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CRIME, POLICING AND PUNISHMENT IN ENGLAND, 1750–1914

DAVID TAYLOR

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Crime, Policing and Punishment in England, 1750–1914

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To Thelma and the memories
of holidays in Spain and Tunisia

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DAVID TAYLOR

INTRODUCTION

> 'The administration of criminal justice is the commonest, the most striking, and the most interesting, shape in which the sovereign power of the state manifests itself to the great bulk of its subjects.' (J. F. Stephen, *A General View of the Criminal Law of England*, 1863, pp. 99–100)

Over the course of the long nineteenth century, that is from about 1780 to 1914, a distinctive disciplinary state – the policeman-state, to use Gatrell's telling phrase – developed, and the growth of the criminal justice system was a central aspect of state formation in this period.[1] Power in nineteenth-century society lay primarily in the hands of property-owning Anglo-Saxon males who had substantially more influence than other groups such as women, the poor, vagrants or gypsies. Society, seemingly unequal to a greater degree than before, also appeared to be more fissiparous. The 'threat to order' was a recurring theme. The need to preserve order was couched in terms of protecting an essentially law-abiding majority against the depredations of a law-breaking minority. Despite the rhetoric, maintaining order was more than a question of upholding an abstract concept of justice; it was also one of finding a balance between coercion and consent that would ensure the preservation of a complex property-based and patriarchal socioeconomic and political society. The evolution of the criminal justice system, the emergence of the policeman-state, can only be understood in this wider context. This book seeks to provide an overview of the existing literature and an interpretation of the development and significance of the criminal justice system.

The first major argument is that the evolution of the 'modern' criminal justice system was a two-phased process, centred, firstly, on the late eighteenth and early nineteenth centuries and, secondly, on the decades around the turn of the twentieth century. In both of these phases significant and interrelated changes took place in the perception of crime and the criminal, the theory and practice of policing, court procedures and the punishment of offenders. Changes in perception and practice were not completely synchronized in either transitional period and the break between 'old' and 'new' was never complete.

The process of change can be characterized in the following broad schematic fashion. Society in the mid-eighteenth century was still largely rural and small-scale. Face-to-face communities and informal sanctions, legitimized in part by religion and custom, meant that the legal system was often used as a last resort. The courts, dominated by amateurs, dealt with the cases that came before them with breathtaking rapidity and operated in a highly personalized manner, but with little protection for the accused. Punishments were severe but, despite an increase in the number of capital offences, relatively few people were actually executed. Crime, as an abstract concept, was rarely discussed and the criminal, though a problem, was seen as a naturally sinful figure but not one that posed a major threat to the stability of society. Parish-based policing touched but lightly on everyday life. Protection, to use an analogy made by Lord Carnarvon in the 1860s, came, as it were, from a variety of defensive works. At the outer line were the old workhouses and bridewells which had a welfare as much as a disciplinary role. Their role was to sift out and cater for those who might otherwise succumb to temptation and be driven to crime. The next line of defence took the form of a moat: transportation carried away some of the more dangerous criminal elements. Finally, behind this was a legal Maginot line: the gallows, that highly visible last line of defence, dealing with those whose actions threatened the health of the body politic.

By the mid-nineteenth century, significant changes had taken place. A more urbanized, more mobile and impersonal society, more reliant upon formal sanctions, had come into being. Reform of the criminal law and the expansion of summary justice, coupled with a greater willingness to use the courts, meant that the law, in a formal sense, was a more immediate presence in the lives of ordinary men and women. The courts had also changed as the administration of justice, at all levels, became more professional. Trial procedures were significantly different following the 'invasion of the lawyers'. In addition, crime had been invested with far greater significance and more attention was paid to the causes of criminal behaviour. The fear

of disorder was such that society's protection had been greatly increased. The outer line of poor-law 'bastilles' were clearly located in a disciplinary, rather than welfare, regime. Society was now patrolled by a paid and bureaucratically organized police force which was more organized and more intrusive than before. A further line of defence was provided by the state penitentiaries and enhanced local prisons which had taken over from the gallows and transportation as the dominant form of punishment and deterrence.

