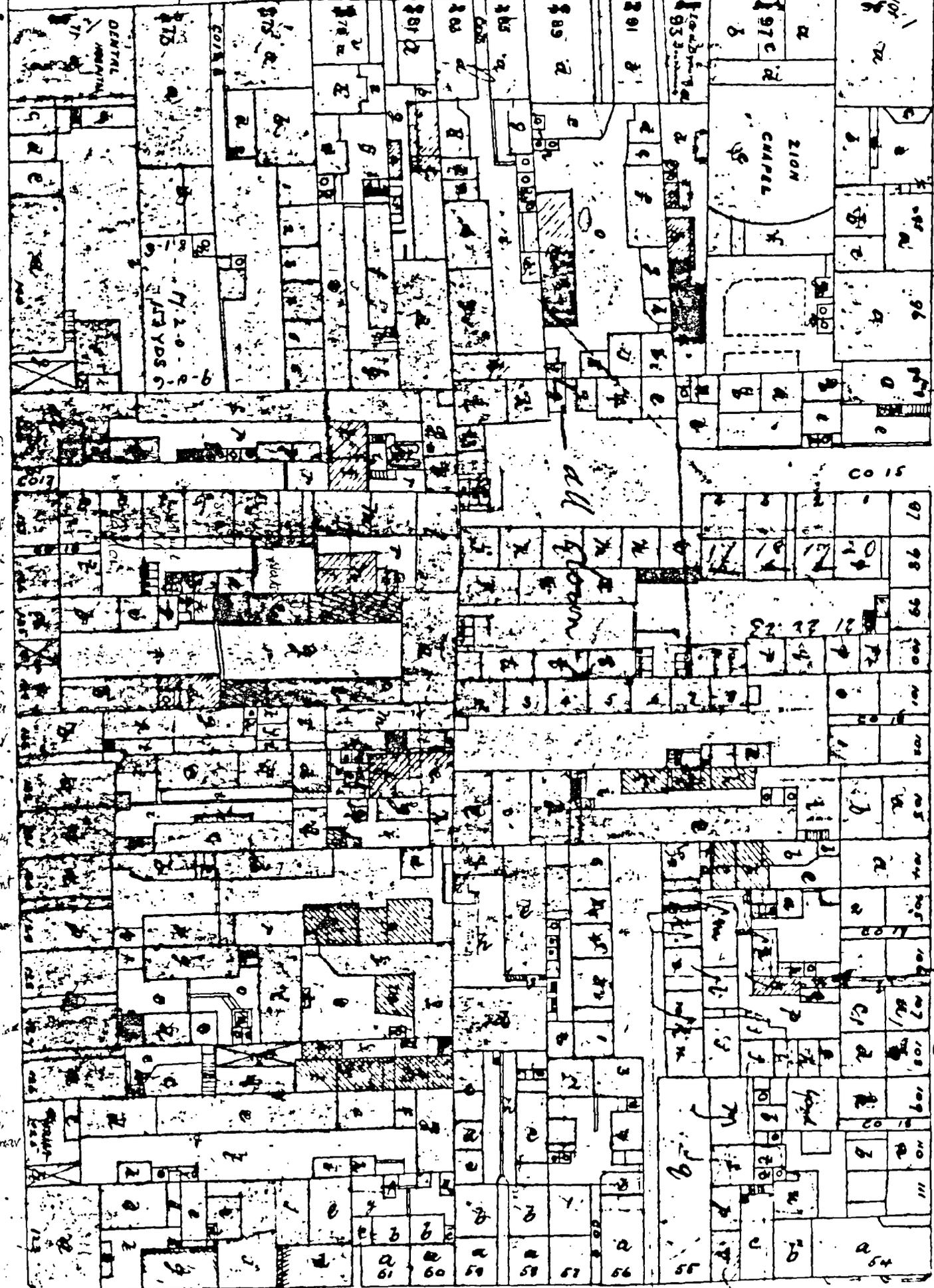
**Thomas Street,  
1874**



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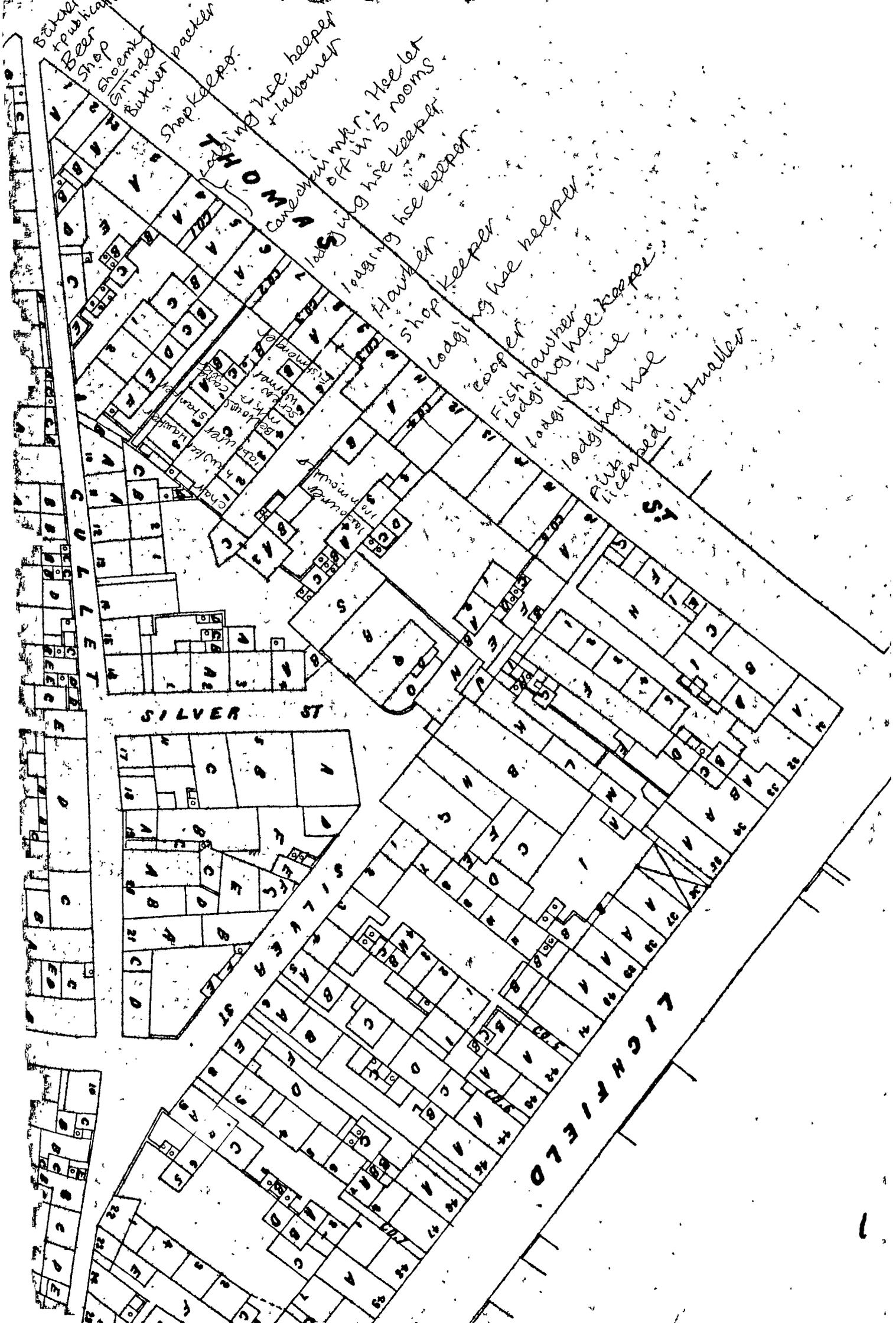
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Lodging hse keeper

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CHAPTER 2Law Enforcement Agencies

## 1

The local nature and local conditions and attitudes which shaped the administration of much 19th century government is very clearly revealed when one examines the legal and law enforcement systems in their day to day practices.<sup>1</sup> In the Boroughs this system had three major components: the Bench of magistrates, selected from amongst the town notables, which needed ratification by the Lord Chancellor; the Watch Committee, selected from and answerable to the Town Council and ultimately to the local electors; and the local police force, whose chief officer was appointed by, and answerable to, the Watch Committee. The views of these three bodies on what constituted a criminal offence, and the interaction between them, determined the manner of the administration of justice in an area.

That this could vary significantly from place to place is demonstrated by even a cursory glance at the criminal statistics. If we compare two offences prosecuted by the police, and the proportion of all convictions at summary level between a number of towns, the immense impact of local policy directives at once becomes apparent. Thus in the three towns compared below at Table 2.1 there were clearly different perceptions by the authorities in each town on the extent of the need for discipline and the suppression of undesirable behaviour. The greater leniency in Birmingham towards drunkenness and prostitution tells us something of the authorities' desire for a comparatively non-coercive policy for behavioural offences; while the proportion discharged reflects only the magistrates' view of the matter. As we shall see later over drunkenness prosecutions, the magistrates' lack of

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1. In corroboration, see J. Field: 'Bourgeois Portsmouth 1815-75: Social Relations in a Victorian Dockyard Town'. Ph.D. thesis, University of Warwick, 1979, Chapter 10.

desire to convict could be at some variance with the Watch Committee's desire to prosecute.

Table 2.1: Percentage of Drunkenness and Prostitution Cases, and of cases discharged at summary level in Birmingham, Manchester and Liverpool, 1868, 1875, 1877.

<u>Drunkenness</u>	<u>B/ham</u>	<u>Total</u>	<u>M/C</u>	<u>Total</u>	<u>L/pl</u>	<u>Total</u>
	%	<u>Summary</u>	%	<u>Summary</u>	%	<u>Summary</u>
		Nos.		Nos.		Nos.
1868	17	13806	43	22009	57	25379
1875	16	15120	39	25056	41	49178
1877	23	16015	37	24046	54	29128
<u>Prostitution</u>						
1868	0.4		7		0.3	
1875	0.1		5		8	
1877	0.2		6		13	
<u>Discharged</u>						
1868	44		26		46	
1875	27		13		19	
1877	24		17		34	

Differences in the criminal statistics between these towns were also in evidence at the Quarter Sessional level, to an extent that puzzled the Birmingham Recorder, A.R. Adams. He said it was quite impossible that only 6% of indictable crimes known to the police went to trial in Manchester in 1868;<sup>2</sup> therefore, he believed that Manchester and Liverpool persistently returned under the heading 'crime' something no other English borough returned. He put the differences down to the fact that the chief superintendents and the government did not read the orders in the same way; and he thought that the Home Office ought to send down instructions explaining what they meant by 'crime'. He also found that Birmingham had a smaller percentage of acquittals than the rest of England,<sup>3</sup> which in this case, he attributed to the care of

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2. As against 18% in Liverpool, and 21% in Birmingham.

3. Average in England in 1869 = 26%; in Birmingham 19%.

the Birmingham magistrates in sending prisoners to trial only if there were reasonable grounds for expecting a conviction.<sup>4</sup>

While it is quite likely that variations in recording practices had their influence on variations in the criminal statistics between police districts, variations in law enforcement practice had the bigger effect. Both alert one to the necessity of placing an assessment of the statistics in their local context. Any explanations will require the examination of the law enforcing agencies in the town<sup>5</sup> and of the relationships between them.

### I. Magistrates

A Commission of the Peace, together with a Court of Quarter Sessions, was first granted to the borough of Birmingham in 1839 under the provisions of the Municipal Corporation Act, 1835. Twenty-five justices were appointed to the bench, and a recorder appointed to the court of Quarter Sessions. Together with a Clerk of the Peace and two Justices' clerks (who were trained solicitors) - and with the later addition in 1856 of a Stipendiary magistrate - they constituted the personnel of the Borough courts.

The Lord Chancellor selected the first magistrates with a view to providing a politically balanced bench, in the absence of any other readily applicable criteria for the selection of a non-elective lay body of men; and in keeping with the intention of the Municipal Corporation Act that the judicial and administrative functions of borough law enforcement be kept separate to ensure that the justices were not tainted with 'party prejudice'.

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4. Recorder's address to the jury at the opening of the Michaelmas Sessions. B.G. October 24, 1871.

5. This was also Chamberlain's view. In his evidence to the S.C. on Intemperance he was asked whether he had any theory to account for the extraordinary difference between Manchester and Birmingham in the number of drunkenness prosecutions. He replied that he thought it had to do with the stringency with which the law was carried out ... he could make the statistics for Birmingham ten times as bad as they were before; just one turn of the screw would bring in ten times the number. P.P. Vol. XI 1877, pp. 234-5, q.23633-4.

To this end the Lord Chancellor omitted three Liberals, including the Mayor William Scholefield from the first list put forward by the Town Council and added those of six Conservatives.<sup>6</sup>

The division of authority over law enforcement between the magistrates and the Council provided a built-in source of dissension, in contrast with the situation in the counties where the justices remained in sole control of all aspects of law enforcement. It was the House of Lords who had insisted that the right of appointing magistrates should be held by the crown and not by the new town councils, against the wishes of Joseph Parkes who drafted the Municipal Corporation Bill, and Lord John Russell, who introduced it in the House of Commons. Russell had pledged that as long as he held power he would appoint magistrates from lists of names submitted by the town councils.<sup>7</sup> In the case of Birmingham this principle was not adhered to. The refusal of the government to confirm William Scholefield as a justice of the peace was clearly intended as a rebuff to the man (however moderate a liberal) who had been mayor at the time of the Bull Ring riots and was therefore regarded as unreliable as far as keeping law and order was concerned. A wary suspicion of the possible consequences to which the radical sympathies of the bench could lead meant that for the next twenty years the government sought to appoint Conservatives to the Bench in an overwhelmingly Liberal town. This brought the Council into dispute with both the government and the magistrates. As Bailey noted, the history of magisterial appointments in Birmingham was dominated by the involvement of the borough council as it struggled to keep the right to influence appointments. Few other borough councils asserted this right as tenaciously as Birmingham, for the reason, Bailey believes,

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6. Bunce: Op.cit. p.257.

7. J. Prest: Lord John Russell, 1972, p.183.

that Birmingham had a distinctive and largely unique conception of local government and of public service.<sup>8</sup> While this is true of Birmingham in the 1860's and 1870's, it does not apply to the earlier period when the Council was equally involved in disputes over magisterial appointments.

The roots of this struggle go back to the humiliation of the years between 1839-42 when the Home Office had imposed a police force under the control of an independent Commissioner of the Peace on the borough, after the Chartist disturbances in the town. During this period, the Council had been unable to exercise any of the powers given to it under the Municipal Corporations Act; in particular it was unable to levy any rates. It could raise no funds to build a borough gaol or pay court expenses, and prisoners had to be sent to Warwick, where a large debt to the county for gaol expenses accumulated. For a time, when the Ministry refused to advance any more money, there were not even the means to maintain the petty sessional courts in Birmingham, and the Recorder was only able to try civil cases which were paid for privately.<sup>9</sup> When the powers of the Council were ultimately reinstated a backlog of dissension with the justices and the Recorder had been built up - chiefly over finances - whose influence continued to be felt in the mutual suspicion each exhibited towards the other. The Council sought to establish its authority and to fill the Bench with its own men, claiming as a custom - if not a right - the privilege of nominating prospective justices. The justices submitted their own list; and until 1864, the council's plea that the Commission should contain several members of the Council fell on deaf ears - most strikingly in 1859 when ten out of eleven justices appointed

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8. V. Bailey: 'The dangerous classes in late Victorian England', Ph.D. thesis, University of Warwick, 1975, p.75.

9. Gill: Op.cit. pp. 261-268.

were Conservatives, only three of whom had been nominated by the Council.<sup>10</sup> The Council thus had good reason to try to gain a bigger voice over appointments to a Bench which was politically increasingly out of tune with the other branches of local government. However, by the 1860's the Council was beginning to exercise a more decisive control over municipal affairs, and its influence on the Bench was strengthened when the Mayor finally won his claim that the Mayor of every borough shall, during his mayoralty have precedence over all justices of the peace ... and be entitled to take the chair at all meetings of justices ... by virtue of his office as Mayor.<sup>11</sup>

This was an important victory for the Council which was brought about, not by its acknowledged dominance, but by the refusal of the Justices (because of a dispute with the Mayor) to allow him to preside at their meetings, as was customary.<sup>12</sup> It was the weakness rather than the strength of the Council which had initiated this dispute.

The Council had also had a troubled relationship with the Recorder Matthew Hill, who refused to acknowledge that the Council had any authority over him.<sup>13</sup> In the early years the judicial views of the court had been largely articulated by Hill, and his crusading zeal for reformatory sentences, with prisons and reformatories serving as a 'hospital for moral diseases'<sup>14</sup> spread his influence far beyond the borough's Quarter Sessions court. His successor, A.R. Adams (appointed in 1872) made little impact in an office which only required his presence for four weeks of the year. Adams had been outvoted in his nomination for the far more arduous and influential post of Stipendiary magistrate when this was first instituted in 1856, and had accepted the Recordership as second best. The Stipendiary (a trained barrister)

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10. Bunce: Op.cit. p.261.

11. Ibid.: p.262. The claim was settled by an Act of Parliament in 1861 (24 and 25 Vict. c.75).

12. Ibid., p.261.

13. Gill: Op.cit. p.414.

14. M.D. Hill: 'Draft Report on the Principles of Punishment 1847' in Suggestions for the Repression of Crime, 1857, p.13.

held the key position in the town's legal structure. He presided daily over one of the borough's two police courts which dealt with the more serious charges, the business of the second court being largely confined to transgressions of the bye-laws and licensing laws. The first Stipendiary, T.C.S. Kynnersley held the post for thirty years. He was a Conservative and non-conformist, dedicated to the cause of educational reform and the re-habilitation of delinquents. His religious and educational interests brought him into close contact with many of the leading men in public life in Birmingham, through his work as co-manager of Penn Street Industrial School; as President of the Neglected Children's Aid Society; and as committee member of the Discharged Prisoners Aid Society. Kynnersley was not the only member of the Bench to take an active part in public affairs. Until the end of the 1850's only a minority of the magistrates had been so involved. But from this time forward there was a much greater overlap than previously between Council members and magistrates, as the institutional separation between the two came under pressure from an invigorated Council seeking appointments to the Bench as a reward for party service. Whereas in 1859 only one man in the Commission of the Peace was a member of the Town Council, and none of the Mayors had been included since 1852,<sup>15</sup> from the 1860's onwards many more council members served on the Bench. By 1884 three quarters of the aldermen and 10% of the councillors were also J.P.s<sup>16</sup> In the early years appointment to the Bench had been viewed much more as an honorary reward reflected, as Bailey has noted, in the number of non-acting and non-resident magistrates in the Commission.<sup>17</sup> By 1856 only a third of those appointed to the Bench still carried out any magisterial duties,<sup>18</sup> in contrast with the years 1860-75 when there were no non-acting

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15. Bunce: Op.cit. p.260.

16. Ibid: pp.16-17.

17. Bailey: Op.cit. p.22.

18. Gill: Op.cit. p.438.

magistrates listed, apart from M.P.'s.<sup>19</sup> This does not mean that the magistrates were earlier drawn from different circles than the town's social elite, but rather that this elite had kept aloof from municipal affairs in the 1840's and 50's.<sup>20</sup> Although the Bench numbered more Conservatives in its early than in its later years, its membership was made up of professionals and substantial businessmen throughout. When, with the advent of the civic gospel, men of this calibre turned their energies to local government, the personnel of the Bench and the Council drew closer together. All the leading Birmingham families - such as the Lloyds, Middlemores, Kenricks, Chamberlains and Martineaus - came to have representatives on both Bench and Council.

The question is whether a Bench which was politically more conservative than the Council also diverged from council policy in its judicial actions. On the whole there is little evidence to support this. While the Bench may have been attractive to some men who were not directly active in politics or who were out of sympathy with the prevailing political climate, in other respects the magistrates and councillors formed part of a middle class elite who generally had more uniting than dividing them. One important unifying factor was the representation on the Bench of all the large employers and manufacturers in the town,<sup>21</sup> while in the Council chamber it was the large manufacturers who ousted the Economist party of small scale businessmen and shopkeepers, and who became associated with Chamberlain and the 'new' liberals in the revitalisation of municipal government in the 1870's. These men shared a dislike for the disorder and debasement to which the cut throat competition

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19. Return giving Names and Professions of all J.P.'s in the Various Boroughs and Cities of England and Wales, March 1st 1875. P.P. LXI, 397.

20. E.P. Hennock: Fit and Proper Persons 1973 p.34: "In the Allday era, municipal service lost what limited prestige it had begun to acquire, among the respectable section of Birmingham society'.

21. See list of magistrates, p.72-74.

amongst small masters led, and a desire to establish the rational and well ordered environment and workforce which their large scale businesses demanded. The other unifying factor was dissent, which fuelled the great reforming campaigns in which Birmingham played such a large part - notably parliamentary reform and educational reform. These campaigns found few local opponents on grounds of principle, although there was often dissension over the degree and method of implementation.

In the Chartist years, the disorders in Birmingham were blamed on the magistrates who, out of sympathy with the Chartists, held their hand and did nothing to prevent the riots.<sup>22</sup> Tholfsen<sup>23</sup> has traced the subsequent history of the middle class and working class alliance for the extension of the suffrage. Although Hooper<sup>24</sup> pronounces that the three middle class associations the Complete Suffrage Union (1848), the Reformers Union (1858) and the Radical Reform League (1861) failed in their attempt to revive the inter-class alliance, the fact remains that the attempt was made and that electoral reform remained the chief goal of Birmingham politics until the passing of the 1867 Reform Act.

Several of the magistrates on the Bench in the 1860's and 1870's were actively involved in these campaigns. J. Jaffray and H. Manton had both been members of the Birmingham Political Union; and both were among the five men deputed to invite John Bright to stand as a Liberal for the cause of Reform in Birmingham.<sup>25</sup> Another was the button manufacturer, T.S. Wright whom Tholfsen calls an advanced liberal who had helped to establish the Reformers Union, and who subsequently dedicated his support for reform to Bright. The

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22. Gill: Op.cit. p.252.

23. T.R. Tholfsen: 'The Origins of the Birmingham Caucus', The Historical Journal II, 2, 1959.

24. Hooper: Op.cit. p.371.

25. Alderman Manton's Reminiscences, specially written for the Birmingham Weekly Mercury, November 15, 1902. BRL: 211801.

names of these three men, together with those of Charles Sturge and T. Lloyd crop up constantly, in the chair or on the committee of the meetings and associations pressing for reform. Two other magistrates, W. Holliday and T. Phillips were members of the Birmingham Liberal Association in the year of its foundation in 1865.<sup>26</sup> However, not only Liberals and dissenters believed in class cooperation and reform, in a town where opposition would have meant political suicide. The Tory magistrate, S.S. Lloyd, who was invited by the Working Men's Liberal Conservative Association to stand as parliamentary candidate on Scholefield's death,<sup>27</sup> was in favour of the extension of the franchise to the responsible and intelligent section of the working class. In Birmingham no voices were raised against such proposals. Robert Lowe's castigation of the working classes found no echo in the town. Instead, he was asked to modify the harsh, unjust opinions about them which he had expressed in Parliament.<sup>28</sup>

Similarly there was no dissension at the end of the 1860's over the need for the establishment of a national system of education, although here as elsewhere there was dissension over the extent of secular control of the schools. Joseph Chamberlain, renowned for his 'blazing interest in education' wrote a paper in 1867 promoting universal, compulsory education which his biographer called 'the foundation stone of his political career'.<sup>29</sup> At the conference which met to launch the Birmingham Education Society, George

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26. J.A. Langford: Modern Birmingham and Its Institutions: a chronicle of local events from 1841-1871, Vol. II, Birmingham 1877, p.345.

27. Ibid. p.348. The magistrates J.D. Goodman, J.S. Hopkins and J. Lowe nominated and supported him.

28. B.G. January 5, 1867. Open letter by J. Guedalla (on the executive of the Reform League) addressed to Robert Lowe.

29. Victoria County History of Warwickshire, Vol. VII 1964, p.490. Chamberlain was a Unitarian and belonged to the Church of the Messiah where Crosskey was Minister. Crosskey's political outlook was similar to that of Dawson and Dale; his special interest was in education. Gill: Op.cit. p.379. BRL.276907.

Dixon, supported by Chamberlain, called for a compulsory education system; and the vote of thanks was moved by J.D. Goodman, J.P. and seconded by T.C.S. Kynnersley, the Stipendiary magistrate.<sup>30</sup> At a public meeting of working men presided over by J.S. Wright and addressed by Jesse Collings it was resolved to form a league to promote universal education;<sup>31</sup> and once the National Education League was constituted, several magistrates made large financial contributions.<sup>32</sup> But the formation of the League led to the setting up of a defence association - the Birmingham Education Union - in which a number of magistrates played a leading part. Kynnersley took the chair at the inaugural meeting; and amongst those taking part were J.D. Goodman, H. Manton, J.S. Hopkins and J. Lowe.<sup>33</sup> These men were not necessarily Anglicans - Manton and Kynnersley were non-conformists - but their opposition to the League arose because of their desire to continue to control the local elementary schools rather than to hand them over to local government control.<sup>34</sup> In the Birmingham of the 1870's this meant secular education; and it was the strength of their religious convictions, as much as their specific religious adherences, which led the men of the Union to oppose the policy of the League. The opposition continued after the passing of the 1870 Education

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30. Obituaries, cuttings collected by J.T. Bunce 1871-1898. BRL. 276907. Dixon was a J.P. from 1864.

31. Langford: Op.cit. p.409. The meeting was on February 4, 1869.

32. Ibid., p.418. J. Chamberlain, G.B. Lloyd and W. Middlemore each subscribed £1,000. J. Jaffray and W. Kenrick contributed £500 each. The League pressed for the establishment of a national education system, aided from the local rates with free admission, compulsory attendance and non-sectarian instruction.

33. Langford: Op.cit. p.412. All except Manton were conservatives.

34. A.F. Taylor: 'Birmingham and the Movement for National Education 1867-1877.' Ph.d. thesis, University of Leicester, 1960, p.80.

Act, with several magistrates among the 'Bible Eight' and its supporters, who wanted the Bible to be taught in the elementary schools and who sought election to the School Board on this issue.<sup>35</sup>

There was thus division between a number of magistrates over the best means to institute an elementary education system. But there was no disagreement about the importance of, and need for, some such system - witness the early support for the Birmingham Education Society by Kynnersley and Goodman. Taylor also maintains that Dixon originally had a better response outside than inside the Council Chamber on the education question.<sup>36</sup> The meeting at his house which led to the formation of the Birmingham Education Society was attended, amongst others, by W. Kenrick, T. Martineau, W.L. Sargant, J.S. Wright and G.B. Lloyd from among the magistrates.

The elevation of the working class through education had almost as long a history in Birmingham as the cause of electoral reform. The two were intimately connected, and for those concerned with these issues, the advancement of the one meant the necessary advancement of the other. Men like Henry Manton, Charles Sturge and J.S. Wright were as active in the educational as the political field. The Quaker Charles Sturge pioneered the provision of schools for adults in Birmingham; was co-founder of Stoke Reformatory (one of the first reformatories in the country) and its life-long manager, and became chairman of the Industrial Schools Committee. Henry Manton, a congregationalist, called together a group of friends (including J.S. Wright) to found the Sunday School Union in 1842. He remained president of the Union for the next 60 years, and his close association with Sunday School work, and

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35. The Liberal, October 9, 1873. BRL: 69235. The magistrates standing for election were A.J. Elkington and W.L. Sargant, both Liberals, and S.S. Lloyd. Their supporters among the magistrates were W.M. Ellis, J.D. Goodman, J.S. Hopkins and T. Lane - all conservatives.

36. Taylor: Op.cit. p.25.

devotion to the religious instruction of the young restrained him, he recalled, from active political work during his early years.<sup>38</sup> J.S. Wright was equally involved in educational work, both inside and outside the church. At the People's Chapel in Hockley he was responsible for its educational programme, organising evening classes for young men and supervising the Sunday School classes. From 1869-77 he was on the executive committee of the National Education League; and he was a member of the Birmingham School Board from 1870 until his death.<sup>39</sup> Another magistrate, E.C. Osborne - a printer and stationer, on the Bench from 1874 - was a founder member of the Church of the Saviour (the cradle, under George Dawson, of the 'civic gospel') and the moving spirit behind the campaign for a free library. In these men the connection between religion, public service and educational work was particularly direct. For other magistrates - most notably Dixon, Timmins and Jaffray - who worked together in the Birmingham Educational Society and the National Education League, educational reform became the leading question of the day.

The involvement of magistrates with education was in fact so marked that if there was a difference in outlook between the members of the Bench and the council, it is here that one might find it. We have seen that the Bench was as a whole more conservative than the council. At the same time the magistrates were men of deep religious convictions, and it would seem that where politics did not offer an opening for the expression of their beliefs, the field of education presented the most suitable arena for the expression of their ideological commitments.

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38. Alderman Manton's Reminiscences: Op.cit.

39. Prior to his joining the People's Chapel, Wright had belonged to Zion Chapel where Charles Vince was minister, 'the best loved of all the Birmingham ministers of his time'. (Gill: Op.cit. p.377).

It comes as something of a surprise to find that temperance did not equal the movements for political and educational reform as a focus for the magistrates' evangelical concern, since the drink question was of direct relevance to the work of the Bench. Support for temperance movements and for restrictions on licensing was generally stronger in liberal than in Tory towns; and the reform of the licensing laws found general support and approval amongst the authorities in Birmingham.<sup>40</sup> But there does not seem to have been the ardour in enforcing these laws, especially among the magistrates,<sup>41</sup> that there was in some other places. For a start, there may have been less of a problem, since there were fewer licensed premises in Birmingham than elsewhere,<sup>42</sup> leading a visitor to comment at the end of the century that Birmingham was not a drinking town.<sup>43</sup> Secondly, as Hennock has shown<sup>44</sup> the almost total disappearance of councillors connected with the drink trade was in marked contrast to what was happening in other towns at the time.

On the Bench none of the magistrates appear to have had a direct connection with the drink trade;<sup>45</sup> while there were certainly temperance

40. S.C. on Intemperance: Op.cit. q.2446. Chamberlain gave evidence that for the last 10 years (up to 1877) the magistrates had refused to grant any new licenses.

41. He also said that the employers of labour took an interest in intemperance - but specially as compared with other towns. Ibid. q.2371.

42. In 1877 there were 2,092 licensed premises, including grocers, in Birmingham - or 1 premise per 174 inhabitants. S.C. on Intemperance, q.1975. At the end of the century it was found that there was 1 licensed premise for every 193 inhabitants in East London, 1 per 176 in Sheffield and 1 per 215 in Birmingham. Seebohm Rowntree: The Human Needs of Labour, 1899p.123.

43. R.H. Sherrard: The Cry of the Poor, 1901, p.218. The Chief Superintendent of Birmingham, and the Mayor gave evidence that there was not much drunkenness in Birmingham according to the population. S.C. on Sale of Liquors on Sunday Bill 1867-8, XIV, q.1616, 1.1953.

44. Hennock: Op.cit. Table 5, p.34.

45. Only T. Phillips was a strong supporter of the Birmingham & District Licensed Victuallers Protection Society, which he had helped to found when mayor in 1845. It is striking how few J.P.'s subscribed to this Society between 1845-77. Apart from subscriptions from the various Mayors and M.P.'s, only J.S. Hopkins and A. Biggs gave occasional support. Birmingham & District Licensed Victuallers Protection Society, Annual Reports 1869-94. BRL: 140051.

supporters amongst them.<sup>46</sup> But the temperance movement does not seem to have made a big impact (although several temperance societies were in existence in the town from the 1840's onwards) - since Chamberlain, when asked what attempts were made to reform drunkards in Birmingham replied that there was only the Birmingham Temperance Society which had begun its work in 1875.<sup>47</sup>

The Licensed Victuallers were not strongly organised.<sup>48</sup> They strove hard for respectability and acceptance, and the chairman of their Friendly Society even declared himself against free trade in drink and an advocate of temperance.<sup>49</sup> But their subscription list shows that they were only able to attract small donations, and their annual report complained that only about half of their total number in the borough were members of the society.<sup>50</sup> In the absence of strong pressure groups, either for or against drink (apart from the episode of the Public House Inspectors) the magistrates pursued a lenient policy, to the extent that they were chided for their laxness.<sup>51</sup>

46. A meeting of the Birmingham Temperance movement was addressed by Kynnersley, Sturge and T.S. Wright. The Times, September 22, 1869. Sturge was a teetotaler, and the Morning News commented that this disqualified him from understanding drunks in court. Morning News Cuttings, 1875. Wright forbade smoking, drinking and swearing at his button works in his Rules for Workmen.

47. S.C. on Intemperance, q.2315.

48. After the introduction of the Public House Inspector scheme, the bitter hostility of the publicans was aroused and they held indignation meetings and formed an electoral association to secure the return to the Town Council of representatives pledged to the support of the "righteous privilege" of the liquor seller. J. Chamberlain: 'The Right Method with Publicans', The Fortnightly Review, CX111 New Series May 1876. But in spite of that the efforts of the Chairman of the Licensed Victuallers Association to come on, the town council were defeated - as were two candidates supported by the publicans at the municipal elections. S.C. on Intemperance, q.2407.

49. The Times, September 15, 1871.

50. Birmingham & District Licensed Victuallers Protection Society. Annual Report for year 1868-9. BRL: 140081.

51. The lay magistrates controlled the court which heard the public house cases and ran the Brewster sessions. The Police chief could recall only two instances between 1872-77 when a house lost its licence. Major Bonds evidence, S.C. on Intemperance, q.2180.

Joseph Hood remembered their lack of interest in the suggestions of temperance workers. 'When temperance reformers used to approach the magistrates at licensing sessions to ask that no additional licences be granted ... our suggestions were frequently pooh-poohed',<sup>52</sup> he recalled. The satirical paper The Town Crier criticised the magistrates for being so 'tenderly scrupulous of injuring the vested interests of the licensed victuallers and their landlords on licensing day',<sup>53</sup> and for staying away on that day 'so as not to interfere with property'.<sup>54</sup>

It was never suggested that the magistrates were guided by self-interest, or acting improperly, in the criticisms that were made - only that they were not sufficiently rigorous. They were also criticised for their indecisiveness in acting against the Murphy rioters, before the troops were called in, and for their leniency towards the 'roughs' in the outbreak of street disorders in the 1870's.<sup>55</sup>

Clearly, they felt unthreatened by any of these events. But their liberal and laissez-faire principles also appear to have been stronger than any evangelical tendencies. It appears that the anti-evangelical pragmatism propounded by George Dawson as a guide in municipal affairs<sup>56</sup> found a large measure of support on the Bench, either out of conviction or because this was the most rational choice open to a group of men who might find themselves opposed to the ruling majority in the town. They were themselves too political divided, and at the same time too economically secure, to have felt the need to offer concerted opposition in the form of a committed, evangelical sentencing policy.

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52. Joseph Hood, J.P. 'I Remember' series. Birmingham Gazette & Express, 1907-9. BRL.217750. September 21, 1907. Hood was a member of the Band of Hope.

53. The Town Crier, April 1869. BRL: 10901. This was a satirical paper started by a group of men, mostly associated with George Dawson, 'to promote good government and the progress of the town'. See the account by one of them, T. Anderton: The Tale of One City, 1900, pp.133-4.

54. Ibid., September 1870.

55. Ibid. April 1890. 'The magistrates are slow to put down nuisances ... the police have been discouraged in their attempts at interference'.

56. Hennock: Op.cit. pp. 64, 72-

List of J.P.'s, their Religion, Involvement with religion, reform politics and education, and the size of their economic undertakings, active in the period 1867-1877.

In 1870's

Name	Date Appointed	Occupation	Size of Workforce	Religious Adherence	Political Adherence	Active Reform	Education
J.B. Melson	1841	Doctor	*Leading firms.		Liberal	Lib. Assoc.	✓
T. Phillips	1849	Merchant					
S. Thornton	"	"					
D. Malins	"	"					
S. Buckley	1856						
W. Middlemore	"	Manufacture	*Saddlery 500	Baptist	Liberal		✓
T.C.S. Kynnersley	1859	Stipendiary magistrate		Non-Com-formist	Conservative		✓
C. Sturge	"	Corn merchant		Quaker	Liberal	Lib. Assoc.	
T. Lane	"	Manuf.			Conservative		
S.S. Lloyd	"				Conservative		
W. Holliday	1864	Linen draper			Liberal	Lib. Assoc.	
T. Lloyd	"				Liberal	Lib. Assoc. Rad. Reform League.	
H. Wiggin	1865	Manuf.					
H. Manton	"			Congregat-ionalist	Liberal	Lib. Assoc. B.P.U.	✓
T. Avery	"	Scales Manuf.	*6-700	"	Conservative		✓
H.R. Cooksey	"	Coffin Furn.mkr.					

Name	Date Appointed	Occupation	In 1870's Size of Workforce	Religious Adherence	Political Adherence	Active Reform	Education
G. Goodrich	1865						✓
J.D. Goodman	"	Gun Manuf.	*100 invested in B.S.A.	Quaker	Conservative		✓
J. Jaffray	"	Newspaper Proprietor				Lib. Assoc. B.P.U.	✓
T. Cox	1867	Shopkeeper					✓
W. Gough	"	Merchant					
J. Graham	"						
R. Martineau	1868				Liberal		✓
J.B. Payn	"						
F. Welch	"						
R. Winfield	"	Brass Manuf.	*1,000	Anglican			✓
C.R. Cope	1871	Cutlery Manuf.					
E. Gwyther	"						
W. James	"						
J. Poncia	"	Hardware Merchant					
H. Van Wart	"	Merchant					
J.S. Wright	1874	Button Manuf.		Non-conform- ist	Conservative Liberal	Lib. Assoc. Reform Union	
A. Biggs	"	Cigar & tobacco Manuf.					

Name	Date Appointed	Occupation	In 1870's Size of Workforce	Religious Adherence	Political Adherence	Active Reform	Education
J. Chamberlain	1874	Screw Manuf.	*2,500	Unitarian	Liberal	Lib. Assoc.	✓
J. Chesshire	"	Surveyor					
A.J. Elkington	"	Electro- plate mfr.	*1,000	Anglican	Liberal		✓
W.M. Ellis	"	Metal merchant			Conservative		
T.B. Fletcher	"	Doctor					
R. Heaton	"	Brass Manuf.	*300		Conservative		
I. Heslop	"	Doctor					
J.S. Hopkins	"	Electro- plate mfr.	*450		Conservative		
W. Kenrick	"			Unitarian	Liberal		✓
G.B. Lloyd	"			Quaker	Liberal		✓
J. Lowe	"	Manuf.			Conservative		
E.C. Osborne	"	printer & stationer		Non-Conform ist.	Liberal		✓
S. Timmins	"	Manuf.		Non-Conform ist	Liberal		✓
H. Richards	"	Merchant			Conservative		

## II, The Watch Committee

The Watch Committee which had charge of the police was a key committee of the Council, and the cost of the police a major charge on the borough fund. In a report on the powers of the Watch Committee the Town Clerk wrote that:

the Watch Committee is distinct from other committees appointed under Section 70 of the Municipal Act, and Improvement Act of 1851, in as much as the acts of all those committees must be approved by the Council. The Watch Committee do not receive their powers from the Council but from the Act itself, the Council merely nominating the persons who shall form it. 1

Although the Watch Committee was supposedly distinct from the other committees of the Council, it exercised no separate judicial function. Thus, as Pilling has pointed out, it was local interests which provided the framework for its direction of the police; and the committee tended to see the force as agents of these interests rather than as executors of the law.<sup>2</sup> The Watch Committee viewed the police primarily as a means of guarding the interests of the ratepayers and of responding to their grievances in respect of the protection of property and the safety and seamliness of the streets. Secondly, the police were seen as a convenient branch of local government, useful in carrying out a wide range of bureaucratic tasks at no extra cost.

The Committee's special status was more impressive in theory than in practice, because the Council's control over finance and concern to keep down the rates had serious implications for Watch Committee policy. Its first action, when it was finally constituted in 1842 had been to set up a sub-committee 'specially directed to a reduction in the expense of maintaining a police force,<sup>3</sup> which recommended a cut back of fifty men from a force of

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1. B.W.C.: February 15, 1870.

2. C. Pilling: 'The Police in the English Local Community, 1856-1880', M.Litt. thesis, University of Cambridge, 1974, p.64.

