Combating Recidivist Crime in London:

the Origins and Effectiveness of Legislation against Habitual Criminals, 1869 to 1895

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Abstract

There has been much research beginning in the 1970s regarding efforts of the mid and late Victorian state to control repeat offenders. These offenders were widely believed to be habitual criminals, who collectively constituted a criminal class. The overall image that emerges from the literature is of increasingly organised police forces working with the courts in order to successfully target members of the so-called criminal class for arrest and harsh punishment. However, little is known about the operation of the only two acts of parliament that specifically targeted this group: the Habitual Criminals Act 1869 and the Prevention of Crime Act 1871. This study investigates the genesis of these measures and the outcomes desired by their proponents. It then assesses the extent to which these outcomes were achieved in London, which was the focal point of many anxieties regarding crime and the activities of repeat offenders. An analysis of the available evidence contradicts the widely held assumption that in Victorian Britain the police and the courts willingly worked alongside parliament, with significant success, to repress elements of the working class that were deemed a threat to law and order. Indeed, in London the police and courts did not cooperate closely with the parliament to enforce these acts.
Declaration

This thesis comprises my own work, and due acknowledgement has been made in the text to all other material used. The thesis is fewer than 100,000 words in length, exclusive of text accompanying tables and the bibliography.
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Introduction

The criminal classes … is [sic], 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 … Now, the question that presents itself is this – How are we to deal with this vast mass of criminals – with this great army of crime with which we have to contend?¹ The Earl of Kimberley, Liberal peer, 26 Feb. 1869.

In 1869 the new Liberal government of the United Kingdom, led by William Gladstone, provided a response to this question through the introduction of a remarkable piece of legislation. The Habitual Criminals Act 1869 introduced a system of police supervision in the community for specified repeat offenders and a central registry containing information regarding all so-called habitual criminals. The former measure, the government hoped, would lead to a decrease in crime among this group of offenders. The latter was intended to aid police supervision and to ensure magistrates and judges had all relevant information about offenders before them at the point of sentencing. The legislation, which was re-enacted in 1871 with several alterations, was remarkable for its repressive potential and for the manner in which it reversed the parliament’s long-held position on police supervision. The threat posed by repeat offenders was apparently so great that individual liberty was now relegated to a position of secondary import. Historians have offered differing views regarding the motivation for and effects of mid and late Victorian efforts to control elements of the working class that were deemed unruly. However, the genesis and impact of the only two pieces of legislation that were specifically designed to combat the so-called criminal class are poorly understood. This thesis aims to assess why the legislation was introduced and why it was re-enacted so soon after. Then, it seeks to explore the extent to which the key aims of the government were achieved in London’s Metropolitan Police District in the period up to 1895. In doing so this thesis will, in

particular, contribute to broader debates concerning the ability of the mid and late Victorian state to control the working class.

Firstly, it is necessary to explain why this location and time period have been chosen. The legislation applied throughout the United Kingdom. Yet London was the focal point of many anxieties regarding crime and the activities of a so-called criminal class. As will be discussed below, concerns about a criminal class were fostered by published statistics estimating its size, and because of the gradual cessation of transportation to Australia, which occurred between 1840 and 1868. Such concerns centred on London because of the opportunities for concealment of criminal activity presented by a city of its size and character, its great wealth, and a significant media-inspired panic regarding crime in the capital in 1862. The 1851 census revealed that London’s population was 2,362,236. This figure grew significantly over the coming decades, reaching 4,231,431 in 1891. The commissioner of the Metropolitan Police Force consistently noted that such a large, and growing, population centre presented great opportunities for criminals to evade the police. Anonymity was made easier by the physical layout of the city. In 1869 the journalist James Greenwood listed various ‘vile nests’ – often called rookeries – that appeared almost to have been designed for the concealment of crime. Other contemporary sources also noted that London appeared to be a ‘maze’. In addition, London was the seat of much wealth. According to the social commentator Henry Solly, this made it a magnet for what he labelled ‘the rough’. In short, evidence reveals

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6 Henry Solly, A Few Thoughts on how to Deal with the Unemployed Poor of London, and with its ‘Roughs’ and Criminal Classes, n.p.p.: Society of Arts, 1868.
significant concern that London was, in Gareth Stedman Jones’ words, ‘the Mecca of the dissolute’. The impact of the 1869 and 1871 legislation in the City of London, which was policed by a small and separate force, is not considered here. This is because there is limited data for London’s financial and business centre, which covers only slightly more than one square mile.

A press-inspired panic regarding violent crime in London by repeat offenders in 1862 heightened these anxieties. Between midnight and one o’clock on the morning of 17 July 1862 James Pilkington, M.P. for Blackburn, was attacked by two men while en route to the Reform Club following a late sitting of the House of Commons. This attack was widely reported as an example of garotting, in which the victim is attacked from behind and incapacitated by pressure from the assailant’s arm upon the throat. For the remainder of 1862 many allegedly similar attacks were reported in London’s press, supposedly perpetrated by repeat offenders. The Times, for example, argued in a leading article on 14 August 1862 that such attacks were being carried out by members of the ‘criminal class’ who were building up in London due to the cessation of transportation to Australia. The Times, a three-penny morning newspaper, was widely read among the middle and upper classes and especially politicians. As Richard Shannon has said, it was London’s ‘heavyweight’ newspaper. These ‘brutal ruffians’, argued the liberal Daily News in another leading article on 4 December 1862, were determined to ‘attack society’. The published statistics of crime seemed to support the notion that violent

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9 Times, 14 Aug. 1862, p. 8.
crime was increasing in London. For example, in the Metropolitan Police District the recorded number of offences against the person accompanied by violence, other than sexual assaults, rose from 191 in the year up to 29 September 1861 to 345 over the next twelve months, which took in the first two and a half months following the attack on Pilkington.\textsuperscript{12} However, as Rob Sindall has noted, such figures ‘are open to the interpretation that they were influenced by the reporting of the initial deviance and the subsequent escalation of police activity’.\textsuperscript{13} It is also possible that people felt encouraged to report violent crimes due to the very significant attention given to such offences in the press. In addition, the statistics provided ‘no link’ between the apparent increase in crime and repeat offenders.\textsuperscript{14} But numerous historians nonetheless claim that press reports caused a significant panic about crime in London, perpetrated by a so-called criminal class.\textsuperscript{15} The extent and impact of this panic will be addressed in the next chapter.

Given the evidence that many mid Victorians saw London as the centre of recidivist crime, it has been chosen as the site of this study. As S. J. Stevenson has argued, among mid and late Victorians there was a ‘popular and enduring image of a “criminal class” largely concentrated in London’.\textsuperscript{16} The time span has been selected because of the significant changes to the mechanisms for the identification of repeat offenders that occurred in 1895 as new approaches, including fingerprinting, were embraced.\textsuperscript{17} Up until that time the key measures of the 1871 legislation were in force, albeit having undergone several alterations.