This was the first transition from an old order to a more 'modern' one; but further changes took place by the early twentieth century. Now society was not only more urbanized and impersonal but was also more scientific in its understanding. Crime and the criminal, particularly the habitual criminal, remained a major source of concern but explanations and answers were couched in the language of the administrative and scientific expert. The basic structure of the 'defence system' inherited from the early and mid-nineteenth century remained in place but significant refinements had taken place. The workhouse retained its disciplinary function but the role of the police had increased markedly, partly because of the consolidation and professionalization of the new forces and partly because of the extension of their powers, especially over working-class life. A stronger defensive wall was provided by the rationalization of local prisons, under central control after 1877, and by the creation of convict prisons developed after the abolition of transportation. Furthermore, the prison system was bolstered, not so much by the gallows, as by a series of new institutions – reformatory and industrial schools, and borstal for the young offender, and specialist institutions for the criminally insane, the feeble-minded and the habitual drunkard – each directed at a specific target group. Thus a more complex and sophisticated system of control, based on a more scientific understanding of crime and the criminal, and recognizably 'modern' in most respects, had come into being.[2]

The second major argument is that this two-phase development of the criminal justice system has to be set in a wider context of socioeconomic, political and cultural change, while at the same time recognizing its internal dynamics. Adequate explanation and evaluation can only be given by recognizing the criminal justice system as a complex social institution with a variety of not necessarily compatible objectives. For many years the development of the legal system, changes in the pattern of punishment and the evolution of the police were seen to be problem free. Change was characterized in terms of progress, representing both a legitimate and widely-desired response to the threat of criminality, and a transition from irrational and inefficient to rational and efficient methods of crime control. This

self-confident view can no longer be sustained. The late eighteenth and early nineteenth centuries did not witness a 'golden age of gangsterdom' in which the law-abiding majority was threatened by a lawless minority. In the more recent writings of Hay, Storch and Ignatieff, emphasis has been placed on class divisions as the propertied elites, old and new, in a rapidly industrializing and urbanizing country, sought to protect their interests via an extended criminal code, the new police and the new prison regime. Further, the harshness of the new practices has been seized upon, not least by Foucault, as evidence to undermine the idea of humanitarian progress. Social control has replaced crime control in analyses of the criminal justice system. However, the developments of the late eighteenth and early nineteenth centuries, let alone those of the late nineteenth and early twentieth, cannot be explained simply in terms of the changing economic order and the ideological and political consequences that flowed from it. Rather, the criminal justice system of 'the old order' contained within itself the means of adaptation and development. There were internally driven administrative and bureaucratic developments which helped shape the process of change.[3] In this way significant, though not necessarily rapid, adjustment took place under a variety of interrelated pressures which, in the long run, had the effect of transforming the criminal justice system.

In the first phase of change identified above, the external pressures were partly social and economic, reflecting the gathering pace of urbanization and commercialization; partly political, reflecting the changing composition of local – and to a much lesser extent national – elites; and partly intellectual, reflecting both the new rationalism and the evangelical revival of the late eighteenth century, which predated the crisis of order of the 1820s and 1830s. In addition, there were internal pressures for change which grew out of the practical experience of law enforcement, especially in the more rapidly changing cities and towns. In the second phase, a similar complex of factors interacted. Internal pressures for reform again grew out of experience, most notably in the prison system, and combined with external factors. In particular, concerns for the continuing economic well-being of 'the first industrial nation' in the face of competition from younger rivals co-existed, indeed were inextricably linked, with worries about the international standing of the world's greatest imperial power. At the same time the gradual democratization of politics aroused fears, in some quarters, of the dangers posed by 'the great unwashed'. And underpinning both sets of anxiety was an even greater fear of racial degeneration. New and pessimistic scientific theories were reinforced by the development of new statistical techniques and seemingly proved by a growing body of empirical evidence from the

broad social surveys of Mayhew, Booth and Rowntree and the narrower, specialist information generated by police and prison records and inspections. As in the earlier period, new forms of discipline were developed. Problem groups were more precisely defined, in both popular and scientific discourse, and more specialized institutions developed. At the same time, the identification and marginalization of these 'threats' to society helped to legitimize the state and its increasingly visible agents, the police.