3. B.W.C.: November 8, 1842.

370. A year later, it was proposed to reduce the force to 250 men, and to cut their pay.<sup>4</sup> It could not therefore be claimed that the committee had started its work in any spirit of extravagance. But the financial limits it set itself were further constrained by the Council's policy of minimal expenditure. The relationship between Council and 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 financial decisions, was not the position in Birmingham. Here the Council kept a close watch on all the financial implications of Watch Committee policy. They turned down the committee's recommendation for the appointment of a medical officer of health in 1852. They dragged their feet over the establishment of a police superannuation fund when requested to do so in 1854 and 1857 - by which time it had become mandatory under the Birmingham Improvement Act. Watch Committee decisions to increase the size or pay of the force were also not automatically ratified - in one instance, it took a year of pressure from the committee, backed by the Government Inspector, to get the Council to agree to an increase.<sup>5</sup> An inadequate borough rate had led in the 1850's to a rising deficit in the Corporation's accounts, but an Improvement Bill to increase the Council's borrowing powers was thrown out at a ratepayers' poll in 1855. As a consequence, the Corporation was refused any extension on its overdraft, the Finance and Public Works Committee 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

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4. Ibid., April 14, 1843.

5. B.W.C.: December 1865-December 1866.

down, even though the refusal meant losing financial aid from the government, and despite the warning 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'.<sup>6</sup> Thus concern over expense necessarily became one of the main organising principles of Watch Committee policy, which extended right beyond the period after the defeat of the 'Economists', in a largely successful attempt to keep down the rates.<sup>7</sup>

In consequence, there were fewer policemen per head of population in Birmingham than in almost all other towns of comparable size. This is the single most important factor affecting the rate of offences, where the police were the prosecutors, in the criminal statistics (most notably, as Chamberlain conceded, in the rate for drunkenness charges). The following Table shows how little the number of police per population, or their cost to the borough, had changed between 1857 and 1877.

Table 2.3: No. of Policemen per Population, and Cost to the Borough in Selected Years. 8

<u>Birmingham: No. of Police per Population</u>		<u>Cost of Police (excluding Govt. grant) £s.</u>
1852	1:766	18,391
1857	1:713	20,532
1867	1:811	21,157
1873	1:789	26,519
1874	1:776 M/C L/pl. <sup>9</sup>	26,114
1875	1:718 1:438 1:417	23,091
1876	1:715	23,507
1877	1:726	20,442

6. A. Briggs: Victorian Cities, Harmondsworth, 1868, pp. 211-214.

7. Bunce: Op.cit.: Rate table, p.58.

8. Source: Bunce, Op.cit. Tables I & II, pp. 294-5. Bunce's figures refer to the authorised size of the force. The full complement was never achieved. Thus in 1877, the authorised size of the force was 520, but Major Bond said that the average number was never more than 480 - making the ratio to population even lower. See Bond's evidence to the S.C. on Intemperance, Op.cit. q.2007.

9. B.W.C.: August 2, 1875.

The lengths to which economy could go were extreme. It became established practice to sell the police's old clothes (the income going into the police superannuation fund), to rent out the Public Office when it was not being used, and to hire out constables for private watching.<sup>10</sup> The Committee agreed to hire out two constables to patrol the Worcester and Birmingham canal, if the company would pay their salaries;<sup>11</sup> a detective inspector was assigned to watch at the railway station and paid for by the L.N.W.R. railway company;<sup>12</sup> and policemen were regularly paid by the theatre managers to keep watch at their theatres. But the Committee occasionally, and as late as 1876, agreed to allow policemen to undertake private watching, to be paid for by the party concerned.<sup>13</sup> This was unprecedented, certainly among other police forces in the county,<sup>14</sup> and directly counter to the guidelines set by the first Metropolitan force. However, the point about the 1856 Police Act was that it was permissive, not mandatory, and very few conditions had to be met for the force to qualify for a government grant. Thus for the Watch Committee, their desire for economy and for order was met by allowing private companies, and occasionally individuals, to pay for police surveillance in places where theft and disorder were likely to take place. Since a policeman's day beat was five miles, he would normally have missed many such instances unless specially posted to the trouble spots.<sup>15</sup>

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10. B.W.C.: August 16, 1859.

11. Ibid: December 22, 1869.

12. Ibid: May 19, 1868. The question of constables watching for the L.N.W.R. was taken to Parliament by Liverpool Corporation, with the decision that the power to appoint and dismiss lay with the justices.

13. The application, from the Birmingham Arcade Co. was first turned down, but later acceded to. B.W.C.: July 11, September 26, 1876.

14. In Coventry, for instance, this was forbidden from 1862. B. Weinberger: 'Crime and the Police in the Late 19th Century', M.A. thesis, University of Warwick, 1976, p.32.

15. B.W.C.: August 30, 1864. Chief Superintendent Glossop's statement to the Watch Committee.

The temptation to use the police for a range of administrative tasks was also very great. Central government's perception that the police needed to gain the moral assent of the community in order to be effective accorded with the local authorities' concern for ratepayers' 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. 16

In Birmingham the police were used as auxillary firemen, the Watch Committee reporting as late as 1871 that they considered it too expensive for the Council to maintain a separate Fire Brigade in the Borough;<sup>17</sup> 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.<sup>18</sup> Finally the Home Office sent round a letter listing the 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.<sup>19</sup> This was never strictly adhered to, in the face of a rising tide of local administrative tasks. The police were appointed to assist the summoning officer in levying the rates (1868); as official agents for proceedings against parents, for the Inspector of Reformatory and Industrial Schools (1872);

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16. Constabulary Commissioners Report, 1839, p.227, quoted in A.P. Donajgrodzki 'Social Police and the Bureaucratic Elite' in Social Control in 19th Century Britain, ed. A.P. Donajgrodzki, 1977, p.67.

17. B.W.C.: March 14, 1871. No Fire Brigade was instituted until 1879, after a disastrous fire when the police organisation was criticised. Bunce: Op.cit. p.281.

18. Police Service Advertiser: December 20, 1870.

19. Ibid: January 5, 1871.

and as relieving officer in the tramp ward of the workhouse, responsible also for tracing and detaining men whose families had entered the workhouse and become a charge on the parish (1869).<sup>20</sup>

As time went on, the police undertook more tasks at the direction of central government and other statutory bodies. This brought to the fore strains in the relationship between the Watch Committee and the Chief of Police. The Watch Committee saw the Chief Superintendent as a local government employee directly answerable to them. Police chiefs tended to see themselves as professionals, and the Watch Committee as a bureaucratic obstacle to the efficient running of the force. As the Coventry police chief put it:

the Watch Committee may be good at their business, but they know very little about the management of the police force. 21

The qualities looked for in a chief of police had been a bone of contention between police officers and Watch Committees from the inception of the Borough forces. The police newspaper campaigned both against the tendency to appoint military men as police chiefs, and to the appointment of yes men, rather than of men with skill and experience in tracking down thieves.<sup>22</sup>

In Birmingham the first Chief Superintendent, R.A. Stephens - who held the post from 1842-1860 - had his differences with the Watch Committee, and several times offered, or was ordered to, resign.<sup>23</sup> To a large extent, these were the teething troubles of a new organisation. It took time for those having charge of the police to define areas of responsibility and to clarify what standards of behaviour they expected. Decisions had to be taken to

20. Other extraneous duties included the Inspection of Petroleum and Explosives, and of Hawkers licenses.

21. Police Service Advertiser, July 25, 1873. Captain Norris' remarks at a dinner given to him by the Coventry Police Force.

22. Ibid: August 15, 1868; June 5, 1869.

23. B.W.C.: January 6, 1845; September 23, 1851.

disallow the police from holding other jobs, and whether they should be allowed to accept gratuities, or undertake private watching, all of which had been common practice before police reorganisation. The Chief Superintendent was held financially responsible in a chronically under-financed force; and the temptation for the first superintendent to borrow from funds which were to hand to pay the deficit on another account proved too great for him, in a period before the demarcation of duties had been clearly drawn. He was asked to resign, but was reinstated after a memorial in his favour from councillors and citizens was presented to the Committee.<sup>24</sup>

The responsiveness of the Watch Committee to the demands of members of their electorate was a distinctive characteristic of the Committee. Their aim was to try and satisfy these demands, while they delegated matters concerning police organisation to the Chief Superintendent. In the absence of any serious complaints against the police, they delegated to him the right to suspend police officers without having to bring the matter to the Committee.<sup>25</sup> The second police chief, promoted from within the force where he had been Detective Inspector, was appointed in 1860, and the Watch Committee, having established a satisfactory working relationship with him, exercised a lenient authority. By 1867 they decided that they only needed to meet fortnightly instead of weekly,<sup>26</sup> and then adjourned for a month in the summer.<sup>27</sup> In 1870 they started on an experimental basis, the practice of allowing the Chief Superintendent to take charge of all suspensions,

24. Ibid: January 14, 1845.

25. Ibid: October 15, 1858. In 1876 the Chairman of the Watch Committee, responding to a letter in the papers by a constable, agreed that the Watch Committee had powers independent of the Town Council and Chief Superintendents had power independent of the Watch Committee. But, he said, the Watch Committee never attempted to act independently of the Council and he believed it was best if all three always acted in accord. B.G. November 15, 1876.

26. B.W.C.: November 13, 1867. It is a notable testimony to the sense of security and peace of mind of the members of the Watch Committee that this decision was taken only a few months after the Murphy riots.

27. Ibid., August 8, 1876.

reprimands and fines, as well as recommendations for promotion and admission to the force, without prior consultation with the Committee.<sup>28</sup> But all charges brought by civilians and all severe offences were to be dealt with by the Committee. In this way, a quasi-formal recognition was given to the growing professionalism of the police, while matters concerning the relationship with the public remained firmly in the control of the Committee.

But the independence of the police could go too far. The limits to their autonomy were put to the test by the third Birmingham police chief, Major Bond.<sup>29</sup> He took a much more uncompromising line than his predecessor over his duties, which he regarded as those of 'carrying out the criminal law as it is laid down'. He went on to state that,

the chief officers of the police ought not to be called on to declare in what manner they will carry out the law; if they exceed their duty the magistrates before whom the case comes will be able to protect the public at large. 30

In other words, Major Bond saw himself as answerable to the legal authority of the magistrates, and not to the Watch Committee. Relations with the Committee became strained when Bond on his own initiative started a policy of arresting 'quiet' drunks against the previous custom of leaving them alone. There was an outcry, the magistrates refused to convict, and the policy was abandoned. The Watch Committee ordered him to proceed as usual by acting only against disorderly or riotous drunks;<sup>31</sup> while the magistrates

28. Ibid: February 22, 1870. Six months later the experiment was extended for another six months, and was not subsequently rescinded.

29. Bond, a retired army major, was appointed in 1876 after serving as Chief Superintendent in Cardiff - a port well known for its unruly inhabitants (see A. Bainbridge and D. Jones: 'Crime in 19th Century Wales: a preliminary Report on the Sources and Character of Crime in Welsh Communities'. Report to the S.S.R.C. 1975). The Watch Committee may have decided in favour of a military man after the many street disturbances in Birmingham in the mid 1870's - but his style of policing ultimately did not suit their tender liberal consciences.

30. S.C. on Intemperance: Op.cit: q.1930.

31. Ibid: p.1948.

objected to cases concerning quiet drunks because these could only be brought to court on a summons, and a summons could only be obtained by the 'un-English' practice of following the person home to ascertain his address.<sup>32</sup>

When Bond subsequently instituted proceedings against the manager of Day's Concert Hall for alleged improper performances and for putting on plays without a licence, without consulting the Watch Committee, relations deteriorated to breaking point. Major Bond claimed that he had an independent right to institute prosecutions, as 'the guardian of public morality and order', whereas the Committee required that as their officer he should not take special proceedings 'likely to affect a number of ratepayers, or to provoke public comment.'<sup>33</sup> Ultimately, Major Bond was called upon to resign.<sup>34</sup>

The Watch Committee constituted his employers and retained the upper hand. But the dispute encapsulates the differing purposes and priorities between the Committee and the Police Chief, and the precarious balance which needed to be maintained between the growing autonomy of the police, and the Watch Committee's concern for the ratepayers. While the Committee had readily conceded autonomy to the police chief over the internal management of the force, it was these interests which they were concerned to guard. The speed with which they had relinquished control over the ordering of the force, without any pressure from the police chief and despite the fact that this was officially their responsibility, only underlines the fact that it was not here, but in the response of the ratepayers to the police, that the Committee's chief interest lay.

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32. Ibid: p.1925.

33. Bunce: Op.cit: p.284.

34. Bond appealed to the Justices, and to the Home Secretary, who refused to intervene. The Justices said they had no desire to interfere in arrangements between the Chief Constable and the Watch Committee. Bunce: Op.cit: p.285.

While the Watch Committee and the Justices had their differences, these chiefly centred on disputes over the division of authority for control of the Borough gaol<sup>35</sup> and over court finances.<sup>36</sup> These were not policy differences. The two bodies did, however, come to diverge in their views on the benefits of sentences to Reformatory and Industrial Schools. The Watch Committee was slow to accept financial responsibility for the maintenance of juveniles sentenced to these institutions,<sup>37</sup> and flatly refused to pay for any boys to be sent to such schools except to the one under its own control. By the late 1870's members of the Watch Committee were beginning to question the value of reformatory sentences, chiefly on grounds of expense.<sup>38</sup> Their financial stringency had its effect on the sentencing decisions of the magistrates, in that they could only sentence as many juveniles to reformatories as the Council had places for. The magistrates made no concerted protest in the matter, so one must conclude that they did not feel seriously thwarted.<sup>39</sup> The point is of interest chiefly because it underlines once more the Watch Committee's *raison d'etre*, in its own eyes, as the spokesman and defender of the ratepayers' interests and concern over crime and public order. This concern emerges from the Watch Committee minutes as a desire to pay as

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35. The Council controlled the building and its upkeep, the Magistrates had control over the internal management of the Gaol, until the Prisons Act of 1877 when both ownership and control of local prisons passed to the Secretary of State.

36. Until 1862 the court administered the fees paid in to it in the form of fines and licenses. After that date, the magistrates clerk was paid a fixed salary by the Council and the court fees were paid into the Borough Fund. B.W.C.: February 11, 1862.

37. B.W.C.: April 5, 1859. It was not until this date, after prodding from Kynnersley that the Watch Committee recommended that the Council pay for sentenced juveniles.

38. B.G.: July 19, August 2, 1871.

39. Although Kynnersley did complain in court on a number of occasions of the lack of places for juveniles he wanted to send to reformatory or industrial schools, most forcibly at the Annual Meeting of the Neglected Childrens Aid Society which led to an acrimonious debate with Chamberlain on the Council's non-support for industrial schools. B.G.: April 18, 1874.

little as possible for a police force, which at the same time was to make sure that there were no displays of unseemly behaviour such as swearing, fighting or gambling, in the public streets, or assemblages of rowdy boys, or noisy street traders. Citizens memorials to the Committee on these topics outnumber requests for better watching by ten to one. Crime control was a technical matter best left to be dealt with at the discretion of the police. Public order, and the regulation of public behaviour was what the main business of the Watch Committee was about.

### III The Police

It was the police who were ultimately decisive over who was taken before the courts - whether directly, through a police summons or arrest, or indirectly through the decision of the officer to take the charge at the station house. How did the police act and what were their attitudes? Two aspects are important here: the directives of those having charge of the police, and the policeman's own view of how best to comply with these directives.

The first Police Commissioners laid great stress on their belief that the effectiveness of a local police force depended to a large extent on the moral assent of the community. This understanding steered their model of the force towards a style of policing which emphasised their peace-keeping role. In the disturbed period when most of the county and borough forces were first constituted and resistance to the force at its height, the virtues of this model were by no means obvious, and the outcome by no means a foregone conclusion. In Birmingham, during the Chartist riots in 1839, a mob drove the local force to take refuge in the Public Office - and because of their failure to maintain order, the justices and the Council had to submit to the ignominy of an imposed police force, responsible not to them but to the

Home Office for three years following the Chartist disturbances. The ideal of moral assent was quickly dissipated in the face of serious disorder, or whenever an authority was determined to implement unpopular measures. The speed with which coercion then gained the upper hand and the hostility which was just as quickly aroused in those who felt their legitimate rights threatened, only underlines how unexpected the generally acquiescent attitude of the population to the police generally was. "To me, nothing is more surprising than the authority conceded by a crowd to a policeman" the magistrate W.L. Sargant wrote of the inhabitants of Birmingham in 1857.<sup>1</sup> His explanation - 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".<sup>2</sup> may have some truth in it but is only a partial answer to the puzzle. In that strange mixture of contempt, mockery, deference and hostility with which the police were widely regarded, several contradictory elements were combined. As an embodiment of the rule of the law, policemen commanded respect; as individuals they were despised for selling their freedom and the necessity for any productive labour for security and the right to a uniform,<sup>3</sup> while hostility against them was quickly aroused in all sections of the community if their methods or purposes were felt to be unjust. Thus acceptance of their authority was conditional on the police acting according to prescribed rules. This gave limited scope to individual police initiatives, since each policeman was held legally responsible for his actions. He could not rely on the automatic support of his superiors, of the Watch Committee, or of the magistrates, but could be required to justify his acts to each or

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1. W.L. Sargant: The Economy of the Labouring Classes, 1857, p.302.

2. Ibid: pp. 304-5.

3. R.D. Storch: 'The Policeman as Domestic Missionary: Urban Discipline and Popular Culture in Northern England 1850-80', Journal of Social History, 9, 1976.

all of them. This effectively inhibited the use of his discretionary powers in many spheres, the more so since obedience to superior officers, and a passive demeanour in the face of public hostility were the chief requirements impressed on recruits to the force. Whether by fortuitous accident or not, it was precisely the combination of an emphasis on a peace-keeping passive style of policing with a period of peace, prosperity and minimal local government activity at mid-century which facilitated the acceptance of the new police, both prior to and following the reorganisation of the force dictated by the 1856 Police Act.

Modern studies which stress the importance of the type of community being policed for the styles of policing adopted, distinguish the peace-keeping style possible in communities with a high degree of moral consensus from the enforcement style used in communities where such consensus is lacking.<sup>4</sup> On this argument a case could be made for ascribing the high proportion of behavioural offences brought to court in Manchester and Liverpool as due to an enforcement style of policing in a local community which was highly segregated along class lines,<sup>5</sup> while the lower figures for arrest for such offences in Birmingham were due to a greater emphasis on a peace-keeping style possible in a more consensual, less segregated community. The view taken here is that styles of policing varied according to the character of the social area being policed; so that while the lower total figures for behavioural offences brought to court in Birmingham may be attributed to the comparatively consensual social relations common in the town, an enforcement style of policing was applied to certain highly localised, and socially segregated areas, as indicated in Chapter I. It was from these areas that a

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4. M. Cain: Society and the Policeman's Role, 1973, p.15.

5. C.M. de Motte: 'The Dark Side of Town: Crime in Manchester and Salford 1815-1875', Ph.d. thesis, University of Kansas, 1977, p.103.

wholly disproportionate number of defendants were taken to Court, for both behavioural and other offences. But even here the offence rate was not constant but varied over time according to circumstances, and directives to the police. We shall examine what these directives were, and with what consequences on the recruitment and organisation of the police, in Victorian Birmingham.

### Police Recruitment and Organisation

Under the Street Commissioners, Birmingham's police force had consisted of a score of men, mainly recruited from the many prize fighters in the town, supplemented at night by a number of old soldiers who were paid by the householders they protected.<sup>6</sup> After incorporation, the force was reorganised and twenty policemen together with an Inspector recruited from London, although a local policeman and ex-prizefighter was made police chief.<sup>7</sup>

Philips, and Field, amongst others, have shown how little initial change there was in the scale, organisation and even personnel of the old and the new police forces instituted under the Municipal Corporations Act, for towns as diverse as Walsall<sup>8</sup> and Portsmouth<sup>9</sup>. Birmingham also began with a cautious reorganisation which contained a judicious mixture of the old and the new. After the Bull Ring riots the Home Office imposed a police force on a much larger scale than anything previously experienced in the town. When

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6. T.A. Critchley: A History of Police in England and Wales, 1967, p.81. A. Davenport: 'Chartists and Charleys in Old Birmingham'. 'I Remember' series, Birmingham Gazette and Express, January 16, 1908. Critchley, on the information of the Chief Constable of Birmingham says there were 30 day police and 170 night watchmen. Davenport recalled 10 red collar men by day, and 20 - 30 Charleys by night.

7. This man, much feared and hated, was soon dismissed for his incivility to the magistrates. Davenport: Ibid.

8. D. Philips: Crime and Authority in Victorian England, 1977, p.55.

9. J. Field: Op.cit.: p.537. See also Hart's view that in most provincial towns up to 1856 one was much nearer the old world of the early 19th century watchman than the new world of the professionally supervised Borough Police. J. Hart: 'Reform of the Borough Police', English Historical Review, LXX, 1955.

the Council eventually regained its powers and set up the first Watch Committee, this found itself in charge of a force nearly double the size of that under the Street Commissioners. However, it had neither the will nor the desire to direct a strong police force of this kind. What is significant is how long this attitude persisted, despite the inevitable changes brought about by the growth of the town, the increasing scale of local government and of changes in the law affecting police duties (such as the surveillance of ticket of leave men under the Habitual Criminals Act). At bottom, Birmingham did not seek, or really approve of, a large police presence.

As we have seen, the first action of the Watch Committee was to economise. Wages for new recruits were reduced early on from 16/- to 15/-, and the first request for a wage increase, put in by the Inspectors in 1844 was turned down.<sup>10</sup> But for the first ten years there were few signs of discontent. Men continued to offer their services for a job with some security, during a period of depression, despite the low wages. It was not until 1853 that the Watch Committee became alarmed at the high turnover rate and instituted an improved pay scale.<sup>11</sup> High turnover was attributed by those having charge of the police to the improved economic climate and alternative job opportunities; but the turnover rate continued at a high rate whatever the economic situation through to 1877.<sup>12</sup> From the 1860's onwards a quarter of the Birmingham force

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10. B.W.C.: October 1, 1844.

11. Ibid: July 5, 1853.

12. Police Guardian: February 6, 1874. This contradicts Martin and Wilson's view that recruitment was never a serious problem in the 19th century despite occasional regional difficulties. In the Birmingham area recruitment was a persistent problem in the 1860's and 1870's. See J.P. Martin & G. Wilson: The Police: a Study in Manpower, 1969, p.12. In a discussion with the Chief Superintendent in the Watch Committee the chairman asked if it was true, as stated in a memorial by the constables, that the superior officers left town for service in other forces. The Superintendent said this was true, and that there were more men from the Birmingham force in the forces of other towns than from anywhere else. B.G. May 24, 1871. The lowest class of policeman was paid what the first class got in Birmingham, according to the Chairman at a meeting of constables called to discuss their grievances. B.G. January 24, 1874.

left annually, and there were frequent difficulties in filling vacancies. As the Government Inspector noted,<sup>13</sup> many recruits stayed only long enough to get a certificate of character and then left.

The nature of the job was changing. The peace-keeping style of policing recommended by the Police Commissioners and initially adopted by the Watch Committee had accorded well with their desire for economy. The Committee was content to deploy the force chiefly in manning the beats along the principal streets of the town. Complaints over increases in the number of robberies were answered by an increase in the number of police deployed along the principal streets,<sup>14</sup> and by changing the hours of the night police so that they came on duty earlier.<sup>15</sup> The work was almost totally routinised and there was little attempt to increase efficiency or order by different work methods. During the peaceful years of mid-century, the predictable presence of the police had been sufficient to mollify ratepayers without arousing popular hostility. The Watch Committee were content so long as the police did not arouse too many adverse comments. The statistics show that the level of police activity, and of private prosecutions, remained remarkably constant between 1842 and 1859 with an average of something over 4,000 cases being brought to the courts annually.<sup>16</sup> Thereafter, the number of cases increased steadily to reach about four times that number in the mid-1870's. The political climate in Birmingham changed in the 1860's, and with it, the activities of the police. A more active and wider role was allotted to them, and they became involved in an increasing range of bureaucratic tasks, and

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13. Annual Report of the Inspector of Constabulary, P.P. XXXIV.I p.80. The average annual turnover rate dropped from a quarter of the force in the 1860's to a fifth in the 1870's. But throughout the 1870's the Inspector reported on the difficulty of getting suitable, and sufficient recruits, for the Birmingham force.

14. B.W.C.: January 30, May 22, May 29, 1849.

15. Ibid: December 26, 1851.

16. Ibid: Statistical Return 1842-43, May 28, 1844. Bunce: Op.cit. Tables III and V pp. 296-300 for summary and indictable offences, 1859.

in the positive implementation of policies designed to enforce the licensing laws, and to put down vagrancy.

While many of the tasks undertaken by the police were 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. Major Cartwright, the first Inspector of Constabulary for the Midland region, believed the suppression of vagrancy to have been the main purpose of the 1856 Police Act, while he saw drink as the basis for most petty crime. By the end of the 1860's many local authorities were directing their police to act in accordance with this view, under pressure from the Poor Law guardians faced with an upsurge in vagrancy; and in compliance with the new licensing laws of 1869<sup>17</sup> and 1872<sup>18</sup>. The Watch Committee accordingly agreed to designate a policeman to act as relieving officer, and the nightly attendance of this officer at the tramp ward of the workhouse reduced the number of applicants for out-relief from 29,578 in 1868 to 9,174 within the year.<sup>19</sup> The following year the numbers dropped still further to 4,667<sup>20</sup>. While the numbers of vagrants applying for relief was reduced those arrested for drunkenness rose steadily after the 1872 Act, to reach a peak in 1876-77. In that year, the experiment was made of designating five policemen as Public House Inspectors, specially directed to 'endeavour to obtain better observance by publicans of the licensing laws'.

The number of people not committing any criminal offence but coming in for close attention from the police was rising, and so was hostility to the

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17. 32 & 33 Vict. c.27.

18. 35 & 36 Vict. c.94.

19. B.G.: April 14, 1870.

20. Ibid: October 10, 1871.

police.<sup>21</sup> Assaults on the police increased sharply at the end of the 1860's and remained at a new high level in the 1870's.<sup>22</sup> Styles of policing had changed with the new policy directives, and the previous comfortable relationship was disrupted. Police discontent also grew. Whereas social consensus was not necessarily any greater in the 1840's and 1850's than later on, the conception of the duties of local government had changed, and with it the former emphasis on the peace-keeping role of the police. The municipal authorities had come to see the regulation and improvement of the behaviour of the citizens as part of their duty and responsibility - a responsibility which had earlier been left to the churches and to private philanthropic institutions. This had served at a time when small businessmen and shopkeepers were in control of the town's affairs, but as the large employers and businessmen took over, something more co-ordinated and deliberately directed was put into practice. The drunk, the riotous, the vagrant and the unemployed were learning this to their cost through the agency of the police in the 1870's.

#### The Viewpoint of the Police

The voice of the police is not easily uncovered. No comprehensive records survive to provide details of the background of recruits or of their subsequent careers in the force. The picture has to be pieced together from a variety of sources.

As was generally the case, most police recruits in the Birmingham force came from rural areas.<sup>1</sup> None who were traced were natives of Birmingham. The

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21. See J.A. Fallows: Op.cit. who commented 'It is well known that the bulk of the working class are ready to submit to any grievance, except perhaps the prohibition of betting and drinking.'

22. See Chapter 5, Fig. 1.

1. 51 policemen living in three station houses were located in the 1871 sample census. Of these half were drawn from Warwickshire and neighbouring counties, and half from elsewhere in Britain - including four from Ireland.

majority were married and found their own accommodation while single men lived in the station house.<sup>2</sup> They were thus a body of men without long-standing or settled roots in the town, and for the majority, without a corporate identity - since they lived scattered amongst the general population, and mostly worked alone in walking their beats. Conditions of work were not attractive, and wages were low in relation to other occupations, at a level just above that of agricultural labourers.<sup>3</sup> The response of many was to leave; and the high turnover rate is the single most telling fact in the reaction of the police to the service.<sup>4</sup> For some, joining the force may have been deliberately chosen as a temporary measure to ease the transition of a move to the town, but it seems more likely that the conditions of service and restrictions on the liberty of the police proved too irksome for the many who resigned after only one or two years in the force.

There was no system of training, which might have helped to instill a sense of vocation and pride in the job. Although the probationary period was one month, recruits were sent out on duty after three days,<sup>5</sup> and initiation into their tasks and responsibilities reduced to a 'showing round' by an older constable.<sup>6</sup> Drill and fines were used as punishment; leave had to be

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2. B.W.C.: Return showing the marital status of the police, May 10, 1864. 22% of the force were single.

3. In 1853 the Preparatory class recruit was paid 14/- p.w. and 17/- in the 4th Class. This had risen to £1 in 1871; in 1875 the 4th Class was abolished, and the pay in the lowest grade (3rd Class) was 23/-.

4. An investigation in 1874 revealed that over half of all recruits left after 2 years service. S.C. on Police Superannuation. P.P.: XIII 1875 p.7. B.W.C.: November 17, 1874. The Chief Superintendent reported that the average length of service of those policemen who had resigned or been dismissed in the last year was 251 days. On average a fifth of those who left were dismissed, the rest left of their own accord.

5. B.G.: May 24, 1871. Alderman Manton's statement in the Watch Committee.

6. J.T. Wilson: 'The Story of the Birmingham Police Institute', Gazette & Express, June 5, 1908.

applied for on an individual basis; and pay was stopped when constables were off sick. Policemen were not supposed to gamble or smoke; and they were not allowed to vote in local elections, or form a union, or go on strike. Police grievances generally took the form of memorials from separate classes of policemen, although by the 1870's the police were beginning to meet together to discuss their problems as a body. Nevertheless, the Birmingham police were careful, even at the height of the police agitation for higher wages, to open their meeting with the remark that

the present gathering is not of a hostile character, but is intended to be thoroughly respectful towards the Chief Superintendent and the Watch Committee. 7

The job lacked status, and policemen tended to be looked upon as public servants by the ratepayers, and as parasites by the working class. They paid highly for their job security in loss of personal freedom,<sup>8</sup> alienation from the community, and low wages. Given these constraints the surprise is the extent to which policemen complied with the job requirements. De Motte comments on how few cases there were in Manchester involving a violation of rules or other forms of misconduct by the police.<sup>9</sup> Similarly, in Birmingham, the few cases of theft or misconduct by the police to reach the Watch Committee were of a very petty nature, and more fuss was made of a case of wrongful arrest, where a policeman mistakenly detained a respectable young middle-class lady than for all other police misdeeds put together.<sup>10</sup>

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7. Police Guardian, January 24, 1874. Significantly, this meeting was held in the Temperance Hall - to help ensure its respectable, as well as respectful character. The sensitivity of police authorities to any professional organisation amongst the police is indicated by the case of an Inspector, who was dismissed for taking and distributing 6 copies of the Police Service Advertiser to the constables serving under him in the Surrey Constabulary. Police Service Advertiser, March 7, 1868.

8. Police Guardian: February 6, 1874. At their Birmingham meeting, the police stated that after wages, the question of leave was next in importance. They needed a day of rest, and would give up their ten days annual leave for two free days a month.

9. De Motte: Op.cit. p.89.

10. Under the heading 'Outrage by a Birmingham police officer' the lady's solicitor drafted a three page letter of apology to be signed by the policeman concerned and inserted in the newspapers at the policeman's own expense. Initially he refused, but ultimately the Watch Committee induced him to comply

Police transgressions were primarily concerned with violence and drunkenness - both of which could be regarded as occupational hazards. Perhaps for this reason, a great deal of tolerance was shown by the Watch Committee for behaviour which they felt unable to eradicate. Incidents concerning the most trivial incidents of theft were considered serious enough to bring to the Watch Committee, but the many cases of police violence complained of by defendants and witnesses and by the newspapers<sup>11</sup> were never discussed. On the contrary, strong arm methods were implicitly condoned during 'clean up' campaigns. When, at the height of the street disorders there were complaints voiced in the Council about unruly behaviour in the streets, more forceful action by the police was recommended. One councillor suggested reverting to previous methods:

In the old days, when policemen had a red collar and were armed with an ash plant, one policeman was sufficient to drive away 400 roughs.

he recalled,<sup>12</sup> Nobody opposed his suggestion,<sup>13</sup> and clearly a blind eye was turned to the violence used to discipline unruly sections of the community who

10. (cont'd) ... after a special meeting was called, with the Town Clerk in attendance. B.W.C.: August 7, 1855.

11. The Town Crier: September 1874 thought it was the example of police violence which led to increased violence among the civilian population. They wrote "Will the Watch Committee make a collection of policemen's weapons - not the authorised staves - but the surely unauthorised gutta-percha bludgeons, lithe canes, twisted hazel sticks, knotted sticks and all the evil weapons with which the police have armed themselves. And having made such a collection, will they seriously consider if the children on whom these weapons are now used, are likely to remember the police with kindness when chance, in a few years time, delivers them into their hands'. The Gazette congratulated the Watch Committee for opposing the arming of the police with canes - but thought the edict ought to apply to belts also. "We have seen terrible and cruel punishment inflicted on lads by irate and passionate policemen - In fact the police ought not to be allowed to punish at all. Their business is to preserve the peace, not to inflict sentences on untried people". B.G.: May 11, 1867.

12. B.G.: June 17, 1874.

13. The most common reasons for dismissing a policeman were drunkenness, neglect of duty, and using obscene language. The fact that violence was not a cause for dismissal shows how much it was officially condoned.

carried no electoral weight, and whose protest was largely confined to counter-violence. In the less reputable parts of the town the police were seen as the natural enemy, and could be in some danger when facing a hostile crowd. Attempts to gain the moral assent of these people would have appeared ludicrous. Instead the police took to using their handcuffs and rolled up capes as weapons, but came in for a great deal of physical punishment themselves. After 'quelling a disturbance' the policeman and his prisoner would often both appear in court swathed in bandages. In certain districts there was open warfare between the police and the inhabitants in the 1870's, and the police would venture in only reluctantly, and in pairs when forced to do so. The Town Crier invented a new bye-law which took account of this reluctance:

No policeman shall, except under severe pressure from some ratepayer, be seen near or interfere in any sort of disturbance in the streets ... or hurry beyond the regulation pace to such a scene. 13

Four years later the same complaints about the absence of the police at disturbances were still being raised, and one correspondent wrote that while roughs in Staniforth Street were fighting, throwing bricks at windows, and almost killing people in broad daylight, no policeman from the nearby station was around unless specially sent for.<sup>14</sup>

Whereas the police had always been unwelcome in certain working class streets, the active hostility shown them in the 1870's was a new phenomenon. This was partly the result of increasing police interference, particularly in the drinking habits of the working class, but it was also due to the behaviour of gangs of youths who came into existence at this time.<sup>15</sup> These gangs fought

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13. The Town Crier: April 1870.

14. B.G.: April 21, 1874.

15. For a discussion of these gangs, see Chapter 5.

other gangs and each other, terrorised the neighbourhood, and pelted and stoned the police on sight if they ventured on to the gang's pitch.

Violence was increasingly used by the police to try and curb the constant street disorders of the 1870's - unlike their response during the Murphy riots when the police were accused of inaction and of siding with the rioters.<sup>16</sup> But although reluctant to engage in the street battles where they were usually heavily outnumbered, the police found violence the only immediate means open to them when they were forced to intervene. This had the tacit approval of the Watch Committee, and of the magistrates, who usually released defendants complaining of police violence, but only mildly admonished the police - if at all. None of the authorities appear to have been too concerned with the methods by which the behaviour of certain undesirable elements in the population was curtailed.

Drunkenness amongst policemen was another matter. Drink was the great solace of the police, and the chief occasion for the illegal use of their powers. Policemen had always been liable to dismissal for drunkenness, but the Watch Committee was nevertheless divided in its attitude to drinking in the force. While some members were keen to eradicate drinking, others realised that too strict an enforcement policy was not practicable. Officially policemen found drunk on duty were dismissed after the third offence in one year.<sup>17</sup> However, the police defended their right to a glass of ale while on duty, 'as the work they had to do could not be performed unless they did have some refreshment'.<sup>18</sup> In the face of their inability to curtail police drinking the Watch Committee tried to make light of the matter. When confronted with an increase in the number of policemen fined for drunkenness, the Committee

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16. Denvir: Op.cit. p.260.

17. Police Service Advertiser: May 5, 1871.

18. Police Guardian: October 29, 1875.

discussed raising the fines, and curtailing the powers of sergeants to allow policemen to go into pubs while on duty, until it was pointed out that if constables could not get a glass of beer by fair means they would get it by foul.<sup>19</sup>

But the most striking illustration of complacency on the part of the Watch Committee was their response to the 'police scandal' reported in the Pall Mall Gazette in 1871, and stating that

Birmingham seems to be almost as uncomfortable a position as Paris ... A policeman brought a prisoner to the station at a late hour, the officer being himself intoxicated and foaming at the mouth. 20

The Committee were told that this had gone all over the kingdom. Alderman Manton investigated and reported that:

a young officer, a very stupid fellow, behaving badly, was the foundation of these sensational remarks. He was drunk, and he found a civilian drunk, and the two drunken men together made great fools of themselves. That was about the whole matter ... the constable was dismissed. 21

But the publicity given to this case forced the Committee to continue discussing the issue of police drunkenness, and whether to impose instant dismissal for this offence. The Chairman rejected such suggestions and said there were circumstances in palliation:

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 could upset a man'. 22

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19. B.G.: October 12, 1870.

20. Police Service Advertiser: May 5, 1871.

21. Ibid.

22. Ibid.

The question of police bribery of publicans was raised, when a councillor reported that he had been told by a respectable publican that treating the police cost him £25 a year.<sup>23</sup>

Although attempts were made to deny this, it was in fact common knowledge. At the turn of the century, an old inhabitant of the town noted the improved condition of the Birmingham police:

I remember a time when publicans scarcely dared refuse detectives and police a drink when they chose to call for one. Ever since the closing of the pubs at 11 o'clock the police for a bribe or a share of the drink took people to places of ill repute at all hours of the night. 24

Attempts to curb police drinking led to higher turnover rates. In a discussion on these rates, a Watch Committee member gave as his opinion that many policemen left the force because of the two new inspectors recently appointed for the purpose of watching the police on duty. He said that no honourable servant would stay in a service where he was constantly suspected and watched, and that it was a bad law that stopped a policeman from having a glass of ale if one was given him. The reason so many policemen left was because they could not obtain the necessary refreshment.<sup>25</sup>

But by the mid 1870's, at Chamberlain's suggestion and with his enthusiastic support, a more serious attempt to eradicate police drinking and bribery was made in the proposal to set up a system of public house inspectors. That this was directed as much against the police as the publicans is made quite explicit in the wording of the report of the Watch Committee to the Council on the need for such a system,

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23. Ibid.

24. John Macmillan: Old Birmingham (c.1910) BRL: 302498.

25. Police Service Advertiser, Birmingham Watch Committee meeting February 9, 1872.

being convinced that intemperance in the Police Force itself is very generally to be traced to the illegal treating in public houses of policemen whilst on duty. 26

But the public outcry against the special Public House Inspectors forced Chamberlain and the Watch Committee to retract the scheme, and the police were able once again to enjoy their beer unharassed.

If drinking on duty was the main form which police 'easing' behaviour took, dissatisfaction with wage levels was their main complaint - but the wages agitation also opened up a discussion of other causes of dissatisfaction. The wages question also shows how long it took for the police to conceive of themselves as a corporate body. This was forged out of their discontents rather than encouraged by their employers, who preferred to reward individuals on their merits, and who showed a very niggardly response to general requests for wage increases. Birmingham had always paid their police badly in comparison with other large Boroughs, and Pilling notes that the first offensive in the police wages agitation came from Birmingham in 1872.<sup>27</sup> Here the police met together to consider the difficulty policemen had in making ends meet, their money being sufficient only to buy food, with nothing over for other expenses. The Chairman went on to discuss the other disadvantages of being a policeman:

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. 28

To be scoffed at implies contempt, rather than respect, while pride in one's job is not compatible with loss of liberty. There is no evidence that

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26. Report of the Watch Committee presented to the Council, January 4, 1876 BRL: 66378.

27. Pilling: Op.cit.: p.356.

28. Police Service Advertiser: November 29, 1872.

the police in Birmingham were motivated by any moral imperatives, or felt a sense of salvation in their jobs, as Pilling claims.<sup>29</sup> On the contrary, they were hard put to it to explain why they continued in the force. At the meeting called to consider the question of pay, the Chairman related that policemen from other forces asked him what kept him in the Birmingham force. He replied that

It was their homes and families which kept them in Birmingham ... They would suffer a great deal for their wives and families. 30

This indicates a possible reason why some policemen were drawn to the town, and stayed on there - because of the job opportunities available to other members of the family.<sup>31</sup> But the constable's sense of alienation was enhanced by their lack of free time to spend with their families,<sup>32</sup> and their lack of corporate identity. It was their grievances rather than any positive corporate feeling that drew the police together. The Watch Committee did very little to encourage corporate sentiments. This was left to the private initiative of William White, a Quaker temperance worker and bookseller, who founded a Police Mission in 1878. He used to invite members of the police force to tea, and ran religious gatherings for the constables and their wives at his school for adults in Severn Street.<sup>33</sup> His biographer wrote that he

29. Pilling: Op.cit: p.377.

30. Police Guardian: February 6, 1874.

31. A witness to the Childrens Employment Commission q.197, stated that many parents came to live in Birmingham for the sake of their children's earnings... A country labourer making, as is the case in some parts, only 7/- to 8/- a man, can make here with his children, £2 - £3. They do in fact find this out as come.