\textsuperscript{13} Rob Sindall, Street Violence in the Nineteenth Century: Media Panic or Real Danger? Leicester: Leicester University Press, 1990, p. 53.
\textsuperscript{14} Bartrip, ‘Public Opinion and Law Enforcement’, p. 162; Sindall, Street Violence in the Nineteenth Century, p. 20.
\textsuperscript{16} Stevenson, ‘The ‘Habitual Criminal’ in Nineteenth-Century England’, p. 38. Also see Thomas, The Victorian Underworld, p. 3.
This project was initiated largely in response to the limited nature of the literature regarding the Gladstone government’s habitual criminals’ legislation, a literature which is very brief given the importance of the legislation. In addition, the scholars who have analysed it have utilised frameworks that require further testing. This introduction will accordingly commence with an assessment of the approaches taken by historians studying the acts of 1869 and 1871, as well as an analysis of the broader debate regarding the impact of mid and late Victorian efforts to combat crime. I then discuss the idea of a criminal class, assessing contemporary understandings of this concept and the extent to which it reflected reality. Finally, I delineate the scope and methodology of the study by outlining the thematic content of each chapter.

**Literature Review**

The acts of 1869 and 1871 have not received sufficient attention from scholars. This point has been made most recently by Barry Godfrey, David Cox and Steve Farrall. Specifically regarding the Prevention of Crimes Acts 1869 and 1871 they ask: ‘What was the impact of these on the lives of “habitual” offenders ...?’ And what were the ‘eventual outcomes?’¹⁸ They conclude that as yet these questions cannot be adequately answered. Seventeen years earlier Martin Wiener also highlighted the need to look more closely at these two pieces of legislation, saying that they bring ‘into sharp relief a coercively activist face of Victorian liberalism long ignored by historians’.¹⁹ Finally, Victor Bailey has advanced a similar argument. He has criticised histories of crime in Victorian England for not containing ‘discussion of the impact of the habitual criminals’ legislation of 1869 and 1871’. He explicitly called for ‘additional …

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tests’ of the legislation’s effect. This thesis is an effort to carry out such a test in order to determine exactly why the legislation was introduced and the extent to which it achieved the government’s objectives.

The thesis also contributes to the re-evaluation of the role of the Metropolitan Police Force as an instrument of social control begun in earlier theses by scholars such as Terence Stanford and Stephen Inwood. A central finding is that the Metropolitan Police Force was both unwilling and unable, largely due to the actions of magistrates, to fully implement legislation that targeted elements of the working class, such as the Habitual Criminals Act 1869 and the Prevention of Crime Act 1871. The literature concerning this legislation is dominated by scholars who utilise social control interpretations to determine its impacts. Key to such interpretations is the belief that social order is maintained through various means, which include legal systems, police forces and prisons, and social institutions such as the family and religion. Notwithstanding differences of approach and emphasis, scholars such as Martin Wiener, Stefan Petrow, Barry Godfrey, David Cox, Stephen Farrall, Douglas Hay and Clive Emsley have all used social control interpretations and argue that the legislation was an oppressive tool that was part of a broader apparatus of control. But numerous other historians have argued that British police forces cannot be seen as willing and able elements of such an apparatus. I argue that, in the case of the acts of 1869 and 1871, this was certainly the case in London.

There is a small body of literature concerning the reasons for the implementation of the Liberal government’s habitual criminals’ legislation, to which this thesis also contributes. In doing so I argue, as some other scholars do, that the role of pressure groups in the formulation of policy in mid and late Victorian Britain is not fully acknowledged in the relevant literature.\textsuperscript{25} The consensus regarding the genesis of the \textit{Habitual Criminals Act 1869}, it appears, is that the legislation was brought about by a media-inspired panic, similar to that which occurred in 1862, regarding violent crime and garotting in particular. For example, in reference to the parliamentary debate on the \textit{Habitual Criminals Bill 1869}, in which the government denied the existence of panic, W. G. Runciman has argued that: ‘this could be interpreted, without undue cynicism, as disavowal of the kind that gives the game away’.\textsuperscript{26} Pete King, in agreement that the government was responding to public sentiment, has said that it rode ‘on the back of a media-created crime wave’.\textsuperscript{27} And Drew D. Gray has said, even more explicitly, that: ‘as a result of the garotting panic the government passed the Habitual Criminals Act in 1869’.\textsuperscript{28} These historians all use Stanley Cohen’s framework of moral panic, which he defines as a period when public anxiety serves to amplify deviance and promote new measures for its control.\textsuperscript{29} In this case anxiety was apparently caused by an increase in the reporting of violent crime, especially in \textit{The Times}.	extsuperscript{30} In keeping with Cohen’s model, it is argued that the government responded with repressive legislation.

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\item Economy of Criminal Statistics Since the 1850s’, \textit{Economic History Review}, vol. 51, no. 3 (Aug. 1998), p. 578-9;
\item Stanford, \textit{The Metropolitan Police}, pp. 91-198, 240-72;
\item Inwood, ‘Policing London’s Morals’, p. 129.
\item King, ‘Moral Panics and Violent Street Crime’, p. 57.
\end{itemize}
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However, as will be argued in the next chapter, there is scant evidence to support the notion that fear of crime increased in the period directly before the introduction of the *Habitual Criminals Bill* in February 1869. Instead it appears far more likely that the key factor leading to the introduction of this legislation was the advocacy of a pressure group, the Social Science Association (S.S.A.). The association, a forum for the discussion of social questions, held its first congress in Birmingham in July 1857. The president, Lord Brougham, explained that the purpose of the association was ‘to aid legislation by preparing measures’ and ‘stimulating the legislature to adopt them’.  

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31 Lord Brougham, ‘Inaugural Address’, *Transactions of the National Association for the Advancement of Social Science, 1857*, London: John W. Parker and Son, 1858, p. 23.


and Hood mount a convincing case that, in very large measure, the acts of 1869 and 1871 failed in their efforts to ensure that so-called habitual criminals were always identified as such and closely supervised in the community by the police. This failure was, predominantly, due to flaws in the drafting of the legislation and the incapacity of police forces to effectively monitor such a large group of people.\footnote{Radzinowicz and Hood, ‘Incapacitating the Habitual Criminal’, pp. 1343, 1345-52.} Indeed, repressive legislation that went against the march of progress, they claim, was always likely to fail.\footnote{Ibid., p. 1344-9.} They point, for example, to the failure to include any mechanism to force those under supervision to report themselves to police in the initial legislation. They also argue that once monthly reporting was introduced by the 1871 act for male offenders, London’s magistrates interpreted the relevant clause in such a way as to make it inoperative until legislative change in 1879. Under section 20 of the \emph{Prevention of Crime Act 1871} the chief officer of police, to whom a supervisee was to report, was interpreted by London’s magistrates to mean the commissioner himself. London’s magistrates would only convict a defendant for failure to report on the sworn testimony of the commissioner. Supervision was, as a result, a ‘dead letter’ in London.\footnote{Ibid., p. 1345.} Women were excused from reporting as the government presumably believed they did not pose as great a risk to society as male offenders.\footnote{For the greater threat that male criminals were believed to represent see Martin Wiener, \textit{Men of Blood: Violence, Manliness and Criminal Justice in Victorian England}, Cambridge: Cambridge University Press, 2004, pp. 123-169.} Instead, female criminals in London were often referred to one of the city’s women’s refuges on their release from prison. These institutions, such as the Elizabeth Fry Refuge for the Reception of Female Prisoners, attempted to assist prisoners in their efforts to regain respectable society through a variety of means, including the learning of skills that could aid employment.\footnote{Sean McConville, \textit{English Local Prisons 1860-1900: Next Only to Death}, London: Routledge, 1995, p. 325.} The measures included in the 1869 and 1871 legislation to aid the identification of repeat offenders were also flawed. Initially, the compilation of the habitual criminals’ register was carried out in strict accordance with the wording of the act.
Consequently, all those convicted ‘of crime’ were listed. By 1874 a huge number of criminals, 117,568 in all, had been registered. In 1876 Benjamin Disraeli’s Conservative government introduced the Prevention of Crimes Amendment Act, which gave discretionary powers to the home secretary in order to stipulate parameters regarding who should appear in the register. As a result, from 1877 only repeat offenders were included in the register. Radzinowicz and Hood found that this change meant the register enabled more positive identifications and that, consequently, ‘the only tangible success to emerge from the Habitual Criminals legislation was the system of registration and identification’, which could function as a means of control. These scholars’ thorough work remains the most fulsome assessment of the working of these acts. Yet Martin Wiener has justifiably leveled criticism at the work of Radzinowicz and Hood on the basis that it fails to situate criminal legislation within broader mid and late Victorian efforts to control the working class and is overly accepting of the notion that reforms were part of a process characterised by progress. For example, as Wiener notes, in their 1980 article they make no mention of Michel Foucault, whose significant work, Discipline and Punish: the Birth of the Prison, in which he argued powerfully that penal changes in this period were not animated by a desire to decrease the harshness of punishment, but rather in order to punish more effectively, had been published in an English translation three years before. Radzinowicz and Hood’s failure to even consider such ‘“social control” interpretations’ is therefore a serious defect in their work.