Thirdly, precisely because of the complex genesis of change, the criminal justice system was subject to varied and conflicting claims which it was never able to meet fully. The evolution of the disciplinary state is a history of the growing power of the state, but it is also a history of failure, of exaggerated fears that never fully materialized and of ambitious aims that were only partly realized. Crime was to be controlled and new codes of public behaviour enforced while maintaining social stability and political order. Criminals, at one and the same time, were to be punished, deterred and reformed. Justice was to be dispensed speedily, efficiently and humanely but also inexpensively. At every stage (that is, detection, trial and punishment) there were differing expectations of what the criminal justice system could and should deliver. The debates were about the appropriate balance to be struck. To what extent were individual liberties to be infringed by the extension of police powers to guarantee the well-being of society as a whole? What was the balance between punishment and reform in the prison system? How could justice be delivered without involving unacceptable delays and costs? There was, however, a broader dimension. What part was the criminal justice system to play in the maintenance of social order and political order? What role did it have to play in the creation and preservation of a physically and economically strong nation?

The present volume falls into three sections. The first looks at the incidence of crime and explanations for the criminal. Chapter 1 deals with the way in which the law developed and the problems of measuring crime. This is followed in Chapter 2 by a closer inspection of the nature of crime, which acts as the backcloth to the discussion of the changing image of the criminal in Chapter 3. The second section focuses on the development of the new police and their role in society. Chapter 4 concentrates on the advent of the 'new police', their initial impact and the popular response, while Chapter 5 looks at the period of consolidation in late Victorian and Edwardian England and challenges the popularly held view that police legitimacy was widely established by 1914. The third section is devoted to changes in trial procedure (Chapter 6) and punishment. Chapter 7 discusses the question of capital punishment and Chapter 8 the development of secondary

punishments, notably imprisonment. Thus it will be possible to explore the development of the criminal justice system over the course of the long nineteenth century, the motives and aspirations surrounding the changes that took place and the extent to which these changes achieved their purposes. Finally, the criminal justice system will be evaluated as a product of and causal factor in the modernization of the country.

1

CRIME AND CRIME STATISTICS

The Law and Society

In a formal sense, the law derives from a variety of sources including custom, court precedents, royal prerogative and legislation. Acts of Parliament, and judicial interpretations of those acts, along with the common law are the major formative influences. However, such an approach leaves much unanswered about the evolution of the criminal law and the relationship between the law and society. It is tempting to argue that the law is grounded in an absolute morality that transcends time and place. There are a number of acts, notably murder but also including certain forms of theft, which have been condemned throughout time and across widely differing societies. This suggests that certain actions are seen to be intrinsically wrong and, as such, are universally criminalized. Thus Durkheim, in *The Division of Labour in Society*, argued that 'the totality of beliefs and sentiment common to average citizens of the same society forms a determinate system... one may call it the *collective* or *common conscience*'. He continued that 'an act is criminal when it offends strong and defined states of the collective conscience'.[1]

This consensus view of crime as clear and unambiguous wrongdoing has a powerful appeal. Right/moral and wrong/immoral are clearly demarcated and actions in the latter category are rightly labelled criminal and dealt with accordingly. This belief, comforting to the individual, is also a powerful legitimizing argument for the legal system, and its proponents and practitioners, and is neatly summed up in J. F. Stephen's comment that 'the moral sentiment of law' was expressed by 'the sentence of law'.[2] On closer inspection, such clear-cut distinctions quickly break down and moral consensus proves to be very elusive. Even a cursory consideration shows that

definitions of crime vary between different societies at any given period in time, as well as varying over time in any given society. Furthermore, there is a not a consensus within, let alone between, societies on many matters. This is well illustrated by the conflicting attitudes, and legal responses, to questions of sexuality. The issue of birth control has given rise to fierce debate in which the conflicting sides have claimed that morality was on their side and that the law should reflect their belief. In similar vein, attempts to control 'deviant' sexual behaviour, male and female, has given rise to equally bitter conflict that highlights the absence of any consensus and, furthermore, illustrates how the law is the product of a specific political process that is rooted in an equally specific socioeconomic and cultural context. Rather than a Durkheimian *conscience collective*, it is more convincing to think in terms of a dominant moral order, albeit one subject to challenge and change. However, there is a way in which a general sense of morality is retained within the law. This is enshrined in the idea of blameworthiness, encapsulated in the principle of liability, *actus non facit nisi mens sit rea*, roughly translated as 'the act is not blameworthy unless the mind is guilty'.[3] By focusing upon intent and arguing that the sanctions of the law should be applied only to the blameworthy, a sense of generalized morality is retained at the heart of the system.