32. The police asked for 2 free days a month, for which they would forgo their annual leave - although the police spokesman said that in order to preserve moderation they would be satisfied if the authorities allowed them 1 day. B.G.: January 24, 1874. In April of that year the Watch Committee fixed annual leave at 10 days for Inspectors, 8 for sergeants and 7 for constables. B.W.C.: April 12, 1874.

33. O. Morland: William White: a brother of man, 1903, pp. 90-1. BRL: 176430.

was known personally to almost every constable in town.<sup>34</sup> The Police Mission was a great success, offering educational classes in the winter months which included lessons in shorthand,<sup>35</sup> and a place for the police to meet together outside the station house. There is a missionary fervour in the reports of this institution, as though the police had been a lost tribe. They had certainly been a neglected one, without reliable friends or allies. By the mid 1870's they had in addition gained new enemies among sections of the working class, through police action against a range of non-criminal offences.

The policeman's position was an ambiguous one. Exploited by their employers, they frequently had to take action according to alien principles - especially in cases of drunkenness - and to accept the hostility this aroused against them. Their employers of necessity allowed them a fair degree of discretion over the stringency with which the laws were applied and the methods used in carrying them out. Given this leeway, a working compromise was reached, out of which a professional force with its own traditions and standards was eventually forged,<sup>36</sup> But during the period covered here, violence and counter-violence characterised the relationship of the police and certain excluded sections of the community.

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34. Ibid.

35. J.T. Wilson: 'The Story of the Birmingham Police Institute', Gazette & Express, June 5, 1908.

36. This included a guaranteed pension. While compulsory contributions to the superannuation fund were made from the wages of all police, very few actually received a pension - one of the main stated advantages of the job - before 1890. See J. Martin and G. Wilson: Op.cit: p.24.

Part II

Chapter 3

Juvenile Offenders

About 10% of defendants appearing in the Birmingham police court in the period were juveniles. Juvenile offenders - those under sixteen - thus formed a small but emotionally significant proportion of defendants appearing in the lower courts in the second half of the 19th century. An immense weight of moral and legal attention had been focussed on this group, both as the harbingers of a budding criminal generation and as the most receptive part of the criminal population for reclamation and reform. Two Select Committees directed, in 1847<sup>1</sup> and 1852<sup>2</sup>, exclusively to the problem of juvenile crime and punishment, took evidence from two schools of reformers - the one advocating the establishment of separate juvenile prisons, the other the establishment of rehabilitation centres. The latter were the ascendant group, and Birmingham was their chosen meeting place. The town was well suited in its intellectual and economic climate to support the pioneering experiments in probation and reform, begun in the county and continued by its Recorder, Matthew D. Hill. It was also an appropriate place for the series of conferences held in the town by the reformatory movement. Their most significant outcome were the two Acts passed in response to the reformers' demands, which gave statutory recognition to the place of reformatories<sup>3</sup> and industrial schools<sup>4</sup> in a comprehensive plan for the reformation of young offenders; only the ragged schools failing to make the transition from private charity to government recognition, as hoped for by the reformers.<sup>5</sup>

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1. S.C. on Juvenile Offenders and Transportation. P.P. VII 1847.

2. S.C. on Criminal and Destitute Juveniles. P.P. VII 1852.

3. Youthful Offenders Act, 17 & 18 Vict. C86, 1854.

4. Industrial Schools Act, 24 & 25 Vict. C113, 1861. (amended from 1857 Act).

5. See H.W. Schupf: 'The Perishing and Dangerous Classes: Efforts to Deal with the Neglected, Vagrant and Delinquent Juvenile in England 1840-1875'. Ph.D. thesis, University of Columbia, 1971, p.225.

We shall examine what effect these institutions, and the authorities' attitudes to reform, had on the sentences passed on juveniles in Birmingham. Most of the literature on juvenile crime in the 19th century has concentrated on descriptions of the social milieu and mode of operation of young criminals, drawn from contemporary writings;<sup>6</sup> on the changing attitudes to children and to juvenile delinquents;<sup>7</sup> or on penal reform and the treatment of juveniles.<sup>8</sup> There has been little work which has tried to relate the statistics of juvenile crime to the ideas and purposes behind the administration of the law,<sup>9</sup> as will be attempted here. Hopefully, this will provide a clearer picture of the official perceptions of young offenders which guided the administrators of the law.

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6. J.J. Tobias: Crime & Industrial Society in the 19th century, 1969.

7. K. Chesney: The Victorian Underworld, 1970; J. Carlebach: Caring for Children in Trouble, 1970; I. Pinchbeck & M. Hewitt: Children in English Society, Vol. II, 1973; J. Manton: Mary Carpenter & the Children of the Streets, 1976; H.W. Schupf: Op.cit; M. May: 'Innocence and Experience: the Evolution of the Concept of Juvenile Delinquency in the mid 19th Century', Victorian Studies, XVII, 1973.

8. M. Ignatieff: A Just Measure of Pain, 1978; U. Henriques: 'The Rise and Decline of the Separate System of Prison Discipline', Past & Present, No. 54, 1972.

9. J.R. Gillis: 'Evolution of Juvenile Delinquency in England 1890-1914', Past & Present, No. 67, 1975. S. Magarey: 'The Invention of Juvenile Delinquency in early 19th century England', Labour History, No. 35, 1978; Gillis & Magarey are the exceptions. But Magarey's thesis, that juvenile delinquency was in great measure the artificial creation of a number of new Acts is marred by her inclusion of the arrest statistics under the Larceny Act of 1827 and the Juvenile Offenders Act of 1847 (concerned with larceny by juveniles) - since larceny cannot be described as behaviour which was unprosecuted prior to these Acts.

Juvenile Delinquency and Reform

Juvenile delinquency, like the criminal or dangerous classes, was a concept which slowly evolved during the first half of the 19th century, as magistrates and penal and social reformers grappled with the problems of poverty and crime. In the face of so much destitution and disorganisation, most clearly visible in the larger urban centres, new ways of thinking about the poor helped to provide guidelines for action. Thus attempts were made to hold a clear distinction between the industrious labouring classes and the perishing and dangerous classes; between the respectable and the disreputable; the deserving and the undeserving; and the vagrant and the 'necessitous' wayfarer. The New Poor Law and the Vagrancy Act were designed to discover and maintain the distinction between the unemployed and the dissolute; the Vagrancy Act and the Malicious Trespass Act were widely applied by the police to regulate the behaviour of children in the streets; while a range of preventive and penal institutions was set up to cater for the pre-delinquent, the juvenile delinquent, the petty offender and the habitual criminal. However, the identification of delinquency as a special social problem preceded institutional differentiation, often by several decades.<sup>1</sup> The 'Society for Investigating the Causes of the Alarming Increase of Juvenile Delinquency', and its offshoot, the 'Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders'<sup>2</sup> had been unable in the 1820's to gain official support for proposals for swifter justice and reformatory sentences for juveniles identical to those accepted in the 1850's. A number of voluntary agencies began to provide schools and

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1. This contradicts Margaret May's assertion that the identification of delinquency accompanied institutional differentiation. M. May: Op.cit: p.15.

2. These early reformers were a group of London philanthropists who collected the first statistical evidence on juvenile crime between 1816-20, and pressed for legislation to set up reformatories for juveniles in the 1820's.

industrial training for the 'street Arabs' in the towns; while Warwickshire - uniquely, and from an early date - experimented with probationary sentences for juveniles. But there was a long way to go before official acceptance of a distinct legal status and a distinct system of sentencing for delinquent juveniles. The proposal by Sir Eardley Wilmot,<sup>3</sup> that minor offences by juveniles should be dealt with summarily was rejected because it was held that such differentiation between child and adult would deprive the child of the right to trial by jury, and constitute an unwarrantable interference with the liberty of the individual. Doubts over the State's authority to interfere with parental rights over their children, and fears that reformatory schools might provide a better education for the 'lowest order of children, morally speaking, than the National Schools'<sup>4</sup> delayed legislation for the statutory detention of juveniles in state-supported reformatories and industrial schools. It was not until mid century that the reformers' aims came to be realised, under the Juvenile Offenders Acts<sup>5</sup> and the Youthful Offenders Act.

Two crucial developments which helped overcome moral scruples about individual rights and state interference intervened before the passing of these Acts. The first was the reorganisation of the police. Only after the new police were introduced into the counties of England and Wales were children brought before the courts for petty offences in great numbers.<sup>6</sup> Where

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3. J.E. Eardley-Wilmot: 'A Second letter to the Magistrates of Warwickshire on the Increase of Crime in General, but more particularly of Juvenile Delinquency', 1820. Eardley-Wilmot, Chairman of the Warwickshire Sessions was an early advocate for the reformatory treatment of juvenile offenders, and a founder member of one of the first reformatories, in 1818, at Stretton-on-Dunsmore.

4. S.C. on Criminal and Destitute Juveniles, Op.cit. M.D. Hill's evidence, q.605.

5. 10 & 11 Vict. c.82 1847; 13 & 14 Vict. c.37 1850. The Acts had the effect of transferring previously indictable larcenies by juveniles to summary jurisdiction.

6. For instance, Sergeant Adams, in his evidence to the S.C. on Juvenile Offenders and Transportation, related the increase in the numbers of juvenile offenders brought to the Middlesex Sessions of which he was Chairman, to the establishment of the Metropolitan Police. Op.cit. q.100.

the Vagrancy and the Malicious Trespass Acts criminalised a whole range of behaviour not previously liable to prosecution, it was chiefly the police who took action in arresting juveniles for offences under these Acts.<sup>7</sup> The large numbers of prisoners awaiting trial for these petty offences threw immense burdens on the courts and prisons, for which a solution was sought in the extension of summary jurisdiction culminating, in the case of juveniles, in the J.O. Act of 1847.<sup>8</sup>

The second development concerned the decline of transportation as a method of disposing of convicted criminals for lengthy periods. Transportation had been on the wane for a decade before the Penal Servitude Act of 1853 substituted penal sentences with conditional release - the ticket of leave system - for shipment overseas. Panic at the prospect of the early release of hundreds of convicts free to roam the country (even if nominally under license) and disappointment with the deterrent and reforming effects of imprisonment in reformed prisons on juveniles, gave impetus to the demands of those pressing for statutory authority for reformatories and industrial schools. These now gained official acceptance and support in an attempt to reduce the size of the criminal population, and to prevent one criminal generation from replacing another.<sup>9</sup>

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7. Stressing that these Acts operated mainly against juveniles, the Prison Inspectors, W. Crawford and W. Russell wrote that 'many offences for which a lad is now sent to gaol were formerly disregarded ... By the Vagrant Act alone, hundreds who were formerly permitted to remain at large are committed not for the commission of a specific offence, but as 'idle and disorderly' or 'reputed thieves'. The Malicious Trespass Act and other laws peculiarly applying to the offences of youth, have also materially contributed to the increase of juvenile prisoners'. P.P. 1836, XXXV, pp. 83-4. Quoted in S. Magarey: Op.cit. pp.17-18.

8. Under this Act the magistrates were empowered to deal with larcenies committed by juveniles, whereby offenders under 14 (later raised to 16) could be whipped or discharged without punishment.

9. The reasons for this acceptance were articulated by Stephen Cave, M.P. in his opening address to the Conference of Managers of Reformatory and Industrial Institutions, held in London in April 1869: 'The reformation of criminals ... is now ... an accepted branch of the public service ... It was dire pressure of necessity, quite as much as the more merciful character of society ... which overcame feelings of distrust (of reformatory treatment) ... and brought acknowledgment that the reformation of criminals was one way out of the difficulty (that juries would no longer hang, that the colonies and prisons were full). Report of Proceedings.

The Development of Ragged, Industrial and Reformatory  
Schools

Reformatory-type institutions were intended to cater for different groups of juveniles, and each had different lines of development. Nearly all of them had been started by private initiative, and faced the dilemma of the need for public finance and dislike of external interference and control which delayed or curtailed their growth. The question occasioned considerable soul-searching within the reformatory movement, as the reformers realised that if the system was to be expanded, larger sums would be needed than could be raised by private individuals. Ultimately, they were left with no alternative but to call upon government assistance regardless of ideological scruples; but Grey's Bill of 1857, which would have allowed the State to undertake the duty of establishing reformatory schools, had to be altered in the face of the reformers' violent opposition. The State readily ceded the right to found and manage their institutions to the reformers and, in what is the crux of the matter, made no attempt to step in and make good any shortfall in supply. The schools were thus distributed in a totally haphazard manner, which gave rise to later difficulties, especially in respect of industrial schools. Although the reforming institutions were open to government inspection, in return for certification and public funds (on the basis of a per capita grant per child) the reformers retained the right to develop their institutions independently, and no minimum standard was imposed on these schools. The one exception were the ragged schools, where the insistence of the reformers that they, and not the Inspectorate, should set the standards for their schools proved fatal, as the government ultimately refused them aid unless they conformed to the standard of the Revised Code.

The reasons for this differentiation between ragged schools and the other reforming institutions, which were basically financial, are revealing of official attitudes to the dangerous classes. The 1861 Select Committee

on the Education of Destitute Children hedged on the issue of ragged schools. While they did not think they could be dispensed with, neither did they want them to become a permanent feature of the educational system. They recommended that until the measures under the Industrial Schools Act had been tried, no other provision at the expense of the State should be made for this class of children.<sup>1</sup> But witnesses confirmed Tufnell's evidence to the Committee of Council on Education that:

Not 20 children have been secured in the metropolis under that Act, though the streets are thickly strewn with proper occupants for the certified schools; and in fact all the refuges that I am in the habit of visiting are filled with children of the exact description contemplated in the Act. 2

If all these children had been sent to certified schools, the cost to the State would have escalated alarmingly to an estimated £42,000 per annum.<sup>3</sup> There was little danger of that happening, since provision had been left to private benevolence and very few schools had been founded. Had the government been seriously worried about the contaminating influence of this class of children, they might have grasped the nettle of financing their education on a significant scale. As it was, a comparatively small number in the reformatory and industrial schools were partly maintained by government grants, while the ragged schools who dealt with the largest number of destitute children, were squeezed out. Despite all the evidence on the thousands of children left free to beg and to steal in the large urban centres, the government were only prepared to acknowledge the 'dangerous' status of a very few. And despite the Newcastle Commission's view that the education of children under special temptations to crime was one which should not be left

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1. S.C. on the Education of Destitute & Neglected Children, 1861, VII, p.xi.
  2. Ibid: q.1271.
  3. Ibid: q.1285.

to private individuals, but should be accomplished at the public expense and by public authority<sup>4</sup> the government took no initiatives to make educational provision for this group.

The question of compulsion which raised ethical problems for the educational campaigners, aroused few comments in relation to reformatory institutions. Attendance was ensured through the device of committal by a magistrate, whether the child had committed an offence or not, and although it was acknowledged that this could place a stigma on the child, the purpose was to punish the parent. The legal requirement on the parent to make a financial contribution for the maintenance of the child was seen as a way of fining him for neglect and of ensuring that parents would not seek to abandon their children for financial advantage. 'To take a child out of the custody of its parents, and to educate it in an institution over which they have no control ... is a punishment for neglect of the most important parental duties' the Newcastle Commission noted.<sup>5</sup> R. Lingen of the Education Department added that if parental neglect reached the point where the child became vagrant, the Industrial Schools Act provided stringent compulsion and penalties, and that many parents might be got at under this Act and an example made of them.<sup>6</sup> Although it was perfectly understood by educated people that a committal by a magistrate was a mere form, a witness to the S.C. on the Education of Destitute Children agreed that among the uneducated poor that distinction would not be drawn. Going before a magistrate remained going before a magistrate.<sup>7</sup> It becomes clear that the stigma of committal through a court of law on children sent to Industrial Schools and on their parents was not

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4. Report of the Commissioners on the State of Popular Education in England, 1861, XXI, Pt. I, p.402.

5. Newcastle Commission, p.402.

6. S.C. 1861, q. 3782, p.191.

7. Ibid: q.1325-6, p.61.

inadvertent, but intentional; and that it was hoped these parents would be shunned by the rest of the labouring poor. The parents themselves had no possibility of legal redress in such cases, but were deemed without further discussion to have forfeited their rights. In the grey area of poverty and destitution, the parents of children who had not committed any criminal offence stood morally condemned and without a voice. The situation was summed up by a commentator on the Reformatory and Industrial Schools Acts, as follows:

With regard to criminal children, the law had stepped in and removed the child from parental control for years, educated him religiously, morally, and industrially and returned him to society without in any degree consulting the parent. Compared with this, the General Education Act was merciful and mild. 8

It was not only the parents, but also the children of the dangerous classes who were to be set apart. The reformers were most insistent on this point. In their attempts to make moral distinctions between the classes of children with whom they were concerned, they proposed a series of institutions for the different categories. As Charles Adderley pointed out, this would have meant that in any one locality in England there might be four sets of schools for the poor: the existing National Schools; Free Day Schools for the destitute; Industrial Schools for the vagrant; and Reformatories for criminal children<sup>9</sup>, to which he could have added the fifth category of Poor Law schools for the children of paupers. There was no argument over the need for separate schools for criminal juveniles. For the rest, the reformers maintained that the need for separate institutions had two causes: first because their educational needs were different from the rest of the labouring classes, and second because parents who sent their children to the National Schools would not want them to associate with this lower class. Mary Carpenter believed that there was an enduring difference between the labouring

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8. D.D. Main: 'Reformatory Schools and the Elementary Education Act of 1870', Transactions of the National Association for the Promotion of Social Science. 1870 Hereafter T.N.A.P.S.S.

9. S.C. 1853, Vol. VII, q.583.

poor and the children of the 'perishing and dangerous classes'. 'Behold them' she said when referring to the latter,

when the hand of wisdom and of love has shown them a better way and purified and softened their outward demeanour and their inner spirit, in schools well adapted to themselves, and you hardly believe them to be separated by any distinct boundary from the children who frequent the National and British schools. Yet there is, and long will be, a very strongly defined line of separation between them, which must and ought to separate them. 10

She struggled hard to establish that the children for whom ragged schools were needed differed both from those eligible for Industrial schools and from the children of the respectable poor. They were neglected, not mendicant or vagrant. But they were a group with whom the children of a higher class would not want to be associated; therefore they needed their own schools, and because the parents were too poor to pay fees, they needed maintenance grants from the government. But the Education Department did not agree that there was a need beyond that of the Industrial schools for further segregation of the children of the poor. Their reasons may have been partly financial, in that they did not want to make further grants to free schools in a period when educational costs were being submitted to close scrutiny; and partly political in not wishing to become too closely associated in the public mind with educational provision for a degraded group. But another reason may have been their perception of the dangerous classes as a small group, adequately dealt with under the existing legislation, with only a limited capacity to infect the class above it. The ragged class was no threat, and if left unsegregated would 'fade invisibly into the class above it'.<sup>11</sup> In no way did the Department want to become associated with support for the low educational standards seen as appropriate for these schools, at a time when they were desperately seeking to impose the standard of the Revised Code as a minimum in the educational system.

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10. Mary Carpenter: Reformatory Schools for the Children of the Perishing and Dangerous Classes and for Juvenile Offenders, 1851, p.3.

11. Lingen's evidence, S.C. on the Education of Destitute Children, 1861, q.3769, p.190.

The question of educational standards relates directly to that of the purpose of education, which has generally come to be regarded as the preservation and strengthening of the existing social divisions in Victorian society. The elementary education system was to be geared to the education of children 'belonging to the classes who support themselves by manual labour';<sup>12</sup> while the education of children sent to reformatory institutions was to be suited to their position at the bottom of the social hierarchy. 'The great object of an industrial school' stated the Secretary of the Ragged School Union 'was not to teach trades ... but to teach the children to become industrious in their habits. Any occupation would answer'; and he gave as an example the employment of boys in sorting bristles for brushmakers.<sup>13</sup> The fundamental belief of the reformers in the power of education to change and improve their charges was contradicted by their equally fundamental belief that their permanent station in life was to remain a low one. This constant conflict, and the fear that a free education might offer delinquents an unfair advantage, turned the reformers seemingly progressive ideals into a reactionary practice. In the words of Matthew Hill, the purpose of education for delinquents, aside from moral reform, was in order to

enable the inmates to acquire habits by which they shall be self-supporting in the humblest occupations in life. If they by their own aid can rise out of that humble position of life, be it so; but I am by no means contemplating that the State is to give them any assistance or looks forward to their filling any but the lowest among honest callings. 14

Those who could not be fitted into the educational system (or the social system either) were relegated to the care of specialists and the principle of less-eligibility. In such a scheme, the dangerous classes and their offspring appear as a group to be ostracised rather than one seen as a threatening force.

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12. J. Hurt: Education in Evolution: Church, State, Society and Popular Education 1800-1870, 1971, pp.114-5.

13. S.C. on the Education of Destitute Children, q.302.

14. P.P.: 1852, Vol. VII, q.601.

Reformatory Institutions and Practices in  
Birmingham

a) Probation

Birmingham was the first borough to adopt a system of probationary sentences for juveniles. Both probation and a reformatory had been instituted early on by the Warwickshire magistrates. In 1818 they had opened a reformatory supported by private subscriptions, at Stretton-on-Dunsmore.<sup>1</sup> They also instituted a form of probation for young offenders, which impressed M.D. Hill when, as a young barrister, he went on the Midland Circuit in 1819. After Hill became Recorder for Birmingham in 1842, he continued and refined the Warwickshire system of probation:

I caused the name of the guardian or patron who took charge of the young person to be entered in a book, and he signed it, as an obligation that he would do his best; and I caused the police to make inquiry ...as to his treatment and as to his conduct; and in the course of time, I had reason to believe ... that more were reclaimed by this mode of proceeding than those who were sent to prison in execution of the usual sentence following their offence.     2

Hill was also an ardent champion of the reformatory at Stretton, to which he sent boys whose cases were 'more peculiarly deserving of benevolent care' than those whom he only put on probation.<sup>3</sup>

The question arises why Warwickshire, and in particular Birmingham, figured so early and so prominently in the reformatory movement. There is little to indicate the motives of the Warwickshire magistrates when they decided to institute a system of probation, and to establish a reformatory at Stretton, beyond a statement of concern at the number of delinquents brought before them at a very early age 'who were labouring under profound ignorance

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1. The institution closed in 1854 for lack of funds. Serjeant Adams, whose brother had founded the school, gave evidence that it was mostly children from Birmingham who were sent there but that Birmingham had never supported it. S.C. VII, 1852, p.213.

2. Ibid, q.380.

3. M.D. Hill, Op.cit: p.119.

and unrestricted habits of idleness and were brought up with no other knowledge than that of vice'.<sup>4</sup> Juvenile delinquency was largely seen as an urban problem, and the great majority of young offenders tried at Warwick came from Birmingham. M.D. Hill stated that the number of boys coming before the courts from Birmingham exceeded the average of other places, because of the peculiar nature of trade in that town:

The trade of Birmingham consists of the manufacture of metals, and it is carried on sometimes by making one part of an article in one place and another part at another, so that the articles are carried through the streets very much by boys, who are also employed to take metal to the flattening or rolling mills for the purpose of having it rolled out, and they are very much in the way of being met by tempters ... who meet with them for a considerable time, feed them with cakes and sweetmeats and in the end corrupt them so far as to make them rob their masters, often to a considerable amount., 5.

Hill had been impressed by the Warwickshire magistrates practice of sending children after their conviction back to their parents or masters; and he said he had reason to believe that these experiments were largely successful. When a similar plan was attempted in London, it failed because 'hardly any delinquents in the Metropolis had either employer, parents or friends to look after them.'<sup>6</sup> It would therefore appear that special circumstances were a precondition before a probationary scheme such as the one adopted in Warwickshire could succeed. On the one hand it would have been less feasible in places like the factory towns where the scale of the enterprise and the pattern of industrial relations was such as to preclude close contact between the child and the master. On the other hand the scheme could also not work in cities where there were too many deserted, destitute and homeless children, as in London, or in the ports where a large proportion of the workforce relied on

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4. Warwick Advertiser, August 3, 1817. The emphasis that a faulty upbringing (rather than an innate or wilful wickedness) lay at the root of much delinquency is remarkable at this early date.

5. M.D. Hill's evidence, S.C. 1847, q.147.

6. R & F. Davenport Hill: The Recorder of Birmingham: A Memoir of M.D. Hill, 1878, p.156.

casual employment in the docks. Birmingham, with its multitude of small masters and small workshops in fact provided an ideal setting for a probationary scheme. As Hill put it:

I am rather fortunately placed because many of the children at Birmingham have either friends or relatives, or masters who are kindly disposed, and a considerable number of them I am enabled to return to their masters or friends ... the master enters into an obligation to take care of the child. 7

The Asylum at Stretton was developed in tandem with the probationary scheme, and formed a natural extension to it. Just as the virtue of probation was seen to reside in the fatherly guidance and control exercised by the master or guardian over the child, so the reformatory at Stretton was run on family lines - with some twenty boys under the care of the master and his wife, where the boys were treated almost as members of the family.<sup>8</sup> The emphasis on the parental role of those having charge of juveniles in reformatories was the central tenet of the reformers; reform would come about by offering the moral guidance, care and control which the parent had failed to provide in the case of delinquent children, rather than through the deterrent effect of imprisonment and punishment.<sup>9</sup> By the late 1860's and 1870's it was possible, in theory, to sentence juvenile offenders to such reformatories or Industrial schools rather than to prison (apart from the statutory two weeks in gaol) if the courts so wished. The practice worked out rather differently.

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7. S.C. 1847, q.168.

8. M.D. Hill: Op.cit., p.52.

9. C.B. Adderley, member of the S.C. on Criminal and Destitute Juveniles . in 1852 told the committee about the reformatory established at Birmingham: 'The Birmingham institution is not of a penal character ... I prefer it to the one at Redhill ... Redhill is too large and does not supply a home'. P.P. VII 1852, p.323.

b) Ragged, Industrial and Reformatory Schools in Birmingham.

By the late 1860's the full panoply of specialised institutions for young offenders of both sexes had been established in Birmingham, with four reformatories in the vicinity, and five industrial schools.<sup>1</sup> Of these, Saltley reformatory, established on the eastern edge of the town in 1853, became the first government certified reformatory in Britain.

M.D. Hill had wanted reformatories to be founded by individuals willing to expend time and money on them before government intervention.<sup>2</sup> The reformatories at Stoke and at Saltley set an example in this respect, and they continued to be managed by committees free from outside interference. However, their independence from local government control led, in the case of Birmingham to strains in their relationship with the Town Council (once the Council had agreed to pay maintenance grants to the Birmingham juveniles sentenced to these reformatories).

The founding of Industrial Schools was also left to private initiative but the expense of establishing these could be charged to the rates, while a grant in aid was also available from central government for the maintenance of the pupils. Potentially, the power of the local authority over its industrial schools was greater than over reformatories, which catered for juveniles from a wider area, and this may account for the lack of involvement and interest by the Council in the latter institutions.<sup>3</sup>

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1. The reformatories were: Saltley, founded by Charles Adderley; Stoke Farm, founded by Joseph Sturge in 1852; Weston under Weatherley in Warwickshire; and Birmingham Girls Reformatory, a small establishment in town. The industrial schools were: Shustoke, for boys, founded by the Town Council in 1868; Gem Street Industrial School, started in 1846 by the Rev. G.M. Yorke as a school for poor children, which became an industrial school in 1866; Penn Street Industrial School, opened as a ragged school in 1861 and certified as an industrial school in 1863; and Vale Street Industrial School for girls, started in 1861 and certified in 1866, and Winson Green Industrial School for girls.

2. R. & F. Davenport Hill: Op.cit. pp. 168-9.

3. Birmingham Reformatory Institution, Saltley. Reports & Papers 1851-1878 BRL: 4394, shows the place of origin of inmates:

The weakest institutions were the ragged schools, of which there was a dearth in Birmingham. There were originally two in the town, both of which were later transposed into industrial schools. The oldest, in Gem Street, had been established in 1846 by the vicar of St. Phillips for the education of poor children in his parish. It was known as the Free Industrial School from the start and was run along industrial school lines:

About a hundred children a year were given elements of knowledge, and set to work in tailoring and needlework, with the younger children carding hooks and eyes for a manufactory in the town. All who so worked remained in the school ten hours a day and earned their two meals by their labour. 4

This was a church school. The other, in Penn Street, was started by a group of non-conformists - the stipendiary magistrate amongst them - in 1861 as a ragged school. By 1868 these had both become industrial schools, with Winson Green and Vale Street for girls (with 20 places) and Shustoke for boys (with 40 places) added to the list. The total picture of industrial and reformatory schools for Birmingham in the 1860's and 1870's comprised three reformatories for boys and one for girls; and five industrial schools, one of which was a boarding school for boys outside Birmingham.<sup>5</sup>

Reformatories were considered the most successful among the institutions for delinquent juveniles; and reformers from Birmingham had been closely involved in promoting them. Charles Adderley, who introduced the Act giving statutory authority for the establishment of reformatories in Parliament, also endowed the Birmingham Reformatory Institution at Saltley. Joseph Sturge, who

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3. (cont'd)

	<u>B'ham</u>	<u>Staffs</u>	<u>Warwickshire</u>	<u>Other</u>	<u>% from B'ham</u>
1868	26	68	5	3	25
1871	33	58	6	4	33
1874	34	57	2	8	34
1877	41	53	1	8	40

4. Rev. G.M. Yorke: 'Some Account of the Birmingham Free Industrial School' read at the Birmingham meeting of the T.N.A.P.S.S., 1868.

5. This was Shustoke, established and controlled by the Council.

was as deeply involved in educational as in political reform movements, founded the reformatory at Stoke. The local reformatories were thus pioneering ventures, established with eagerness rather than under duress, in the first flush of enthusiasm which accompanied their statutory recognition.<sup>6</sup> High hopes were held out for their capacity to reform young criminals - of whom, it was held, there were only a limited number, which could be completely checked if the magistrates systematically committed them to reformatories.<sup>7</sup> The national statistics showed a decline in juvenile crime from the mid 1850's; while the numbers detained in reformatories did not keep pace with the increase in population. This was confirmation, in the view of the Inspector of Reformatories, that these were doing their work.<sup>8</sup>

Local charitable support given to the reformatories was not matched by that given to other reforming institutions. The rather surprising lack of charitable involvement with ragged and industrial schools in Birmingham during the peak years of the reformatory movement is probably due to a combination of circumstances. Firstly, since Birmingham was in the vanguard of the campaign for reformatories, the efforts of those concerned with juvenile delinquency were channelled in this direction. The influence of M.D. Hill was important here. As a lawyer, he concentrated on those whose status as convicted juveniles could be clearly defined by the courts. Hill showed very little interest in ragged schools, or even industrial schools. He, and those around him, devoted all their energies to gaining recognition for reformatories and the principles on which they were based. Secondly, there was the counter-

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6. P.P. XXIII, 1852-53, q.3781-2: 'Public interest in reformatories is rapidly increasing ... In Birmingham ... one single manufacturer has given £100 p.a. ... the principal manufacturers are subscribing largely'.

7. Report of the Inspector of Reformatory and Industrial Schools, P.P. XIII, 1859.

8. Ibid: P.P. XXXVI, 1875.

attraction, which drew most of the influential local support in the 1860's, of the campaign by the Birmingham Educational Society, and later the National Education League, for a national system of compulsory education. This broader campaign attracted many more supporters than did the effort for educational provision for one specialised group, particularly since provision for the main delinquent group had already been made.

But the low level of charitable involvement with ragged and industrial schools, together with the lack of interest shown by the Council in all the institutions for the reformation of young delinquents would seem to indicate that juvenile delinquency was not widely regarded as a pressing problem. Local authorities had powers to provide grants for the children sent to these institutions; but the Council was slow to avail itself of these opportunities. Their reluctant support of these schools, despite the prestige of the local reformatories, and the involvement of senior Council members such as Chamberlain and Manton on the Watch Committee and the Industrial Schools Committee, pinpoints the lack of urgency or necessity to act decisively on the question of juvenile crime felt by the town's ruling class. In the case of reformatories, the Council agreed, after prodding from the stipendiary magistrate, to allocate an annual sum to the local reformatories for the upkeep of juveniles sent there by the Birmingham courts;<sup>9</sup> but they refused to consider maintenance for juveniles sent to other reformatories where per capita payment was required.<sup>10</sup>

The Council were even more reluctant to provide support for children at industrial schools. In 1866, five years after the passing of the Industrial Schools Act, the Watch Committee rejected a suggestion that Gem Street school

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9. B.W.C.: April 5, 1859.

10. Ibid: October 22, 1861.

should be used as a certified school for the reception of vagrant children, on the grounds that

under the Industrial Schools Act of 1861 the Council has no power to provide out of public funds any industrial or other school for children found begging or wandering - or to maintain any such children when sent by the Justices to any such school, which must be maintained entirely upon the voluntary system, with a Government contribution if the Secretary of State sees fit. 11

This was a very stringent interpretation of their responsibility for destitute children under the Act - too stringent in fact, since while there was nothing which compelled local authorities to contribute, there was nothing which forbade them to either. The Earl of Lichfield, in his opening address to the Conference of Managers of Reformatory and Industrial Schools in 1869 commented on the lack of industrial schools, especially in the agricultural districts, and reported that he had received numerous complaints from the stipendiary magistrate and others in the neighbourhood of Birmingham complaining of the want of industrial schools. Although, as he pointed out, there was a power to charge the expense of establishing these on the rates, it was very difficult to persuade local authorities to do so.<sup>12</sup> Under pressure, Birmingham Council yielded in 1868 when they decided to found and manage their own industrial school for about 40 boys on a site fifteen miles outside town. They were then able to use this as an excuse to reject all requests for aid from other industrial schools in the town, since 'the Council declines to contribute to institutions over which it has no control'.<sup>13</sup> The historian

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11. Ibid: April 18, 1866.

12. Conference of Managers of Reformatory and Industrial Institutions, London, 1869.

13. Minute Book of the Industrial Schools Committee, March 14, 1870.

of Birmingham, J.A. Langford wrote in 1877 that:

The Town Council of Birmingham ... has not availed itself of its full powers in respect of these schools. Repeated applications have been made to the Council to subscribe towards the different schools to which Birmingham children are sent, but the Council has steadfastly adhered to the principle of not subscribing towards any institution in the management of which it had no voice. Beyond establishing one school at Shustoke it has done literally nothing. 14.

But despite the Council's obduracy, more and more children were being sent to local industrial schools, although only about a quarter came through the Birmingham courts. It was the counties who were using the Birmingham schools, to avoid the expense of establishing their own, and the schools themselves were forced to accept this. Langford wrote that the Council's offer of 1/6d per week for each girl committed to Gem Street school still left such a deficit that the school's committee was compelled to take children from Warwickshire and Worcestershire on condition of payment by their local authorities, in addition to the government allowance.<sup>15</sup> But the Council would pay nothing for boys to be sent anywhere but their own school at Shustoke, and they took extreme care over the selection of those whom they did admit.

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14. J.A. Langford: Modern Birmingham and its Institutions. Vol. II, Birmingham, 1877, p. 206.

15. Ibid: p. 219.

The following Table shows the distribution between Birmingham and the Counties.

Table 3.1a: Numbers Sentenced to Industrial Schools by the Birmingham Courts, and Total Numbers in Birmingham Industrial Schools. \*

	<u>Number sent from Birmingham Court.</u>	<u>Total number in Birmingham Industrial Schools</u>
1867	20	67
1868	93	140
1869	46	206
1870	54	250
1871	51	285
1872	54	294
1873	78	319
1874	54	356
1875	51	338
1876	55	374
1877	19	357

Table 3.1b: Numbers Sentenced to Reformatories by the Birmingham Courts;\* and as Percentage of all Juvenile Offenders from Birmingham 1871 - 1877.

	<u>Number sentenced by Birmingham Court</u>	<u>As Proportion of all Juvenile Offenders</u>	
		%	Nos.
1867	33		
1868	97		
1869	25		
1870	44		
1871	47	4.3	1,085
1872	67	4.9	1,354
1873	48	3.2	1,491
1874	62	3.8	1,627
1875	64	4.8	1,309
1876	54	4.0	1,334
1877	55	4.6	1,187

\* Source: Judicial Statistics, Table 6 for the years cited.

The Council's attempt to limit and control the numbers sent to the local industrial schools was connected with their view that the problem of criminal and vagrant children in the town was also a limited one, and was a burden which they had only reluctantly taken on, and one which brought them very little return by way of either votes or prestige. The chairman of the Watch Committee Alderman Holland led a campaign against the reformatory institutions in the early 1870's. It was time they considered the expense of sending a child to a reformatory, he said. It could cost £100 for a five year sentence, and he did not think that the money expended was productive of any good results. He also proposed that any neglected children found in the streets who had not committed any crime should be dealt with by the Poor Law guardians instead of being sent to an industrial school. The cost of each child at such a school was far greater than at the workhouse, and the present system was, he believed, a premium to parents to desert their children.<sup>16</sup> The problems arising from the uneven provision of schools on the voluntary principle were compounded by the Council's attempt to regularise the situation. Ironically, the result in the case of industrial schools was that Birmingham children were excluded in favour of children from the counties where there was no industrial school provision at all.

The question of selection also led to difficulties. The Inspector of Reformatory schools had written in his annual report for 1859 that a reformatory should be viewed as a hospital to cure a real disease and not a sanitorium for more light and transient ailments:

the class of young offenders really living by crime and professionally engaged in it amounts to a manageable and moderate number, and if the magistrates keep these individuals steadily in view, and systematically commit them for long periods to reformatory schools, I think that a complete check would be given to the evil we have to deal with. 17

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16. Birmingham Gazette: July 19, August 2, 1871.

17. Report of the Inspector of Reformatories, P.P. 1859 Vol. XIII.

In principle the local magistrates agreed with the Inspector. The stipendiary magistrate was a firm believer in reformatory treatment for juveniles who were persistent thieves, although he did not believe it necessary to adopt an unvarying rule to send juveniles to reformatories on a second conviction. Nevertheless he began sentencing boys to reformatories as soon as he was appointed and succeeded in reducing the number of juveniles in prison from 80 in 1856 to nine at the time of the 1871 census. During his first fifteen years on the Bench, the stipendiary had clearly made significant changes in sentencing practice. But his reformatory intentions were held in check by the question of costs, by the availability of places, and by judgements about the suitability of the candidates. He noted that it cost 7/- a week to send a boy to a reformatory while the cost in gaol for an adult was only 3/- a week.<sup>18</sup> The number of available places was also limited, although not to the extent of causing complaints on the part of the magistrates. Instead they accommodated their sentences by selecting those whom they felt would profit most from time in a reformatory. Contrary to expectation, these turn out to be the less rather than the more hardened among juvenile offenders - a trend in keeping with the national one observed by the Inspector at the end of the sixties, who found that the proportion of juveniles not before committed had increased, and the proportion of those committed twice before had decreased.<sup>19</sup> This was generally interpreted as an indication of the effectiveness of reformatories in reducing serious juvenile crime, but the evidence from the Birmingham courts points to a different conclusion. Here the magistrates seem to have selected reformatories mainly for those whom they deemed morally worthy and capable of profiting from the experience. Those

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18. T.C.S. Kynnersley: 'On the Treatment of Juvenile Offenders in Police Courts and Petty Sessions', T.N.A.P.S.S. 1860.

19. P.P. 1868-9, XXX.

who lived in the roughest areas, who could not produce character witnesses or parents to speak in their favour, or who had previously been in trouble with the police were held to be irredeemable and were sent to prison, Whether for reasons of space, of economy, or of belief in the value of punishment, prison was and remained the likeliest outcome for the majority of juveniles convicted in Birmingham. A reformatory sentence was the solution only for a select minority of 5% or less of convicted juveniles; so that serious pressure on places did not arise, given the fact that the number of juvenile criminals remained quite stable after the 1850's and that prison was a viable alternative.

Selection for an industrial school raised greater difficulties because of the extreme pressure on the places that did exist. It was not only the Inspector who complained of the broad category of children being sent to these schools; Birmingham Council's Industrial School Committee was aware from the very start of the near impossibility of selecting, among the candidates for its industrial school, the neglected from the criminal. The school was intended to cater for those found destitute and begging whom they feared would 'help to swell the ranks of the criminal class if they were not removed from the temptations of crime and vice with which they were surrounded.' These children were not guilty of any crime. Nevertheless the committee stated that they had reason to believe that many of the boys sent to Shustoke were guilty of thefts,<sup>20</sup> and that they all belonged to a class little if at all removed from the criminal class.<sup>21</sup> To prevent the wrong sort of child from being received into the school, the Council needed to make full inquiries so that improper lads whose parents were fully able to look after them would not be admitted. Were this not done, it was feared that many dishonest parents

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20. Birmingham Gazette: July 6, 1868.