Numerous scholars have considered such interpretations and argued that mid and late Victorian police forces were in fact increasingly capable of exerting control over those deemed

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39 Habitual Criminals Act, 32 & 33 Vict., c. 99, 1869, s. 6.
41 Radzinowicz and Hood, ‘Incapacitating the Habitual Criminal’, p. 1348.
to be part of a ‘criminal class’.\(^{44}\) In a frequently cited 1980 book chapter, V. A. C. Gatrell argued that criminals were not able to adapt to the increasing efficiency of the police, leading, in England, to a real decrease in crime over the latter half of the nineteenth century.\(^{45}\) Gatrell said that criminals had not managed to learn the new ‘rules of the game’.\(^{46}\) The newly formed and well-resourced Metropolitan Police Force replaced an amateurish system and managed to ‘cut into the criminal world’ due, largely, to its competence.\(^{47}\) Gatrell asserted that London’s gangs, described by Dickens in *Oliver Twist*, had arisen and thrived before the establishment of the Metropolitan Police Force. But, after the introduction of this force in 1829, gang structures were broken up and nothing meaningful took their place. Various scholars have embraced Gatrell’s position. For example, Lynn McDonald has written that ‘crime rate decreases proved the effectiveness of the police’ and Victor Bailey accepts Gatrell’s thesis that the police gained ‘mastery over the unsophisticated world of casual and professional crime’.\(^{48}\) Wiener, Douglas Hay and Stefan Petrow have all argued that the police were increasingly capable of controlling criminals, contextualising this change within broader efforts to control the working class.\(^{49}\) While this explanation is plausible, there were other factors at work. The whig view that decreasing crime during a period of industrialisation was due to an ‘ever deepening consensus between classes’ has been discredited by the aforementioned authors who point to clear examples of ongoing class antagonism.\(^{50}\) For example, Petrow cites statistics demonstrating significant levels of working-class violence against members of the Metropolitan Police Force throughout the nineteenth century and ‘at least into the 1920s’.\(^{51}\)

\(^{44}\) Petrow, *Policing Morals*, p. 80.


\(^{46}\) Ibid., p. 261.

\(^{47}\) Ibid., p. 261.


But the contention that the crime rate declined in line with economic and social advances is convincing. As Yue-Chim Richard Wong has argued, ‘the declining crime rate observed in this period is explained primarily by the rising economic prosperity and educational standards of the population’. Nonetheless, contrary to Radzinowicz and Hood’s sunny whiggism, the increased power of the state, manifested through the new police forces, certainly shifted the balance of power away from criminals.

However, in the context of this discussion, several historians have justifiably argued, as Radzinowicz and Hood had earlier done, that the key provisions of the acts of 1869 and 1871 were initially ineffective in London. One of the most vocal critics of the legislation has been Petrow, who studied under Gatrell. Petrow has argued that the Metropolitan Police was a powerful force for the imposition of middle-class norms on working-class communities. Yet in a brief analysis of two key elements of the Gladstone government’s habitual criminals’ acts, he asserts that they were deeply flawed. Police supervision, for example, was initially ‘practically useless’ due to various errors in the drafting of the legislation. He cites similar evidence to that used by Radzinowicz and Hood. In particular, he notes that within the Metropolitan Police District mandated monthly reports had to be made to the commissioner himself due to the interpretation of London’s magistracy, which was unique throughout the United Kingdom. As a result, Petrow’s criticism of the legislation’s implementation is valid for London at least. Furthermore, the numerous registers of repeat offenders were ‘far from infallible’. This was predominantly the case, Petrow argues, due to the bulk of the habitual criminals’ register, which made searches very time consuming and, consequently, the number of positive identifications ‘meagre’. In addition, the Metropolitan Police Force kept its own registers at the Convict

53 Petrow, *Policing Morals*, p. 82.
54 Ibid., p. 83.
55 Ibid., p. 84.
Supervision Office (C.S.O.), which was created in 1880 in order to better facilitate the work of police supervision, primarily through the provision of officers in plain clothes who were specifically trained to carry out surveillance.\textsuperscript{56} However, there was ‘little intercommunication’ between the C.S.O. and those who managed the habitual criminals’ register, further decreasing the usefulness of the various documents that were intended to enable the identification of repeat offenders.\textsuperscript{57} Petrow’s short discussion of the habitual criminals’ legislation presents strong evidence of the ineffectiveness of two of its key elements.

Similar criticisms of police supervision have been levelled by numerous others. Weiner has criticised supervision, especially in London, where, as discussed, those under supervision could not be prosecuted for failing to report themselves to the police until 1879. Consequently, he has argued that the ‘protective power of police supervision came to exist more as a useful myth than an ever present reality’.\textsuperscript{58} And Godfrey, Cox and Farrall have said that supervision under the 1869 act was ‘inoperative’.\textsuperscript{59} They stress the great number of those under supervision at any one time, with 5,638 repeat offenders subjected to the punishment between 11 August 1869 and 31 December 1869.\textsuperscript{60} A like assessment of supervision has also been made by Radzinowicz and Hood.\textsuperscript{61}

So the legislation of 1869 and 1871 was far from perfect. But the police, according to several of these same scholars and some others, made the utmost of their new powers as they were refined throughout the period of this study.\textsuperscript{62} It is argued that the tools given to the police