Finally, even where there is common ground on certain issues of morality, it is evident that not all immoral acts are criminal. Adultery, for example, though much condemned as immoral by many in the nineteenth century, was not a criminal offence. Further, it is not always clear that a criminal act is immoral. Footballing youths in the streets of early nineteenth-century towns did not see themselves as acting immorally, nor did the men and women of Hampshire and Wiltshire who appeared in large numbers before the courts charged with stealing wood from forests. Indeed, in these cases – and also in some instances of poaching – there existed a popular sense of justice which rejected both the illegality and immorality that had been assigned to these acts. In other words, crime, far from being absolute and moral, is both a relative concept and a social and political construct, varying with time and place. Despite the circularity of the definition, crime is most simply but most satisfactorily thought of as an action (or in certain circumstances inaction) that has been criminalized by the state and which involves criminal prosecution and, on conviction, some form of sanction. While such a definition, as *The Times* once noted, rejects the distinction drawn by the ordinary person between 'acts that are wrong in themselves and others that are wrong because the law has forbidden them', it has the considerable merit of focusing attention upon the criminal law as the product of a political

process which itself is intimately linked to the distribution of social and economic power and influence.[4]

Given the existence of a plurality of values in society, the enshrining of some and not others into law has to be seen in political terms. However complex the process may be, its essence is the possession and effective use of political power, though reform of the law was not sought simply for narrow sectional or class interests. There was widespread acceptance of the idea that the law was concerned with social stability, even justice, which required the recognition of a common good that led to limitations on the powerful. Undoubtedly the law was also used to protect narrower elite interests, but not necessarily in a uniform or blatantly self-interested manner. For example, the interests of industry were important but so were restrictions on unfettered industrialization. Few members of parliament in the late eighteenth century would have disputed that property had to be protected, but all property owners could not automatically expect to enjoy this protection.[5] In fact the extension of the law was piecemeal. There was a plethora of property laws and no single, all-embracing piece of legislation. This reflected 'a restrictive, libertarian approach'[6] which was of a piece with the unwillingness of the political elites to introduce new forms of policing. In similar vein, nineteenth-century parliaments passed a number of acts which limited, in theory at least, the actions of factory owners. Such legislation is doubly significant, reflecting a willingness to curb the excesses of capitalism in the interest of preserving social stability and a patriarchal order.

These examples highlight the problematic issue of the relationship between the state and dominant social and economic groups in society. Douglas Hay has argued powerfully that the criminal law was one of the 'chief ideological instruments' of the ruling class in the eighteenth century.[7] In certain respects this argument cannot be denied, though it needs to be refined to recognize the complexities of eighteenth-century society and of the actual workings of the law. Attitudes towards the law did not fit simple class divisions. Some laws were welcomed and supported by substantial parts of the working classes as much as the middle classes while others were disliked as much by elements of the middle classes, as by the working classes. This is perhaps most clearly seen in the attempts to legislate on moral issues. Policing morals aroused strong feelings, both for and against, that cut across class lines.[8]

Nonetheless, the fact remains that property and its protection was seen to be central and the law as a 'multi-use right' was enjoyed by property owners, albeit drawn from a wider range of society than has sometimes been conceded. The desire to preserve order, including patriarchal order as well as

civil order, and to defend property specifically, recurs constantly and reflects the well-founded fear that consensus did not extend to all sections of society and was shallow-rooted in others. However, the rhetoric of 'the fight against crime' served a further purpose. It was a powerful cry that gave legitimacy to the extension of the power of the state through legislative change and the growth of policing.

Legal Distinctions and Definitions

While it is important to see the law in its wider political context and to appreciate the social definition of crime, we must not lose sight of narrower but equally important legal distinctions and definitions. First, there was the distinction between indictable and summary offences. The latter were less serious and were dealt with by magistrates in petty sessions. The scope of summary justice was greatly expanded in the early nineteenth century and again in the mid-century, notably through the 1847 and 1850 Juvenile Offenders Acts and the 1855 Criminal Justice Act. The latter allowed minor larcenies, though still indictable offences, to be tried summarily. The 1879 Prevention of Crime Act brought a further extension when the value of goods for which those accused of theft or embezzlement could be tried summarily was raised from 5*s* to £2. Offences such as common assault, minor affrays, drunk and disorderly behaviour, breaches of the peace, vagrancy and breaches of local by-laws were also dealt with in this way. The former, indictable offences, comprised more serious offences and were tried on indictment either at quarter session before magistrates or at assize before a judge. Within this category were distinctions which were observed in practice and formally recognized by an act in 1842 whereby at quarter sessions all offences were dealt with except those for which the death penalty or transportation for life for a first offender could be imposed, or for a range of specified offences – bigamy, blasphemy, bribery, forgery, perjury and libel – which were restricted to assize. In other words, the most serious crimes of murder, burglary, rape, robbery with violence and assaults accompanied by wounding were tried at assize.