21. Birmingham Council Minutes: August 4, 1868.

would take advantage by ridding themselves of their liability to maintain their children.<sup>22</sup> In this way, a system of double checks was proposed, with the Council checking the boys' credentials once again after the magistrate had made their own inquiries. But the Council had no control over the sorts of children sent to the other industrial schools in the town, where the inmates may have been sent not because the parents were seeking to rid themselves of a liability but because neighbouring counties were seeking to do so, and where maintenance payments to a Birmingham industrial school offered the cheapest and least troublesome solution for dealing with their own delinquent juveniles. The degree of selectivity thus ranged from the attempted stringency of the Council to the much laxer procedures in the counties, revealed by the doubling and trebling of juveniles sent to Birmingham industrial schools in the decade after 1867. No hard and fast borderline between the destitute and the criminal was ever discovered by the authorities, but the combination of the two provided industrial school candidates in unceasing numbers. In the last analysis, selectivity here depended on the availability of a maintenance grant but, unlike the reformatories, with no alternative solution if this was not forthcoming. The child was then simply released by the magistrates and sent back to the circumstances from which he had come.<sup>23</sup> Thus sentencing policy was constrained by the financial restrictions imposed by the local authority, who were determined to keep costs down to a minimum. This they were able to do most stringently in the case of industrial school committals. In the case of reformatories, the magistrates had four to choose from, in the case of Industrial Schools only one.<sup>24</sup> But significantly, the position

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22. Birmingham Gazette: July 13, 1868.

23. B.G. : April 3, June 15, 1874.

24. This explains the anomaly of the committal figures from the Birmingham courts (See Table 3.1), where more juveniles were sentenced to reformatories than to industrial schools annually, although the total number detained in the latter schools was much higher than in the reformatories.

worsened in the Chamberlainite era of municipal reform. Far from supporting such institutions, the Council wished to dispense with them as far as possible,<sup>25</sup> and to substitute cheaper day schools.<sup>26</sup> The reforming principles of the Council in the 1870's were not applied to the institutions for the detention of juvenile delinquents.

#### Juvenile Offenders in Birmingham

How representative are the newspaper accounts of juveniles appearing in the Birmingham courts for the sample years? Statistics contained in a report to the Watch Committee covering three of the sample years enables one to compare the two, and to show that the newspaper sample is quite reliable with regard to the proportion and sex of the juveniles represented.

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25. Kynnersley complained at the annual meeting of the Neglected Childrens Aid Society in 1874, that there was now no Protestant School to send a child to because the School Board had refused to contribute towards the maintenance of children committed by the magistrates to the local industrial schools. The honorable secretary, Ald. Ryland characterised the action of the Board as 'the most injudicious act ever committed by a public body'. Chamberlain strongly objected to Kynnersley's remarks, and asked for information on the probable numbers of industrial school children. The outcome was that, as Chairman of the School Board, Chamberlain recommended that industrial day schools should be provided instead of industrial schools proper, since these cost about £25 per capita per annum, whereas day schools might be conducted at £5 a head. B.G.: April 18, April 25, December 5, 1874.

26. Ibid.

**Table 3.2:** % of Juveniles out of all Offenders appearing in Court, and reported in the newspaper - with the proportion of males to females in brackets.

	<u>In Court</u> <sup>1</sup>				<u>Reported in the Newspaper</u>			
	All Offenders	% Juveniles	Male	Female	All Offenders	% Juveniles	Male	Female
1871	15,120	8.8	(91.2	8.7 )	1,251	8.0	(87.1	12.8)
1872	16,185	10.2						
1873	13,863	10.4						
1874	12,746	9.7	(90.7	9.2 )	1,549	9.6	(89.9	10.0)
1875	11,722	7.8						
1876	16,551	7.7						
1877	16,015	7.2	(90.4	9.5 )	1,424	5.8	(86.9	13.0)

8.8% of offenders brought before the courts in 1871 were under 16, while the proportion in the borough aged 10 - 15 was 14.5 at this date.<sup>2</sup> This would indicate a definite change compared with the situation twenty-five years previously, when Hill had stated that 30% of those whom he tried annually in Birmingham were boys and girls under sixteen.<sup>3</sup> Statistical evidence on the ages of those brought to court at that time is not available to corroborate this statement. But those whose concerns centred on juvenile delinquency were convinced that delinquency was diminished and diminishing by the 1860's. Their view on how this had come about is summed up in the Commission on Reformatory and Industrial Schools report:

The effect of the system of certified schools ... upon juvenile and adult crime is on the whole very satisfactory. They are credited, we believe justly, with having broken up the gangs of young criminals in the larger towns; with putting an end to the training of boys as professional thieves; and with rescuing children fallen into crime from becoming habitual or hardened offenders, while they have undoubtedly had the effect of preventing large numbers of children from entering a career of crime. 4

1. City of Birmingham Watch Committee: Report of the Police Establishment and the State of Crime 1875 - 1889. BRL: 65007 and 36200.
2. 1871 Census Population Tables.
3. P.P. VII 1847, q.148-9.
4. Report of the Reformatory and Industrial Schools Commission. P.P. XLV 1884, p.X.

Extravagant claims were made for the impact of reformatories alone. In speaking of the reformatory system, the Gloucestershire magistrate and founder of Hardwicke reformatory told a meeting of reformatory managers that:

I doubt much whether any system has ever been tried in this or any other country which has had so perfect a success. I doubt if any experiment has ever been tried which has diminished the crime of a great country ... by nearly half in four years. 5

Baker attributed the decrease in juvenile crime from the mid 1850's to the effect of reformatories and to the stated general practice of committing all qualified juveniles to them on a second conviction, almost regardless of offence.<sup>6</sup> In Birmingham, however, no such general practice existed, and most juveniles continued to be sent to prison. It is in any case inherently unlikely that any single factor could satisfactorily account for trends in juvenile crime. Certainly, reformatories will have played a part, at the very least by extracting the young offender for years rather than months from his home territory. But the numbers detained there depended more on the availability of places and of maintenance grants than on the desire of the magistrates to pursue a consistent policy of long term reformatory sentences, and only a small proportion of juvenile offenders were ever sent there. It is possible that the combined impact of reformatories with other agencies of the 1860's and 70's, such as the Neglected Children's Aid Society; the Gutter Childrens Homes and Childrens Emigration Homes, together with industrial and other schools can help to account for the lower proportion of juvenile offenders before the courts in the 1870's than appeared before Hill at the end of the 1840's. At that date there were hardly any agencies concerned with 'rescuing' children at risk. Of more immediate relevance however, is that while the national

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5. Address to meeting of reformatory managers, December 2, 1861. Reprinted in T.B.L. Baker: War with Crime, 1889, p.209.

6. Letter to Daily Telegraph, November 4, 1865 in: Ibid: p.228.

statistics show a clear secular decline in the proportion of juveniles in prison between 1861 - 1881,<sup>7</sup> no such trend is observable in Birmingham. The figures here show a fluctuation around the mean, with the proportion of juvenile prisoners in 1861 almost exactly matching that of 1881.<sup>8</sup>

Why was there no decline in the numbers of juvenile offenders appearing before the courts in the period? In the short term, the effect on these numbers by the two main agencies dealing with the children of the streets worked in opposite directions, and so tended to cancel each other out.

The first of these - the Neglected Childrens Aid Society - was founded in 1868 by Arthur Ryland, with the stipendiary magistrate as its president. A full time officer was appointed, specially directed to search out neglected children in the streets,<sup>9</sup> which until that time had been undertaken by the police, if at all. In the first three years of its existence, the Society claimed that it was instrumental in sending 216 children to industrial schools<sup>10</sup> (or 23 more than were sent there through the Birmingham courts in these years).<sup>11</sup> Since candidates for industrial schools could only be admitted through a court order, the Society's figures may be slightly exaggerated.

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7. V.A.C. Gatrell & T.B. Hadden: 'Criminal Statistics and their Interpretation' in 19th Century Society, ed. E.A. Wrigley, Cambridge, 1971. Table 8, p.384. The proportion of male prisoners under 16 fell from 9.2 in 1861 to 3.7 in 1881, nationally.

8. Figures for the proportion of under 16 year old in Birmingham prison, (males and females) are as follows:

1861	:	7.3	1873	:	9.5
1867	:	7.4	1874	:	9.5
1868	:	9.5	1875	:	8.1
1869	:	7.2	1876	:	7.6
1870	:	7.6	1877	:	9.7
1871	:	8.4	1881	:	6.3
1872	:	10.7			

Source: Judicial Statistics.

9. His work was modelled on that of the Boys Beadle, of the Reformatory and Refuge Union in London - who employed an ex-policeman for the job.

10. Neglected Childrens Aid Society, 3rd Report, February 7, 1871. BRL:320301.

11. See figures in footnote, p.21.

However, it is quite likely that most, if not all such candidates, did appear in court because of the efforts of the Society, as its officer was careful to negotiate a placement at an industrial school before he brought the child to court<sup>12</sup> something which no policeman ever undertook or was empowered to do.

The second agency was a children's emigration scheme, which was founded in 1872 as the Gutter Childrens Homes and renamed the Childrens Emigration Homes in 1875. This was the brainchild of John Middlemore, the son of the magistrate and manufacturer; in the first year he took 16 children to Canada. Five years later 80 neglected and criminal children were brought together to the Childrens Emigration Home, and attended a farewell meeting before being escorted to Canada.<sup>13</sup> In the intervening period, 250 children 'collected from the lowest quarters of Birmingham' had been sent to the Dominion. 'I got most of my little emigrants from Thomas Street, John Street, the Gullet and Old Cross Street' Middlemore recalled.<sup>14</sup>

The interest of the magistrates in this scheme, in contrast with their lack of involvement with reformatories and industrial schools, is made clear by the Emigration Homes' subscription list. Admittedly the Middlemores were an old and influential Birmingham family. It is nevertheless striking that

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12. One of the declared objects of the Society was to 'look after the neglected Children of the Streets with a view to ... 1) Place such as may be proper objects in Certified Industrial Schools'. Neglected Childrens Aid Society, January 1868. BRL: 51332. In the extracts from the officer's journal, reproduced in the above report, he describes the negotiations he undertook with the Stipendiary and the managers of the Industrial School to ensure that there was an available place before he brought the child to court. The decision had therefore been taken before the case came up.

13. B.G.: May 10, 1877. Kynnersley presided over the farewell meeting, and the Chief Superintendent was also present, which must have given the meeting a rather punitive character.

14. John Middlemore: 'I Remember' Series. June 27, 1907. Middlemore stated in the first annual report of the Gutter Childrens Homes, 1873, BRL: 12821, that children were not taken to Canada because they were poor, but to save them from their bad companions.

nearly the whole of the Bench were regular subscribers,<sup>15</sup> while Alderman Ryland was desperately requesting subscriptions for his society and was supported on his committee only by the Stipendiary from the members on the Bench.<sup>16</sup>

The numbers of juveniles taken to court, and sent to Canada, are more or less equal, so that together they cannot account for the steady level of juveniles in court over the period. Meanwhile, the majority of juveniles continued to be charged on the initiative of the police. Their numbers show no diminution in the 1870's in any of the main categories of offences. No effect from changes in the economic climate, from the influence of reforming institutions, from emigration, or from the appointment of a new chief of police in 1876 can be inferred from the statistics. It would appear that a customary level of larceny cases were brought to court in the decade, and that a similar customary level of police arrests, chiefly for misdemeanours, was maintained by the police - although the peak number arrested for misdemeanours in 1874 is likely to be a consequence of the general street disorders and battles with the police, which culminated in that year.<sup>17</sup> It is also evident

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15. There were twenty-three subscribers to the Gutter Childrens Homes from among the magistrates in its first years. Three years later there were twenty-two subscribers on the Bench.

16. And yet the Neglected Childrens Aid Society was a far more constructive agency than the Childrens Emigration Homes, which merely sought to get rid of the children of the streets by shipment overseas. The former agency not only placed children in industrial schools. It also restored lost children to their parents, looked after the destitute, and tried to find places of work (sometimes after paying a premium) for suitable candidates. Yet they were not able to attract sufficient funds. Their Report for 1870 showed an income of £163. 14s. 3d. and an expenditure of £174. 0s. 2d. In that year the Report stated that the lack of funds did not allow them to take up the offer of industrial school places at Gem Street and Penn Street at £2 p.a. per child to the extent that they would have wished.

17. See the complaints in the Watch Committee that several small lads were taken into custody, but that these were such a bad representation of the 'roughs' that they were let off with a small fine. B.G.: June 17, 1874.

that the authorities found the level of juvenile offenders quite acceptable; and that while they were happy to dispose of the problem by contributing towards the cost of emigration, they were lukewarm in the support they gave to those engaged in the more burdensome task of rescue and reform at home.<sup>18</sup>

Table 3.3: Numbers Charged under J.O.A.,<sup>19</sup> and Type of Offence Committed by Juveniles. 20

	J.O.A.	Felonv		Misdemeanour		Drunkenness		Vagrancy	
		No.	%	No.	%	No.	%	No.	%
1867	198								
1868	461								
1869	362								
1870	382								
1871	347	400	37	500	46	11	1	174	16
1872	454	491	36	625	46	10	1	228	17
1873	445	497	33	825	55	10	1	159	11
1874	445	497	30	979	60	6	1	145	9
1875	386	444	34	716	55	15	1	134	10
1876	379	435	33	757	57	4		138	10
1877	420	475	40	588	50	9		115	10
1878	219	491	39	610	48	2		169	13

18. In a discussion on the declining rate of larceny down to 1890 at the national level, Gatrell observes that the way in which the Victorians dealt with juvenile offenders after mid century was probably of little effect, although it was the one on which Victorians were most prone to congratulate themselves. Juvenile crime, he believes, remained as serious a problem as it ever had been before reformatories and industrial schools had been introduced - and that one of the reasons for scepticism about the reformatories' impact was in the numbers they actually dealt with. He found that in no year between 1856 and 1914 were more than about 4% of convicted juvenile larcenists sent to reformatories. V.A.C. Gatrell: 'The Decline of Theft and Violence in Victorian and Edwardian England, pp. 305-6.

In the early years after mid-century, attempts to dispose of juvenile offenders through emigration schemes will have had little impact on the juvenile offence statistics. For instance, although a committee was established in Toronto in 1858 to receive reformatory and industrial school children, less than 100 children a year were sent to Canada until the end of the 1860's. From 1869, an average of 10,000 children were then sent to Canada annually down to 1914: the emigration schemes only really took off when non-criminal juveniles came to be included. See G.J. Parr: 'The Home Children: British Juvenile Immigrants to Canada, 1868-1924', Ph.D. thesis, University of Yale, 1977.

19. Source: Judicial Statistics.

20. Source: B.W.C. Report of the Police Establishment and the State of Crime, 1875 - 1889.

The Socio-Economic Circumstances of Juvenile  
Offenders

Hill had stated that the average number of boys coming before the courts exceeded the average in other places. The reasons he gave for this - the nature of trade in the town which encouraged receivers to incite boys to steal from their masters, and the habit of shopkeepers in hanging their goods outside shops, which encouraged shoplifting,<sup>1</sup> were based on his experience of the nature of juvenile offences he had to deal with in court, and are somewhat at variance with his more theoretical statements on the causes of juvenile crime. These he gave elsewhere as the consequence of the growth of towns and resulting segregation of classes, so that the children of the masses no longer came under the influence of the superior classes, but took the masses' moral standard as their own; being illegitimate, orphaned or a step-child; and living in idleness.<sup>2</sup> How far did these views have validity in the Birmingham of the 1860's and 70's?

Hill, and many contemporary observers were of the opinion that idleness led to crime among juveniles.<sup>3</sup> At the same time, Hill had noted that many boys in employment were exposed to temptations to steal.

The evidence in Table 3.4 supports the latter contention. Between two-thirds and three-quarters of juvenile offenders were in some form of employment, mostly in the hardware trades, while the Census sample reveals that in 1871 over twice as many juveniles aged 10 - 15 among the general population had no paid employment (nearly two-thirds of all juveniles).

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1. P.P. VII, 1847, q. 152.

2. P.P. VII, 1852, q. 386-92.

3. Before the 1870 Education Act, this assumption was one of the stumbling blocks confronting those seeking a reduction in the hours of child labour. In Birmingham, a committee set up in 1856 to seek information on this question devoted much of its attention to the problem of child vagrancy. Hooper states that initially the committee was as concerned with child vagrancy as with factory legislation. Hooper: Op.cit: p.184.

Table 3.4: Occupation of Juveniles aged 10 - 15; 1871 Census sample, and Newspaper sample, selected years.

	<u>1871 Census</u>	<u>1868</u>	<u>1871</u>	<u>1874</u>	<u>1877</u>
	%	%	%	%	%
Hawker/labourer	2	14	6	5	6
Artisan	1	2	4	7	4
Juvenile (errand etc.)	8	4	10	9	8
Servant	4	2	5	3	6
Metal trades	17	29	40	38	34
Other semi-skilled	3	7	11	8	5
No occupation	64	41	25	29	36
n =	385	96	103	149	84

It was always maintained that employment prospects for juveniles in Birmingham were good, albeit at a low level of skill. But juveniles working in dead-end jobs and liable to be dismissed when they grew older, had little incentive to watch their behaviour for the sake of a good character from their employer. At the same time, the organisation of some hardware trades - especially the gun trade - on a piece-work basis meant that youths were often employed carrying unfinished products from one piece-worker to another. Timmins' reference to the army of boys seen hurrying to and fro about the gun quarter is relevant here,<sup>4</sup> and in such occupations, the lack of any future prospects combined with the lack of close supervision would have been conducive to acts of petty larceny if the opportunity arose.

Well over half the offenders had a job. But the large proportion of juveniles without an occupation listed in the 1871 Census is surprising, in view of the persistent evidence of high demand for child labour in Birmingham's staple trades.<sup>5</sup> The Census figures cannot have been much affected

4. S. Timmins: Birmingham and the Midland Hardware District, 1866, p.118.

5. Childrens Employment Commission, 1862, p.52.

by the 1870 Education Act, since the Act was permissive, and there were no prosecutions under the local bye-law for non-attendance until 1872. Similarly the Factory and Workshops Act was not generally implemented until 1872, which then resulted in a shortage of juvenile labour and a rise in their rates of pay.<sup>6</sup> The Census figures on juvenile employment are corroborated by the detailed report in 1868 on the state of education in the town. The Birmingham Education Society investigated the circumstances of over 50,000 children and found that only 14% aged between three and fifteen were at work.<sup>7</sup> The discrepancy between contemporary statements stressing the particularly high demand for child labour - to the extent of 'inverting the natural order of labour between children and their parents'<sup>8</sup> - is important in revealing the high levels of intermittent unemployment accepted as the norm amongst adults.<sup>9</sup> The greater proportion of juveniles in employment amongst offenders than amongst the population in general can also be taken as an indication of the greater poverty and need for supplementary income in the families from which the offenders were drawn.

Children were not, however, shielded from unemployment. Indeed, they were perhaps more exposed to the vagaries of the trade cycle than other groups of workers. Since the majority were hired not by the principals but by the

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6. G.C. Allen: Op.cit: pp. 206-7. Allen writes that the Act caused the price of boy assistants' labour to rise from 4/- to 5/- p.w. in 1860 to 10/- p.w. in 1875. But Jesse Collings noted that in 1868 the Act, whereby workshops employing less than 50 hands were exempted, had had the effect of driving juvenile labour from the factories to the poorer conditions in the workshops. Child labour in the workshops remained unregulated, owing to the resistance of the small masters in Birmingham until 1872 when the first prosecution was brought under the extended Act. Jesse Collings: 'On the State of Education in Birmingham'. Paper read to the Social Science Meeting in Birmingham, October 1868. Birmingham 1869, p.11.

7. Ibid.

8. J.E. White: Childrens Employment Commission, p.63.

9. Hardly anyone over 20 in the Census is listed as without employment. Under Occupation, the adult would list his trade, whether he was in or out of employment. But children were not considered to have a fixed trade in this sense, so that an occupation was only stated if the child was actually at work.

adult piece workers, out of whose earnings they were paid, children would quickly become redundant when demand fell.<sup>10</sup> The effect is noticeable in the offence statistics, where a greater proportion of juveniles were unemployed in the depression of 1868 and 1877 than in the intervening years.

Juvenile offenders were mostly employed in the metal trades, accounting for around double the Census rate for juveniles in these trades - although the effects of lower demand in the year of depression are also evident here (in contrast with the trend for the proportion employed in unskilled and labouring jobs). Servants and errand boys formed a more or less representative proportion among offenders, but hawkers and labourers were over-represented (especially in 1868). As far as street peddling was concerned, a commentator on boy labour wrote that it was difficult to imagine a worse life for a young boy, since this means of earning a livelihood was more than any other subject to the most violent fluctuations. It was undisciplined, casual, and exposed to all the temptations of the street at its worst, and he believed that the great majority drifted into crime or some form of living by their wits.<sup>11</sup> Casual employment also dominated the juvenile labour market in the hardware trades. High but fluctuating demand, ease of entry, low level of skills, and absence of training encouraged juveniles to drift from one job to another with the result that at sixteen or seventeen they were 'mere wastrels on the labour market with no special training or capacity'.<sup>12</sup> This applied equally to girls. Investigators into women's work in Birmingham found that:

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10. Childrens Employment Commission, p.52.

11. R.A. Bray: 'The Boy and the Family' in Studies of Boy Life in Our Cities ed. E.J. Urwick, 1904, pp. 131-2.

12. Ibid: P.111.

Restlessness finds vent in frequent changes of work, especially in the first few years of working life. In the first flush of freedom girls are very independent, and as soon as they feel out of sorts, or quarrel with neighbours or master, or as soon as work gets short, they try a new place ... The common practice of taking on extra hands when there is a press of work, only to discharge them unconditionally when work slackens encourages thriftless and improvident habits among men and women alike ... with a tendency to create a vagrant class in industry, which has a very bad effect on the workers themselves. These 'casuals' are always the lowest class in any trade and their presence is a constant menace to the better workers. 13

The evidence in Table 3.4 indicates that it was the employment rather than idleness which offered an incentive or opportunity for larceny. But the conditions of employment with the fluctuations in demand for child labour, and the drifting from job to job that this gave rise to, were an added inducement to thieving.

If we look at the distribution of offences between the different groups of juveniles, certain variations become apparent.

Table 3.5: Distribution of Offences between Occupational Groups of Juveniles (All Years).

	<u>Labourer</u>	<u>Artisan</u>	<u>Juvenile</u>	<u>Servant</u>	<u>Metal Trades</u>	<u>Other Semi sk.</u>	<u>No Occup'n.</u>
false pretences	7	0	0	5	1	3	1
Pick pockets	3	12	0	0	11	3	5
<u>Larceny</u> employer	0	6	63	74	8	9	0
" shop	21	12	11	5	27	25	33
" Parent/ neighbour	3	6	18	10	1	0	8
" Other	38	50	0	5	30	44	34
begging/vagrant	10	0	0	0	3	3	6
assault	7	6	4	0	11	6	2
disorderly	10	6	4	0	5	3	3
other	0	0	0	0	3	8	5
n =	35	16	34	19	151	33	145

13. Cadbury, Matheson & Shann: Op.cit: p.246.

The first point to notice from Table 3.5 is that the newspaper concentrated on reporting cases of juvenile larceny, whereas Table 3.3 shows that around two thirds of juvenile offenders were arrested for misdemeanours or vagrancy. However, there is no reason to doubt the validity of the distribution of larceny offences, since the evidence on these will have been of direct interest to readers. Contrary to Hill's experience in earlier decades, theft from an employer was not a marked feature, whereas the incidence of shoplifting remained high. Hill's assertion that receivers encouraged boys to steal from their masters is difficult to corroborate. It was notoriously difficult to make cases against receivers stick. The Recorder complained that out of seventy-six known receivers in the town, he had not tried one in the last four years.<sup>14</sup> Certainly, very many stolen articles were pawned, and it must have been obvious in many instances that the goods were stolen. But there were only two cases involving juveniles stealing from their masters where evidence of incitement to steal was offered - and in one of these the receivers were boys of the thief's own age.<sup>15</sup> In most instances the disposal of the goods depended on the thief's own initiative; for example, in the case of two boys aged twelve and thirteen who stole brass from their different employers and offered it to a nail manufacturer who did not know them, or ask any questions, but who paid them half the market value of the metal.<sup>16</sup>

Shop assistants and servants had higher rates of stealing from their masters (although the rate among metal workers may be to some extent masked by the fluidity of the labour market)<sup>17</sup> By the time a theft came to light the

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14. B.G.: December 30, 1873. Address to the Grand Jury, Borough Sessions'.

15. Ibid: August 23, 1877.

16. Ibid: January 22, 1874.

17. White commented on the frequent shifting from one kind of work to another among children, facilitated, he noted, by the great resemblance of many of the work processes in different trades, and the small amount of skill and training required. Childrens Employment Commission, p.51.

offender might well have moved on to a different employer. But the crucial difference had more to do with divergent work situations. The control exercised over juveniles by the principals in the metal trades was less close than that exercised over shop assistants and servants. A brassfounder in whose works up to a hundred children were employed explained why:

Though as many as a hundred children are employed ... they are scattered through a very large number of small shops. As is the case in brassfoundry generally, the greater part of them are boys, who are employed as helpers by adults in filing, turning and miscellaneous work, and over whom only a general control is reserved by the principals. 18

Control over servants and shop assistants, by contrast, was very close. Marked money was planted in tills, servants' boxes were searched, and a watch was kept to try and catch them thieving in ten cases involving juveniles employed by shopkeepers or as servants, compared with only two such cases in a manufactory. In a typical incident, a fifteen year old servant slept in the same room as the daughter of the house. When the latter missed some money, the servant was immediately suspected, some marked money was left in the room, and a policeman was later called, who searched the servant and found the marked coin on her.<sup>19</sup> It was the freedom from such surveillance which caused many girls to prefer workshop or factory jobs, however noisy or dirty.

While the evidence for an increasing segregation of the social classes is indisputable, the consequences for rates of juvenile - or any other - delinquency are less clear. On the one hand many thefts, apart from shop and workplace larceny, took place between working class individuals in and around the streets where they lived. On the other hand, the highest rates for larceny

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18. Childrens Employment Commission: p.64.

19. B.G.: February 8, 1871..

from an employer occurred among servants, where the restraining influence through close contact with members of the superior classes was at its greatest. The circumstances of most juvenile thefts fell somewhere between these two extremes. Thefts from employers were in general at considerably lower rates than thefts from shopkeepers. The closer relationship between juvenile and master than between juvenile and shopkeeper could account for this difference. But one must also take differences in opportunity, and in the likelihood of being discovered and charged into consideration. The opportunity for theft between neighbour, employer or shopkeeper may have favoured the shopkeeper, with his goods temptingly laid out in front of his shop. Time and again, the magistrates chided the shopkeepers for encouraging shoplifting by this display. Only servants, with unrestricted access to their employer's house had better opportunities for theft. But where shopkeepers had first to catch the thief before they could charge him, servants were instantly under suspicion if anything was missing. Lower rates of larceny from industrial employers probably had more to do with lower rates of discovery than with fewer thefts. In workshops employing numbers of juveniles it would not be easy to be sure who was responsible for the loss of small pieces of metal, or to determine what was missing from stock. Two boys stole and pawned 3 - 400 clocks from their fathers' manufactory before they were discovered;<sup>20</sup> while another boy passed on over a hundred buckets to his companion, from the warehouse where he worked.<sup>21</sup> However, there is some evidence that industrial employers were not always prepared to press charges against their employees,<sup>22</sup> whereas in no case did a shopkeeper decline to

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20. B.G.: May 15, 1874.

21. Ibid: May 16, 1871.

22. There were seven such cases involving juvenile employees in the four years scrutinised - and in one case the employer only agreed to bring charges for theft because the stepfather insisted. B.G.: June 7, 1877.

prosecute. So Hill's view that a closer relationship between the classes lowered the crime rate has some substance, to the extent that a paternalist sense of responsibility for their young employees occasionally led employers to refrain from pressing charges for theft.

Hill also believed that the loss of one or both parents was an important factor in creating juvenile delinquency, and most of the reformers laid great stress on the connection between a parentless background and a career of crime. While they emphasised the loss in terms of a deficiency of moral guidance where today one might stress the emotional deprivation and economic pressure on such juveniles, the slender evidence available does indicate a much greater incidence of broken families among juvenile offenders than was the norm. The families of eight juvenile offenders whose cases were reported in the newspaper were traced in the 1871 Census sample. In addition there is information on the parentage of inmates admitted to Saltley reformatory for the years with which this study is concerned. Together, this evidence shows a far higher percentage of offenders coming from homes disrupted by the death of one or both parents than was the case for the population in general. 7.8% of the Census sample population were widowed, whereas two out of the eight offenders' families traced in the Census were headed by widows, and one was living with his aunt and uncle. The Saltley evidence also shows the strikingly high proportion of offenders from homes lacking at least one parent.

Table 3.6a: Parentage of Inmates, Saltley Reformatory.<sup>23</sup>

	<u>Both parents living</u>	<u>Father dead</u>	<u>Mother dead</u>	<u>Both dead</u>	<u>% without one or both parents</u>
1868	46	20	22	8	52
1871	48	21	23	9	52
1874	50	18	23	8	49
1877	56	17	20	7	44

23. Birmingham Reformatory Institution, Saltley, Reports and Papers, 1869 - 1878. BRL: 4394.

Table 3.6b: Home Circumstances 8 Juvenile Offenders, 1871 Census sample.

<u>Occupation</u>	<u>Occupation</u>	<u>No. of</u>	<u>No. of</u>
<u>Head of Household</u>	<u>Wife</u>	<u>Children</u>	<u>children working.</u>
Pearl button worker	None	7	2
Servant	None	4	2
Labourer	None	1	0
Brasscaster	None	3	1 (nephew)
Burnisher (widow)		5	3
Widow		7	4
Boatman	None	5	0
Coach Finisher	None	6	3

Hill's view that the loss of one or both parents was an inducement to steal seems quite well founded. Quite apart from the emotional loss,<sup>24</sup> the economic strains which this laid on the depleted household would have been formidable at a time when few outside agencies offered economic support. That economic pressure pushed juveniles into thieving is also suggested by the large numbers of dependant children among the eight offenders families, shown in Table 3.5b. Where 38% of Birmingham families had three or more children living at home in 1871, all except one of the offenders came from families containing at least three children, with 60% of the children not in work. Between them, these eight families had 38 children. The financial pressure on such working class households, where seven of the eight heads of households were in semi or unskilled work, must have been intense. Thieving, or a reformatory sentence offered at least a partial solution to their problems. Hill's observation that employment offered opportunities for theft finds more support in the criminal statistics of the 1860's and 70's than his speculation that idleness led to crime; and while the impact of class segretation on rates of juvenile crime remain unclear, there is confirmation that the loss of a parent had direct

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24. It is interesting that the loss of the mother had a greater influence than the loss of the father for the Saltley inmates - a pointer that the emotional security supplied by the mother might outweigh the economic support supplied by the father as a factor in restraining delinquency.

bearing on juvenile delinquency - at the very least because of the necessity of supplementing the household income.

### Sentencing Practice

We shall now turn to consider the sentencing practice with regard to juveniles in Birmingham. While the power of the Bench to implement a radical reformatory policy for most juveniles convicted of a felony, or in need of care, was curtailed by the financial restrictions imposed by the Council, the magistrates clearly favoured such a policy. The influence of the Stipendiary, T.C.S. Kynnersley was important here. Kynnersley was a firm believer in the value of probationary and reformatory sentences, so continuing a tradition first started by M.D. Hill. Kynnersley told the Society for the Promotion of Social Science that when he first came to Birmingham in 1856, there were on average 80 boys in the gaol. He then began the system of sending boys to reformatories, so that in his first year the number in gaol was reduced to 60, then to 30, and in the last week the return showed that there were only twelve boys in the gaol.<sup>1</sup> He had also told a previous meeting of the Society:

Idleness and want of regular occupation is the thing to be guarded against. Therefore when a boy is brought to me on a first offence who has work to go to, I am very unwilling to inflict any punishment which may interrupt his work. In such a case we usually find the prosecutor willing enough to take a hint from the bench and say that 'he does not wish the boy to be sent to gaol', and if he is his master, he will often 'give him another chance' and take him again into his service. 2

Kynnersley had clearly implemented a policy of reformatory type sentences for a number of juvenile offenders, even if he was no longer able, or willing, to ask employers to act as 'guarantor' for the good behaviour of the offender.

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1. Address to the N.A.P.S.S., October 6, 1868. At the time of the 1871 Census there were 9 juveniles in prison. The average length of sentence was 1 month for juveniles, so that at least 100 juveniles p.a. would have been imprisoned.

2. 'On the Treatment of Juvenile Offenders in Police Courts and Petty Sessions,' Paper read at the N.A.P.S.S., 1860.

But his reformatory principles did not apply to all the offenders who came before him, nor did they go unchallenged. There were clear limits to the number of reformatory sentences the Bench could mete out, because of the restrictions on the institutions for which the Council would pay maintenance grants. There were a number of alternative local institutions to which the magistrates could send juveniles, subject to availability of places and the suitability of the candidate. Nevertheless, imprisonment remained the most frequent sentence - although the proportion did decline from a half in 1871 to a third in 1877.

Table 3.7: Distribution of Sentences on Juvenile Offenders

	<u>1868</u>	<u>1871</u>	<u>1874</u>	<u>1877</u>
	%	%	%	%
Reformatory	20	19	14	18
Industrial School <sup>3</sup>	4	4	5	2
Prison <sup>4</sup>	48	51	42	32
Fine or Prison	5	1	5	1
Fine	2	4	5	10
Remand	4	4	11	12
Discharge	16	15	15	13
Not known	1	2	1	2
Remand to find reformatory place	-	-	-	10
n =	96	103	149	84

The very low proportion of juveniles sentenced to Industrial Schools vividly demonstrates the effect of the Council's financial stringency. The consequent difficulty in placing Birmingham children in these schools is well illustrated in the following case, where a twelve year old boy was brought up

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3. Those eligible for Industrial Schools were an awkward category of criminal and non criminal children. The only legal stipulation was that the child should have no previous conviction for felony, and be under the age of twelve. But all cases had to be brought before the justices, whether criminal or not, and the children were sent to Industrial Schools by the Bench for a stated term, as in sentences to reformatories.

4. The statutory two weeks imprisonment which all juveniles sentenced to a reformatory had to serve, is not included here.

on remand for stealing 3/3d from his father. Penn Street was full and Gem Street declined to take any boys from Birmingham free while they could get boys from the counties who paid. Since he could find no school for the boy, Kynnersley discharged him.<sup>5</sup> The Watch Committee, responsible for paying the maintenance grants was in two minds over the value of these schools, and as we have seen, Alderman Holland led a campaign against them. Such was the dissension and doubt on this issue that the offer by the School Board to take over responsibility for Shustoke was immediately accepted, whereas normally any encroachment on the Committee's area of jurisdiction would have been strongly resisted.<sup>6</sup> However, the School Board, with its wider responsibilities for the education of all the children in the Borough, did not prove to be a more enthusiastic supporter of Industrial Schools than had the Watch Committee.<sup>7</sup>

Prison remained the likeliest outcome for juveniles convicted in Birmingham. Despite Kynnersley's declared faith in reformatories, he certainly believed in imprisonment (or whipping)<sup>8</sup> as punishment. This is shown quite clearly in the Bench's action of sentencing most of those sent to a reformatory to a longer period of prior imprisonment than the statutory two weeks, on two occasions for as long as two months.<sup>9</sup>

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5. B.G.: April 3, 1874.

6. B.G.: August 2, 1871.

7. See footnote 25, p.128.

8. Kynnersley had stated that 'if a boy with work is getting in to bad company, I am old fashioned enough to think that the sharp, short and decisive treatment of a flogging is the best thing for bringing a reaction to a better state of mind'. T.N.A.P.S.S., 1860.

9. Well over a third of all juveniles sentenced to a reformatory spent longer in prison than the statutory two weeks.

The principle of automatically sentencing juveniles to a reformatory on a second conviction<sup>10</sup> was also not adhered to, since more children with previous convictions were noted among those sent to prison than among those sent to reformatories.<sup>11</sup> The length of prison sentences for juveniles is shown in Table 3.8.

Table 3.8: Length of Prison Sentences for Juveniles, as  
% of all Sentences on Juveniles

	<u>1868</u>	<u>1871</u>	<u>1874</u>	<u>1877</u>
	%	%	%	%
3 days and a whipping	2	5	6	4
2 weeks	16	12	9	7
1 month	9	12	9	7
2 months	7	14	7	10
3 months	14	8	10	2
Over 3 months	-	-	1	2
Other	52	49	58	68
Previous conviction noted	3	6	5	7
n #	96	103	149	84

The evidence shows that imprisonment of juveniles was taken seriously, with the majority being sentenced to longer periods than the 'short, sharp lesson' of two weeks or less. The flogging of juveniles was also a regular feature, despite an attempt by one of the visiting justices to get it abolished.<sup>12</sup>

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10. As T.B.L. Baker stated was the case throughout England after 1856. Baker: Op.cit: p.44.

11. The percentage of juveniles with previous convictions noted in the newspaper who were sentenced to reformatories was 3% in 1868 and 1871; 4% in 1874 and none in 1877.

12. In 1876, 22 boys were whipped for felony, six being under 12 and fourteen under 13. The boys were strapped to a wooden horse to be whipped, and a visiting justice called for a report on the subject. The justices, after their inquiry, reported that they did not think flogging was a deterrent, and that the Governor of the Gaol was also opposed to flogging children. Nevertheless, the Report was adopted only on the understanding that it was in no way binding on the Bench. B.G.: January 10, April 4, 1877.

The key factor determining the type of sentence juveniles received was the character they were given. If the child was 'known to the police' they usually received a prison sentence; a bad character from the parents most frequently resulted in a sentence to a reformatory or Industrial School; while with a good character most children could expect to be discharged. Kynnersley was quite explicit about the importance of a good character:

If a boy is in bad company, and above the age of whipping, and his master turns his back on him after one act of theft - but he has a decent home and parents - I am very unwilling to remove him permanently from them. Also a reformatory is costly ... If the parents do not speak hopefully of him, he is sent to prison. ... I think short sentences of 2 - 3 weeks useless ... I impose sentences to the whole period to which a magistrate's power of commitment extends, viz. 3 months. It is better not to send him at all, than for a shorter time. 13

A good character carried weight in mitigating the sentence which was passed. In this way a vestige of the former probationary scheme was continued, with character of greater significance for the outcome of the trial than the nature of the offence. An example to illustrate this point occurred in 1868 when seven boys - ranging in age from ten to sixteen - were charged with sleeping out of doors.<sup>14</sup> Four of the boys were discharged, two who had previous convictions were sent to prison, but the ten year old who was given a bad character by his mother was sent to a Reformatory. In an opposite example, two boys were charged with stealing gloves from a drapers; one was sentenced to three days and a whipping, the other whose mother gave him a good character was discharged.<sup>15</sup> However, the most interesting distinction in sentencing was between offenders who were given a bad character by their parents, and those who were given a bad character by the police. Out of the thirty-eight children given a bad character by their parents, nine were

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13. T.C.S. Kynnersley: 'On the Treatment of Juvenile Offenders in Police Courts and Petty Sessions', Op.cit. 1860.

14. B.G.: April 17, 1868.

15. B.G.: May 25, 1871.

sentenced to imprisonment and twenty-four were sent to a reformatory or industrial school; whereas all but one of the nine children given a bad character by the police were sent to prison. On the face of it, this latter group would appear to have been prime candidates for reformatory sentences, since they were designated by the police as known thieves or as keeping company with thieves. Most of the nine were pickpockets, which is as close to a description of an habitual thief among juveniles as one is likely to find.<sup>16</sup> The homes of the Birmingham pickpockets tended to cluster in certain ill-famed streets to a much greater extent than for other juvenile offenders, with 31% of juvenile pickpockets having addresses in the rough streets shown in Chapter 1.<sup>17</sup>

Kynnersley had stated that by sending boys and girls to reformatories they broke up the nurseries of crime.<sup>18</sup> It was amongst the pickpockets that such nurseries most clearly flourished, but they were sent to prison, not reformatories. In Birmingham, the Bench seems to have decided that there was a possibility of moral reformation for children whose parents deplored their behaviour, while children whose parents did not speak for (or against) them, who lived in streets having a bad reputation and who often had previous convictions were treated as habitual criminals, too hardened to be likely to benefit from the scarce chance of a place in a reformatory. The reformatory

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16. H. Mayhew: London's Underworld, ed. P. Quennell, 1950, pp. 140, 194. Mayhew believed that all pickpockets had some training, and were a cut above the common thief.