\textsuperscript{56} Ibid., p. 84.
\textsuperscript{57} Ibid., p. 86.
\textsuperscript{58} Wiener, \textit{Reconstructing the Criminal}, pp. 303-7.
\textsuperscript{59} Melling, ‘Cleaning House in a Suddenly Closed Society’, pp. 315-62; Godfrey, Cox and Farrall, \textit{Serious Offenders}, p. 67. While Godfrey, Cox and Farrall have largely focused on the north of England in their research, they also refer to, and use examples from, London. See ibid., pp. 16, 23, 40, 55, 125, 126, 133, 180.
\textsuperscript{60} Ibid., p. 67.
\textsuperscript{61} Radzinowicz and Hood, ‘Incapacitating the Habitual Criminal’, p. 1345.
in order to combat recidivists increasingly helped them to focus their attentions on those they suspected to be repeat offenders. D. J. V. Jones, David Garland, Donald Thomas and Petrow - notwithstanding his strong criticisms of the legislation - all claim that changes to the way identification was carried out aided the police to monitor repeat offenders. The registers were a more efficient way of identifying known offenders than the informal mechanisms that had previously existed. Petrow, for example, has argued in a manner that arguably contradicts the bulk of his evidence, summarised above, that while the systems of registration and identification were most imperfect when first introduced, ongoing refinements, including those of 1877, represented ‘essential steps towards singling out for special punishment habitual offenders’. Godfrey, Cox and Farrall have said that the other key measure of the legislation, police supervision, also helped the police to monitor repeat offenders following the improvements that have already been discussed. Therefore, while these scholars acknowledge the defects of the 1869 and 1871 legislation, they nonetheless argue that it broke ‘significant new ground in the extension and intensification of state power’ and that various alterations to the way identification and supervision were carried out enabled the police to ‘beset’ the ‘every move’ of those deemed to be habitual criminals. This apparent contradiction compels a re-examination of the impacts of the Gladstone government’s habitual criminals’ legislation, which this thesis aims to undertake.

Various scholars have taken this position further, arguing that the legislation of 1869 and 1871 actually aided in the creation of a criminal class. A greater police focus on the identification and supervision of repeat offenders, it is argued, led to a higher arrest rate than

65 Godfrey, Cox and Farrall, Serious Offenders, p. 205.
66 Wiener, Reconstructing the Criminal, p. 149.
67 Ibid., p. 149; Petrow, Policing Morals, p. 51.
would have otherwise been the case and, consequently, further convictions. After one conviction as a habitual criminal, coupled with time in prison, ‘another conviction was sure to follow’. Petrow has therefore claimed that the legislation ‘helped the police manufacture a criminal class’. Increased police attention and the difficulty of finding employment once stigmatised by being branded a habitual criminal made this the case. Godfrey, Cox and Farrall, Clive Emsley and Helen Johnston have made similar arguments. For example, Johnston, whose work was published in 2015, has said that the habitual criminals’ legislation was ‘stigmatising’ and, as a result, could ‘reproduce’ criminality. According to these scholars, the legislation actually contributed to the creation of what it was intended to destroy: a criminal class.

But the evidence in support of such claims is very limited. Petrow provides none and indeed focusses predominantly on the defects of the legislation. He nonetheless claims that detectives could ‘probably’ prove to magistrates that a person under supervision had breached the conditions of the 1869 and 1871 acts, whether in fact they had or not. As will be discussed later, such a bias among magistrates, especially in London, cannot be so easily assumed. Godfrey, Cox and Farrall also produce little evidence to prove their assertion that the acts of 1869 and 1871 contributed to the ‘production’ of their ‘objects’. The authors only give one example of supervision being ‘overbearing for some’. Notes of an Exeter detective show that in 1908 a suspected person, who may or may not have been under police supervision, was kept under observation following some earlier robberies. More evidence than this, along with the approving comments of one former police officer regarding the efficacy of supervision, is

69 Petrow, Policing Morals, p. 51.
70 Ibid., p. 82.
72 Johnston, Crime in England, p. 36
73 Petrow, Policing Morals, p. 51
74 Godfrey, Cox and Farrall, Serious Offenders, p. xii.
75 ‘Investigation following the burglary of a shop’, 24 Dec. 1908, detective enquiry books, Exeter constabulary, Devon Archives, reproduced in Godfrey, Cox and Farrall, Serious Offenders, p. 186.
needed to justify the assertion that police ‘attention must have fallen heavily on … those who were thought dangerous enough to be sentenced to police supervision’. In addition, Emsley offers no evidence to support his argument that habitual criminals’ legislation ‘probably contributed’ to repeat offenders being treated like their own ‘property’ by the police, who subjected them to ‘harassment’. And finally, Johnston’s remarks, quoted in the paragraph above, seem odd given that she cites no evidence to support them and the majority of her comments regarding the 1869 and 1871 legislation focus upon its flaws. Scholars who make the significant claim that the Gladstone government’s habitual criminals’ legislation was an important factor in the creation of a criminal class have not provided the evidence required to prove its veracity. I argue that insufficient evidence exists to make such a claim.

Indeed, many members of the Metropolitan Police Force were unwilling to implement this legislation in the manner in which the government intended. From the inception of the force in 1829, the need to maintain workable relations with working-class communities meant that many policemen were unwilling to play the role of spy. Evidence suggests that many working-class communities deeply resented the insertion of state power, through police forces, into spaces such as the street and the public house. In particular, the notion that the police would surreptitiously monitor working-class activity met with fierce animosity from the working class, and many within the middle and upper classes also. According to Bernard Porter, a strong tradition of limited government and individual liberty meant that ‘the slightest hint’ of spying by agencies of the state was ‘resisted vociferously’ by ‘nearly every section of

76 Ibid., p. 186.
British society’ in mid Victorian Britain.\textsuperscript{80} There were, as The Times observed in 1870, ‘deep rooted prejudices against police supervision’.\textsuperscript{81} The reasons for, and extent of, animosity towards police supervision will be addressed in more detail in Chapter 4. The Metropolitan Police Force was aware of public unease and, as a result, took significant steps to mitigate such sentiment. Inwood, Howard Taylor and A. L. Beier have argued strongly that the Metropolitan Police Force resisted pressure to vigorously enforce legislation that would have harmed their relationship with the working class.\textsuperscript{82} Given the considerable literature concerning the significant impact of popular attitudes on policing, such a thesis is plausible.\textsuperscript{83} Inwood, for example, uses ‘orders’, which were sent from the commissioner to each station, to demonstrate that constables were actively encouraged to develop a ‘practical compromise’ with poor communities in order to enhance relationships that had been greatly strained by the introduction of the force in the first place.\textsuperscript{84} I will argue therefore that the Metropolitan Police Force was not simply a compliant cog in a broader machine of mid and late Victorian social control and that many policemen did not fully implement the provisions of the habitual criminals’ legislation.

The work that has most directly questioned the willingness of the Metropolitan Police Force to utilise the measures contained in the acts of 1869 and 1871 has been carried out by Terence Stanford. He has argued, similarly to those above, that ‘public opinion’ played a major role in ensuring that the monitoring of working-class suspects by the Metropolitan Police Force did not amount to ‘improper targeting’ or ‘harassment’.\textsuperscript{85} ‘Public opinion’, he says, was

\textsuperscript{81} Times, 16 Apr. 1870, p. 9.
\textsuperscript{84} Inwood, ‘Policing London’s Morals’, pp. 134, 144.
strongly against such actions. Like Inwood, Stanford links these sentiments to the instructions given to policemen. Correspondence from the commissioner shows that members of the Metropolitan Police Force were ‘continually being warned’ about the care needed in dealing with repeat offenders. If they did not heed such warnings they were ‘disciplined’, as the record shows a small number were. Consequently, he argues convincingly that the monitoring of criminals, including repeat offenders, occurred to a limited degree in the Metropolitan Police District.