The situation is complicated by the legal distinction between felonies and misdemeanours which dates from the Middle Ages. Both were indictable offences, but misdemeanours did not amount to felony and were generally punished by imprisonment or fine. Felonies were generally capital offences and were distinguished as crimes which occasioned at common law a total forfeiture of lands or goods, or both.[9] Forfeiture for felony was not abolished

until the 1870 Forfeiture Act. Significantly, this distinction affected legal procedures, including the right of an accused's counsel to address the jury, and the degree of force that could be used in arresting a suspect.[10] However, any meaningful distinction between more and less serious offences had largely disappeared. While the theft of 6*d* worth of goods was a felony in the early nineteenth century, serious assault and obtaining goods by false pretences were misdemeanours.[11]

Furthermore, the two distinctions between indictable and summary offences and felony and misdemeanour did not necessarily coincide. While all felonies were indictable offences, some could be tried summarily and a number of misdemeanours, such as assaults, riots and obtaining goods by false pretences, were also indictable offences and tried on indictment.

Finally, we need to consider briefly the technical elements of a crime. All crimes comprise two parts, both of which had to be proved before the accused was found guilty.[12] The first element, the *actus rea* of the offence, is the action proscribed in law; the second, the *mens rea*, is the state of mind regarding the *actus rea*. The concept of *mens rea*, which should not be confused with motive, was problematic in that it was difficult to define precisely and was interpreted differently as attitudes towards crime changed. The difficulty of precise definition is well illustrated by the advice given by Blackstone, quoting Hale:

> In cases of larceny [*sic*] the variety of circumstances is so great, and the complications thereof so mingled, that it is impossible to prescribe all the circumstances evidencing a felonious intention, or the contrary; but the same must be left to the due and attentive consideration of the judge and jury, wherein the best rule is *in dubiis* to incline rather to acquit than convict.[13]

The law commissioners spent much time considering the question of theft in their first report of 1834.[14] Conflicting rulings and 'imperfect and uncertain rules' created an unsatisfactory situation but this was compounded by the fact that changing circumstances had rendered many older judgments of dubious validity. Anomalies abounded. A carrier stealing a whole package entrusted to him was not guilty of an offence, whereas if he broke open the package and stole part of it he was guilty of a felony.

The problem surrounding *mens rea* was compounded by the belief that certain unlawful actions should be punished as criminal, even though the defendant lacked any clear intention to commit the crime in question. The question of murder, which much exercised the minds of the law commissioners in the 1830s, is a case in point. Where there was clear proof that the

defendant intended to kill the victim there was no problem, but what if the victim had been accidentally killed by the defendant during the commission of another crime? By the doctrine of constructive or implied malice a person might be guilty of murder even though he or she had intended only to commit another felony, had not intended to harm another individual and had done so by pure accident. In a famous ruling, Coke had determined that, if a person, meaning to steal a deer from the park of another, shot at a deer and the arrow, being deflected, killed a boy hidden in a bush, unbeknown to the defendant, that was murder, because the act was unlawful, even though there had been no intention to hurt the boy. This was later modified by Foster so that, if the intention was to commit a trespass, the offence could be no more than manslaughter.

The fourth report of the law commissioners in 1839 dealt at length with this problem. As they noted: 'implied malice, according to the law of England, is loosely defined, or rather is not defined at all'.[15] In an attempt to clarify the situation, they considered a variety of circumstances from which they were able to distinguish between an accidental killing that occurred during the commission of a non-violent crime and an accidental killing that occurred as the result of a violent crime; the death could be seen as purely accidental and unconnected with the criminal intent in the former case, but not in the latter.[16] Although their recommendation was not implemented, they were not alone in thinking the law to be unsatisfactory and disquiet with the felony murder question continued well into the twentieth century. The Report on the Homicide Law Amendment Bill in 1874 contained a familiar complaint:

> The existing definition of murder, which may be roughly stated as killing with malice aforethought, is far too narrow, and the defect has been supplied, not by re-defining the crime, but by subtle intendments of law, by which malice is presumed to exist in some cases where the action is unpremeditated, and even in some cases where death is caused by accident. It is most desirable that a state of the law under which people are condemned and executed by means of a legal fiction should cease.[17]

It is important to recognize the legal distinctions that existed and the changing and problematic nature of fundamental aspects of the criminal law. Nonetheless, there was a body of law which defined criminal behaviour and a legal system that dealt with breaches of the law. From the early nineteenth century onwards, annual criminal statistics, recording those crimes

brought to court, were published. Unfortunately, these crime statistics are themselves problematic and do not provide a simple measure of the incidence of crime.