17. Juvenile offenders were drawn from the 'rough streets' in roughly the same proportion as for the sample as a whole:

	<u>1868</u>	<u>1871</u>	<u>1874</u>	<u>1877</u>
% juvenile offenders living in named rough streets, out of all juvenile offenders.	13%	5%	17%	10%
n =	96	103	149	84
% offenders living in named rough streets out of total sample	15%	12%	13%	11%
n =	1213	1251	1549	1424

18. Address to the N.A.P.S.S., 1868.

movements' categorisation of juvenile offenders as morally distinct found its echo in the sentencing policy of the Birmingham magistrates, where a lower class, seen as hereditary or hardened criminals, was held distinct from other juvenile offenders. This may be one reason why the statistics on juvenile offenders showed so little decline in the period.

## Chapter 4

### Habitual Criminals

The impetus for the increasingly severe penal measures imposed on convicts after mid-century arose from the waning of transportation as the chief method of disposing of the long-term convicted. In its place, the Penal Servitude Act of 1853<sup>1</sup> provided for a fixed period of eighteen months cell labour; and a second stage of silent associated labour on public works. The new principle embodied in the Act, of a conditional discharge on a ticket-of-leave for prisoners who behaved well, had been taken over from the practice of issuing such tickets to convicts in New South Wales as a discretionary award for good conduct.<sup>2</sup> It was this part of the Act which aroused the most debate, and on which the fears of the public fastened, and which led inexorably to the tighter measures of identification and control which culminated in the Habitual Criminals Act<sup>3</sup> and Prevention of Crimes Act.<sup>4</sup>

Davis has traced one outcome of public fears over the ticket-of-leave system, in the moral panic which occurred in London in 1861. She concluded that:

A moral panic arises when a society feels threatened. During the panic a certain easily identifiable group, whose distinct image has been refined, or even defined, largely by the mass media, becomes a symbol of this threat. If the panic is very strong ... the authorities concerned will take steps to control this group ... Lying behind the ensuing attempt to control the threat are often 'moral entrepreneurs' who use the public indignation aroused during the panic to 'sell' their particular form of moral enterprise. The outcome of a moral panic is often a change in the way control agencies function. 5

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1. 16 & 17 Vict. c.99.
  2. Bartripp: Op.cit: p.319.
  3. 32 & 33 Vict. c.99, 1869.
  4. 34 & 35 Vict. c.12, 1871.
  5. Davis: Op.cit: pp. 198-9.

Davis' summary offers an explanatory framework for the interaction of public opinion and press campaigns directed against ticket-of-leave convicts as the perpetrators of the serious crime in the country, and the ascendancy of the penal school of 'moral entrepreneurs', like Sir William Crofton, in persuading Parliament to pass a series of penal Acts in the third quarter of the 19th century.<sup>6</sup> The question remains why public fears should have fastened on the ticket-of-leave man, and to have been aroused almost exclusively by incidents of robbery with violence in London. The key lies in fear of personal violence. Overwhelming numbers, and the threat of physical force was the hidden weapon, and the one undisputed advantage of the working class in any confrontation with the middle classes. But with the subsidence of class conflict and the Chartist threat, fear of the insurrectionary potential of the working class also subsided, to emerge transposed into panics surrounding a few well publicised incidents of robbery with violence. The anonymity of London, the 'unknown' quality of the lives and circumstances of much of its labouring population, and London as the seat of the national press made it the ideal setting for the dissemination of such panics. Despite the high level of violence (including robbery with violence) which existed in Birmingham in the period, there was a remarkable lack of public debate about the criminal classes, such as periodically filled the columns of the national press, and the pages of the T.N.A.P.S.S. The lack of corroboration for panics outside London or for campaigns such as the London Association for Preventing Pauperism and Crime<sup>7</sup> against the 'criminal class' alerts one to the fantasy

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6. Lord Houghton, speaking against the Habitual Criminals Bill, stated that 'it is not the Bill of the present Government or of any Government at all - it has come to them from without ... The real author of this Bill is Sir William Crofton'. Hansard, 2nd Reading, March 5, House of Lords. 3rd Series 1869. CXCIV, p.710.

7. This Association, formed under the umbrella of the Association for the Promotion of Social Science in July 1868, was the forerunner of the Charity Organisation Society.

element in much of the discussion about the activities of this class. On the other hand, public fears, broadcast in the national press, provided the necessary emotional back-up for the proposals of the penal ideologues who were disappointed with the results of a reformatory prison system; and shocked at the number of 'known thieves and depredators' revealed in the new annual series of Judicial Statistics from 1856 onwards; and who wished to implement stricter measures to identify, hold distinct and deter, convicted criminals. Where the Judicial Statistics provided the basic information on the number and distribution of the members of the criminal class, the new Borough police offered the means for instituting a system of checks and surveillance of convicts on licence and other criminals. The Government was thus led, through a series of Select Committees and Royal Commissions to enact legislation imposing registration, regular reporting to the police and police supervision on the ticket-of-leave man.<sup>8</sup> Meanwhile, a photographic record and entry into a criminal registry, at local and at national level, distinguished those not subjected to penal servitude, but twice convicted of a felony, as habitual criminals, rather than occasional offenders.

With the passing of the Habitual Criminals Act and the Prevention of Crimes Act the legal position of anyone having a previous conviction for felony worsened considerably. Where penal servitude had introduced the principle of reformatory sentences, with remission for good behaviour and a probationary period for the remitted sentence, these new Acts went a stage further than an elaboration of the conditions of licence. For the first time, an Act was

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8. A Select Committee inquired, in 1856, into the working of the Penal Servitude Act of 1853, which was consequently amended in 1857 because of public dissatisfaction with the lack of checks on ticket-of-leave men. Some improvements were made in this respect in the 1858 Act. But more important was the Royal Commission on Transportation and Penal Servitude in 1863 which investigated the workings of the Penal Servitude Acts of the 1850's. The outcome was the Penal Servitude Act of 1864, where for the first time the registration and supervision of ticket-of-leave men by the police obtained some reality. A Select Committee of the House of Lords investigated local and convict prisons in 1863, resulting in the policy of 'hard labour, hard fare and a hard bed' for local prisons, under the Prisons Act of 1864.

passed which attempted to provide the means of identifying a criminal class, almost as it were, at its birth. It radically altered the status of certain offenders who were designated habitual criminals under the Act, and to whom were applied a separate set of legal principles. This concerned not only a small number of special cases, or of hardened offenders sentenced to penal servitude, but the large numbers who belonged to the 'criminal classes', as the Earl of Kimberley made clear when he introduced the Habitual Criminals Bill in the Lords:

In dealing with the criminal class, we must not confine our attention to those convicted of grievous offences and undergoing penal servitude. We must view the whole of what are usually called the criminal classes, and I regret to say that large as may appear the number of convicts I have just stated, the number of the criminal classes is far larger. It is in fact a great army - an army making war on society, and it is necessary that society should for its own defence make war upon them. 9

There were dissenting voices against the Bill (notably Lord Houghton and Lord Shaftesbury), both in principle and because of the difficulties it would create for the employment prospects of offenders. But extra-parliamentary pressure provided the momentum which enabled the Home Secretary, H.A. Bruce (who introduced the Bill in the Commons) to secure the passing of the Act.<sup>10</sup> The Acts of 1869 and 1871 were to see the culmination of Victorian efforts to institutionalise the categorisation and segregation of a criminal class from the rest of the labouring population. In this respect, the employment

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9. Hansard: First reading of the Habitual Criminals Bill, February 26, 1869, House of Lords, 3rd Series, CXCVIII, p.338.

10. The Annual Register for 1869 stated that the Act was produced by the Government to meet the urgent demands of the public ... and that to facilitate its progress it was introduced first in the House of Lords. This sense of urgency derived from an upsurge of concern about crime in 1868-9. The work of Simon Stevenson, in analysing the annual incidence of letters and articles on the subject published in the Times, shows a peak at this time, itself triggered off, he believes, in the formation of the London Association for the Prevention of Pauperism and Crime and the report of its concerns in the Times. Simon Stevenson: 'Criminal Class and Criminal Area in the mid Victorian City: a study of prisoners and their families with special reference to Birmingham and Tower Hamlets.' Forthcoming Ph.D. thesis, University of Oxford. Private communication.

difficulties of ex-prisoners were seen as an advantage rather than the reverse, in that they held the two groups apart. The Prison Chaplain of Wandsworth, W.D. Morrison, gave voice to this view when he wrote of released prisoners that:

These men hang upon the skirts of labour and seek shelter under its banner, but it is only for short and irregular intervals that they march in the ranks of actual workers. The real working man knows such people well, and heartily despises them. 11

In the effort to define the criminal as morally distinct, the concept of a criminal class in this period came to replace the earlier more diffuse notion of the 'dangerous classes'. Stringent new measures were to ensure that the criminal would not slip back to merge unnoticed with the population at large. The Habitual Criminals Act provided that a person twice guilty of felony, and not punished with penal servitude, was to be subject to police supervision for a period of up to seven years. If, during that time, they committed a further offence subject to summary jurisdiction they could be sent to prison for up to one year. The circumstances which defined such offences provided the police with a licence to detain anyone under police supervision they chose to; and for the justices to sentence such defendants to imprisonment without proof, for intent - as Section 8 of the Act makes clear:

... whereas doubts are entertained as to the nature of the evidence required to prove ... the intention to commit felony; Be it enacted that in proving such intent it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent, and he may be convicted if from the circumstances of the case, and from his known character as proved to the justices or magistrates it appears ... that his intent was to commit a felony. 12

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11. W.D. Morrison: Crime and its Causes, 1891, p.126. His supposition was not without foundation. A leader in the B.G., January 26, 1867 commenting on the work of the Discharged Prisoners Aid Society noted the difficulties they had in placing ex-prisoners in work, because of 'the opposition in Birmingham by fellow workmen if they discover that there is a discharged prisoner amongst them'.

12. Habitual Criminals Act, Part III, 8, Habitual Criminals. The Prevention of Crime Act (1871) further extended the circumstances in which a suspect under supervision could be detained to include Section IV of the Vagrancy Act 1824 (5 Geo. IV c.83). These included frequenting any river, canal... quay or wharf;

When introducing the Bill, Kimberley had defended this aspect of the proposed legislation:

I think we are perfectly justified in shifting the burden of proof in certain cases from the accuser to the accused. Nobody honours more than I do the good old maxim of English law that a man shall be presumed innocent until he shall have been proved guilty: but there can be no harm - on the contrary, it seems to me perfectly consistent with justice to the individual himself and to be demanded by justice to society - that men who by repeated crimes have shown that they set the laws of society at defiance should be placed under a different code - that a special law should be made applicable to them - that, to a certain extent, they should be under a disability, and should have the burden of proving that they are earning a livelihood by honest means. 13

Where intent could bring up to a year's imprisonment, the slightest felony was liable to bring the most severe punishment for those under supervision. Thus when William Mason, a nineteen year old brassfounder under police supervision, was sentenced in Birmingham to seven years penal servitude for stealing three lumps of coal from a loaded boat,<sup>14</sup> he became a victim of the newest legal doctrines. For while systems of reformation and rehabilitation put forward by those of the 'moral suasive' school might appear to have lost out to those in favour of a purely deterrent system, yet the views of both groups regarding the unrepentant or habitual criminal meshed together without strain, with a consequent heightening of the stringency of the measures adopted. Where one group wanted such criminals to be detained for long periods of time so that they could not commit further crimes or influence others into crime, the other looked to long penal sentences with release on licence as the means

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12. (cont'd) ... any street, highway or avenue leading thereto; or any place of public resort without being able to account satisfactorily for their presence there. In the Habitual Criminals Act places for arrest on suspicion had been confined to yards and buildings, private land and public parks.

13. Earl of Kimberley: Op.cit: p.340. It is noteworthy that only Lord Romilly objected to this section of the Bill, on the grounds that it gave magistrates too great and arbitrary a power. Ibid: 2nd Reading, March 5, p.693.

14. B.G.: December 5, 1871. Mason had five previous convictions: one for stealing a ball when he was thirteen; three for vagrancy and one for stealing coal.

to reform such offenders.<sup>15</sup> An habitual criminal was guilty until he proved himself innocent. But where the deterrent school doubted that habitual criminals had any genuine desire for gainful employment, the reformer saw no additional hazard but rather an additional possibility for reform in the difficulties ex-prisoners would face in finding employment:

... they should clearly understand that they have lost their good characters for the time, and must not at first expect to be employed in places of trust or at high wages, and that it would be dishonest in them to accept any such places without informing their employers of the truth. ... a good character ... can only be regained by some years of steady good conduct. 16

The outcome was the prospect of increasingly long prison sentences for those with several convictions, and a very insecure position in relation to the police and their employment prospects. Under the terms of the 1869 Act a very limited sufferance was to be extended to this group. How were these terms carried out?

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15. As early as 1855, M.D. Hill proposed that the correct deduction after adopting the principle of making the duration of imprisonment dependent on the conduct of the prisoner, would be to detain 'incurables' in prison for life. Hill: Op.cit. Charge to the Grand Jury 1855, p.464-5. Life imprisonment for habitual criminals was discussed during the debate on the Habitual Criminals Bill but rejected because it was not thought that the public were prepared for it. Nevertheless, there remained a considerable body of professional opinion in favour. See f.i. the opinion of Pike when he wrote of the incorrigible offender that 'his nature ... is at variance with the modern conditions of life. He is incapable of appreciating, and therefore cannot be changed or softened by sympathy. He may be no more responsible than a madman is responsible for his delusions, but it may nevertheless be expedient to restrain both the one and the other. Neither should have the opportunity of leaving offspring behind him. Perpetual imprisonment of the irreclaimable - imprisonment not only nominally but really for life - would be one among many causes of that change in the general tone of society which is shown by history to be the greatest preventive of crime as now understood'. L.O. Pike: A History of Crime in England, 1876, pp. 579-80.

16. T.B.L. Baker: Letter on Police Supervision, June 7, 1880, in Op.cit.: pp. 115-6.

The Habitual Criminal and Prevention of Crime Acts raise a number of questions concerning their practicality and applicability, which will be discussed in relation to the Birmingham evidence. The first question concerns the extent to which the Acts were successful in aiding the police and the courts to select out habitual criminals from other offenders.<sup>17</sup>

All those appearing at Quarter Sessions or Assizes who were found guilty of a felony after a previous conviction - the grounds on which they were designated as habitual criminals - were noted for the sample years.<sup>18</sup> On this evidence, about two thirds of those appearing before the higher courts could have been termed habitual criminals. Their characteristics are compared with those of the total sample of offenders in the following Table.

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17. The precise definition of an habitual criminal was: a person convicted of any felony not punishable with death also, or the offence of uttering false or counterfeit coin or of possessing counterfeit gold or silver coin, or the offence of obtaining goods or money by false pretences, or the offence of conspiracy to defraud, or misdemeanour under the 58th section of 24 and 25 Vict. c.96. First Schedule, Habitual Criminals Act.

18. An habitual criminal was any person convicted on indictment of any offence specified in the above First Schedule, having been previously convicted of an offence specified in the schedule. While indictable offences of larceny under 5/-, or over if the defendant pleaded guilty, could be tried in the summary court, the sample here is restricted to those appearing in the higher courts, since it was only in the higher court records that previous convictions were consistently noted down.

**Table 4.1: Characteristics of Habitual Criminals, of Total Sample of Offenders and Census 1871 sample.**

a) <u>Age</u>	Census	1868		1871		1874		1877	
		All	H.C	All	H.C	All	H.C	All	H.C
	%	%	%	%	%	%	%	%	%
10 - 15	15	8	3	8	0	10	1	6	1
16 - 20	13	22	21	24	33	27	35	25	34
21 - 25	13	23	27	18	23	17	21	19	21
26 - 35	21	23	27	22	22	18	27	21	25
Over 35	37	17	22	21	21	18	16	19	19
b) <u>Sex</u>									
Male	52	80	78	79	74	82	90	85	86
female	48	20	22	21	26	18	10	15	14
c) <u>Occupation</u>									
Labourer/char	4	15	19	10	12	11	16	15	18
Hawker/carter/ boatman	4	6	5	8	7	7	6	7	5
Tailor/shoemaker	5	4	10	5	8	4	5	4	5
Metal trades	26	29	36	33	43	31	48	28	45
Building trades	2	3	5	2	7	3	5	4	4
Other artisan	4	5	2	5	4	5	3	4	3
Other semiskilled	4	5	9	7	8	7	9	5	10
Servant/groom	5	2	4	3	5	2	3	1	1
Clerk/shop asst.	3	2	1	3	1	4	0	4	2
Shopkeeper/services	4	3	1	5	0	3	2	7	2
Agent/dealer	2	3	1	2	2	3	2	2	1
None(women, children)	33	18	6	15	3	18	1	13	4
Other	4	3	0	2	0	2	0	6	0
n =	2515								
d) <u>Address</u>									
Thomas St. & Park St.		5	3	5	7	5	9	5	13
All rough areas		15	9	12	14	14	12	11	11
No fixed address		5	12	7	7	4	5	6	8
n =		1213	139	1251	128	1549	149	1424	156

The first point to notice in Table 4.1 is the absence of under sixteen year olds among the habitual criminals. While, until 1849, about a quarter of all juvenile offenders were convicted on indictment,<sup>19</sup> after the Juvenile

19. See Magarey: Op.cit: Appendix, Table I.

Offenders Acts of 1847 and 1850 most juvenile cases were transferred to summary jurisdiction. These Acts, and the provision of reformatory and industrial schools ensured that juveniles were dealt with as a separate category. This does not of course imply that juveniles could not run up a string of convictions, but it does mean that they were not subjected to penal sentences or to the scrutiny given to returned convicts. But Table 4.1a points up the high proportion of young offenders aged 16 - 20 in the 1870's, with a particular upsurge of habitual criminals in this age group. The significance of this will be discussed later in the chapter. (See pp.173-177).

The sexual division between offenders shows the customary preponderance of males, but indicates a greater fluctuation in the proportion of female habitual offenders than was evident among female offenders generally. Thus the proportion of females amongst habitual criminals dropped from a peak of over a quarter in 1871 to well under a fifth in the late 1870's. This goes against the trend for female prisoners, where a rising proportion of prisoners with previous convictions were female throughout the decade, amounting to a fifth of all prisoners in 1877.<sup>20</sup>

The reasons for this decline are not to be found in changes in the pattern of offences committed by women. There were no variations in the types of offences committed by female habitual criminals, by far the largest single group of offences continuing to be the larceny of clothes. This accounted for around half of female offences, with a further fifth concerned with larceny from the person. The difference must therefore lie in the attitude

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20. Birmingham Borough Prison: % of Females with Previous Commitments to any Prison.

<u>Judicial Statistics:</u>		<u>%</u>
LXVII	1868	13
LXIV	1871	16
LXXI	1874	18
LXXIX	1877	19

of the magistrates in deciding whether to send the case to sessions, which showed itself in a growing leniency towards women with prison records. This comes as something of a surprise, since the received opinion was that criminal women were worse than men,<sup>21</sup> and that crime - as a chiefly male undertaking - was somehow more unnatural in a woman. The close connection in the public mind between prostitution and crime further debased the standing of female criminals. But Tobias believes that crime and prostitution were no longer so closely linked by the 1870's as in the first sixty years of the century;<sup>22</sup> and this view receives some corroboration from the Birmingham evidence, where three quarters of the cases involving felony by prostitutes were sent to the higher court in 1868, but a much lower percentage ended in these courts in the 1870's.<sup>23</sup> Certainly, attitudes to women and views on their place in society were changing at this time, and the magistrates were taking a much sterner view of assaults directed against them (see Chapter 5). Perhaps prostitutes were also beginning to be regarded more as victims.<sup>24</sup>

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21. The author of an article on 'Criminal Women' asserted that it was notorious that a bad man was not so vile as a bad woman. Cornhill Magazine XIV 1866. Mary Carpenter observed in 'Our Convicts' that criminal women had much higher rates of re-conviction than criminal men. See 'Life in the Criminal Class', Edinburgh Review, XXII, October 1865.

22. Tobias: Op.cit, p.107.

23. The figures are:

	<u>No.</u>	<u>%</u>
1868	24	75
1871	16	37
1874	15	33
1877	14	43

24. But Walkowitz's work on prostitution makes clear that magistrates' attitudes towards prostitutes in towns like Southampton and Portsmouth where the Contagious Diseases Act was in operation, were very different to the leniency of the Birmingham magistrates. See J.R. Walkowitz: Prostitution and Victorian Society: Women, Class and the State. Cambridge, 1981, Chap. 10.

There is little to distinguish habitual offenders from others in the occupational statistics, except that a much smaller percentage were listed as without an occupation. This is to be explained by the fact that the category applied chiefly to married women and children, of whom there were very few amongst habitual criminals. The effect is to inflate the proportions in the other occupational categories. Nevertheless, even when allowing for this, the distribution of occupations between the two groups of offenders is not an even one. Thus white collar and artisan occupations are under-represented, and metal trade and semi- and unskilled occupations are over-represented among habitual criminals. This tendency is in keeping with the general occupational differences noted between the Census sample and all offenders; among the habitual criminal group these differences were simply more pronounced. The dividing gulf is between offenders in general and non-offenders, particularly as far as the unskilled were concerned, with between three and four times as many labourers among offenders as among the population in general. But there can be no suggestion that habitual criminals formed an occupationally distinct, marginal or ostracised group in relation to other offenders - most being drawn not from labourers but from the staple metal trades of the town. One might best characterise the occupational distribution of habitual criminals as representing one end of a continuum, with non-offenders at the other extreme, and the total sample of offenders in between.

A similar heightening effect is observable in the tendency for more habitual criminals to live in high crime streets, or to be without a fixed abode, than was general amongst all offenders. The increasing criminality of Thomas Street, shown earlier (Table 1.2, Chap. 1) is further pointed to in the rising proportion of habitual criminals after 1871 from Thomas Street and Park Street. The proportion without an address or living in the rough

areas rose from a quarter of habitual criminals in 1868 to nearly a third in 1877. In summary, it would appear that the criteria for defining an habitual criminal succeeded in selecting out a group of young, male, metal workers, living in the rough areas as the typical habitual criminal in Birmingham in the 1870's. This finding is of some importance since it corroborates the hypothesis proposed earlier in this chapter, that fear of personal violence lay at the root of the demand for new penal legislation; and shows that the Birmingham courts acted in accordance with this view when they sent violent young gang members, rather than common thieves, to Quarter Sessions or Assizes. The significance of these gangs will be discussed presently.

Were habitual criminals to be distinguished by the nature of their offences? Table 4.2 shows the distribution for felony, false pretences and counterfeit as listed in the First Schedule of the Habitual Criminals Act, and for receiving.

Table 4.2: Offences Listed in the First Schedule, Habitual Criminals Act and Receiving: All Offenders, and Habitual Criminals.

	<u>1868</u>		<u>1871</u>		<u>1874</u>		<u>1877</u>	
	All	H.C	All	H.C.	All	H.C	All	H.C.
	%	%	%	%	%	%	%	%
Goods/money person	18	18	18	20	23	28	20	21
Money, other	10	2	12	10	13	3	9	5
Burglary/housebreaking	2	13	5	11	3	17	2	10
Larceny food	9	3	6	4	5	4	7	6
Larceny clothes	13	24	20	28	15	14	10	14
Goods workplace	12	3	13	6	9	6	15	3
Goods, other	25	30	17	11	22	10	25	26
False pretences	6	1	3	2	6	2	7	4
Receiving	3	1	5	4	3	1	3	1
Counterfeit/forgery	2	3	1	2	1	3	2	8
n =	753	139	815	128	942	149	782	156

The professional nature of some of the offences listed was given legal recognition in that they were automatically referred to a higher court - all burglary, forgery, and robbery with violence cases being sent to Assizes.

But receivers, while often depicted as the most heinous professionals, were mostly dealt with at summary level because of the extreme difficulty of proving these cases. This, despite the section in the Habitual Criminals Act which dispensed with the necessity of proof in the case of receivers with previous convictions, and which allowed the police to search their premises without a warrant. Receivers were certainly a prime target of the Act, as the following passage makes clear:

There is a special class deserving of attention as much, or perhaps, more than others - the receivers of stolen goods. But for them the criminal would have no means of disposing of his plunder ... At present it is necessary ... to prove that (the receiver) has received stolen goods knowing them to be stolen; but we propose that where any man has been sentenced to imprisonment, if afterwards accused of being a receiver of stolen goods, the burden of proof shall be put upon him to show that he did not know that the goods are stolen. We shall treat him as a suspected man. 25

It was often stated that without receivers there would be no thieves. But the Act does not seem to have made it easier to convict them. Very few appeared in court on the charge of receiving - seven in four years - and of these three were discharged and one was fined 40/-. The difficulties of identification, particularly if the stolen goods concerned small pieces of metal, as was often the case in Birmingham, were almost insuperable. This is well illustrated by a case where a metal roller was charged with stealing from his master, and Elizabeth Parrott charged with receiving. The man was seen to put the metal in his pocket and was followed to Parrott's house on two consecutive evenings. When the policeman entered the house, some metal similar to that stolen was found in the kitchen, but the woman said it belonged to her husband, who was a metal worker. She added: 'I know nothing about the metal. You did not see me receive it'.<sup>26</sup> She was acquitted, whereas the metal roller

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25. Habitual Criminals Bill, 1st Reading: Op.cit.: p.343.

26. B.G.: September 15 and October 27, 1877.

received a ten month sentence. Only two cases where there was clear evidence of receiving came to light in the period. One occurred by chance when a policeman overheard a conversation concerning the case, and the thieves - two young boys - were induced to give evidence against the pawnbroker.<sup>27</sup> The evidence was so blatant, with the pawnbroker receiving 2 - 300 clocks, sometimes as many as nine a day, that the case was sent to Quarter Sessions and the pawnbroker was sentenced to 18 months imprisonment. The second unambiguous case of receiving was also sent to Sessions and the dealer sentenced to one year in prison.<sup>28</sup> In this instance, the dealer Mary Neale, continuing a practice started by her father, sent a carter to fetch scrap metal from the prosecutors yard and asked the foreman to 'turn the scale'. By a long established arrangement the foreman 'put a little more on the load than he should have' - giving the carter four tons but only charging for three - as the policeman sent to watch the suspects discovered when he weighed the scrap after it had left the yard. But such clear evidence of receiving was rare, as it required the police to more or less witness the transaction or the thief (who could be easily discredited by the defence) to give evidence against the dealer. If stolen goods were sold in small amounts this also made prosecution more difficult. For instance, Ellen Phelps, a nineteen year old warehousewomen employed by a papier mache manufacturer, had been stealing goods from her employer for many years before she was finally suspected. When the police were informed it emerged that she had pawned the goods all over town. The magistrates condemned the pawnbrokers for taking newly manufactured goods, and ordered these to be returned to the owner without compensation to the dealers,<sup>29</sup> But the evidence was not strong enough to sustain a charge

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27. Ibid: May 15, 1874. This case has been referred to in Chapter 3.

28. Ibid: August 17, 1877.

29. Ibid: August 16, 1877.

against them. The fact is that the sale of stolen goods was too profitable a transaction for all the parties involved for it ever to be decisively stamped out. Through the receiver, the market was broadened so that he remained central and indispensable. Matthew Hill called him a capitalist, and said that here, as elsewhere, capital was the mainspring of commerce.<sup>30</sup> Few receivers were brought to court either before or after the Habitual Criminals Act, which seems to have made very little difference to their activities. Most of those charged with receiving in the newspaper sample were in fact middlemen taking goods stolen by others to the pawnbrokers.

Burglary and most housebreaking offences were tried in the higher courts. Although nearly three quarters (72%) of those tried for these offences had previous convictions, there was little difference between burglars and other thieves in the scale and nature of their thefts. Whereas the popular stereotype of the professional criminal was the image of the burglar with a bag of swag slung over his shoulder, Gatrell is probably right in his contention that repetition or habit did not necessarily imply professionalism.<sup>31</sup> The great majority of burglaries were very petty affairs involving a few articles of food, clothing, or objects of little value - and their discovery was often a question of luck on the part of a passing policeman, or ineptitude on the part of the burglar. In one case, the burglar left his boots standing outside the lodging house he was burgling;<sup>32</sup> in another, the burglar walked into the arms of a passing policeman.<sup>33</sup> Two young men carefully loosened a

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30. M.D. Hill. Op.cit: p.67. Hill also noted that since Birmingham's staple manufactures were in metal, these soon changed their form in the melting pot, so that the means of detection - ever scanty - were seriously diminished in Birmingham.

31. Gatrell: 'Theft and Violence in England', p.326-7. He quotes the Criminal Registrar's estimate, in the Report for 1899 that the losses from burglary in London that year worked out at 3d per head of population.

32. B.G.: December 14, 1877.

33. B.G.: March 29, 1871.

pane of glass at a clothiers, and returned the next night to steal two caps;<sup>34</sup> while another two climbed into an auction house and stole a pair of opera glasses which they pawned for a shilling.<sup>35</sup> The danger and effort involved in acquiring objects of such little value hardly seems worth the risk. Most of these robberies were in the nature of fishing expeditions to see what could be turned up; the answer in such ad hoc forays was usually not much. In a handful of cases only were there indications of planning and organisation. Three men, of whom two were returned convicts, were charged with the burglary of jewellery worth £75 from a warehouse, which they had entered with skeleton keys. When their lodgings were searched the proceeds of another burglary of plate worth £40 were found.<sup>36</sup> In another case, where a woman was murdered in the course of a burglary at her house, an informer gave evidence against the five men involved which revealed that this had been a planned job - with the informer acting as middleman in disposing of the stolen goods.<sup>37</sup> These last two cases were the only unambiguous instances of burglary by professional thieves to be reported in the newspaper in the four sample years. In general it would appear that the higher incidence of burglary among habitual criminals had more to do with the attention the police paid to known thieves than with the more organised and professional nature of their crimes. For instance, when the police were informed of a burglary which had just taken place, they set a watch on certain lodging houses in the area, and saw three men enter one of them with a parcel. As the police entered, the men were putting their proceeds on the table - and nine razors, six pairs of scissors, and a clock weight discovered.<sup>38</sup> Unless stolen goods

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34. B.G.: August 31, 1871.

35. Ibid: March 17, 1874.

36. Ibid: November 21, 1868.

37. Ibid: January 18, February 28, 1868. Two of the accused were returned convicts. The defendants and the informer had arranged to meet in Bristol to share out the proceeds from the sale of the goods stolen.

38. B.G.: September 1, 1874.

were immediately disposed of, burglars and other thieves were at risk of being stopped by the police on suspicion. They had no secure places in the lodging houses to store anything, and were liable to be stopped and questioned if they were carrying a parcel, or anything bulky or unusual. One young man living in Thomas Street was even pursued by a policeman because the constable heard the rattle of money as the man passed him.<sup>39</sup> So that if the police wanted to turn up evidence of a theft they had only to comb the low lodging houses. But what they came up with was rarely anything on a large scale or of great value. When two labourers were arrested for burglary, one of them was wearing a coat from the break-in;<sup>40</sup> as was a brassfounder also arrested for burglary.<sup>41</sup> In the hand to mouth existence of the poor, burglaries of this type were also on a hand-to-mouth basis - often from shops and houses in their immediate neighbourhood for immediate sale or consumption.<sup>42</sup>

Cases of larceny from the person reveal the existence of a criminal underworld much more clearly than was apparent in most of the cases of burglary. The key institutions of this world were prostitution, and the gang - each with their established areas of residence and operation. Most of the women involved in larceny from the person were prostitutes,<sup>43</sup> and this was also the offence with which prostitutes were most frequently charged.<sup>44</sup> The

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39. Ibid: January 19, 1874. The man was accused of robbing a till and was sent to Quarter Sessions.

40. Ibid: February 2, 1877.

41. Ibid: June 16, 1874.

42. As when two boys broke into a baker's shop and stole 16 loaves which they took to a hawker in the same street (B.G.: March 15, 1871); or when two men burgled a greengrocer and gave the food to an out-of-work family on promise of future payment. (B.G.: March 5, 1874).

43. 50% of females in cases of robbery with violence were described as prostitutes in the newspapers. This is an under-estimate of the total, since identification of prostitutes was dependant on a mention of that fact in the newspaper. No one in the court records was so described.

44. Nearly half of all charges against prostitutes were for larceny from the person.

main brothel area began in Vale Street behind New Street station and stretched down to Fordrough Street in the canal-side area. Near the station, the prostitutes hung around the traveller's hotels and the main thoroughfare, accosting men (preferably drunk) and acting as 'pickers-up'. Having attracted a client, the prostitute would take him up an entry where she would pick his pocket and pass the proceeds on to her male accomplices; or these accomplices would attack and rob the man while she made her escape. As the proceeds were immediately passed on, the thieves often escaped trial, since nothing stolen was found on them. In a typical instance, a prostitute had accosted a drunk man and robbed him of his watch, when two men came up, struck him, and ran away. He whistled for a policeman who came and secured the prostitute, but the watch and money were lost. Although the prostitute was sent to Quarter Sessions, the case against her was not proved.<sup>45</sup> Alternatively, prostitutes - again with male accomplices - would rob their clients in brothels. In many cases the thieves must have been able to rely on the fear of publicity which prevented those robbed from bringing charges.<sup>46</sup> The magistrates were in any case not very sympathetic, since they felt the prosecutor had only himself to blame 'for going with women who accosted him'.<sup>47</sup>

Despite the clear involvement of prostitutes in a network of crime against clients, carried out in alleys and brothels, only nine out of the seventy-two prostitutes committing a felony qualified (because their case was heard in the higher courts) as habitual criminals. The reason lies partly with the nature of the evidence and the difficulty of proving an identification;

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45. B.G.: January 14, 1868.

46. The prosecutor either did not appear (B.G.: March 27, 1868) or declined to give his name (B.G.: March 3, 1874).

47. B.G.: August 30, 1877.

but partly it must lie in the attitude of the magistrates who seem increasingly in the 1870's to have decided that those who resorted to prostitutes got what they deserved.<sup>48</sup>

The second organisation for theft from the person was the pickpocket's gang. Pickpockets preferred to work in gangs of three or four, to jostle and confuse the victim, and to quickly disperse the pickings. And where prostitutes worked at night in secluded places, pickpockets looked for crowds: the high street, theatre, market, fair and station were their preferred haunts. The great majority of pickpockets were male. As is well known,<sup>49</sup> numbers of professional pickpockets travelled the country according to a regular pattern, moving in to a town when the local fairs or races were held; and in Birmingham the Onion Fair, held at the beginning of October attracted a number of pickpockets from outside town.<sup>50</sup> None were sent to the higher courts, the magistrates preferring to sentence them to one month and then be rid of them.<sup>51</sup> Among local pickpockets there was little to choose between those sent to the higher courts and those sentenced to summary jurisdiction - except that most of those who were under seventeen years old were tried in the summary court. There is some ambivalence in the magistrates attitudes here. Although they did not appear to think the more severe punishment of a Quarter Sessions trial

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48. Numbers of Prostitutes in the four year sample committing a felony:

	<u>All</u>	<u>Sent to higher court</u>	<u>% higher court</u>
1868	24	18	75
1871	16	6	37
1874	15	5	33
1877	14	6	43

49. See f.i. J.J. Tobias: Op.cit: p.82 on travelling pickpockets who worked the fairs.

50. 9% of pickpockets had no fixed address, or said they came from outside Birmingham.

51. As in the case of two men charged with pickpocketing at the cattle show (B.G.: December 18, 1876). A letter to a Liverpool address was found on one of them, stating 'I have done nothing since I came here, the cattle show was very little good. I paid 5/- to go to it. I hope to do better by and by'. Although these men were described as well known thieves, they were not sent to Sessions.

suitable for this age group, neither were these youths considered as candidates for reformatories,<sup>52</sup> although on the face of it several would appear to have been ideal subjects. For instance, a detective watched a group of boys attempting to pick pockets in Bull Street, and detained two of them. The eldest, aged fifteen, he described as the tutor to the gang. The youngest, aged eight, was also brought to court. The fifteen year old was sentenced to six weeks imprisonment, the youngest to seven days.<sup>53</sup> Such sentences did little to break up the gang, which could shortly resume its activities. There were in fact two cases noted where the defendant was caught picking pockets, having just come out of gaol for the same offence.<sup>54</sup> Both were summarily sent back to serve a further three month sentence. Pickpockets seem to have been regarded as irredeemably criminal, whether because of the nature of their offence or because of the criminal environment they came from. A high proportion of those before the summary courts for picking pockets (13%) did in fact come from a handful of high crime streets, with seventeen from Park Street alone. Only two gave a Thomas Street address. This finding is of some interest, in that it confirms the distinction drawn earlier between the two areas - the one characterised as socially disorganised, the other as subculturally distinct. Pickpockets worked in gangs, and theirs was a skill which traditionally was passed on from older to younger thieves. Such continuity was lacking in the lodging house area.

Pickpocketing was a very specialised crime. 70% of defendants so charged in the higher courts had previous convictions, mostly for a similar offence. The reason that more pickpockets did not appear in these courts has to do with

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52. Only one 15 year old pickpocket was sent to a reformatory. B.G.: November 4, 1871.

53. Ibid: May 26, 1868.

54. B.G.: May 12, 1868; January 3, 1877. In the last case, a 16 year old girl caught picking pockets with a companion had only been released from gaol three hours previously.

the nature of the evidence rather than the seriousness with which the crime was regarded. In the summary courts pickpockets tended to be charged with attempted larceny.<sup>55</sup> Pickpockets needed to be caught in the split second after they had committed the theft, and before they had time to dart away or pass on the proceeds, for the evidence to stand up in the higher courts. A prosecutor who caught a thief with his hand in his pocket could not claim that he had been robbed; and the police watching for pickpockets in the station and main shopping streets often for hours and days at a time, had to be content in many instances with detaining a thief for attempted larceny, rather than lose him altogether. Even in the two cases where the thieves tried the pockets of plain clothes policemen planted in the theatre and at the fair, the charge was one of attempted theft.<sup>56</sup> Such charges also served the purpose of warning the pickpocket that he was known and watched. 'I can't walk down the streets at all' complained an 18 year old thief. 'Whenever I do, there's either you (P.C. Ore) or P.C. Black catches hold of me'.<sup>57</sup>

Gangs of pickpockets did not resort to violence. There were however, gangs separate from pickpockets, and from prostitutes and their bully-men, who took to robbery with violence. These gangs made their appearance quite suddenly in Birmingham in the 1870's, reaching a peak of their activity in the middle of the decade. But they were not essentially criminal organisations. As the following Table shows, those charged with robbery with violence, especially in 1874 when the gangs were at their height, were more likely to have had previous convictions for assault or misdemeanours than for felony.

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55. B.G.: March 5, 1874. Two young men were watched at the station for an hour by the prosecuting policeman, during which time they made 40 unsuccessful attempts at picking pockets. The policeman obviously lost patience and arrested them anyway.

56. Ibid : September 28, 1874; November 20, 1874.

57. Ibid: August 7, 1877. He had some cause for complaint since he and his companion - detained for attempted pickpocketing - were sentenced to three months each as rogues and vagabonds.

Table 4.3: Occupation, Age and Previous Convictions of those charged with Robbery with Violence at Assizes.

	<u>1868</u>	<u>1871</u>	<u>1874</u>	<u>1877</u>
<u>Occupation</u>				
Labourer	2	1	3	3
Metal trades	2	4	13	8
Other	2	0	3	2
<u>Age</u>				
Up to 16	0	0	1	0
16 - 20	1	0	10	9
21 - 25	2	0	5	3
26 +	3	5	3	1
<u>Previous conviction for felony:</u>	3	3	7	8
<u>No previous felony:</u>	3	2	12	5
<u>Previous conviction for:</u>				
Assault	5	0	17	3
Drunk & disorderly	1	1	8	3
Obstruction	0	0	3	0
Vagrancy	0	2	3	0
Gambling	0	0	2	2
Obscene language	0	0	3	1
Damage/stoning	0	1	5	0
n =	6	5	19	13

The street gangs of the 1870's came together on the basis of territory and ethnicity, rather than for robbery, itself with each gang staking out and defending its territorial claims against outsiders - whether these were the police or a rival gang. For a while certain gangs in the Irish, canal-side and gun quarter areas came to dominate their neighbourhoods, and the police lost control of the situation.<sup>58</sup> The street disorders, accounts of which filled the newspapers, reached their peak in 1875, when a policeman was

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58. A judge at the Assizes commented that the local authority should either strengthen the police force in certain localities, or erect boards stating the area to be 'Dangerous after Dark' if they were unable to prevent the violence. He said it would be better to have no police there at all than an inefficient body, as it could not be expected that a solitary policeman should risk his life. B.G.: December 19, 1873.

murdered in a skirmish with a gang, when trying to arrest one of its members.<sup>59</sup> After this date the Watch Committee took action by organising double beats in the dangerous districts and the police slowly regained control.