Compelling as this argument is, Stevenson has put forward other possible reasons for the limited effectiveness of the habitual criminals’ legislation in London. Stevenson has brought together data on the number of repeat offenders who were registered and prosecuted in London and the nineteen other largest towns and cities in England. Under both of these categories the figures for London, in proportion to population, are among the lowest. Given the image of London as the centre of criminality, such evidence means London is ‘an enigma’, an ‘exceptional case’. The key explanation given, which has been largely ignored by historians since Stevenson wrote in 1986, is that London’s magistrates opposed, and sought to undermine, the legislation. Stevenson points to the view of London’s magistrates that those reporting themselves monthly to the police must be received by the commissioner of the Metropolitan Police. This interpretation was unique to London. Stevenson claims that London’s magistrates expressed a kind of ‘liberal paternalism’ that was unique among the magistracy. This was the case because London’s magistrates were well paid, unlike many counterparts elsewhere, and were highly qualified in the law. They therefore, Stevenson appears to argue, lacked the conservative impulses of many other magistrates who were drawn from the upper classes and

86 Ibid., p. 183.
87 Ibid., p. 221.
88 Ibid., p. 187.
the clergy.\textsuperscript{90} This conclusion is bolstered by the work of Davis, which Stevenson cites, in which she argues that London’s magistrates viewed their role as ‘a working class resource’, settling disputes and providing advice. Consequently, they often pushed back against statutes that they believed unreasonably targeted the poor.\textsuperscript{91} Stevenson’s work, which focuses predominantly on the period from 1869 to 1880, provides further cause to question the thesis that this legislation helped create a criminal class, particularly in London. In doing so it shows that, along with the Metropolitan Police Force, London’s magistrates did not unquestioningly implement the government’s agenda, whilst leaving significant scope for further analysis of their role in interpreting the acts of 1869 and 1871, which has been largely overlooked.\textsuperscript{92} Such analysis is a key focus of this thesis, which will make a significant contribution to the very small body of literature concerning what made London unique regarding the implementation of the Gladstone government’s habitual criminals’ legislation.

Within the literature regarding Victorian efforts to combat criminality there is much agreement that police forces were able to closely monitor elements of the working class that they deemed a threat to public order and private property and, in doing so, were part of a broader system of social control. Most historians who have examined the habitual criminals’ legislation of 1869 and 1871 believe that, despite its flaws, it aided the police in this endeavour. In doing so, it is argued, the legislation actually helped to create a criminal class. However, some scholars have sought to re-evaluate the extent to which police forces monitored and targeted for arrest those known to have been previously convicted. Some work on the attitudes of London’s magistrates further undermines the dominant view, at least in the capital. This

\textsuperscript{90} Ibid., p. 47.


\textsuperscript{92} See Emsley, \textit{Crime and Society in England}, pp. 173-4 for a brief and rare example of a discussion regarding the role of magistrates in implementing the habitual criminals’ legislation of 1869 and 1871.
thesis will build on the work of those who argue that mid and late Victorian police forces and magistrates were, more often than not, careful not to alienate members of the working class. In doing so it will argue that, in London, the 1869 and 1871 habitual criminals’ legislation was largely ineffective in achieving its key objectives.

The ‘Criminal Class’

At this point it is necessary to examine the idea that a criminal class existed, and was most prevalent and dangerous in London. This sub-section will delve into the genesis of the category and assess the extent to which it was believed to exist.

As Godfrey, Cox and Farrall have shown, as early as the sixteenth century, concern was being expressed in England regarding the existence of a criminal class which made its living from crime.\(^93\) Print references to the notion of a distinct body of repeat offenders continued throughout the seventeenth and eighteenth centuries.\(^94\) However, such references increased significantly from the 1830s, and the ‘use of the term was at its height’ in the 1850s and 1860s.\(^95\) Recorded statistics concerning the number of repeat offenders in England and Wales, whilst highly problematic as a gauge of recidivist offending, as will be discussed, help to explain why this was the case. Firstly, these statistics were consistently brought to the attention of the public and appeared to suggest that persistent offenders, labelled in these official documents as a criminal class, were the cohort responsible for most crime. Police estimates of the number of ‘habitual depredators’ or people of ‘known bad character’ were tabled annually in parliament from 1839, one year before the cessation of transportation to New South Wales sparked significant concern regarding the release of known criminals in Britain. In that year the constabulary force commissioners believed there were 10,444 such offenders living wholly by

\(^{93}\) Godfrey, Cox and Farrall, *Serious Offenders*, pp. 2-4.


crime, including prostitutes and vagrants, in London.\textsuperscript{96} A lesser number, albeit representing a greater proportion of the overall population, were reported to reside in various other locations.\textsuperscript{97} These statistics provided a most inaccurate indication of the number of Londoners whose criminality was in any way habitual. For example, prior to 1861 the returns for ‘known thieves and depredators’ included anyone who had ever been convicted of an offence. After 1861 those who were no longer thought to be active were excluded and after 1864 those who had not committed a crime for at least one year were omitted.\textsuperscript{98} Furthermore, until a significant overhaul of the method of compiling the criminal statistics was undertaken in 1892, regional police forces also interpreted the definition of ‘habitual depredators’ in different ways.\textsuperscript{99} As Sindall has noted, the different methods of ‘definition, collection and presentation, therefore, made the statistics unreliable as evidence’.\textsuperscript{100} At least partly as a result of the changes made after 1861, the statistics showed a significant reduction in the number of the ‘criminal classes’ prior to the introduction of the 1869 legislation, both in London and throughout England and Wales.\textsuperscript{101} For example, from 1867-8 to 1868-9 the total number of the ‘criminal classes’ in England and Wales declined from 56,584 to 54,249 and in London from 5,772 to 4,336.\textsuperscript{102} Yet from 1839, as transportation was being significantly curtailed, annual statistics purported to show that thousands of repeat offenders resided in London.

The capital’s many influential newspapers regularly reported the recorded crime figures. Since the advent of official statistics in 1839, all major London papers frequently reported on the supposed size of the criminal class, and the figures were often accompanied by

\textsuperscript{96} First Report of the Commissioners Appointed to Inquire as to the Best Means of Establishing an Efficient Constabulary Force in the Counties of England and Wales, [C 169] H.C. 1839, xix, p. 8.
\textsuperscript{97} Ibid., p. 8. The locations reported upon were the Borough of Liverpool, the City and County of Bristol, the City of Bath, the Town and County of Kingston-on-Hull and the Town and County of Newcastle-on-Tyne.
\textsuperscript{98} Sindall, \textit{Street Violence in the Nineteenth Century}, p. 20.
\textsuperscript{99} Ibid., p. 24.
\textsuperscript{100} Ibid., p. 20.
\textsuperscript{102} Ibid., p. x.
commentary that stressed the threat from this group. Despite the limitations of these data,
discussed above, in 1858 the Standard, a penny daily conservative paper, believed they were
‘a reliable measure of the vices of the community’.\textsuperscript{103} Sometimes the problems inherent in
attempts to judge the size of the criminal class were acknowledged. But, when this was done,
it was usually argued that the statistics underestimated the size of the problem.\textsuperscript{104} Far more
often they were simply accepted. For example, in 1863, a leading article in the liberal Daily
News reproduced data from the annual judicial statistics and argued that ‘the real source of
danger’ is ‘the habitual offender’.\textsuperscript{105} An analysis of The Times shows that every year through
various means, including leading articles, court reports, reports of parliamentary debates and
letters to the editor, its readers were made aware of the new annual data concerning the size of
the so-called criminal class.\textsuperscript{106} Taking 1868, the year before the introduction of the Habitual
Criminal Bill 1869, as an example, The Times published two lengthy leading articles on the
‘Criminal Classes at Large’, which cited the judicial statistics, and a letter to the editor by a
‘Chairman of Quarter Sessions’ that once again referred to the published data and argued
Britain’s major cities were ‘infested by old offenders’.\textsuperscript{107} London’s newspapers therefore
ensured that their readers were well aware of statistics that suggested a significant mass of
repeat offenders lived in the city.