The Official Crime Statistics and the Incidence of Crime

Fears about increases in criminal activity in the late eighteenth century led to demands for the collection of national statistics which were finally heeded in 1810, as the debate on capital punishment gathered momentum. In addition, the preoccupation with the moral and physical well-being of the nation led to the creation of local statistical societies which sought to explore the extent, nature and causes of crime. Increasingly, the contemporary debate was shaped by perceptions of the threat of crime which were drawn from such statistics.

In 1810, clerks of court or circuit were instructed to make annual returns, related to a list of some 50 offences and backdated to 1805, of the number of people in each county of England and Wales under the following headings: (a) committals for trial for indictable offences, (b) discharges on 'no true bill', (c) acquittals and (d) convictions.[18] In 1833, important changes took place. The old list of serious crimes was extended in number, from roughly 50 to 75, and a new sixfold classification, which remained largely constant thereafter, was introduced by the Criminal Registrar, Samuel Redgrave. Crimes were now categorized as follows: (a) offences against the person, (b) offences against property involving violence, (c) offences against property not involving violence, (d) malicious offences against property, (e) offences against the currency and (f) miscellaneous offences. The addition of new offences, for example simple assaults and assaults on police officers under the general heading of offences against the person, would clearly give an artificial inflation to the recorded crime figures. However, this change does not entirely invalidate comparisons with the earlier period. In addition, after 1833 the criminal returns contained information on the age, sex and degree of instruction of those committed for indictable offences for the years 1834–49, while from 1836 the appendix to the annual report of the inspector of prisons included similar biographical data as well as previous gaol records, distinguishing between indictable and summary offences.

A further and more far-reaching reorganization of the official statistics, again conducted by Samuel Redgrave, took place after the passing of the 1856 County and Borough Police Act. In addition to the court and prison returns, the new statistics included the number of people tried summarily

by offence and also the number of indictable offences known to the police. From 1859 the Criminal Registrar provided a commentary and review as part of the annual report. Existing information was refined. Data on juvenile offenders sent to industrial and reformatory schools were tabulated separately and information on the birthplace and occupation of prisoners was also included. Finally, a further reorganization in 1893 saw returns standardized on the calendar year and figures given as ratios per 100 000 of the population for ease of comparison, but the underlying structure remained largely unchanged.

The statistics of committals, convictions, discharges and acquittals can be seen as the end product of a complex and changing filtering process. This is shown in Figure 1.1. Critical decisions had to be taken at a number of points and these decisions had the effect of filtering out a large number of criminal (or allegedly criminal) acts. The initial decision, whether or not to start proceedings, was the most important one. For much of the period the onus for initiating a prosecution rested with the individual. The police increasingly took over this role in the latter part of the nineteenth century and the Office of the Director of Public Prosecutions was created in 1879, though its role was essentially advisory until the early twentieth century. Having recognized that he or she had been the victim of a criminal act and decided that it would be appropriate to take formal action through the legal system, the individual would have to weigh up the various costs of taking action. It is impossible to say how many people were deterred by such considerations, but it was felt by many observers, particularly in the early years of the nineteenth century, that there was a serious problem of non-prosecution.

The next set of decisions rested with the local justice of the peace. It was for him to decide whether the case should be proceeded with or not and, if the former, whether it could be dealt with summarily or at quarter session or assize. In the late eighteenth and early nineteenth centuries, the role of the magistrate was more inquisitional but Jervis's Act of 1848 confirmed his developing role that made him akin to a preliminary judge, evaluating the strength of the cases put before him and rejecting those deemed to be inadequate for whatever reason. The number of cases thrown out at this stage is unknown, but magistrates undoubtedly sought informal settlement between the disputing parties or refused to take further action in cases where the allegation seemed frivolous or malicious. But even if the justice was convinced of the need to proceed further, a decision had to be taken as to where the case would be tried. Generally, this was a relatively straightforward matter, but in some cases of both assaults and thefts a judgment had to be made as to whether an indictable offence had been committed.