The reasons for the gang warfare of the 1870's are complex, but basically it would seem that the gangs arose in response to the more interventionist policies of the local authority in that decade. When the value system of the municipal elites clashed with that of working class communities, conflict over such matters as the freedom of the streets, leisure habits and the general enforcement of borough bye-laws was inevitable.<sup>60</sup> This would account for the general resentment and resistance in traditional working class areas - shown in the support given by the crowd to the gang attacks on the police - against a revitalised council, intent on promoting the civic gospel in all areas of municipal life. The council-promoted campaign to enforce the licensing laws was especially unpopular in these areas,<sup>61</sup> but drives against gambling,<sup>62</sup> swearing<sup>63</sup> and sporting activities<sup>64</sup> were also keenly resented. Resistance, and attacks on the police for action in these matters therefore come as no surprise. The evidence in Table 4.3 shows how frequently those sent to Assizes

59. B.G.: March 7, 1875.

60. For a similar situation in the Black Country, see D.C. Wood: 'Crime and Society in the Black Country 1860-1900', Ph.D. thesis, University of Aston in Birmingham, 1979, p.14.

61. The first of these was a Vigilance Committee of gentlemen who were to accompany the police to ensure that they enforced the laws (June 1871). In the same year 'The British Workman', a pub without drink, was opened in Birmingham 'for the reform of the working class'.

62. Requests were sent to the Watch Committee to ask the police to take action against outdoor betting. B.W.C.M.: May 10, 1871; September 9, 1874. In 1868 there was a round up of the gangs of gamblers around Navigation Street and Worcester Sharf, with 51 people in court charged with gambling. B.G.: May 12, 1868.

63. B.W.C.M.: September 13, 1871. The Watch Committee discussed the necessity of curbing the use of bad language by the lower classes, and of punishing policemen who let this go by unnoticed.

64. W. Thorne: My Life's Battles, 1925, p.26 describes police intervention in street races. Prize-fighting and dog-fighting - the two principal amusements among the working class - were also strongly discouraged by the police, and had to take place clandestinely. Alfred Davenport: 'Reminiscences of Old Birmingham' Birmingham Gazette and Express, January 16, 1908.

for robbery with violence had previously been arrested by the police for such behavioural offences; and that at least half of these offenders could not be described as habitual criminals.

But it was not only the police who were attacked. Gang members attacked and robbed the people who shared their streets and pubs with them, and threatened bystanders not to bear witness against them. The newspapers constantly refer to neighbourhoods being terrorised, but even if this was an exaggeration, there is no reason to suppose that the inhabitants welcomed the gangs, even if they supported their anti-police activities. Thus, resistance to the police was only one aspect of the gangs' activities. Another aspect had to do with the lack of recreational facilities and other opportunities available to the young.<sup>65</sup> The gangs had erupted during a period of economic prosperity. There was work and money available, and most gang members were in employment, largely in the metal trades. And while local government was becoming more interventionist, it had not yet arrived at the destructive phase of the Improvement Act, so that the run-down central areas where the gangs lived and operated were still intact. In the expanding economic climate of the early 1870's, single young men had more money, freedom and leisure, but there was a dearth of leisure or consumer outlets for their age group - since, on the contrary, the police were clamping down on their traditional leisure activities. With their newfound powers, the gangs were formed, against all comers, as a response to the situation they found themselves in. This was chiefly expressed in sectarian violence between anti-Irish and Irish gangs. Gang warfare offered possibilities of immediate power and prestige in their

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65. B.W.C.M.: May 19, 1871. The Watch Committee, complaining of the large numbers of boys brought before the magistrates because of stone-throwing or gambling, discussed the lack of recreation grounds as a factor in the street disorders. They also believed that the Factory Acts, under which lads were not allowed to work after 6 p.m. contributed to the problem.

local areas to its members which was not available to them through more orthodox channels. Gangs were a response, not to economic deprivation or social dislocation, but to their lack of a voice at the level of local politics.

The majority of gang members had been in trouble with the police at one time or another, even if it was only on a charge of obstruction. The majority before the courts for forgery or counterfeit, by contrast, had no previous convictions - despite the fact that this was a 'professional' type of criminal offence. Birmingham was traditionally the centre for the forgery of bank notes<sup>66</sup> and the trade in bad money. But while the forgery of bank notes declined, the cost of counterfeiting was reduced,<sup>67</sup> and the ease of manufacture and the quality much improved after the invention of electroplating. Instead of the old cumbersome dies, the coiner now only needed a small amount of equipment, which he could carry from place to place in a handkerchief, or even in the crown of his hat.<sup>68</sup> Bad money abounded; and Birmingham and counterfeit were associated to such an extent that Alfred Davenport recalled how country people would bite your money suspiciously, if you said you came from Birmingham.<sup>69</sup>

It was not easy to catch those making or dealing in counterfeit coin. Only three groups of coiners were discovered in the period. The report of one of these cases provides a good account of the business. Four men were sent to Assizes for dealing in counterfeit, which was thought to have been manufactured at the house of one of them, who was a metalsmith. The chief

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66. Sir George Stephen's evidence to the R.C. on Constabulary Force, 1839. Quoted in J.J. Tobias, Op.cit.: p.173.

67. Gatrell: Op.cit.: p.281 says the systematic forgery of Bank notes ended with the conviction of a Birmingham gang of forgers in 1863.

68. M.D. Hill: Op.cit.: p.47.

69. A. Davenport: Op.cit.

witness, the son of the female searcher at Moor Street lock-up, was an informer acting under the direction of the police. He had been approached in a pub by one of the counterfeiters who asked him if he could do with any 'stuff'. With money given him by the police, the informer bought coin several times, paying 6/- for a pounds worth of bad coin. The informer was then asked to go to a butcher and pass base coin, and was given a good florin to cover himself if challenged. He made several such expeditions and gave the counterfeiter the change he received. Despite the inside information provided by the informer the police believed the ringleader had absconded by the time they came to make their arrests, and although all the tools for making coins were found in the metalworker's house, the evidence for manufacture appears to have been inconclusive.<sup>70</sup> In only one case, where the landlord's daughter saw the coiners at work, did the police catch coin manufacturers in the act of polishing counterfeit 1/-.<sup>71</sup>

Many more were detained for passing counterfeit coin, often as a result of their own carelessness. Such cases confirm M.D. Hill's opinion that counterfeiters could usually make one purchase without exciting suspicion, their detection frequently being the consequence of a second visit to the same shop.<sup>72</sup> When James Williams tried twice to get stamps with counterfeit coin at the same post office, he was recognised by the clerk and detained;<sup>73</sup> as was Fanny Prosser when she tried passing a counterfeit florin twice in the same shop.<sup>74</sup> Mary Ann Sweetman exchanged a bad for a good 6d when the shopkeeper complained but he became suspicious and called a policeman, who followed her to two other shops where she passed base coin.<sup>75</sup> Publicans were

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70. B.G.: June 4, 1877.

71. Ibid : December 30, 1873.

72. M.D. Hill: Op.cit: p.47.

73. B.G.: March 6, 1868.

74. Ibid: February 20, 1871.

75. Ibid: October 25, 1870.

often at the receiving end of counterfeiters' offerings, and seem to have become adept at handling such situations. When Joseph White asked for a sovereign in exchange for some silver, the landlady noticed it was light and quickly sent a neighbour to have it tested, calling a policeman when it was found to be base.<sup>76</sup> Similarly the police were called when a publican became suspicious about some coins used to pay for beer; three men were searched and one had slipped half a dozen bad coins down his trousers.<sup>77</sup> In all the cases brought to the higher courts there was evidence of guilty knowledge, or a repetition of counterfeit offences in short succession. If this could not be proved, the defendants were discharged by the magistrates. For instance, when a tinplate worker passed two base florins in a pub he was given in to custody and searched, but only good coins were found on him.<sup>78</sup> The magistrates discharged him, but the magistrates' clerk commented that 'the smashers were sharp enough nowadays to keep only good coin in their pocket, and to obtain counterfeit one by one from their confederates'. There were however, significant differences between the type of defendant sent to Quarter Sessions or Assizes.<sup>79</sup> The more serious cases went to Assizes where

76. B.G.: January 19, 1877.

77. Ibid: April 14, 1874.

78. Ibid: January 23, 1877.

79. Table 4.4: Occupation, Age and Previous Convictions of Counterfeiters and Forgers at Quarter Sessions and Assizes, (aggregate years).

<u>Occupation</u>	<u>QS</u> %	<u>Assize</u> %	<u>Age</u>	<u>QS</u> %	<u>Assize</u> %
Labourer	26	10	> 20	26	13
Artisan	10	13	21 - 25	32	16
Metal worker	55	26	26 - 35	16	29
Jeweller	3	16	36 +	26	42
Dealer/clerk	0	35			
Other	6	0			
<u>Previous Convictions</u>					
Yes	36	58			
No	64	42			
n =	31	31			

a third of those with records had previous convictions for counterfeiting, whereas none with such convictions were sent to Quarter Sessions. Defendants at Assizes were generally older and more skilled, with over a third in white collar occupations. A core of habitual criminals here had records for counterfeiting; but an equal number without records were given penal sentences for this offence. Once again, as with receivers, the difficulty of either catching the defendants red-handed or of proving guilty knowledge meant that comparatively few cases ever came to court, in what appears to have been a widespread and thriving business, in a town where many had access to the materials and the necessary skills for producing counterfeit.

Another thriving business arose from the larceny of clothes, for which there was a large secondhand market. Clothes were one of the staples of the pawnbroker's business, and the easiest way of raising a few shillings for those who had cloth to dispose of. Stolen clothes were far more likely to be pawned - and by women - than sold.<sup>80</sup> Women also played a greater part in clothes thefts, their presence in draper's shops fingering scarves or bales of material probably arousing less suspicion than would that of men. Equally it was easier for women to pledge bundles of clothes with no questions asked since this was a customary female transaction. About half of all cases of clothes theft dealt with in the summary courts were perpetrated by women. But clothes thefts from shops were declining in the later 1870's, and with this, the proportion of women involved in such thefts also declined.<sup>81</sup> Snatching up

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80. Many clothes thieves were caught before they had disposed of their goods - but the trends in their disposal are shown in the evidence from summary and Quarter Sessions level. Over the period there were nine cases of clothes reported sold, seventy of clothes pawned. 46 out of the 70 were cases of pawning by women.

81. Table 4.5: Number of Clothes Thefts tried at different courts; from Shops; and Percentage of female clothes thieves.

	Q.S.	% Female	Summary	% Female	Thefts from Shops
1868	48	56	72	57	35
1871	53	45	119	43	37
1874	23	48	89	45	30
1877	25	40	62	45	17

cloth displayed outside shops and running off had been the crude but common method of many thefts. It is possible that shopkeepers had begun to take more notice of the magistrates' constant warnings against encouraging thieves by exhibiting their goods outside their shop doors. Whether for this, or other reasons, thefts from shops declined from nearly a third of all clothes thefts at the end of the sixties to under a fifth by the end of the seventies.

Differences between clothes thieves sent to Quarter Sessions and those tried in the lower court had more to do with the thieves' records than with the seriousness of the crime. Occasionally not even this distinction held good. There seemed little more reason to send John Thomas to Sessions, where he got a six months sentence than Thomas Lennan, who got three months from the magistrates. Neither had previous convictions. The former was stopped by a policeman when carrying a parcel containing a stolen shirt; the latter was given in to custody by a pawnbroker after he stole a shirt off a line and tried to pawn it while it was still wet.<sup>82</sup> But most of those sent to Quarter Sessions had previous convictions for felony. Nearly three quarters of the defendants had previous convictions, and half of these were for stealing clothes. It is the repetition of offences rather than the professionalism of their crime which is the distinguishing feature of habitual clothes thieves. Emma Bowen, who was given an eight year penal sentence for stealing a pair of stays from a drapers,<sup>83</sup> seems on the face of it to have been far less of a professional thief than James Ward who, with three others, broke into an outfitters where he had previously been employed and stole 36 pairs of trousers. He was given a six month sentence by the magistrates.<sup>84</sup> A packer in a hosiers stole, and

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82. B.G.: January 4, 1868; November 29, 1870. Both men were labourers.

83. Ibid: March 26, 1868. She had twenty-three previous convictions, of which twenty were for being disorderly in the workhouse, and three for stealing clothes. She would appear to have been a petty thief and was caught on this occasion 'having absconded from the workhouse'.

84. Ibid: January 16, 1874.

pledged or sold hosiery to the value of £80 from his employer before he was discovered, and having no previous convictions, was sentenced to six months in the summary court;<sup>85</sup> while a tailor and his wife only got three months at the same court for stealing three capes from a shop where they were purporting to buy, the wife having a large bag 'such as professional thieves carry'.<sup>86</sup> Although there were a few instances of professional clothes thieves among the habitual criminals - as when five young women acting in concert made off with a bale of cloth, and tore up a number of pledge tickets when they were apprehended<sup>87</sup> - the more serious cases at Quarter Sessions were in fact perpetrated by those without previous convictions. A tailor and his son and daughter (none of whom had records) were found to have stolen 45 yards of tweed from a draper and have taken it to the tailor's house. There it was cut up into short lengths and pawned in separate lots by the daughter.<sup>88</sup> Or a porter employed by a clothier and his accomplice (both without records) who broke through the wall of the porter's flat into the clothier's shop and stole cloth for over a year, was found to have pawn tickets representing £50 worth of cloth.<sup>89</sup>

The picture for clothes thefts is thus basically opposite to that of counterfeiting, where all cases were either sent to the higher courts, or else totally dismissed; counterfeiting - if proved - being considered a serious criminal offence whatever the circumstances. Clothes thefts covered a wide range of behaviour and motive - from the labourer without a jacket stealing one for his own use; to youngsters pawning the sheets off their beds; to highly organised networks of theft for resale (or more usually for pawning).

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85. B.G.: April 24, 1874.

86. Ibid: May 14, 1874.

87. Ibid: December 12, 1876.

88. Ibid: October 5, 1871. Father and daughter were acquitted, but the son was sentenced to 7 years penal servitude.

89. Ibid: December 1, 1870.

Although such theft did not require great skill, it seems to have been quite a specialised crime. Those with previous convictions had often stolen cloth before. In this instance, it was the prisoners' record, rather than the nature of the offence which counted against him - to the advantage of the large-scale clothes thieves who appeared at Quarter Sessions less often than did the petty thieves who repeatedly stole and pawned single articles of clothing. But, as David Philips has rightly observed, even the larger scale clothes thieves can hardly be called 'professional' thieves, since stealing clothes was not particularly lucrative. Philips describes them as neither the honest poor nor the criminal class, but an important third category of people, who were in employment, but supplemented their income with thefts.<sup>90</sup>

Many food thieves came into the same category, although the theft of food was generally regarded less seriously than the theft of clothes.<sup>91</sup> It was the nature of the offence which was decisive for the level at which the case was tried: fifteen out of seventeen defendants with previous convictions brought to the summary court were convicted of petty thefts of single items of food, usually from shops; compared with four petty thieves among the thirty-eight defendants with records sent to Quarter Sessions. In general, only cases involving large scale food thefts from employers, such as the railway company, butchers or hotel keepers, or the theft of livestock were sent to Sessions. This last was the most common specialised type of food theft, the livestock being sold to greengrocers or dealers. The account of a case which came to Sessions in 1868 shows that this trade was widespread and organised, even though the financial returns were quite modest. When two

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90. D. Philips: Op.cit.: p.198.

91. In recognition perhaps of the imperatives of hunger. Garratt confessed in his autobiography to stealing food when hungry. 'Hunger sharpens the wits of the underfed children of the slums, and to expect them to remain honest when a little pilfering profits their stomach is like expecting a stock-broker to show self-denial when he can grab something for his bank account'. V. Garratt: Op.cit. p.35.

men were accused of stealing 48 pigeons, a detective travelled to West Bromwich to interrogate the dealer who had bought them. 'I hear you men who keep cages at West Bromwich are buying all the pigeons that are stolen in Birmingham' he told the dealer.<sup>92</sup> The man had paid 7d each for the birds, but denied any knowledge that they were stolen. This price seems to have been near the going rate, since in another case a greengrocer paid 2/- for three birds.<sup>93</sup> That this was an organised type of theft is shown by the fact that it was usually carried out by two or three men acting together. Over a third of food thefts at Sessions were concerned with stealing livestock, compared with 12% of such cases reported at summary level. Women were not involved in the trade; and in fact only six women were sent to Sessions for food thefts in the whole of the period. Employees connected with the distribution or sale of food had the best opportunities for theft, and were the least likely to have been caught previously. Thus only one out of twelve porters, warehousemen or shop assistants sent to Sessions for food thefts had previous convictions. These inside jobs were the more organised and large-scale, and it was for this reason that the defendants were sent to Sessions.

Most of the food theft cases at summary level concerned the theft of small amounts from shops or gardens.<sup>94</sup> Beef and bacon were the single most popular items stolen, accounting for a quarter of the summary court cases. Contrary to expectation, few women were involved in food thefts even at this level;<sup>95</sup> the total number of such thefts was not large; and fluctuations in

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92. B.G.: January 7, 1868.

93. Ibid: June 16, 1877.

94. Drink was not so easily come by - access being restricted mainly to publicans and victualler's employees. But one enterprising groom, caught carrying off 8 gallons of ale defended himself by saying that 'it was for the horses'. B.G.: September 18, 1877.

95. In all, 21 women appeared in court over the whole period, out of 241 food thieves.

keeping with the economic climate were perhaps not as marked as might have been expected. Although there were more cases of food thefts in the depression years of 1868 and 1877 than in the early 1870's, a steep rise in food thefts occurred chiefly in 1868, and 1877 did not see a steep rise of this nature.<sup>96</sup> Fluctuations in the annual number of petty food thefts are not as indicative a response to economic conditions as are the more serious, or large scale food theft cases sent to Quarter Sessions. However, the evidence for this offence at the petty level is probably incomplete.<sup>97</sup>

The theft of money and goods from employers (other than food and clothes) will be considered conjointly. Embezzlement covered two-thirds of the money thefts, the rest being thefts from shop tills. In this sphere of legitimate occupations the pickings were in general much better and safer than in the domain of the criminal underworld of thugs and prostitutes. One great advantage of a secure position from which to thieve and dispose of goods was that this could take place over a lengthy period while bringing in steady returns, as opposed to the one-off coups of professional thieves. This applies

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96. The winter of 1867-8 was a particularly severe one, with heavy unemployment because of the frost, when a distress committee was set up by the Mayor to provide food and fuel. B.G.: January 19, 1868. But the mid 1870's depression was also severe. Allen writes that by 1876 the depression had spread to the greater part of local industry, prices had fallen, unemployment was rife, and the export trade had greatly diminished. G.C. Allen: Op.cit. p.120.

97. Cases of petty food theft are highly likely to have been under-reported in the newspaper, perhaps particularly so in times of distress. It is also possible that shopkeepers showed greater leniency at such times, especially to women, and abstained from prosecuting. The numbers in court for food thefts in the four years are as follows:

	<u>Summary Court</u>	<u>Quarter Sessions</u>
1868	48	36
1871	37	4
1874	42	10
1877	45	19

particularly to those employed in the transfer or conveyance of goods, and to white collar crime which came into its own in the expanding commercial and service sectors. The large market for scrap metal allowed many of those controlling the sale of metal to make private profits on these transactions - as in the example given of the foreman and the receiver whose working relationship stretched back over many years. It often took a long time for an employer to realise he was being robbed in such circumstances, especially where no finished products were involved. Scrap or other pieces of metal could easily get 'lost' and were difficult to identify. Thus it was several years before the employer of George Hawkins, a warehouseman, suspected he was being robbed. Hawkins had been selling copper ingots to a brasscaster, but it was not until the employer marked some of the metal and set a policeman to keep watch that the warehouseman's deals were discovered.<sup>98</sup> The railways were another fruitful source for workplace thefts, as well as an aid in the disposal of stolen goods. When John Petifer, a railway porter stole some parcels of gold chains from a goods van he took advantage of his travel facilities to pawn the goods in London.<sup>99</sup> Although the railways employed their own police, it was difficult to prove theft by porters or carters at the point of collection, one of the most extensive of such cases involving the theft of goods from the depot by two railway policemen and a gatekeeper, for whom the actual removal of goods was no problem.<sup>100</sup> But by far the largest returns in monetary terms were to be made from the embezzlement of employers' funds. This was the province of agents and commercial travellers,

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98. B.G.: September 15, 1871. Employers frequently made use of the police to watch and search suspected employees, which served the double purpose of relieving them of an unpleasant task and delivering the employee directly into the hands of the law.

99. Ibid: August 24, 1874.

100. Ibid: December 16, 1876. The witness in this case was paid by the railway policeman to bring his horse and cart into the station and then 'walk away'. The thefts and deals were complicated and extensive, and the witness so frightened of giving evidence that he stabbed himself to try and keep out of the case.

where thefts ran into hundreds of pounds instead of the pounds, shillings and pence taken by their working class counterparts. For example, a commercial traveller, engaged at a salary of £100 p.a. plus commission, embezzled £600 from his employers over the three years he had been employed by them;<sup>101</sup> while the sixty-two year old manager of the Birmingham Hide and Skin Co. was accused of embezzling £500 from the firm.<sup>102</sup>

Nearly a quarter of all workplace theft cases were sent to Quarter Sessions (24%). But the employer's attitude was an important intervening influence on where a case would be heard, and if the employer asked for leniency - even when there was evidence of previous larceny<sup>103</sup> - the case did not go beyond summary level. Employers' attitudes varied considerably according to the scale and type of enterprise and the standing of the accused. Outwork production, and the sale or pawning of material given to be made up, or the non-return of goods, led to a number of disputes between the parties concerned (6% of cases) but in this rather grey area of what constituted embezzlement between semi-autonomous craftsmen, only one of the fourteen cases reported reached Quarter Sessions. In large scale works of those where supervision was difficult, as in the bus company, some exemplary cases were brought as a warning to workers that they were being watched, the bus company employing a number of women to ride the buses and check that the bus conductor's takings tallied with the official receipts.<sup>104</sup> The manager of Muntz's large brassworks took a sixteen year old employee to court for stealing 6d worth of brass as a warning to the workforce;<sup>105</sup> and the foreman

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101. B.G.: March 30, 1877.

102. Ibid: May 5, 1877.

103. Ibid: January 28, 1874. Here a porter was taken to court for embezzling £3 from his master, who did not wish to press for punishment because the porter was a good employee, despite having been previously convicted of embezzlement!

104. Ibid: October 28, 1870; December 14, 1876; May 22, 1877.

105. Ibid: December 20, 1870.

in a factory making wax matches sent eleven girls from the same shop to court as a reprimand for stealing matches.<sup>106</sup> In the last two cases the prosecutors specifically stated that they did not wish to press charges, making it clear that they were using the court to underline their own authority rather than to seek retribution. But in most other cases where leniency was asked for it was the status of the offender rather than the nature of the offence which seems to have influenced employers. Leniency was requested in an above average number of white collar, and semi-white collar<sup>107</sup> instances of embezzlement - to a very striking degree in the more middle class occupations. The pronounced equation of respectability with moral worth - despite evidence to the contrary - appears to have been a belief which was as strongly held by employers as by magistrates. The mention of the defendants respectable background often accompanied requests for leniency. There was also an element of identification and perhaps guilt in some of these requests. A chief clerk earning £300 p.a. appropriated nearly £1,000 from his employer to pay his gambling debts when the management of the business was left in his hands because of the employer's illness. But the employer wanted the case dealt with summarily since he felt it was his fault to have given the clerk so much responsibility.<sup>108</sup> An agent who embezzled £1,000 from a brewery firm for whom he managed the Birmingham branch of the business was sent to Sessions despite the employers plea for leniency. At the trial the prosecutor asked the jury to recommend mercy because the prisoner was connected with a highly respectable family, the mother was a widow partially supported by the prisoner, and the sister had been brought to the edge of the grave by the distress of the trial. 'It is on the ground of the respectability of his family that we

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106. B.G.: August 26, 1870.

107. Warehousemen.

108. B.G.: May 4, 1877.

recommend the prisoner to mercy' the prosecutor stated. 'In a commercial country like this, the crime of embezzlement must be punished' replied the Recorder sternly, and sentenced the prisoner to nine months in prison.<sup>109</sup> At the same Sessions he sentenced Henry Cartwright, a metal worker to ten months in prison for stealing 1/- from the person;<sup>110</sup> and Ed. Honeybourne to twelve months for stealing 1d.<sup>111</sup>

Although 23% of money embezzlement cases at Quarter Sessions were committed by white collar employees, this figure greatly understates the serious extent of their involvement in this offence due to the successful number of pleas for leniency by employers which kept nearly half of the white collar crime cases tried at summary level from the higher courts. (12 out of 29 summary cases).<sup>112</sup> Table 4.6 shows that labourers and white collar workers were greatly over-represented at Quarter Sessions but while the number of middle class defendants was lowered by pleas for leniency, very few such pleas were made on behalf of labourers.

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109. B.G.: June 14, 1871.

110. Ibid: May 3, 1871. But Cartwright was an habitual criminal, in that he had a previous conviction for stealing 7 lbs of lead.

111. Ibid: December 20, 1870. He was found in a shop with his hands in the till.

112. See R.S. Sindall: 'Aspects of Middle Class Crime in the 19th Century', M.Phil Thesis, University of Leicester, 1974,p.2, who suggests that the seriousness of middle class crime is reflected in their high representation at Quarter Sessions, but who ignores the effect of pleas for leniency in reducing their number in the higher courts.

**Table 4.6:** Occupation of those tried summarily for Embezzlement and % of cases where leniency was asked for; Occupation and Previous Conviction of those sent to Q.S. for embezzlement (aggregate years).

<u>Occupation</u>	<u>Summary</u>	<u>% Leniency</u>	<u>Q.S.</u>	<u>% Previous Conviction</u>
Labourer	12	5	18	33
Carter/porter	7	3	8	13
Metal worker	19	12	18	33
Artisans	11	3	11	7
Servant	9	0	6	0
Errand boy	5	3	0	0
Women/nk	8	5	3	0
Semi skilled	8	20*	5	0
Warehousemen	5	9	0	0
Clerk/traveller	9	30	23	13
Shop assistant	6	8	8	0
n =	361	64	62	15

\* This figure is inflated by the case of the eleven factory girls.

A quarter of those at Sessions for embezzlement had previous convictions - a rather low proportion in relation to most other felonies - and a reflection of the seriousness of this basically white collar crime.

The evidence reproduced here does not indicate that previous convictions were a particularly useful means for distinguishing professional criminals from less committed offenders. Contemporaries were of the same opinion. The Recorder of Portsmouth disputed that previous convictions were sufficient, or even presumptive proof that the prisoner was an Habitual Criminal.<sup>113</sup> Receivers, embezzlers, and forgers, who made the largest profits out of crime, rarely had previous convictions; whereas those who were most often caught were the street thieves who went shoplifting or pickpocketing for what were mostly quite petty amounts. Receivers and forgers were protected by the difficulty of procuring evidence against them, and embezzlers were protected

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113. E.W. Cox: The Principles of Punishment as Applied in the Administration of the Criminal Law by Judges and Magistrates, 1877, p.131. Cox wanted magistrates and judges to distinguish between Habitual, and Professional Criminals in their sentencing practices.

by their class position. Street thieves were protected by neither, while their image conformed to the conventional stereotype of who constituted a member of the 'criminal classes', and made them vulnerable to arrest on suspicion.<sup>114</sup>

We have seen that habitual criminals were rarely to be distinguished by the nature of their offence. We shall now turn to sentencing policy to see how far habitual criminals received different sentences from others. Those concerned with penal matters had long been advocating a change in sentencing practice from the repetition of short prison sentences which had not proved deterrant to habitual criminals, to a more stringent penal policy. The reforming school also believed that short terms of imprisonment were likely to be followed by a speedy relapse, because they allowed no time for a change of heart in the prisoner.<sup>115</sup> T.B.L. Baker proposed that punishment should depend not on the supposed degree of criminality, but on the number of repetitions. He believed first convictions should carry a ten day sentence; a second, one year's imprisonment; a third, seven years penal servitude; and a fourth a life sentence, or later release under continuous police surveillance.<sup>116</sup> He succeeded in getting something close to this system adopted in his own county of Gloucestershire.

According to this policy, which was in keeping with the spirit of the Habitual Criminals Act and its declaration of 'war' on a section of society, habitual criminals should all have received penal sentences. In Birmingham,

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114. See R.E. McGowen: 'Rethinking Crime: changing attitudes towards law breakers in 18th and 19th century England', Ph.D. thesis, University of Illinois at Urbana-Champaign 1978, p.182: 'The police were to act upon the poor so as to separate the honest lower class from the undeserving and criminal. The middle class believed that such distinctions existed...Thus the police had a vested interest in the discovery of a group of a particular type. Their organisation and activities were structured to create such a class, even if it could not be found in fact'.

115. M.D. Hill: Op.cit: p.464.

116. T.B.L. Baker: Op.cit: p.36.



The Birmingham evidence makes clear that sentencing policy was generally consistent in regarding certain offences more severely than others: robbery with violence, forgery and counterfeiting, and burglary being the offences where a high average of about half the habitual offenders consistently received penal sentences. Sentencing policy was also quite sensitive to trends in crime. The sharp rise in the number of young male metal workers sent to the higher courts, and the rise to 64% in the proportion sentenced to penal servitude for robbery with violence in 1874 - one of the peak years for street disturbances in Birmingham - shows the concern of the Bench and the judiciary over the local situation and their determination to eliminate the trouble makers. We would interpret the decline from the mid 1870's in the proportion of penal sentences, not to any liberalising spirit, but as an indication that the authorities felt they had the situation under control.

It is doubtful if the Habitual Criminals Act or the Prevention of Crimes Act made a great ideological impact on most judicial proceedings. Although there were instances of didactic sentences in keeping with the Acts (see p.157) these were by no means carried through consistently. <sup>123</sup> Certainly in Birmingham court proceedings were guided more by a pragmatic response to situations of local concern, and to local interests, than by a more theoretical approach. Habitual criminals were not treated en bloc as a group 'who made war on society', but variously according to the seriousness with which their offences were regarded; while they shared with most other offenders their vulnerability to the attentions of the police because of the areas in which they lived and their low economic status.

The greatest impact of the Acts was probably on the functioning of the police. Photographic and other records of habitual criminals entered in an

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123. There was only one instance reported of imprisonment ordered by the magistrates for intent, because the defendant was under police supervision.

Habitual Criminals Register<sup>124</sup> and tighter regulations for the police supervision of returned convicts after their release from gaol increased the bureaucratic efficiency and control of the police. Gatrell believes that the declining offence rate to the end of the century was due to the 'progressive application of all the controls which the ingenuity of Victorian philanthropists and the State could devise, for which that section of society from which most crime was expected to emanate, was no match'.<sup>125</sup> The signs were, that after a period of resistance, the authorities in Birmingham had taken sufficient action to contain their criminal population and reduce the level of reported crime to their own satisfaction. They had no need, or desire, to make their penal policy as oppressive as the limit of the law allowed. At the local level the significance of the Habitual Criminals Act and Prevention of Crimes Act - apart from their support for more efficient police record keeping - remained largely at a symbolic level.

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124. Records of habitual criminals, under the 1869 Act, were held in London, Dublin and Edinburgh. The local police held their own Register of Habitual Criminals. See pages from this Register, opposite p.194.

125. Gatrell: Op.cit. p.335.

BIRMINGHAM BOROUGH PRISON,  
COUNTY OF WARWICK.

*11th October* ..... 1871

PARTICULARS of a Person convicted of an offence specified in the First Schedule of Habitual Criminals Act, 1869, and who will be liberated from this Gaol within seven days from the date hereof, either on expiration of sentence, or Licence from Secretary of State.

Name ... .. *Elizabeth Davis*  
and  
Aliases ... ..

PHOTOGRAPH OF PRISONER.

Age (on discharge) ... .. *20 Years*  
Height ... .. *5: 1/2*  
Hair ... .. *Brown*  
Eyes ... .. *Green*  
Complexion ... .. *Fresh,*  
Where Born ... .. *Newport*  
Married or Single ... .. *Single*  
Trade or Occupation ... .. *Shoe Maker*  
Any other distinguishing mark ... .. *Vaccination*



Address at time of apprehension ... .. *No 2 Thomas St Birmingham*

Whether summarily disposed of or tried by Jury ... .. *Tried by Jury*

Place and date of conviction *Newport 10 January 1871*

Offence for which convicted ... .. *Simple Larceny*

BIRMINGHAM BOROUGH PRISON,

COUNTY OF WARWICK.

*20th October 1871*

PARTICULARS of a Person convicted of an offence specified in the First Schedule of Habitual Criminals Act, 1869, and who will be liberated from this Gaol within seven days from the date hereof, either on expiration of sentence, or Licence from Secretary of State.

Name ... .. *2245 Thomas Job,*

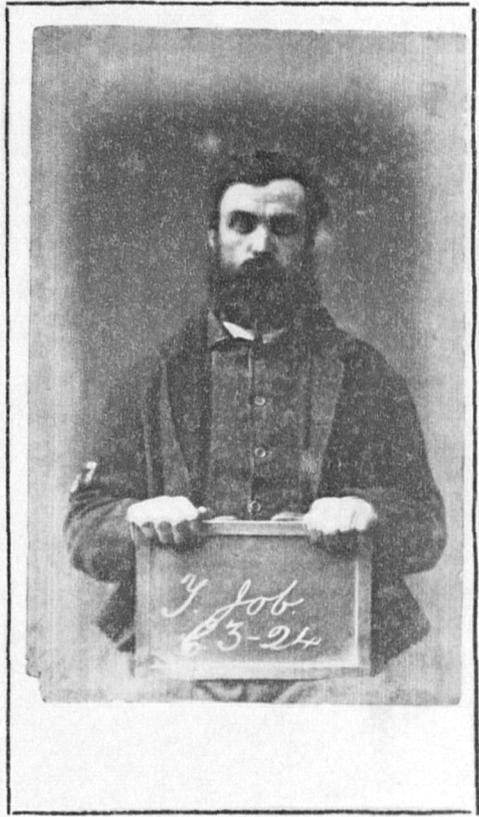
and

Aliases ... .. *Jones (and Smith),*

PHOTOGRAPH OF PRISONER.

Description.

Age (on discharge) ... .. *100 Years*  
 Height ... .. *5' 5 1/4"*  
 Hair ... .. *Brown*  
 Eyes ... .. *Grey*  
 Complexion ... .. *Pallid*  
 Where Born ... .. *Stafford*  
 Married or Single ... .. *Single*  
 Trade or Occupation ... .. *None*



Any other distinguishing mark *Scar left breast -*  
*and bottom of belly,*

Address at time of apprehension ... *No fixed residence.*

Whether summarily disposed of or tried by Jury ... *Tried by Jury*

Place and date of conviction *Borough Sessions 20 July 1871*

Offence for which convicted ... .. *Simple Larceny*

Sentence ... .. *1 Calendar Month 1/4*

COUNTY OF WARWICK.

21<sup>st</sup> October

1871

PARTICULARS of a Person convicted of an offence specified in the First Schedule of Habitual Criminals Act, 1869, and who will be liberated from this Gaol within seven days from the date hereof, either on expiration of sentence, or Licence from Secretary of State.

Name ... .. 305/... Jane Jackson  
 and  
 Aliases ... .. Kelly

PHOTOGRAPH OF PRISONER.

Description.

Age (on discharge) ... .. 31 Years  
 Height ... .. 5' 1/2"  
 Hair ... .. Brun  
 Eyes ... .. Brun  
 Complexion ... .. Fresh  
 Where Born ... .. Manchester  
 Married or Single ... .. Married  
 Trade or Occupation ... .. Charwoman



Any other distinguishing mark ... .. Burn on right arm  
 Scars on upper lip and right side of neck  
 Address at time of apprehension ... .. 26, St. Thomas St. Birmingham

Whether summarily disposed of or tried by Jury ... .. Tried by Jury

Place and date of conviction ... .. Birmingham 21<sup>st</sup> October 1871

Offence for which convicted ... .. s. 12. s. 13. Larceny

Sentence ... .. 12 calendar Months

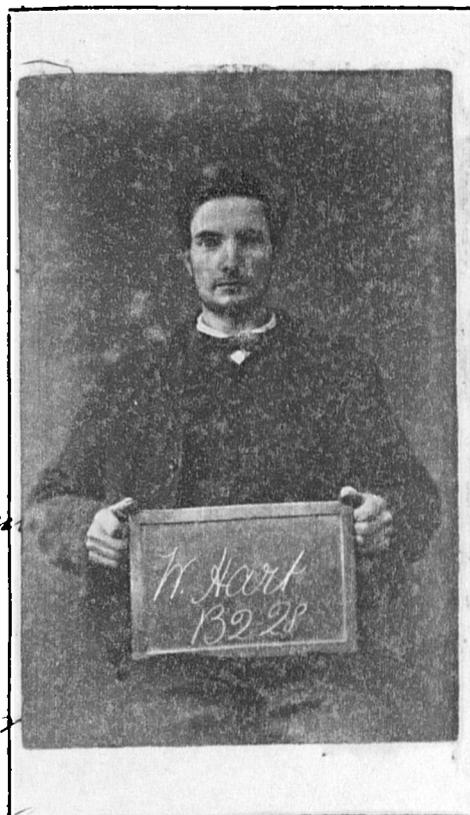
11, October 1871

PARTICULARS of a Person convicted of an offence specified in the First Schedule of Habitual Criminals Act, 1869, and who will be liberated from this Gaol within seven days from the date hereof, either on expiration of sentence, or Licence from Secretary of State.

Name ... (3201) William Hart  
 and  
 Aliases ...

PHOTOGRAPH OF PRISONER.

Description.  
 Age (on discharge) ... 29 Years  
 Height ... 5' 6 1/2"  
 Hair ... Brown  
 Eyes ... Grey  
 Complexion ... Pale  
 Where Born ... Birmingham  
 Married or Single ... Single  
 Trade or Occupation ... Brass founder  
 Any other distinguishing mark 2 Moles left shoulder



Address at time of apprehension ... Allerton, Birmingham

Whether summarily disposed of or tried by Jury ... summarily

Place and date of conviction (Bristol Court 26 Sep 71)

Offence for which convicted C. Act ... simple Larceny

Sentence ... Twenty one Days 11/1

## Chapter 5

### Assault

Violence was a prominent feature of working class life in many 19th century British towns, and Birmingham was no exception.<sup>1</sup> Although it was the threat of violence that the middle class most feared about the working class, this violence was directed almost exclusively against other working class people. The peaceful nature of inter-class relations in Birmingham which has been so frequently commented on by contemporaries and historians<sup>2</sup> was not mirrored in the behaviour of certain social class equals. Where relationships were not constrained by social distance, deference, respectability or fear, violence - among a section of the under class - was the normal method for settling disputes. Violence was also offered by this section against policemen, as the representatives of authority. But it will be maintained here that the target for much of this violence was misplaced; not out of deference or fear, but because of a lack of political consciousness and organisation amongst the lowest section of the working class, who had no coherent strategy to defend what they saw as their legitimate rights; who were excluded from the political arena and the skilled and organised trades; and who reacted with violence to the strains, uncertainties and frustrations inherent in their everyday lives. Zehr has concluded that violence represents a traditional form of criminal behaviour, and that its rise in a situation of change reflects the retention rather than the breakdown of traditional behaviour

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1. Even in the early years of the 20th century, Roberts recalls that 'as a child before the first World War, I hardly knew a weekend free from the sight of brawling adults and inter-family disputes'. R. Roberts: Op.cit. p.24.

2. W.L. Sargant: Op.cit. pp. 304-5. J.T. Bunce: Birmingham Life 60 Years Ago, Birmingham, 1899. BRL: 284199. T.R. Tholfsen: Op.cit.

He views violence as a form of primitive 'unrealistic' protest against developments in society and the economy, with inter-personal violence being an expression of frustration and tension, and a form of social conflict.<sup>3</sup>

The Birmingham evidence is fully congruent with this view, where the violence of the 1870's was strongly associated with the gangs who operated in the inner-area slums,<sup>4</sup> but above all in the Irish quarter.<sup>5</sup> Sectarian violence was the distinguishing feature of many of the gang battles of the 1870's - a violence which had been first fully unleashed in the Murphy riots, the effects of which continued to be felt into the next decade. Six months after the Murphy riots a leader in the Gazette stated:

The Murphy riots could not have occurred but for the weakness on the part of the Executive ... by calling in to the assistance of the legal authorities an extra legal power in the shape of an organised English mob. The employment of such a weapon against the Irish rioters was not only an admission of weakness but a precedent, of which the danger is now becoming apparent ... Night after night a mob which confuses Fenianism with Roman Catholicism, and Roman Catholicism with Ritualism parades our streets, smashes windows or heads, and upsets the peace of the entire town. It is in great measure the mob which retaliated on the Irish rioters by sacking Park Street - the mob to which the authorities delegated no unimportant part of their functions and powers which now, not unnaturally manifests its opposition to the very executive which formerly employed it.

It is not without significance that the occasion for this comment was the anti-Irish disturbance which occurred after a meeting addressed by speakers from the Birmingham Reform League in favour of repeal of the death sentences which had just been passed on four Fenians in Manchester. The combination of reformers speaking in favour of the Irish - after the Reform Act had

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3. H. Zehr: Op.cit. p.142.