It is highly likely that reports such as these shaped perceptions of the significance of
the criminal threat in London. Firstly, London’s press in the second half of the nineteenth
century had a very large readership. Between 1850 and 1870 a dramatic growth in newspaper
circulation occurred. This was partly due to a fall in the price of paper per ream from 55
shillings in 1845 to 40 shillings in 1855. Furthermore, the abolition of the advertisement tax in

\textsuperscript{103} Standard, 26 Jul. 1858, p. 4.
\textsuperscript{104} Pall Mall Gazette, 25 Oct. 1867, pp. 4-5.
\textsuperscript{105} Daily News, 14 Jan. 1863, p. 4.
\textsuperscript{106} For the 1860s see the Times, 27 Jan. 1860, p. 5; 24 Oct. 1861, p. 11; 14 Aug. 1862, p. 8; 20 Feb. 1863, p. 6; 4 Apr. 1864,
\textsuperscript{107} Times, 11 Jul. 1868, p. 12; 26 Oct. 1868, p. 4; 4 Nov. p. 5.
1853 and then of stamp duty in 1855 made publishing newspapers a more attractive financial prospect. In addition, from the second quarter of the nineteenth century technical improvements in printing presses allowed the hourly production rate of newspapers to rise. In London 4,000 copies of newspapers could be produced per hour in 1827. This rose to 20,000 in 1847 and then 168,000 after 1870. Finally, this trend was hastened by the abolition of paper duty in 1860. These various factors meant that by 1860 most daily newspapers in London sold for a penny. Consequently, their circulation trebled between 1855 and 1860 and doubled again between 1860 and 1870. By the middle of the nineteenth century newspapers had become the major medium for the dissemination of news and opinion. In 1851, a select committee was informed, albeit with some exaggeration, that ‘newspapers are the only thing that people will ever read’, and ‘all the information they get is through that means’.

From the 1840s onward an increasingly large London readership was exposed to reports of a substantial criminal class. However, this does not necessarily mean that these readers believed such reports. It is essential to explore briefly whether newspapers in the second half of the nineteenth century shaped the views of their readership. Hannah Barker has claimed, with some justification, that in mid Victorian Britain the press ‘was widely perceived to be the most crucial factor in forming and articulating public opinion’. For example, numerous contemporary sources, including Whig foreign secretary Viscount Castlereagh, believed that public support for various social reforms following the end of the Napoleonic wars in 1815 was the result of agitation in the press. As the century wore on similar views concerning the impact of newspaper reporting were often expressed. Journalist Henry Reeve, writing in 1855,

believed ‘newspapers are just as truly representative of the people as legal senators’. It was
‘scarcely possible to exaggerate’ their influence.\footnote{H. Reeve, ‘The Newspaper Press’, *Edinburgh Review*, vol. 102 (Oct. 1855), p. 479.} Then in 1871, James Grant, the editor of
the trade journal of licensed victuallers, the *Morning Advertiser*, wrote that: ‘within the last
few years the appellation of ‘The Fourth Estate’ given to our newspaper journalism, has
acquired an appropriateness to which it was never entitled at any previous period of history’.\footnote{J. Grant, *The Newspaper Press*, vol. 2, London: Tinsley Brothers, 1871, p. 459.} London’s numerous and popular newspapers therefore surely influenced the opinions of their
readers.

Various social commentators also produced statistics concerning the number of repeat
offenders and stressed the existence of a discrete cohort, most noticeable in London, that
seemingly committed crime with impunity. The social investigator Henry Mayhew made
estimates of London’s ‘criminal class’ in 1862 in the widely-read fourth volume in his series
on *London Labour and the London Poor*. For example, he argued that 80,000 prostitutes
Greenwood said that London’s criminal class represented an ‘army’ of thieves that was 20,000
strong.\footnote{Greenwood, *The Seven Curses of London*, p. 57.} The Reverend H. W. Holland, who claimed to have lived among London’s thieves
for two years, was more circumspect regarding the number of repeat offenders. Nonetheless,
in an article in the *Cornhill Magazine* in 1862, he said they ‘count by many thousands’.
\footnote{H. W. Holland, ‘Professional Thieves’, *Cornhill Magazine*, vol. 6, no. 35 (1862), p. 640.} These figures, like the official data, tell us little, if anything, about the number of recidivist
criminals in London at this time. For one thing, they are ‘implausibly varied’.\footnote{Godfrey, Cox and Farrall, *Serious Offenders*, p. 87.} The
methodology used to collect them is also unknown. Yet Godfrey, Cox and Farrall have argued
that such estimates influenced public opinion. They have said that ‘many of the popular

\begin{thebibliography}{9}
\footnote{H. W. Holland, ‘Professional Thieves’, *Cornhill Magazine*, vol. 6, no. 35 (1862), p. 640.}
\item Greenwood, *The Seven Curses of London*, p. 57.
\item H. W. Holland, ‘Professional Thieves’, *Cornhill Magazine*, vol. 6, no. 35 (1862), p. 640.
\item Godfrey, Cox and Farrall, *Serious Offenders*, p. 87.
\end{thebibliography}
conceptions of criminality that date from the mid-to-late Victorian period … can be traced back either to Mayhew or Binny’, Mayhew’s collaborator.\textsuperscript{119} It is probable that the work of these commentators, which supported the official judicial statistics in asserting that a sizable body of repeat offenders resided and operated in London, increased the prevalence of this view.

The perceived threat of a so-called criminal class also needs to be understood in the context of the changing penal landscape of the time. The key change was the reduction in the use of the punishment of transportation to Australia, which ultimately ceased in 1868. After British settlement of Australia in 1788, following the refusal of the former American colonies to take further convicts, over 168,000 convicts were sent to New South Wales, Van Diemen’s Land and Western Australia during the next eighty years. For the authorities in the United Kingdom, a great benefit of this system was that very few convicts returned from half way around the world at the expiration of their sentence. However, this system had been in decline since 1840 when New South Wales took its last convicts. This was largely due to the vigorous opposition of many colonists who desired to rid their adopted homeland of the ‘convict stain’ and, to a lesser extent, unease in the United Kingdom at the costs associated with transportation.\textsuperscript{120} Nonetheless, Van Diemen’s Land took convicts for a further thirteen years. Then, until 1868 when transportation to Australia finally stopped completely, comparatively small numbers of convicts were sent to Western Australia. Between 1850 and 1868 only 10,000 British and Irish criminals were sent to the western-most Australian colony. The refusal of New South Wales to accept more convicts meant that from 1840 many who would previously have been transported were instead being punished, usually through incarceration, and released at home. For example, between 1848 and 1852, of the 16,229 convicts sentenced to

\textsuperscript{119} Ibid., p. 17.
transportation, only 10,963 were transported.\textsuperscript{121} Numerous historians have noted this change and argued that it increased popular anxieties regarding crime.\textsuperscript{122} Radzinowicz and Hood have sought to explain the nature of these anxieties.