4. The Shadwell Street gang operated in an area of decline in the gun quarter; the Navigation Street gang in the canal-side area.

5. The most notorious gangs in the Irish quarter were the Milk Street gang and the Bordesley Street gang.

6. B.G.: November 23, 1867.

failed to extend the franchise to most of the audience at this open-air meeting - was a recipe for trouble. After the meeting, 2 - 300 roughs marched to the Cathedral and stoned the priests' house, the Irish counter-attacked, and the police only managed to disperse the crowd by a sabre charge.<sup>7</sup>

In his analysis of the Murphy phenomenon, Patrick Joyce states that Murphy's principal appeal was to the poor and excluded in society, who translated his message into violence against the Irish. In releasing that violence Murphy spoke to the condition of the very poor, for when the Murphy phenomenon is penetrated to the lowest levels of its social support, Joyce believes that within the sectarian fanaticism there was another message - of attack on authority and its pretensions which answered the needs of those who were most shut out from that authority.<sup>8</sup> This analysis encapsulates the motive and context for much of the violent disorder in Birmingham in the period.

#### The Statistics of Violence

There were few new legal initiatives to deal with physical violence in the second half of the 19th century. The Offences Against the Person Act of 1861<sup>1</sup> consolidated the various existing statutes under this heading. Despite a campaign in the 1840's to repeal all capital punishment, this was retained for murder convictions; while life sentences could be inflicted in cases of rape, abortion, buggery or bestiality, and sexual intercourse with a child under ten years of age. The severity of the possible punishments for sexual offences equalled that for attempted murder or manslaughter. The maximum punishment for aggravated assault on indictment was three years penal servitude,

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7. B.G.:

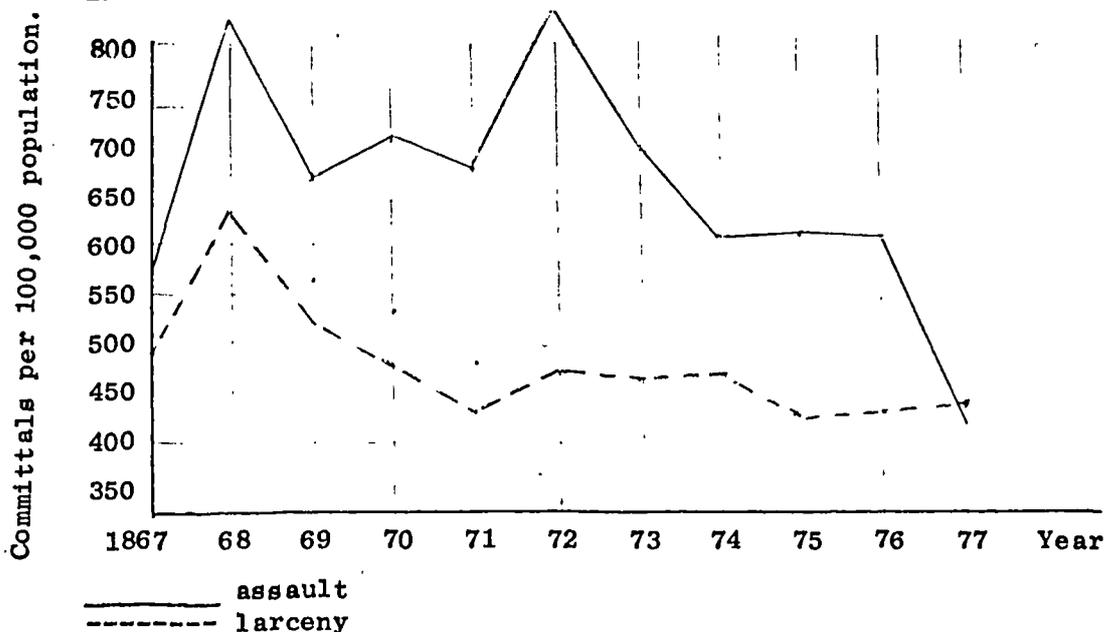
8. Patrick Joyce: Work, Society and Politics: The Culture of the Factory in later Victorian England, Sussex, 1980, pp. 259-60.

1. 25 & 26 Vict. C.100.

with one year for common assault, and two years for assaults on police officers. At petty sessions the maximum punishment for these offences was six months and two months respectively. The panic response to the outbreak of robbery with violence in London in 1862, which resulted in the 'Garotters Act' in the following year, raised the possible punishment for this offence to life imprisonment, and added whipping as a deterrent measure. Thus by the late 1860's the full range of punishments for all forms of personal violence was available to the courts, allowing room for the heavy sentences meted out for certain types of physical assault which aroused strong feelings of moral outrage. The great majority of assault cases, however, continued to be dealt with at summary level.

What was the incidence of assault cases brought before the courts in the decade 1867 - 1877? Contrary to the picture presented by Philips for the Black Country up to 1860, in which 80% of committals were for offences against property, we find that in Birmingham the proportion of assault cases before the courts was consistently higher than the proportion of larceny cases. This is because summary trial as well as indictable cases are included here. Fig. 1 shows the combined rate for indictable and summary committals for assault per 100,000 population, compared with the rate for larceny.

Fig. 1. Rate for larceny and assault, Birmingham 1867-77.



Gatrell and Hadden have shown that the rate for larceny and for violent offences began a secular decline from about the mid 1860's to the 1890's in England and Wales.<sup>2</sup> In Birmingham too, a long term slow decline for larceny set in after the mid 1860's, while the rate for assault - peaking, together with larceny in 1868 - did not begin to tail off until after 1872.<sup>3</sup> The mid 1870's appear as a watershed in the reform of public behaviour in Birmingham, occurring about a decade after the decline in violence shows up in the national statistics.

The large number of assault cases before the courts contrasts with the insistence of historians of this period and earlier that the protection of property was the over-riding concern of the courts.<sup>4</sup> By the 1860's, through the agency of the reorganised police, the authorities were as concerned to reform manners as to protect property,<sup>5</sup> and a considerable number of prosecutions brought by the police were the consequence of an assault on them when they interfered to stop a violent dispute or other unacceptable behaviour. However, the majority of assault cases continued to be brought to court by private prosecutors, most of whom were members of the working class. The divide between working class and middle class behaviour was probably greater in the sphere of violence than in any other criminal matter. This can be seen even for the types of violent crime least likely to be subject to class bias in their incidence, or rate of detection and prosecution. In

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2. Gatrell and Hadden: Op.cit.: Tables I & II, pp. 389-391.

3. See Tables III & V in Bunce: Op.cit. for trends in indictable and summary offences in Birmingham, 1858-1884, pp. 296 and 298-300.

4. See for instance Nancy Tomes: 'Crimes of Violence between working class men and women in London, 1840-75', Journal of Social History, No. 3, 1978, where she states incorrectly that crimes of violence were much less common than crimes against property in 19th century England.

5. There is agreement with this view in D.V. Jones and A. Bainbridge: Op.cit. Jones and Bainbridge stress that the preoccupation with order is vital to an understanding of Welsh society in the mid 19th century, when the authorities were desperately trying to impose some kind of civilised behaviour on a frontier society.

only one instance - of a murder committed by a publican - among the small number of murder, attempted murder, and manslaughter cases, was the defendant not unambiguously a member of the working class.<sup>6</sup> As with other forms of violent crime, homicide appears to have been largely confined to working class perpetrators.

While varieties of theft were not confined to the working class, assault was to a very large extent. If violence was a normal form of behaviour among sections of the working class, under what circumstances did cases of assault find their way to the courts? We shall consider this question under three headings: common assault; aggravated assaults on women and children; and assaults on peace officers. But first an assessment of the representativeness of the newspaper evidence must be offered. Table 5.1 shows the proportion of the different types of assault and the coverage they received in the newspaper. It can be readily seen that violent assault aroused increasing public interest, while concern over wife-beating remained at a high level throughout - with more cases reported in some years in the papers than found their way into the police statistics of aggravated assaults on women.

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6. The social class position of the few females charged with murder or manslaughter is not clear. The statistics for homicide in Birmingham for selected years are as follows:

	<u>1868</u>	<u>1871</u>	<u>1874</u>	<u>1877</u>
Murder	1	0	3	12
Attempted murder	0	1	9	3
Manslaughter	6	7	2	5

Table 5.1: Number and Type of Assault Cases in the Judicial Statistics, and % reported in the Newspaper

	1868	1871	1874	1877
Common Assault, J.S.	2,099	1,985	1,646	979
" " Newspaper	143 7%	128 6%	156 9%	176 18%
Assault women/children, J.S.	40	47	55	62
" " " Newspaper	28 70%	59	62	51 84%
Indictable assaults known to police, J.S.	39	22	19	53
" " " Newspaper	17 43%	10 45%	14 74%	12 23%
Assaults on peace officers J.S.	530	325	491	409
" " " Newspaper	64 12%	65 20%	147 30%	159 39%

While some forms of assault were very fully covered only a fraction of the common assault cases were reported. Were only the more violent and sensational given coverage, or was it the average? There are in fact reasons to suppose that the cases reported were quite representative. Firstly, the full coverage and moralising comments from the bench in cases involving middle class assaulters indicate that these appeared as rarely in the courts as in the newspaper.<sup>7</sup> Secondly, the more sensational cases of aggravated assault were either dealt with by the higher courts or were wife-beating cases, both of which did receive extensive coverage in the newspaper. Table 5.2, showing the age, occupation and residence for assaulters, compared with habitual criminals, provides a profile of the defendants in these cases.

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7. Two examples will suffice: A forty year old surveyor stabbed a man who was detained in hospital, and bail was refused 'despite the fact that the defendant was in a superior position', B.G.: December 19, 1877. A schoolmaster, summonsed for thrashing a boy for playing truant, was told by the bench that a man in his position had to learn to control himself. B.G.: September 14, 1877.



The most distinctive group in Table 5.2 were the wife beaters, who were on average much older than other assaulters or habitual criminals, and less concentrated in the rough streets. Wife beaters were drawn from a wider area and from a wide range of occupations, with the unskilled and metal workers predominating. The distinction here is not in their occupations, but in the trend over the decade. If we aggregate the first two occupational categories to provide an index for the unskilled, it will be seen that this group increased steadily to 1874 and then fell back sharply among wife beaters, whereas for the rest the beginning and end of the decade saw more unskilled defendants than the middle. Wife beating and drink were closely associated, so that the greater proportion of wife beaters among the unskilled in the middle of the decade may well be related to their enhanced capacity to spend money on drink during years of prosperity. However, in order to fully establish this point one would need to be able to show that the pattern of drink consumption among the unskilled was more sensitive to economic fluctuations than was that of other occupational groups - which is outside the range of the evidence available here.<sup>9</sup>

Among other assaulters, the unskilled were more numerous during the years of depression. Did they quarrel more, and resent the police more, when times were hard? What is clear is that the upsurge of assaults on the police in the mid 1870's had less to do with resentments among the unskilled than with the challenge by those working in the metal trades to the authority of the police. From this time too, the rise in the number of youths amongst the assaulters is striking, particularly among those assaulting the police.

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9. See A.E. Dingle: 'Drink and Working Class living standards in Britain 1870-1914', Economic History Review, XXV, 1972. He quotes contemporaries as deploring the effect on the working classes of the rise in wages in the early 1870's: 'The rise of wages coming upon a class of men ill-prepared for it was a positive evil of the highest degree'. But Dingle doubts whether the increased drink consumption at this time included the unskilled as much as the artisans.

Here the statistics reflect the emergence of a number of gangs in the mid 1870's, and the street and police battles which ensued. Assaulters were not among the rootless and homeless as were so many of the habitual criminals. On the contrary, many of their assaults were in defence of their territory. But assaulters (other than wife beaters) did share the rough streets to a significant - if decreasing - extent with habitual criminals. Nor were there any real occupational differences between them. It would look as though assaulters were largely drawn from the same social strata and areas as were habitual criminals.

#### Common Assault

The majority of assault cases came under the heading of common assault. A high degree of casual violence was accepted as a normal part of life among the poor, in which men were much more likely to be involved than women, who were more frequently brought to court on charges of larceny. This is hardly unexpected in a sphere where women were likely to come off badly, at least in physical conflicts with men. Table 5.3 shows the differences in types of assault between the sexes, and includes the small number of assault cases tried on indictment.

Table 5.3: Circumstances of Assault by Sex of Offender

<u>Assault</u>	<u>1868</u>		<u>1871</u>		<u>1874</u>		<u>1877</u>	
	M	F	M	F	M	F	M	F
In pub	15	16	8	0	10	0	5	0
On publican	5	0	14	18	7	3	8	0
Neighbour	15	37	13	18	16	32	11	50
Fellow workman	5	5	2	0	2	7	3	0
Bailiff/Official	2	10	6	9	1	7	1	6
Same hse/family (except wives)	5	10	15	9	10	32	8	0
Against witness	3	16	2	18	2	7	7	12
In street/other/dk	50	5	40	27	52	11	57	31
n =	129	19	117	11	133	28	165	16

Over two thirds of female assaults were on other females or children, a further 7% being assaults on their husbands, or assaults on men carried out jointly with members of their family. Only a fifth of female assaults were thus made by women alone on men outside the family. But the female assaults reported in the paper were frequently more violent than male assaults. A quarter of female assaults involved stabbing or the use of some other weapon, compared with 14% in the case of men for common assault (and 9% in the case of assault on wife or child).<sup>1</sup>

Partly this was no doubt a function of men's superior physical force, so that they felt less need for a weapon, particularly when they attacked women. But other factors also seem to have been involved. There are two possible explanations for the greater use of weapons by women. The first postulates that physical violence did not come as naturally to women as to men, but that once aroused to fury they were more likely to use weapons to increase the effect of their assault - the heightened violence when their pent-up anger did explode being an expression of the exceptional nature of female assault as a means of settling disputes. But this hardly accords with the picture of life in the slums painted by contemporaries where women were ready to brawl and fight and to join in the mob violence in the streets. It may have more relevance to the relationship with neighbours in the crowded courts, with their common water taps and wash houses, and the endless tensions this could give rise to. Here some degree of restraint would have been necessary in order to make daily life at such close quarters tolerable. The

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1. This contrasts with the received opinion on women's crime, as quoted (but not necessarily subscribed to) by J.M. Beattie: 'The Criminality of Women in 18th century England', Journal of Social History, 8, 1975; 'it is one of the commonplaces of the literature on women's crime...that women not only commit fewer offences than men, but commit them less violently and less aggressively'.

second view, by contrast, sees violent quarrels between women, where the damage given and taken was within the bounds of acceptability, as a normal daily occurrence - so that it was only those cases which overstepped the norm which were taken to court. When Mary Payne quarrelled with her court-yard neighbour over some soapsuds this must have been a commonplace event, but she went too far when she tore out her neighbour's hair and broke a teapot over her head, and she ended up in court with a six week prison sentence.<sup>2</sup> Rows and fights would have been very hard to avoid in the overcrowded conditions of the courts and lodging houses where women and children, as the most housebound, competed for the use of the meagre space and facilities available. There was a far greater risk that disputes with neighbours would end in violence among women than among men (with an average of 34% of female disputes ending in the court compared with 13% of male disputes). But however high the rate, with neighbours as the chief target for female aggression, the total number of women appearing in court for assault was very low. These two aspects may not be unconnected in that neighbours had to try and live with each other without resorting to the law if their relationship was not to deteriorate into open warfare. In some of the rougher districts women had the choice of settling their own disputes and accepting the accompanying violence, or of going to law and facing the ensuing hostility - as occurred in the case of Ellen Oliver, a hawker, who encouraged by a large crowd, attacked a neighbour when she served a summons on her for uttering threats.<sup>3</sup> In such circumstances women seem to have held more strongly than men to the view that one should not resort to the law or give evidence in court, as is indicated by the comparatively high

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2. B.G.: July 25, 1877.

3. Ibid: August 16, 1877.

rate of female assault on witnesses, in cases which all had to do with neighbourhood disputes (av. 11% compared with 3% male: Table 3). The likelihood is that women were restrained not so much in carrying out physical assaults but in bringing these cases to court, for reasons which had to do with the circumstances of their daily lives rather than with any innate lack of aggressiveness.<sup>4</sup> But the use of weapons or of undue force by women seems to have been especially frowned on, and many of these cases might end up in court.

What life in the backyards and courts was to women, the pub was to men. There was at least one pub or beerhouse in most streets in the central area of town (see Map over page), which was the focus for much of the local social life. Its importance in the lives of the working class as a refuge and social centre, and as a source for drink, warmth, comfort and companionship has often been commented on, but can hardly be exaggerated. Many cases of assault which ended up in court were the result of drunken brawls which took place in the streets around the pub. The magistrate John Malins recalled that in the days when the pubs remained open through the night, there was invariably a turn out of customers on half the nights of the week, who piled out of the pub in order to have a fight. The police only appeared when there was an uproar of unusual dimensions.<sup>5</sup> Another Birmingham man remembered every night in his slum street as noisy and bolsterous, but Saturday night was like hell let loose, with drunken men and women staggering their various ways home.<sup>6</sup> What is of interest is that given all this turbulence, so few cases of drunken assaults inside pubs found their way to court. As with

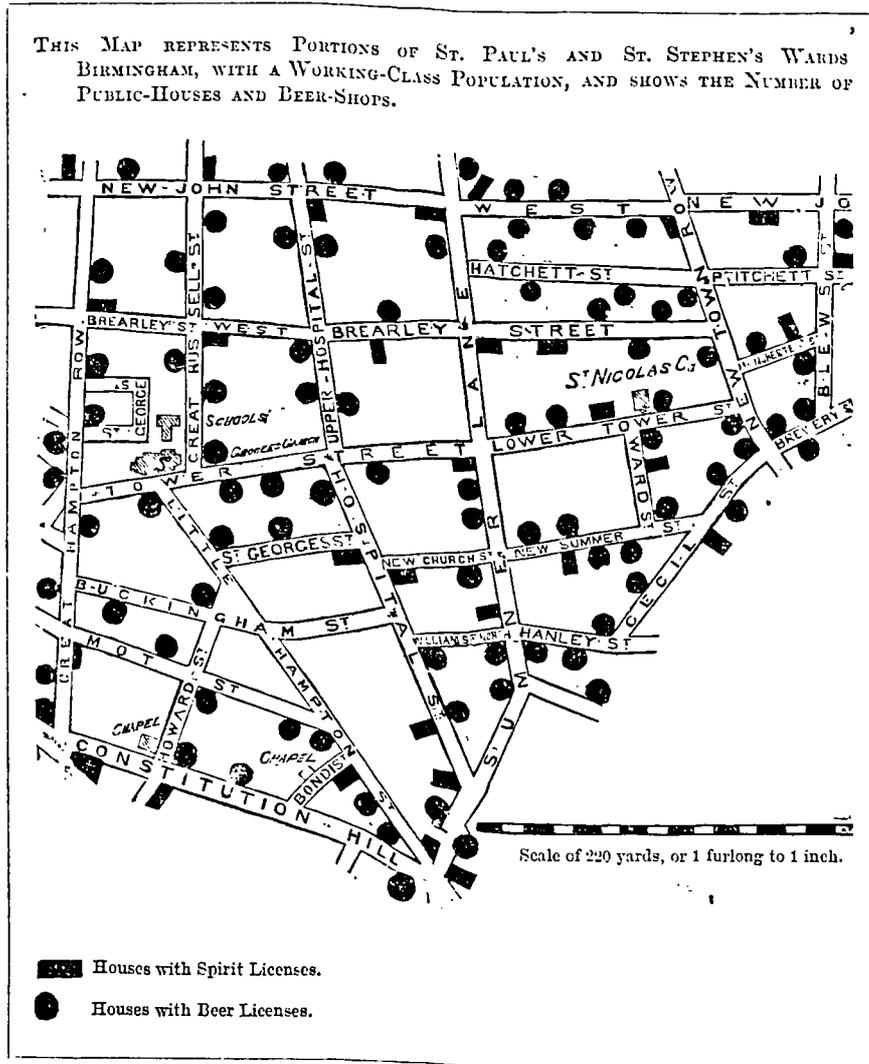
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4. See Beattie: Op.cit. 'The disparities in levels and types of violence between the sexes is too great to be fully explained by reporting. The principal reason ... derives from the restricted scope of women's lives and the training that shaped them to their social role'.

5. Birmingham Gazette & Express: September 18, 1908.

6. Sam Shaw: Guttersnipe, 1946, p.6. BRL: 577736.

Map 6: Distribution of Public Houses and Beershops in a Working Class District of Birmingham, 1877.



Source: J. Chamberlain: 'Municipal Public Houses', Fortnightly Review, February 1, 1877.

instances of assault between women neighbours, there seems to have been a common understanding, both between customers, and between customers and the police that social life in the pub was a self-regulating affair, not subject to the process of the law except in extreme instances. The outcry over the licensing laws and the hostility to the police who had to try and see that they were implemented bears witness to the strength of feeling that life and behaviour in the pubs was the concern of no-one but the customers. If efforts simply to impose restricted hours raised the indignation which it did, efforts to curb drunken behaviour will have been even more resented. As it was, out of the ninety-one cases of drunken assaults recorded in the newspaper over the four years scrutinised, only five were for assaults on other customers in the pubs, while sixteen were assaults on the landlord. Nearly half of all assaults carried out in pubs (whether drunken or not) involved attacks on publicans, usually for refusing to serve the defendant or for trying to eject him. That this could be a hazardous enterprise, arousing all the fury of a man denied his rights, is evident from the accounts of several cases, of which the following is an extreme example. A landlord and his wife were assaulted by a brass founder and his three companions when the publican tried to eject them at the end of drinking hours. The wife finally fetched the police, who came to find the participants covered in blood and the pub wrecked. Had the police not appeared, the defendant said he would have 'settled the landlord'<sup>7</sup>. Publicans were in the front line of fire and steered a difficult course between complying with the law and accommodating their customers. If they took the law into their own hands they could also be in difficulties. When a publican assaulted an Irishman who refused to leave the pub when ordered out he was taken to court, where the magistrates told him that he should have

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7. B.G.: December 29, 1877.

called the police rather than dealt with the matter himself, and fined him for the assault.<sup>8</sup> Publicans were also in danger of arousing the wrath of the community and not just that of the individuals against whom they acted, when they tried to impose order in their houses. There are several recorded instances of mob attacks on publicans, where crowds of 40 - 50 people descended on the publican, armed with sticks and pokers.<sup>9</sup> There was a very real sense in which it was felt that the local pub belonged, morally speaking, to its local customers; and publicans were attacked, not because they were alien to the community but because they tried to impose alien rules and regulations. Publicans were members of the same community as their customers. In the 1870's, it was thought to be the Birmingham working man's aspiration to save up enough money to take a pub;<sup>10</sup> and ex prize-fighters, who were regarded as the local heroes, frequently did so from out of their prize money.<sup>11</sup> Although in danger of being attacked, publicans were thus mostly well able to take care of themselves. Apart from the brief and ill-fated attempt to see that the licensing laws were enforced, through the appointment of special public-house officers, the police were careful not to intervene in public house affairs, so that publicans came in for much of the aggression these laws aroused. The police arrested the drunk and disorderly in the streets but they did not enter the pubs to enforce the law, unless called upon by publican or customer to do so; while witnesses in these cases ran the risk of being attacked if they gave evidence in court.<sup>12</sup>

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8. B.G.: June 16, 1871.

9. Ibid: November 8, 1871; January 20, 1874; March 29, 1874; March 28, 1877.

10. W. McGregor in Birmingham Gazette and Express, September 19, 1907:.

11. Ibid: Also January 16, 1908.

12. Ibid: May 3, 1871; July 22, 1871.

Of course, in a situation where most of a pub's clientele will have been acquainted with one another, disputes with fellow workmen, neighbours or companions could find their culmination in the pub. An iron turner stabbed a youth who had given evidence against him three weeks previously, when he met him in a pub;<sup>13</sup> while a shoemaker assaulted his cousin in the pub over a family dispute which had erupted at home the previous day.<sup>14</sup> A fifth of the pub assault cases involved the use of a weapon, and may have been brought to court because this was considered unwarrantable.<sup>15</sup> In a further 14% of cases the prosecutor refused to press charges or did not appear to prosecute. This leaves thirtythree cases (a third of pub disputes) brought to court in the four years where there were no apparently aggravating circumstances or regret on the part of the prosecutor. But male assaults on neighbours, fellow lodgers or workmates, or members of their family added up to a far greater total than pub assaulters, which inclines one to conclude that despite the stimulus to quarrels supplied by drink, the pub was considered as a haven rather than the right place to further private quarrels through the law.

Parents came in for their share of violence from their off-spring. A fourteen year old filer attacked his parents when they remonstrated with him because of his idleness;<sup>16</sup> a nineteen years old filer assaulted his mother who gave him nothing to eat because he was not bringing home any money;<sup>17</sup> and a thirteen year old attempted to stab his mother when she asked for his wages, which were then taken from him by force by his father, and the police called in.<sup>18</sup> In these instances, where sons beat their mothers for denying or inter-

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13. B.G.: May 11, 1877.

14. Ibid : August 16, 1877.

15. A. Davenport in Birmingham Gazette & Express, January 16, 1908. When writing about a rather earlier period in Birmingham, the lawyer Arthur Davenport recalled that one seldom heard of any kicking or use of the knife in a quarrel, for it was considered derogatory for an Englishman to do so.

16. B.G.: November 26, 1868.

17. Ibid : April 8, 1874.

18. Ibid : October 13, 1874.

fering with their rights, the family tensions which could result from a precarious economic existence are evident. In other cases where the sons were older and not necessarily living at home the assaults appear to be straightforward instances of bullying and brutality, as when a thirtyfive year old drunk man beat up his parents, who lived in fear of him and called the police;<sup>19</sup> or a twenty-three year old hinge maker dragged his mother about the yard by her hair until stopped by the policeman who came in answer to her screams.<sup>20</sup> 4% of assaults were by children on their parents, whereas there were only a handful of cases where parents and their children co-operated in an assault on someone else. The pressures - particularly economic pressures - driving such parents and children apart, may have been greater than those which kept them together.

A small number of cases of assault between fellow workmen reached the courts, of which half a dozen involved prosecutions for assaults on blacklegs.<sup>21</sup> Despite the notorious difficulties in the way of concerted strike action (in a town known for its multiplicity of employers and products, and pool of cheap boy labour),<sup>22</sup> there was nevertheless a long tradition in the trade societies of attempted control over workplace norms, concerning wage rates and workshop practices.<sup>23</sup> How effective these controls were given the ease of entry and abundance of labour in most of the town's staple trades is debateable. Attacks on blacklegs, or to enforce output norms occurred in all

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19. B.G.: December 28, 1868.

20. Ibid: January 10, 1871.

21. See Clive Behagg: 'Custom, Class and Change: the trade societies of Birmingham', Social History, Vol. 4, No. 3, October 1979. The figure above can be compared with Behagg, who discovered that 43 individuals were prosecuted for intimidation or assault in trade disputes between 1830-50. Six cases in four years (or 10 cases if enforcement of workshop practices cases are included) implies a higher rate in the 1860-70's than in the first half of the century.

22. Alan Fox: 'Industrial Relations in 19th Century Birmingham', Oxford Economic Papers, 1955.

23. Behagg: Op.cit.

years except the most prosperous, 1871. Prosecutions under the Master and Servant Acts rose to a peak in 1872 (at double the 1869 figure) after which they declined - suggesting that some labour was scarcer, and workers felt freer to break contract during periods of economic expansion;<sup>24</sup> while society members had less occasion to try and enforce wage norms when pressure on wage rates eased. But these pressures returned with down-turns in trade. In the depression of 1876 a plane maker assaulted a fellow workman, provoked he said by the 'Mary Ann' system at his workplace, whereby a man's tools were taken away from him if he would not agree to the regulations to prevent him working. A witness countered his accusations, saying that the regulations were subscribed to by all the men and very conducive to their mutual welfare.<sup>25</sup> But the weakness of the societies and the difficulty of controlling entry into a trade, even in unions of skilled men, during a depression is apparent. A stonemason and non-unionist, who was taken in to custody by a unionist stonemason for uttering threats, stated that he had been offered money to leave town and assaulted when he refused.<sup>26</sup> Taking him to court seems a desperate remedy, since the unionist can hardly have supposed that the court would view his claims sympathetically. In the event, the defendant was fined 1/-. More understandable was the action of union men against blacklegs during a trade dispute at a galvanising works, when a newly engaged iron plate worker was assaulted by the unionised workers who had been discharged.<sup>27</sup> In other instances, more traditional methods of moral censure were used, as in 1874 when a crowd surrounded the house, and pelted the windows of an iron

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24. See D. Wood: Op.cit who found a similar pattern of prosecutions under this Act in Walsall and Wolverhampton, with a great increase in prosecutions following the upturn in the economy after 1870. p.313.

25. B.G.: December 20, 1876.

26. Ibid: July 22, 1868.

27. Ibid: September 11, 1877.

moulder who refused to join a strike.<sup>28</sup> But the courts were becoming increasingly unsympathetic to such communal manifestations, whether carried out by a crowd or by a group of union men. 'It was a system of tyranny' the Stipendiary declared, saying that he would inflict heavy punishment in cases of group intimidation.<sup>29</sup> In the early 1870's, the labour movement was chiefly concerned to try and change the labour laws. Its anger was aroused by the passing of the Criminal Law Amendment Act of 1871 and the inequity of the Masters and Servants Act, whereby a master could only be fined for an offence for which the worker could be imprisoned; and the T.U.C. was committed to the goal of the repeal of the C.L.A.A. Its oppressive nature was summed up by Henry Crompton in his address to the T.U.C. in 1873, wherein he stated that:

cases under the C.L.A.A. show that men have been convicted for simply standing still in the street ... The cases show that if there is a strike, the magistrates will infer coercion from any facts, even from the strike. 30

This state of affairs is not well mirrored in the newspaper accounts of disputes brought to court. The Bench was likely to have been split in its attitude towards unionists - with certain old style radicals such as J.S. Wright firmly opposed to them. But Chamberlain's advocacy of the rights of unions, and their acceptance by several of the larger manufacturers may have eased their legal position in the town.<sup>31</sup> Nevertheless, the very small number of prosecutions brought under the Master and Servants Act which were reported in the newspaper do not reflect the reality. Extensive use of the Act to enforce contracts and prevent workers from using their economic power to improve their position was made, especially during periods of economic prosperit

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28. B.G.: November 14, 1873. This was the only work dispute case to be sent to Quarter Sessions. The defendant received a six month prison sentence.

29. Ibid: April 25, 1874.

30. Quoted in Harrison: Op.cit. p.298.

31. Between June 30, 1871 and April 1, 1874 there were only two convictions under the C.L.A.A. in Birmingham; for the intimidation of workmen. P.P. LIV 1873, p.163; LIV 1874, p.199.

when skilled labour was scarce. In the absence of evidence from the police court, one can only guess that it was the small masters, as the most opposed to the unions, and the least willing and able to raise wages, who resorted to the Act. That this was likely to have been the case receives some corroboration from the statistics for this offence from a number of towns, which show that prosecutions in towns based on small workshop production as in Birmingham were high compared with similar prosecutions elsewhere.

Table 5.4: Offences Relating to Servants, Apprentices or Masters in Four Towns.

	<u>Birmingham</u>	<u>Sheffield</u>	<u>Liverpool</u>	<u>Manchester</u>
1868	234	112	8	110
1869	215	95	10	162
1870	364	147	3	62
1871	375	154	11	241
1872	422	223	11	218
1873	357	236	7	208
1874	201	164	14	228
1875	183	161	15	222

As far as attacks on officials were concerned, these chiefly involved bailiffs and poor rate collectors, workhouse officials and theatre managers. While evictions because of rent arrears were a constant feature in the lives of the poor, the position of tenants was not helped by the confusion caused through the clause in the second Reform Act of 1867, whereby compounding of the rates was no longer allowed. During the two years that this clause was in force the collection of rates became increasingly difficult, and it was estimated that probably two-thirds of small householders were summoned or had their goods distrained for non-payment - amounting to nearly 50,000 people in one year. Many warrants of distraint were issued, and two or more officers were constantly out with a van effecting seizures. There was a great loss of

rates from poverty, removals and evasions during this period.<sup>32</sup> Such experiences will not have enhanced the popularity of the bailiff and poor rate collector, nor inclined landlords to leniency over rent arrears. The wonder is that they were not attacked more often.<sup>33</sup> Evasion was preferred to attack, and eviction accepted as part of the normal hazards of life. Sam Shaw describes the use made of the outhouse in the backyards where the tenants did their washing (called the brewhouse), which served as a kind of standby for those evicted from their dwellings. His family, he recalled, often had to resort to the brewhouse until their rent was forthcoming.<sup>34</sup>

The difference between the rate of assaults on officials and on policemen is striking and significant. The basis for attacks on authority figures by members of the working class has to do with conceptions of justice much more than with the extent of the hardships imposed on them.<sup>35</sup> Conflicts over measures which went counter to popular conceptions of rights and of justice have been perennial throughout history; but as long as it was considered legal, the working class were prepared to accept the most extreme privations. The oppressive aspect of the law and its power to act as a form of domination through the 'universal' character which gave it its legitimacy was clearly stated by Engels:

the specific character of economic oppression which weighs down the proletariat stands out in all its sharpness only after all the special privileges of the capitalist class have been set aside and the complete juridical equality of both classes is established. 36

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32. Bunce: Op.cit. pp. 42-3.

33. There were only five recorded instances in four years (and one of these was on the bailiff's wife).

34. Sam Shaw: Op.cit. pp. 1-2.

35. Arthur Harding, probably the last man alive to have been brought up in the 'Jago', the most famous criminal slum of late-Victorian London, has related how the predominant idea of its inhabitants was paying the rent. 'That was the first and last duty of everybody, to pay that rent' he records. R. Samuel: Op.cit. p.24.

36. F. Engels: 'Origins of the family, private property and the State', in B. Fine: 'Law and Class', p.31, Capitalism and the Rule of the Law, National Deviancy Conference, 1979.

Organised groups who felt discriminated against pressed for changes in inequitable laws. The law was also regarded as a resource as well as a form of oppression by the Birmingham working class, who continued to resort to it in large numbers. But the unquestioning acceptance of their legal economic obligations by the impoverished and the powerless bears witness to the truth of Engels' observation. Paying rent and rates were seen as lawful obligations by the poor as well as the rich. However, just because the law was expected to be fair, policemen were attacked when they interfered in non-criminal matters, such as drinking, loitering in the streets, or private quarrels - activities which were not rightfully deemed to be subject to the law.

There were of course groups who denied the legitimacy of the law, typified in the present case not by habitual thieves and criminals but by the gangs of young men who tried to impose their own rule through force in the territories where they operated. The intimidation of witnesses in 1877 was part of this process. A publican witness for a defendant who attacked a member of the Bromsgrove Street gang described this gang as a most violent set of men and said that most people in the neighbourhood were afraid of them.<sup>37</sup> In another case, three members of a gang operating in Allison Street attacked a woman who had given evidence against them, in favour of the police. 'There is the copper. Let us stone her' they cried. When her father came to her assistance, they knifed him, saying 'We shall have no coppers here. Let us do for him and all belonging to him'.<sup>38</sup> Another aspect of gang rule shows up in a number of assaults on theatre officials, who tried to control or eject them. These were mostly confined to the Theatre Royal, which was considered as part of their territory by a 'very tough gang of roughs' whose haunt lay in

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37. B.G.: January 2, 1877.

38. Ibid: July 3, 1877.

the streets behind the theatre. Will Thorne described their operations:

One of their games was to come along when the people were lined up to go in to the theatre ... just as the doors opened they leapfrogged over the crowd, ran to the gallery taking charge of the best centre seats, and later sold some, keeping a number for themselves.

Until the time of the Navigation Street riots in 1875, neither the police nor the theatre authorities were able to prevent these raids.<sup>39</sup> Only one policeman, known as Curly, could be trusted to face them, John Malins recalled. He was usually armed with a stick of stiff gutta percha with which he laid about him; and the play on stage was frequently interlarded with duels in the gallery between Curly and the hooligans, whose efforts were mainly directed at throwing the officer over the front into the pit below.<sup>40</sup> But conditions were said to have been much better at other music halls where the proprietors were very strict about their patrons, and no man was allowed in without a collar and tie.<sup>41</sup>

In the remaining bulk of cases of common assault where no specified victim or location was reported, a number appear as motiveless and gratuitous acts of violence, and were perhaps brought to court for this reason. In less than a fifth of cases was the defendant described as drunk (although many more than reported probably were drunk at the time of the assault). A 19 year old labourer assaulted a man in the street, fearfully disfiguring his face, for no reason that he could give;<sup>42</sup> while a drunk slater assaulted a woman in the street by striking her on the face with a slater's hammer. She said she had never seen him before in her life.<sup>43</sup> For the remaining cases of assault the motives are unclear and the details too sparse for any further useful comment.

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39. W. Thorne: Op.cit. p.28.

40. J. Malins: Op.cit.

41. W. Thorne: Op.cit.

42. B.G.: November 7, 1877.

43. Ibid: December 12, 1876.

Aggravated Assaults on Women and Children

The legal position of women and children who were subjected to domestic violence remained extremely precarious. In 1853 the Prevention and Punishment of Aggravated Assault on Women and Children Act was passed which enabled magistrates to send offenders to prison for up to six months (extended in 1868 to one year);<sup>1</sup> while Francis Power Cobbe's campaign<sup>2</sup> for a new Act which would offer ill-treated wives better protection and the possibility of a judicial separation, together with a maintenance order and custody of the children was incorporated into the Matrimonial Causes Act of 1878.<sup>3</sup> In the intervening period the Home Office inquired of judges and magistrates whether they considered the law relating to brutal assaults to be sufficiently stringent.<sup>4</sup> The majority, including the Birmingham Stipendiary, replied in the negative. However, nothing came of this inquiry, so that during the period of this study the most that wives subjected to brutality could look forward to was a prison sentence for their husband - a measure that was often worse than useless. If the wife or children had no paid employment their only recourse might be the Poor Law. But the Guardians were extremely reluctant to grant out-relief to deserted wives or to those whose husbands were in prison, with the result that there was often no alternative but the Workhouse for such families. For juveniles also, there was no legal protection against exploitation or ill-treatment from their parents. The N.S.P.C.C. was not founded until the 1880's, and the Prevention of Cruelty and Protection of Children Act not passed until 1889.

A wife had three choices, none of them very satisfactory, in coping with a brutal husband. She could leave him, put up with him, or take him to court.

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1. 16 & 17 Vict. c.30.

2. Published as an article: 'Wife Torture in England', The Contemporary Review, April 1878.

3. 41 & 42 Vict. c.19.

4. Reports to the Secretary of State for the Home Department on the State of the Law relating to Brutal Assaults. P.P.: C.1138, 1875.

A fairly substantial number (8%) chose the first course, but in nearly half of these cases the couple were cohabiting and were not legally married. For the legally married, the common expectation of behaviour appropriate to the married bound them to remain with their husbands, quite apart from any financial constraints. While the dark figure for wives who accepted ill-treatment from their husbands without official complaint is unknowable, it was probably very great, and the small number of wives bringing cases of brutality to court may represent only the tip of the ice-berg. As it was, 16% of wives changed their minds once they were in court and refused to press charges, or asked for protection and sureties of good behaviour rather than gaol sentences for their husbands. Table 5.5 sets out the circumstances in which cases of assault on wives came to court.

Table 5.5: Circumstances and Reactions of Wives/Cohabitees bringing Cases of Assault to Court. 5

	<u>1868</u>	<u>1871</u>	<u>1874</u>	<u>1877</u>
	%	%	%	%
Charge not pressed ...	18	17	14	10
Asked for sureties ...	7	2	3	0
Asked for divorce/separation	0	0	0	4
Assault seen by p.c./p.c. fetched	11	12	11	12
Assault where others intervened/ gave evidence ...	3	7	5	2
Wife had left husband ...	0	5	8	16
Husband drunk ...	43	30	24	24
Other/n.k. ...	28	24	34	41
n =	28	59	62	51

There are several points of interest in this Table, which together seem to show an increased willingness by the wife to take action against her husband - a trend which goes counter to Tomes' evidence for London. Where she shows a decline in the number of cases of assaults on wives between 1840-1875,

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5. Percentages add up to more than 100 as more than one reason could apply.

the Judicial Statistics for Birmingham show an increase and a doubling of the number of such cases between 1859 and 1878.<sup>6</sup> To account for this decline, Tomes hypothesized that this was due to a passive acceptance by women towards the end of the period of a more confined domestic role in exchange for acceptance of new standards of respectability, which included a prohibition on physical violence.<sup>7</sup> But there had been no change in the economic position of women in London or Birmingham to support the view that women's status was declining. In both towns there was little factory work available, and throughout married women were employed on an out-work basis, if at all. However it is possible that as the social climate changed, married women may have been coming to the conclusion that violence in marriage was no longer something they simply had to accept. Table 5.5 indicates that this conclusion was arrived at independently, and not as one subject to increased intervention on the part of neighbours or the police; nor to the extenuating circumstance of the husband being drunk. Disdain of wife beaters and assaults on women as acts of the 'ruffian' class may well have been gaining more general working class support.<sup>8</sup> The condemnation of the courts for acts of brutality against women will have acted as encouragement for assaulted wives in bringing charges against their husbands. However, since the law could offer them little real protection (aside from depriving them of the main bread-winner for a few months) it took real courage and determination for a wife to take this step. The decline in the percentage of wives who refused to press charges can be seen as one aspect of this determination - so it is not necessary to conclude

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6. Between 1859 and 1868 there were 309 cases of assaults on women brought to court in Birmingham; and between 1869 and 1878 there were 596 cases.