As long as transportation provided the means for flushing large numbers of England’s convicts to the antipodes, there was no necessity to consider how to control or incapacitate them at home. The refusal of Australia’s eastern colonies to accept more convicts at the end of the 1840s, combined with the rapid growth of the cities and the expansion and consolidation of the police, made the phenomenon of crime appear more real and more tangible. The perception of a mass of offenders at home, moving about and yet anonymous, fostered an escalating fear of a criminal or dangerous class and a resolve to do something drastic about it.\textsuperscript{123}

For its part the government believed what it read about a criminal class. Lord Kimberley specifically referred to the most recent data concerning ‘known thieves and depredators’ in his second reading speech on the \textit{Habitual Criminal Bill 1869}. He then asked, ‘how are we to deal with this vast mass of criminals?’ He also claimed that the ‘criminal class’ was a ‘great army’.\textsuperscript{124} A new means of defeating this army was needed because of the termination of transportation as a penal option. ‘There is at the present time’, Kimberley said, ‘a special reason for carefully scrutinising and seeing whether we cannot improve our system, and that is the complete cessation of transportation’.\textsuperscript{125} A belief in the existence of a large criminal class, no

\textsuperscript{121} \textit{Report from the Select Committee of the House of Commons on Transportation}, [C 244] H.C. 1856, xvii, appendix I, p. 179.
\textsuperscript{123} Radzinowicz and Hood, ‘Incapacitating the Habitual Criminal’, p. 1308.
\textsuperscript{124} The Earl of Kimberley (Liberal), 194 \textit{Parl. Deb.}, H.L. (3\textsuperscript{rd} ser.), col. 338 (26 Feb. 1869).
\textsuperscript{125} Ibid., col. 337.
longer subject to transportation, was a key reason for the introduction of the Habitudal Criminals Bill 1869.

The Characteristics of the ‘Criminal Class’

Many commentators, as well as the government, therefore believed that there was a large body of repeat offenders in England and Wales, amounting to a criminal class. Anxiety about this class focused on London. This sub-section will address the perceived characteristics of this body of offenders.

The significant mid-nineteenth century discourse concerning a criminal class stressed the provenance of this social group. It was a recognisable sub-group, many theorists confidently asserted, of the broader working class.\textsuperscript{126} Social investigators Harriet Martineau, Rev. Holland, Henry Mayhew and Mary Carpenter all wrote extensively on the problem of repeat offenders who, they argued, lived by crime. Their writing was informed by first-hand experience, as all boasted that they had lived among criminals in order to better research their subject. They did not have a difficult time locating it. The criminal class was not a disparate grouping, but, they believed, one concentrated in the poorest quarters of major cities, especially London. The class origin of this group, furthermore, was made plain by the appearance of its members. Holland said that what he called professional thieves lived in a ‘thieves’ quarter’ in the most deprived working-class sectors of cities that was ‘well known to the police’.\textsuperscript{127} And according to Carpenter, the criminals who lived in such areas had both a facial appearance and a more general bearing that was recognisable. They bore, she said, a ‘low expression’, a point that Mayhew also made repeatedly.\textsuperscript{128} As Martineau informed her readers, members of the


\textsuperscript{127} Holland, ‘Professional Thieves’, p. 645.

‘criminal class’ were used to an existence ‘altogether unlike our own’.129 The working-class origin of repeat offenders was therefore clearly articulated by numerous mid-nineteenth century authors.

Up until the late 1880s a further, and insistent, element of this discourse was that members of the criminal class freely chose a life of crime over honest living. Many sources, albeit predominantly drawn from the middle and upper classes, claimed that despite the numerous possible causes of crime, members of the criminal class freely chose to live by crime. For example, in the 1870s the ordinary of Newgate prison argued that: ‘in nine cases out of ten it is choice, and not necessity, that leads to crime’.130 And in 1894 The Times, referring to the rise of Lombrosian criminology that minimised the role of free choice in crime and popularised the idea of the born criminal, lamented the advent of ‘modern controversies’ about the causes of crime.131 While there were now ‘differences and doubts’ concerning the origin of crime, before the 1880s, during which – as will be discussed in later chapters – ideas linking crime to heredity came to be widely recognised, there had been ‘an accepted opinion’ that crime was a matter of ‘choice’.132 Numerous historians have found that this was a prevalent mid Victorian view. David Taylor has said that: ‘it was commonly believed that the criminal, exercising his or her free will, chose a life of crime’.133 And George Pavlich has argued that: ‘Individuals were regarded as free to choose whether to build character … or to fall prey to base character

129 Martineau, ‘Life in the Criminal Class’, p. 337.
traits’. Despite the distress and poverty of working-class life in London, and elsewhere, freedom of choice was often ascribed to the criminal class.

Commentators addressed the issue of why such a choice might have been made. Repeat offenders apparently calculated that a life of crime, accompanied by the danger of imprisonment, would be both more pleasant and remunerative than one that adopted the respectable norms of self-help and honest hard work. Despite his empathy for many whose experiences he chronicled, Mayhew did much to propagate this notion. Criminals were, according to Mayhew: ‘Those that will not work’.

Martineau, after having spent time with the criminal population of London, also said that its members ‘show no traces of honorable toil on their hands’. Finally, Holland compiled a report in 1862 based on personal experience of London’s underworld. He found that repeat offenders were ‘idle’ and that honest work would not deliver the requisite compensation to ‘satisfy their wants’. These themes were also apparent in crime fiction, which was popular and cheap.

The content and importance of this literature will be discussed further in later chapters. Emsley is correct in his assertion that the idea of a ‘criminal class’ that simply preferred ‘idleness and moments of adventure to a fair day’s work … had become popular in Victorian England’.