7. Tomes, op.cit citing J. Scott & L. Tilly: L. Oren & P. Stearns. But if status goes with economic power, married women's status, except in the cotton towns, was never high.

8. Note that the addresses of wife beaters show them to have been less concentrated in rough areas than those of other assaulters.

that increasing respectability implies an increase in passivity. On the contrary, given the widening social support for the standards of respectability, married women took action to invoke these standards.

Violence against children, no doubt widespread, went largely unrecorded, and often only emerged incidentally in cases brought by wives of violence against themselves. Until the Act of 1889 whereby children could be removed from homes that the courts ruled dangerous to their health and well-being, juveniles had little legal protection against exploitation and ill treatment.<sup>9</sup> Fourteen cases of child abuse found their way to court in the period, of which eight were adjuncts to cases of assault on wives. There is evidence of intervention in gross cases of abuse on the part of neighbours; in one instance a neighbour took two boys aged nine and five to the police station after their father had beaten them bloody because they had stolen money from him;<sup>10</sup> and in another, a neighbour was assaulted by the father when she remonstrated with him for ill-treating his baby.<sup>11</sup> But generally the right to ill-treat their children was so much taken for granted that parents did not trouble to hide it.<sup>12</sup> For instance, when a wife called a policeman to take her husband into custody for assaulting her, the man knocked his son's head against the wall several times in the constable's presence without thinking that this was in any way untoward.<sup>13</sup> But the right to maltreat was

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9. The protection offered by the Factory Acts Extension Act and the Workshops Act of 1867, which limited the age and hours for which children could be employed was of limited scope until the middle of the 1870's - being hindered in its application by the conservatism of the employers and workers and the difficulty of enforcing the Acts, particularly in the workshops. G.C. Allen: Op.cit.p.178.

10. B.G.: December 29, 1876.

11. Ibid: March 21, 1874.

12. Similarly, men continued to beat their wives in front of policemen, and attack the police if they intervened.

13. B.G.: February 20, 1877.

the right of possession - whether of wife or child - which was not lightly yielded to others. Parents would not accept that teachers had the right to thrash their children,<sup>14</sup> and in such cases the teachers might themselves catch a hiding from the father.<sup>15</sup> Nevertheless, the relationship between parents and children in the poorest working class households was often one of exploitation,<sup>16</sup> violence or neglect, to which the children responded with similar violence towards their parents when they themselves grew older.

The last category of assaults on women and children to be discussed is rape. This was a charge in which it was notoriously difficult to offer proof, and no doubt in most cases the victim did not even try to bring a case. There were thirtyfour reported incidents in the period, of which two thirds (21 cases) concerned minors,<sup>17</sup> or were rapes carried out in front of witnesses. The problems involved in establishing convincing evidence in other rape cases can be seen in the high proportion of acquittals (six out of thirteen) compared with two acquittals in rape cases involving minors or witnesses. The chances of proving a case of rape were not high, while the sentences meted out were variable to the extent of being capricious. Most sentences varied between three to six months imprisonment, whether the rape was on a minor or an adult. But in a case of attempted rape, a twentyone year old metal worker was sentenced to two months for the attack and to three months for indecent exposure,<sup>18</sup> while a commercial traveller was fined only £5 for raping a servant

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14. S. Frith: 'Elementary Education in Leeds before 1870', in ed. P. McCann: Popular Education and Socialisation in the 19th Century, p.85. 1977.

15. B.G.: May 12, 1877; September 14, 1877.

16. H.M. Richardson: 'The Outcasts', The Englishwoman, Vol. III, 1909, writes of the small stratum of the residuum like the sector of Birmingham where it was 'a fairly common practice among mothers of quite young girls in terribly over-crowded slums to force their daughters to sleep with men lodgers'. Quoted in Helen Ware: 'The Recruitment, Regulation and Role of Prostitution in Britain from the Middle of the 19th Century to the Present Day'. Ph.D. thesis, University of London, 1969, p.410.

17. The age of consent was raised from 12 to 13 in 1875. Two of the rapes were cases of incest.

18. B.G.: March 6, 1868.

girl.<sup>19</sup> The most severe sentence was fifteen years penal servitude passed on three men for a criminal assault on a servant, of which the details, the newspaper decided, were not fit to publish.<sup>20</sup>

The sentences reflect the complex nature of Victorian attitudes to sexual offences. Straight-forward sex and prostitution, were condoned. Sexual perversions such as bestiality or buggery were regarded with the utmost horror. Children were presumed to be innocent; whereas above the age of consent this was no longer held to be true. The following case illustrates this point quite explicitly. A fifty-three year old labourer was acquitted of violating his twelve year old daughter, on the grounds that she had offered no resistance. However, he was later committed to trial because the birth certificate showed that the child was only eleven. He then received an 18 month prison sentence.<sup>21</sup>

While the temptations and opportunities for incest were obviously very great in the overcrowded living conditions of the poor, and at the same time difficult to prove, incest was not condoned by the working class, as the following case clearly shows: A man was accused of raping his sixteen year old daughter, who told a neighbour that this was a regular occurrence. At the end of the trial, Kynnersley said he had to discharge the defendant because the daughter had not offered sufficient resistance to constitute a rape. The mob then beat the father up when he left court and the police did not intervene. He had to seek refuge in the police station until it was dark before he could go home.<sup>22</sup>

As far as the courts were concerned, it was obviously easiest to accept proof of rape in cases where there were witnesses. But one senses that it was the public indecency, rather than the offence itself, which aroused the court's

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19. B.G.: December 15, 1876.

20. Ibid: February 23, 1874.

21. Ibid: January 11, 1868.

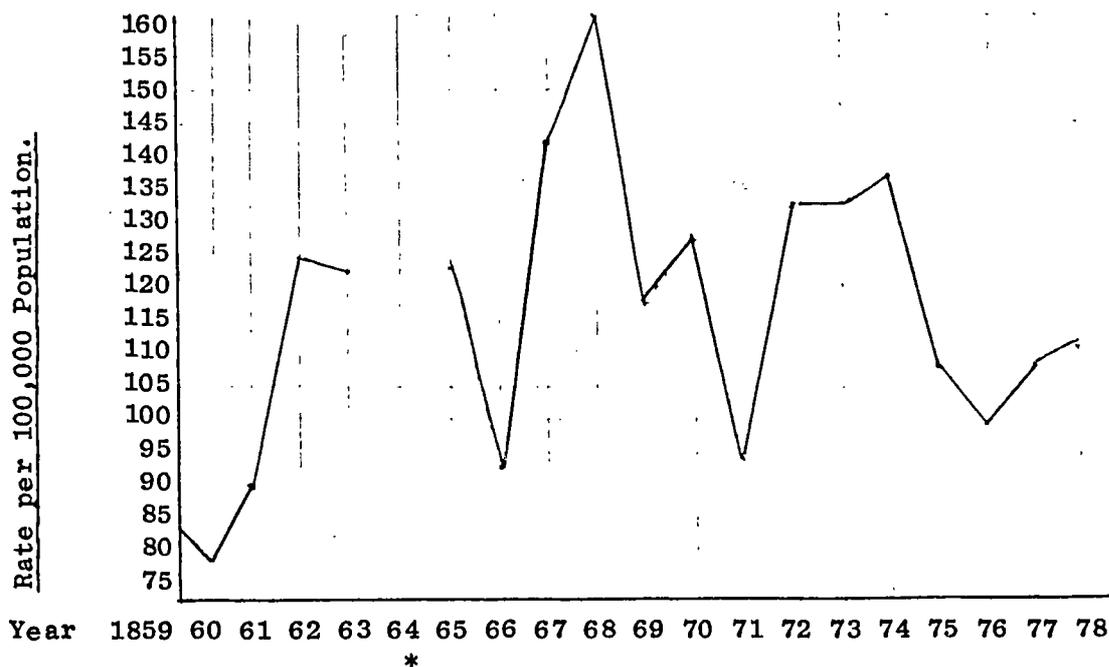
22. Ibid: April 4, 1868.

greatest condemnation - as in the case referred to where the defendant was punished more severely for indecent exposure than for attempted rape. The exceptional sentence of penal servitude passed on the three men for raping a servant girl indicates outrage at the manner of the rape. It was not so much rape, as sexual perversion and indecent public behaviour which was being most severely punished in these cases.

#### Assaults on Police

The numbers arrested for assaulting the police have already been noted in Table 5.1. The Figure below shows more precisely the upsurge in assaults on police in the decade from the end of the 1860's, with peaks in 1868 and 1874; while Table 5.7 shows the circumstances of these assaults for selected years, as reported in the newspaper.

Fig. 2: Rate of Assault on Police 1859 - 1878



\* The figure for 1864 (8 cases) must be an error in the Judicial Statistics.

Active hostility to the police increased markedly after 1867, and they were subjected to mob assaults in the towns of a kind which had not occurred when the Borough forces were first constituted. Despite the purely local impact of the Murphy riots in the summer of 1867 on the assault statistics in Birmingham (when numbers of Irish in particular were arrested for assaulting the police) the upsurge from this date of assaults on the police is supported by similar evidence from other parts of the country. Assaults on the police rose to a peak in 1868<sup>1</sup> and remained at a generally higher level throughout the 1870's than they had been in the previous decade. The reasons for this are complex, but one aspect of the problem becomes clearer if one looks at the Judicial Statistics for certain summary offences in 1868, in the years immediately before and after, and in 1877 for comparison with another year of severe depression.

Table 5.6: Numbers Arrested for Five Summary Offences in Birmingham in 1867, 1868, 1869 and 1877.

	<u>Assault P.C.</u>	<u>Begging</u>	<u>No means Support</u>	<u>Deserting Family</u>	<u>Disorderly Workhse</u>
1867	465	82	500	10	4
1868	530	483	956	114	133
1869	388	92	323	62	36
1877	409	95	183	183	61

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

For all the offences listed in Table 5.6 except deserting family, the numbers brought to court were greater in 1868 than in any other year in the period 1859-78. 1868 was a year of general trade depression and a peak year

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1. Judicial Statistics, 1868-9. See also Gatrell & Hadden, Op.cit Table 1, p.389 which shows that 1868 was the peak year for summary and indictable committals to trial between 1857-92 throughout Britain.

for the number of vagrants applying for out-relief. If many people who were arrested that year resorted to 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, after the excitement of Bright's monster meeting in Birmingham,<sup>2</sup> which raised the hope of many that they would gain the vote, was the clause in the 1867 Reform Act which instead abolished compounding of the rates and demanded that every occupier should pay his rates in full, as a condition of obtaining the franchise. This measure actually reduced the numbers of eligible voters in Birmingham,<sup>3</sup> and led to thousands of poor people being summonsed for non-payment in the following year. Critical attitudes to the police may well have crystallised in this period, the effect of which continued to be felt through the 1870's, to help account for the heightened tension in the relationship of the police and the working class at this time. Assaults on the police, while not numerically as high as in 1868, were of a more violent nature in the 1870's, and often took the form of mob assaults. Some of these incidents were quite large affairs involving hundreds or even thousands of riotous people, if the newspapers are to be believed, although only a handful of rioters might end up in court. The scale and frequency of these disturbances suggest the need for a modification of Storch's view, that anti-police violence became an under-current in Victorian life after the 1850's.<sup>4</sup> For some years in the 1870's in many towns in England, anti-police violence was more than an under-current. It became a major form of expression of the feelings of a section of the working class, excluded from the national and

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2. August 1866. 200,000 people were said to have attended the meeting.

3. Bunce: Op.cit. p.519.

4. R.D. Storch: 'The Plague of Blue Locusts: Police Reform and Popular Resistance in Northern England 1840-57', International Review of Social History, XX, 1975.

local political arena, but increasingly subjected to interference in their daily lives. In Birmingham, a newly energised Council became intent on moral reform of the inhabitants as an integral part of their municipal doctrine. Inspired by George Dawson's speeches, its leaders agreed with him that:

a town is a solemn organism through which should flow,  
and in which should be shaped, all the highest, loftiest,  
and truest ends of man's moral nature. 5

Intervention in the leisure activities of the poor thus had a wider purpose than simply concern that the lower orders had escaped from all social control outside the discipline of work.<sup>6</sup> This purpose was no less than the conversion of the lower classes to the value system of the municipal elites - a far more difficult task and one which periodically came unstuck in conflicts with defenders of the liberty of the individual against encroachment by the authorities. At different times, over different issues, individual councillors and magistrates intervened to uphold the rights and liberties of working class defendants. As Brian Harrison has shown, the middle class never presented a united front in their moral reform campaigns, nor were they confronted by a united working class.<sup>7</sup> As far as anti-police violence was concerned, this was largely carried out by distinct sections of the working class - and increasingly by the Irish, the young and the drunk. Lowe has shown that one third of those arrested for assaults on the police in Manchester and Liverpool between 1846-1871 were Irish, although they formed only about 13% of the population.<sup>8</sup> In Birmingham they formed a smaller proportion of around 4%, and were more inter-mixed with the general population than in the north-western towns.<sup>9</sup> This makes the large proportion arrested for assaulting the police

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5. George Dawson: Inaugural Address at the Opening of the Free Reference Library. October 26, 1866. Birmingham 1866, p.23.

6. As is the view of R.D. Storch: 'The Policeman as Domestic Missionary'.

7. Brian Harrison: 'State Intervention and Moral Reform', in Pressure from Without, ed. P. Hollis, 1974, pp. 297-8.

8. W.J. Lowe: 'The Irish in Lancashire 1846-1871', Ph.D. thesis, University of Dublin, 1974, pp. 227-8.

9. J. Denvir: 'The Irish in Britain' 1892, p.415.

the more striking.<sup>10</sup> The following Table, containing figures for assaults on the police, provides an index of working class hostility, and of public concern with this issue, as shown by the increasing proportion of these cases reported in the newspaper.

Table 5.7: Characteristics of those arrested for Assaulting The Police.

	<u>1868</u>	<u>1871</u>	<u>1874</u>	<u>1877</u>
	%	%	%	%
Skilled manual <sup>11</sup>	9	11	13	11
Semi-skilled	46	58	40	32
Unskilled	31	21	19	30
White collar	3	2	2	3
Not stated	11	9	26	25
<hr/>				
Drunk	28	28	31	48
Under 21	17	18	50	36
Irish	11	15	19	20
n =	64	65	147	159
% reported in the newspaper	12	20	30	39

10. The comparatively low figure for Irish assaulters on the police in the year of the Murphy riots is due to the fact that these cases were heard prior to the date at which the statistics for 1867-8 begin. These run from after the autumn Quarter Sessions in 1867 to October 1868.

11. The social class gradings, particularly within the manual group, are by no means straight forward - firstly because of the imprecision of the self-assigned occupational labels; and secondly, because such labels do not un-ambiguously 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 the trades in Birmingham, as outlined in M.D. Blanch: 'Nation, Empire and the Birmingham Working Class 1899-1914', Ph.D. thesis, University of Birmingham, 1975, pp. 399-402. Blanch refers to four grades of skill among men, as follows:

1. Unskilled: No training or special ability.
2. Semi-skilled: Training of 1 - 2 months to a year.
3. Skilled: Training of more than one year.
4. Highly skilled: One holding a skilled job for many years, or claiming one of the few rare highly paid esoteric skilled jobs.

Table 5.7 shows that an increasing proportion of youths were involved in cases of assault on the police. Attacks were carried out by street gangs who terrorised certain neighbourhoods and who pelted and stoned the police at the slightest provocation, usually after closing time on a Saturday night. The newspapers are full of accounts of street disturbances in the 1870's, which culminated in a gang war between rival groups of English and Irish youths on a scale which had not been seen in the town since the Murphy riots.<sup>12</sup> Until the time of the Navigation Street riots in which a policeman was killed when trying to arrest a gang member,<sup>13</sup> the police had tried to steer clear of those areas where they had lost control. But occasionally the disturbances reached such a pitch that councillors or local residents forced them to intervene, in which case they were invariably attacked. After the Navigation Street murder, the Watch Committee decided to increase the size of the police force by fifty men in order that double beats could be worked in the worst areas.<sup>14</sup> Despite this measure the police continued to be attacked. 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.<sup>15</sup> Several cases of policemen found drowned or attacked were noted in the police newspaper, and the editorial complained that:

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12. Birmingham Daily Mail: July 14, 1874.

13. Police Guardian: April 2, 1875. Two policemen, attempting to arrest a gang member for burglary, were attacked in a pub by 30 - 40 men, and one policeman was stabbed to death.

14. Birmingham Watch Committee Minutes: April 6, 1875.

15. B.G.: April 7, 1877.

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. 16

The following year The Times stated that they learned with regret:

that assaults on the police increase steadily. Last year these amounted to 3,692 - all more or less violent since the police are discouraged from taking notice of trivial cases ... This implies that every policeman in the force is seriously assaulted once in two years. 17

In Birmingham, baiting the police became accepted practice for sections of the working class in the 1870's 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 police discrimination against them, or out of natural dislike.<sup>18</sup> Denvir asserts police discrimination against the Irish in his account of the no-Popery riots following the Murphy lectures in Birmingham in the summer of 1867, where he says 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.<sup>19</sup> 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

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16. Police Service Advertiser, October 18, 1872.

17. Police Guardian: August 22, 1873.

18. B.G.: June 5, 1863. In a case reported in 1863 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'.

19. Denvir: Op.cit. p.260.

were seen to do so by the inhabitants of the quarter.<sup>20</sup>

Police discrimination against the Irish was strengthened by the anti-Irish sentiments aroused during the Fenian scare of 1867-8.<sup>21</sup> But the Irish were united with the rest of the working class in their resentment against the police for the rising number of drunkenness arrests. Much of the hostility to the police in the 1870's arose through their attempts to enforce the licensing laws, from their presence around the pubs and from their interference in the drinking habits and drinking places of the working class. The number of people proceeded against for drunkenness in Birmingham increased after 1872 and showed a constant tendency to increase for the next five years.<sup>22</sup> 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 were local variations in policy implementation. The greatest proportion of offenders arrested for assaulting the police when drunk occurred in 1877 (see Table 5.7, p228) during a period of economic depression, but covering the time of the appointment of the ill-fated Public House Inspectors. Also, after 1876 additional measures against drunks were undertaken when the new Police Chief began pursuing 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.<sup>23</sup> Although these

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20. B.G.: June 22, 1867.

21. A policeman, brought to court for using seditious language in defence of the Fenians, was dismissed from the force, but later re-instated. B.G.: January 16, 1868. Birmingham Watch Committee Minutes, January 21, 1868.

22. 

	<u>1872</u>	<u>1873</u>	<u>1874</u>	<u>1875</u>	<u>1876</u>	<u>1877</u>
<u>Drunk &amp; Disorderly statistics:</u>	1,999	1,200	2,505	2,501	2,834	3,727
Cases where drunkenness was <u>an element:</u>	2,449	2,540	2,802	2,869	3,044	3,632

Source: Bunce: Op.cit. Table XI, p.306.

23. One pleaded corns as the cause of a limping gait the policeman had mistaken for drunkenness. Another declared: 'I was not drunk ... I shall be a Tory now, if these are your Liberal laws'. Police Guardian: November 17, 1876.

measures resulted in a larger number of prosecutions the outcry against them ultimately led to the abandonment of both measures - but in the meantime they added fuel to the already inflamed relations of the police and sections of the working class.

Who were the people who mostly assaulted the police? The social class distribution for assaulters on the police does not deviate greatly from that of the general working class population in 1871 (although skilled manual workers were under-, and semi and unskilled workers were over-represented). Assaulters were not confined to a particular social stratum, all the manual strata being 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 of the police and the rest. Among the leading artisans, for instance, jewellers were conspicuous by their absence from the list of assaulters. They were equally well-known for their relatively stable employment prospects and for their sober habits and abstention from drink.<sup>24</sup> 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 were 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 1870's such men had come to be despised by leading artisans for their custom of drinking during working hours.<sup>25</sup> Many of the young men who assaulted the police will also have belonged to that group of unskilled

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24. D.A. Reid: 'The Decline of St. Monday, 1766-1876', Past and Present, No. 71, May 1976.

25. Ibid.

labourers who had been thrown out of work after their early years in employment, in a town where many employers in the metal trades found it more profitable to dismiss boys in their late teens in favour of younger, cheaper hands.<sup>26</sup> These youths 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.<sup>27</sup> 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 job prospects of different groups of people within them.

A growing hostility to the police among the working class, most directly expressed by the poorest and most unrepresented within this class, had its roots in a resistance to new trends in central and local government directives. The emphasis on a passive style of policing - of the promotion of public order simply by walking the beat - and of thief catching and crime prevention as the goal of the police - was changing. The police were coming to be used by governments as an arm of the bureaucracy, interfering with people not previously interfered with, especially in the matter of drunkenness, vagrancy, and public manners and behaviour. The result was an upsurge of assaults on the police, which occurred in towns throughout England in the 1870's.<sup>28</sup> The heightened activity of the municipal authorities was also 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

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26. Duggan: Op.cit.: p.6.

27. Cf J.R. Gillis: Op.cit.- Gillis notes that in Oxford in the 1890's 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.

28. See f.i. Fig. 48 showing the upsurge in assaults on the police in Wolverhampton and Walsall in the mid 1870's in D.G. Wood: Op.cit. p.238.

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. The police became the agents of the municipal authorities in their drive to enforce urban discipline and to achieve the requisite standards of public behaviour; and tolerance of the police by the target population diminished sharply. The distinction between confidence in the law and respect for policemen was maintained. Members of all sections of the working class continued to resort to the law over cases of theft or injury, and for the settlement of disputes; but what was regarded as outside the law's province were attempts, through the police, to control non-criminal behaviour. 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 the new policy directives. Hostility was aroused not only by police interference in non-police matters but also by the methods used. The public-house inspectors' efforts to try and enforce the licensing laws by watching and entering public houses for this purpose provoked widespread opposition. In this instance Chamberlain, who as chief magistrate had initiated the scheme, conceded defeat.<sup>29</sup> Extensive new discretionary powers delegated to the policeman acting as relieving officer at the workhouse, will also have been resented. The Guardians, with the concurrence of the Watch Committee, had:

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29. B.W.C.M.: July 4, 1877. Chamberlain reported that although a considerable number of convictions were obtained, many prosecutions failed because the magistrates considered the evidence inconclusive. More evidence could not be obtained unless the police were in plain-clothes, in his opinion - but the council were strongly opposed to this measure.

obtained the attendance every night of a policeman to search and examine all tramps who apply for admittance ... if, after relieving an individual once or twice, and cautioning each vagrant against making further application they still apply, admission is refused and the vagrant told he must apply to the first policeman he meets and tell him that he had been refused admission to the tramp ward. Lodging is then found for the vagrant at the police station and he is brought before the magistrates the next morning. 30

Vagrants, and those arrested for begging or being without means of subsistence rarely attacked the police, being inhibited by a sense of their own powerlessness.<sup>31</sup> But they added to the numbers who felt animosity towards the police, including those who witnessed such an arrest. There is evidence that the police also did not care to arrest in such circumstances. The first policeman enlisted to aid the officer of the Neglected Childrens Aid Society in detaining a beggar woman and her three children, refused him assistance. When the officer then found a constable who would help him 'the opposition of the woman and the screaming of the children was so great, I was obliged to have them conveyed to Moor Street in a cab, from the immense crowd that had assembled round them'.<sup>32</sup> Popular opinion was clearly opposed to arrests in these circumstances.

From 1871 the Poor Law Board encouraged a general tightening up of relief and insisted that the workhouse test should be strictly applied; that deserted wives should not be given outdoor relief for a year after their

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30. B.G.: December 19, 1870. The relieving officer, P.C. Daniels, reported to the Watch Committee that in the year ending September 1870, he had refused 441 tramps admittance as incorrigible because of the number of times they had been admitted; 14 because they were drunk; and 425 because they were inhabitants of the town. B.W.C.: October 11, 1870.

31. They vented their feelings less directly - as when a labourer, refused admittance to the Workhouse, stoned the windows. He was given a month's prison sentence instead. B.G.: January 16, 1868.

32. Minute Book of the Neglected Childrens Aid Society, February 1, 1868.

desertion, and that out-relief to the wives and children of men in gaol should be restricted.<sup>33</sup> In this way, women as well as men among the poor and destitute were coming in for closer scrutiny from the authorities and the police - which in the depression of the mid-1870's could mean action to deprive many of those without resources of a bed for the night. This added to the numbers who felt an increasing hostility to the police.<sup>34</sup> Table 5.8 gives the circumstances of assaults on the police in the decade, and shows that the police were almost exclusively liable to attack only when they acted outside what were considered to be their legitimate concerns. Very few thieves would attack the police,<sup>35</sup> since larceny was universally regarded as an illegal act, and an arrest in such circumstances considered 'a fair cop'. But behavioural offences were seen as neither illegal nor any business of the police.

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33. P. Thane: 'Women and the Poor Law in Victorian and Edwardian England', History Workshop, No. 6, Autumn 1978. Thane says this policy was not carried out in Birmingham until the mid 1880's. But the Aston Board of Guardians was certainly implementing this policy in the early 1870's. The chairman, E. Fowler, wrote in The Poor Law and Its Administration in the Aston Union, 1873: Deserted wives trouble us very much. We refuse out-relief except in very rare 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.

34. In 1871 the Edgbaston Mendicity Society was formed, which listed twelve of the magistrates among its subscribers. In 1875 this became the Birmingham C.O.S. with Chamberlain as President and Kynnersley as vice-president. The annual report for 1872 stated that: 'During the past year the Society has taken the offensive against professional mendicants. Through the kindness of the Chief of Police a Constable in plain clothes has frequently been sent to Edgbaston to watch this class. Many arrests have been made, and some of the more notorious beggars have been brought before the Borough Magistrates and sentenced to various terms of imprisonment'. Annual Reports of the Edgbaston Mendicity Society (from 1875, Birmingham C.O.S.) 1871-77. BRL: 21433.

35. The higher percentage in 1871 is a freak figure produced largely by one case of robbery and assault involving seven people.

Table 5.8: Circumstances of Assaults on Police

<u>Circumstances of Assault</u>	<u>1868</u>	<u>1871</u>	<u>1874</u>	<u>1877</u>
	%	%	%	%
Stopping arrest/rescuing prisoner	11	3	19	10
During disturbance in street	8	13	22	14
Drunk, and drunk and disorderly	18	9	5	24
Police called : to pub	4	8	8	2
to aid wife	0	6	4	2
to aid other	10	5	6	2
Obstruction/moved on	16	2	9	7
Interference in quarrel	11	11	1	11
Gambling/swearing/fighting	2	8	12	10
Vagrancy	0	2	0	1
Revenge on police	2	3	2	1
Caught thieving	2	17	1	4
Disturbance theatre/concert	2	2	1	2
Poor rate collection	3	0	0	0
In pub	3	2	2	2
Other/n.k.	8	9	7	7
n =	64	65	147	159
% noted drunk during assault (apart from drunk and disorderly alone)	10	19	26	24

Reasons for hostility to the police and for the anti-police violence in the 1870's are therefore multiple. First, there was resentment at the heightened coercive and punitive action of the police in this period against people whose only crime was destitution or drunkenness. Second, there was active resistance to the new police initiatives against behavioural offences. Third, the gangs rejected police claims that the police had the right to maintain order in the territories under gang rule.

Fluctuating demand in many of Birmingham's staple trades maintained the need for a pool of casual labour, largely supplied by juveniles before they were thrown out of work at the end of their teens. Frustrated in their job prospects and without a political voice or role, they organised themselves into gangs of the 1870's, in an effort to gain local power, prestige and control. It was these gangs who most directly challenged the authority of the police. But they were supported in this by a wider public who rejected new aspects of the police role.

Sentencing Practice

How did the courts react? Table 5.9a shows the distribution of sentences for varieties of assault; while in Table 5.9b sentences for assault are compared with those for larceny.

Table 5.9a: Distribution of Sentences for Varieties of Assault

	1868										1871										1874										1877									
	*C	W	F	R	Wf	PC	C	W	F	R	*C	W	F	R	Wf	PC	C	W	F	R	*C	W	F	R	Wf	PC	C	W	F	R	*C	W	F	R	Wf	PC	C	W	F	R
2 Weeks	2					2									2																									
1 month	7		8	6	18	4	11		2			2			5							7						3												
3 weeks	18	7	24	6	11	16	9	15	24			24			12							17						11												
2 Months	6	14	4	19	7	16	12	7	7			7			6							3						14												
3 Months	2		4		18	16	5	8	15			15			14							14						28												
5 months	3		4	6	14	1	1	1	15			15			2							14						43												
Fine, Fine/Prison	35	7	40	12	14	40	47	15	32			32			8							34						46												
Sureties	2		4		18										12													14												
Remand	5	14	4	12		4	4	8							2							3						8												
Discharge	7	14	8	12		2	6		5			5			11							7						9												
Q.S./Assize	13	43		25		5	54								6							10						25												
n =	101	14	25	16	28	55	81	13	41	10	59	63	97	29	10	62	125	102	36	35	7	51	133																	

\* C = Common Assault.  
W = Assault with Weapon  
F = Assault on female other than wife and without weapon  
R = Rape  
Wf = Assault on wife.  
PC = Assault on policeman.

Table 5.9b: Distribution of Sentences for Larceny and Assault

	<u>1868</u>		<u>1871</u>		<u>1874</u>		<u>1877</u>	
	Larceny %	Assault %	Larceny %	Assault %	Larceny %	Assault %	Larceny %	Assault %
2 Weeks	7	1	5	1	5	1	6	
1 Month	10	11	11	5	6	6	6	5
6 Weeks	8	15	9	13	9	10	13	14
2 Months	3	10	3	9	3	10	3	13
3 Months	19	3	21	12	25	16	19	13
6 Months	5	4	8	8	10	8	8	9
Fine, Fine/ Prison	1	31	1	32	2	25	1	30
Sureties		3		3		3		2
Remand	6	5	5	2	8	9	10	4
Discharge	6	6	6	7	7	6	3	2
QS/Assize	35	9	29	6	23	4	29	6
n <sup>1</sup> =	604	239	709	259	789	352	635	364

Taking Table 5.9b first we can see that even if the courts were as concerned with assault as with larceny, offences against property were generally regarded more seriously than offences against the person.<sup>2</sup> Few assault cases, but a quarter and upwards of larceny cases were sent to the higher courts; whereas a similar proportion of assault cases but very few larceny cases were disposed of by a fine only, or by imprisonment in default of payment. On the other hand, a hardening attitude in the lower court towards assault is apparent in the trend towards stiffer prison sentences. The proportion of sentences of two months or more for assault rose steadily from 17% in 1868 to 35% in 1877, in which year for the first time a greater proportion of assaulters than of thieves received these heavier sentences in the lower courts - while the courts' attitude towards thieves remained much more constant throughout the period.

1. Figures refer only to those cases where a sentence was recorded (this being sometimes omitted in the newspaper account) and are therefore lower than the total newspaper sample. Juveniles charged with larceny under the J.O. Act are also excluded, sentences on such juveniles having been dealt with in Chapter 3.

2. See D.H. Macfarlane, M.P., who mounted a campaign against the inequality of sentences between attacks on the person and property offences. He raised the question in the House of Commons in 1881, supporting his contention that property was better protected than the person in an article in Macmillan in 1882, and published a pamphlet entitled: Criminal Contrasts: Property versus Person. Inequality of Sentences in 1884.

The breakdown of sentences for different categories of assault offered in Table 5.9a enables us to draw some general conclusions concerning the magistrates' attitudes towards assault. Contrary to expectation the street disorders of the mid 1870's did not evoke a clear determination from the Bench to act decisively against the most culpable (i.e. those who used weapons, and those who attacked the police). Assault cases involving the use of a weapon were the most likely to be sent to the higher courts; but despite the threat of one magistrate to send everyone charged with a stabbing to Assizes,<sup>3</sup> the proportion sent on in fact decreased rather than increased.<sup>4</sup> The magistrates appear to have agreed with the Council that the street disturbances were not a matter for serious concern. Justice Hawkins' comments at the Northampton Assizes that 'night after night the streets of Birmingham become the scene of an almost irrepressible violence and brutality' led to a letter in the Times asking for an explanation for the discrepancy in the praise bestowed on the inhabitants of Birmingham for the perfection of their municipal institutions, and the large number of cases of violence.<sup>5</sup> The letter was discussed at a meeting of the Town Council, and Chamberlain sent a reply to the Times refuting the charges and stating that Justice Hawkins was misinformed.<sup>6</sup>

The denial of allegations of disorder by the Town Council, together with the lack of decisive action on the part of the magistrates points very strongly to an attitude on the part of the authorities that the rowdyism in certain areas of town was of concern to few people other than the local inhabitants.

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3. B.G.: March 4, 1874.

4. Those remanded in custody should be added to those sent for trial in order to arrive at a more accurate figure of the proportion of cases sent to the higher courts.

5. The Times, November 26, November 27, November 28, 1877.

6. But the only evidence he offered in explanation was that the governor of the gaol said that there was a great improvement in the prisoners there over the last few years.

What clearer evidence could there be that these people were excluded from the rights and responsibilities of full citizenship than the indifference which their living conditions aroused, and with which their disreputable behaviour was received. Chamberlain, who was as jealous of the reputation of Birmingham as of his own, simply brushed the problem aside - in total contrast to his attitude towards drunkenness, where he was concerned that the working class should be taught to spend more on raising their living standards and less on drink. But the people he was mostly referring to were not the roughs at the bottom but the sort of workmen who were his employees.<sup>7</sup> Since the roughs rowed chiefly amongst themselves, there was no compelling reason for the authorities to intervene. Their hopes and efforts for the improvement of the working class were restricted to the respectable section, and no serious attempts were made to curb the excesses of the residuum. The sentences meted out to the disorderly remained at a conventional level, rather than increasing in severity with the increase in rowdyism. The distribution of sentences for assaults on the police in the period showed little consistent change, and although a smaller proportion of offenders escaped with a fine in the second half of the period, exactly the same proportion were sentenced to imprisonment for two or more months in 1868 as in 1877 for this offence - despite all the discussion in the local and national press about the need for greater severity.

It is only in cases of common assault, particularly against females, that a consistent trend is discernible - with sentences of two months or more for common assault trebling between 1868 and 1877, and a quadrupling for assaults on females. The conclusion must be that whereas the authorities remained

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7. Chamberlain's evidence to the S.C. on Intemperance: q.2415-6 when speaking of his employees stated that many had become more and more respectable and entirely reclaimed from drunkenness, but that others were growing up to whom this did not apply, and that with the increase in wages, the consumption of drink had also increased.

unmoved by the dramatic exploits of the street gangs, which they may have regarded as a passing fashion, they did come to show less and less tolerance for violence in personal relationships on an everyday basis. Here the roughs, as well as other members of the working class, came to experience increasingly the punitive aspect behind the meaning of moral reform.

### Conclusion

The period covered in this study saw the physical, social, economic and political transformation of Birmingham. With the redevelopment of the city centre for commercial and civic purposes, the establishment of the Liberal party with its tight machine, the build up of the suburbs, and the rise to greater dominance of the larger manufacturers and of factory production, many of the pre-industrial features of the town were being eliminated. Through their reorganisation of local government and politics, and in their role as large employers, the Chamberlainite elite had influenced the direction of events in Birmingham which lasted until the present century. How did this effect that section of society with which this study has been concerned? Some of the places where they lived were wiped out by redevelopment. Thomas Street and the surrounding streets were demolished in 1891. Many of the old staple trades - most notably guns and buttons - were in decline, with the great depression from 1876-1886 marking a watershed, according to G.C. Allen, between two industrial eras in the hardware trades.<sup>1</sup> The gun trade on its traditional site was so badly hit by the decline in demand, and by competition from Belgium and from factories like the Birmingham Small Arms Company that it had less and less use for surplus labour as supplied from the lodging houses. In many ways therefore the position of the residuum worsened, since there was a decreasing economic function for them; so that while there was a very gradual decline in the offence statistics, this did not occur in the numbers arrested for failing to support their families or for begging - the latter number rising steeply from 1876 to the mid 1880's.<sup>2</sup> By the end of the century, the most

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1. G.C. Allen: Op.cit. p.211.

2. Bunce: Op.cit. Table V, p.299.

impoverished had left the city centre and were mostly to be found living in the south-eastern wards around the old Irish quarter. Here, the Rev. J. Bass noted, lived the poorest of the poor who eked out a living as rag pickers, hawkers and bill-stickers. He also observed that it was here, in the police division of which his parish formed a part that all the crime of the city originated.<sup>3</sup> The quarter maintained its criminal reputation - which had already existed for many decades in its Irish streets - while the institution of the street gangs acquired a public recognition through the christening of its members as 'Peaky Blinders'. The Rev. Bass described his parish as the home of the 'Peaky Blinder' and its thoroughfares as constituting his little kingdom.<sup>4</sup> Here the street gangs continued to reign. But the criminal class had been by-passed by the major developments which had taken place in the town. They had not been given the vote, nor been re-housed, nor gained access to new trades or occupations. While a criminal reputation clung to the area and its inhabitants, they continued to be treated as outcasts to be ignored, rather than as a danger. Few voices were raised in their defence, since the attitude of the authorities towards this section of the community was supported and sustained by a similar attitude among the rest of the working class. While the stigmatisation of the residents in certain areas as deviants and criminals may have been initiated by the authorities, and especially by the police, it could hardly have persisted throughout the century except in the absence of any countervailing view. There is no evidence for the existence of such a view, while there is certainly evidence of the strong desire among all sections of the working class above the lowest to draw and

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3. Rev. T.J. Bass: Op.cit. p.11.

4. Ibid. p.8.

maintain the status distinctions they perceived to exist between themselves and the strata below them.

Historians, when discussing the sources and mechanisms of stability in class relations in the period have chiefly stressed the importance of the role of the labour aristocracy in acquiescing to bourgeois containment - although Joyce has recently widened the discussion by focussing on the means whereby 'ordinary' factory workers became tied in to patterns of deference and paternalism.<sup>5</sup> But little attention has so far been paid to the relations of the residuum to the rest of the working class in helping to forge class stability after mid-century. Yet the necessity of working class involvement in 'solving' the problem of the residuum, as the counterpart to the progressive incorporation of the rest of the working class into the pale of the constitution, was clearly stated by Alfred Marshall in 1886. Describing that incorporation, he wrote that

the feeling that the residuum ought not to exist, and that they will exist till the working class have themselves cleared them away ... has coloured my whole life and thought for the last ten years. 6

For the most part, the working class response ranged from indifference to ostracism. How the working class paid the price of incorporation through their exclusion of the residuum merits more attention than it has so far received.

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5. P. Joyce: Op.cit.

6. Quoted E.P. Hennock: 'Poverty and Social Theory in England: the experience of the 1860's', Social History, No. 1, January 1976.

## Appendix

### Sampling

Three basic samples were used in the study.

#### 1. Offenders Sample

This sample consisted of offenders appearing in the Birmingham Police Court for summary jurisdiction, as reported daily in Aris' Birmingham Gazette. Normally, the offenders' name, address, age and occupation was given. At least three of these variables had to be given before the offender was included in the sample; but in the great majority of cases all four variables were available. The sample was drawn from all offenders so reported in four selected years. The years ran as follows: from the opening of the Michaelmas Quarter Sessions, October 1867 to the opening of the Michaelmas Quarter Sessions 1868; and from the same date, October 1870 to October 1871; October 1873 - October 1874; and October 1876 - October 1877.

For additional information, all offenders appearing at Quarter Sessions and Assizes at these dates were noted and cross referenced with the newspaper sample. About nine tenths of the prisoners appearing in the higher courts had previously had their cases at summary level reported in the newspaper.

#### 2. 1871 Census Sample

A 1% sample of the population of Birmingham aged 10 years and over was taken. The sampling frame was derived from Table 6: Ages of Males and Females in Principal Towns, p. 294 of the 1871 Census Population Tables, from which the size of the population over 10 was calculated. The sample of 2,515 was achieved by drawing every 100th name from the 1871 Census for the town (excluding those aged under 10).

### 3. Social Areas Sample

All the people residing in Thomas Street in 1871 were noted from the Census. A similar sized population was drawn for each of the other designated social areas. Children under ten were subsequently excluded from the social area tabulations, although the information on family size and number and age of children under ten was available for easy reference. But the populations referred to in the social area Tables are exclusive of children under ten.

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