Such a criminal class, made up of members of the lowest stratum of the working class and freely choosing an adventurous life of crime, did not in fact exist. It was, rather, a comforting construct that enabled the middle and upper classes to believe crime was overwhelmingly committed by a distinctive group that could be identified and suppressed. This

construct also ensured that the middle and upper class could be guilt-free, as the impact of any social causes of crime that they served to exacerbate, such as poverty and a lack of education, were downplayed. J.J. Tobias, however, has argued that the criminal class was a reality, claiming that a large amount of criminality was concentrated within the poorest elements of the working class. He has said that: ‘the concept of a “criminal class” may be regarded’ as an ‘acceptable explanation’.140 However, court records do not support his position. Instead they show that convicted criminals, although predominantly from the working class, did not emanate from an identifiable sub-group. Emsley has carried out an analysis of court records in London in the 1860s and found that most thefts were ‘opportunist’ in nature, while crimes of violence predominantly involved ‘people who were either related to each other or who were known to each other’.141 As Pat Carlen has argued, it appears clear that ‘all kinds of people’ from all social classes committed crimes. Consequently, the concept of a criminal class was a ‘myth’.142 As transportation to the Australian colonies ceased, many members of the middle and upper classes were genuinely fearful of a criminal class, notwithstanding the fact that such a class did not exist.143

After coming to power in 1868 the Liberal government embraced the notion of a discrete and identifiable section of the working class that was often called the criminal class, which freely rejected honest society. In the House of Lords Kimberley said that members of the ‘criminal class’ looked upon crime ‘as a profession’.144 And in the Commons the home secretary, H. A. Bruce, said that only 10 per cent of prisoners committed crime ‘under some strong temptation’. The rest made a free choice in order to avoid ‘vigorous labour’. This view

142 Pat Carlean, foreword to Godfrey, Cox and Farrall, Serious Offenders, p. viii.
was in keeping with those of commentators and newspapers that have been summarised above. It was used to justify a firm response. Because repeat offenders chose to forego honest labour and respectability, ‘society was justified in taking vigorous measures of repression’. The measures that the government consequently introduced are ripe for reassessment. The literature concerning these measures predominantly utilises models of moral panic and social control in order to explain their genesis and effectiveness. However, this thesis will argue that these models are not sufficient to fully understand why the government introduced the legislation in the form that it did and the extent to which its aims were achieved. Indeed, adherence to these models has led to conclusions that are partial, contradictory and, at times, incorrect.

The Shape of the Thesis

Chapter 1 aims to establish why the Liberal government introduced the Habitual Criminals Bill 1869. It will examine the impact on penal policy of the gradual cessation of transportation to Australia, and press-inspired panics regarding violent crime in London. The role of the S.S.A. in shaping efforts to better control repeat offenders will also be assessed, given the group’s very close relationship to the new government. This chapter will look into whether the role of the S.S.A. in formulating the Habitual Criminal Bill 1869 has been sufficiently examined by scholars who often cite a moral panic in 1868 as the principal reason for its enactment. The chapter will then analyse the parliamentary debate on the Habitual Criminals Bill 1869, during which several major amendments were made. It asks: why was the Habitual Criminals Bill 1869 introduced and why was it passed by parliament?

Chapter 2 assesses the early operation of the new act until 1871, when further changes were made and the key measures of the legislation were re-enacted through the Prevention of

It will analyse whether the early operation of the act highlighted major defects concerning the key measures: the registry and police supervision. The new legislation will then be examined along with the views of the major political parties, the press and the S.S.A., who generally supported the measure, as they had its predecessor. This chapter asks two key questions: why was the 1869 act repealed after such a short time and replaced by the *Prevention of Crime Act 1871*? Was the new act a significant improvement over the old?

Chapter 3 contains an analysis of the habitual criminals’ registry and how it was intended to function, as well as of the various other registers created in London. These were the key means of identifying repeat offenders introduced by the habitual criminals’ legislation. Secondly, the chapter will provide an assessment of both the positive and negative aspects of the registers’ operation. Housed at Scotland Yard, the registry’s various volumes of habitual criminals were designed to enable the police to carry out searches in order to, firstly, identify repeat offenders who had been arrested but not yet brought before the courts and, secondly, aid supervision. Other registers held at individual police stations and the C.S.O., following its establishment in 1880, were intended to serve the same function. Did the registers allow this to occur? To what extent did members of the Metropolitan Police Force utilise the registry, and do reasons for the rate of usage present themselves? This chapter will also detail and assess the numerous changes that were made to the composition of the registers of habitual criminals between 1871 and 1895. Why were changes made and did they lead to more habitual criminals being identified? In short, this chapter will ask: to what extent did the various registers achieve the government’s stated aim of securing the identification of habitual criminals?

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146 For an examination of these amendments see Melling, ‘Cleaning House in a Suddenly Closed Society’, pp. 334–42.
Chapter 4 will provide an assessment of the operation of police supervision under the *Prevention of Crime Act 1871*. The government and parliament expressed ambitious hopes that the legislation would empower the police to closely monitor licence-holders and repeat offenders sentenced to a period of supervision in the community, preventing further crimes.\(^{148}\) Licence-holders were those who had been released from jail following the remission of a portion of their period of penal servitude. They were subject to the conditions of a licence, which was commonly called a ticket-of-leave. This chapter will assess the evidence regarding whether supervision achieved its aim. It will then seek to explain why the measure was either effective or not. Were members of the Metropolitan Police Force able to monitor those under supervision in the busy city? What impact did the longstanding aversion to a continental-style spy system, discussed above, have on the manner in which supervision was carried out? What processes were in place to ensure those who moved from one district to another were tracked? How did London’s magistrates interpret the provisions of the *Prevention of Crime Act 1871* concerning police supervision?

Finally, Chapter 5 will investigate the extent to which the legislation led to longer sentences for repeat offenders, as anticipated by the government. The various registers, discussed above, were intended to ensure that magistrates and judges had full information before them concerning the offending history of criminals.\(^{149}\) The government hoped that this knowledge, coupled with information gained from police supervision, would lead to longer sentences as fewer repeat offenders would be able to deceive the judicial system by lying about previous offending.\(^{150}\) The chapter asks whether sentencing data from this period, along with the few surviving accounts of repeat offenders themselves, shows that this occurred. It also

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148 The Earl of Morley (Liberal), 207 *Parl. Deb.*, H.L. (3\(^{rd}\) ser.), cols. 1082-5 (4 July 1871).
150 Ibid., p. 42; Lord Cleveland (Liberal), 194 *Parl. Deb.*, H.L. (3\(^{rd}\) ser.), col. 712 (5 March 1869); Henry Bruce (Liberal), 198 *Parliamentary Debates*, H.C. (3\(^{rd}\) ser.), cols. 1251-60, 1276-8 (4 Aug. 1869); 200 *Parl. Deb.*, H.C. (3\(^{rd}\) ser.), col. 2134 (29 Apr. 1870).
seeks to assess why magistrates and judges handed down the sentences that they did. How much discretion did they have in sentencing repeat offenders? What impact did the disagreement among magistrates and judges in the second half of the nineteenth century regarding the notion that repeat offenders should receive progressively longer sentences have? In short, the chapter asks whether magistrates and judges placed the weight upon proven past convictions that the government had hoped they would, and if not, why not.
Chapter 1. The Origins of the *Habitual Criminals Act* 1869

What shall we do with our convicts?\(^1\) *The Earl of Carlisle, Liberal peer, 1858.*

The *Habitual Criminals Act* 1869 was, as Leon Radzinowicz and Roger Hood have argued, a ‘heavy baggage of repressive measures’.\(^2\) To understand why such legislation was introduced it will be necessary to examine the role of the press, public opinion in London, and the Social Science Association (S.S.A.), which was an important pressure group with very close ties to the Liberal Party.\(^3\) According to the published criminal statistics, the very significant analytical pitfalls of which have already been discussed, the 1860s were years in which crime decreased in England and Wales, as did the size of the ‘criminal class’.\(^4\) Nonetheless, at the end of the decade the government felt it necessary to bring forward legislation that greatly increased the power of the state over repeat offenders and those who had been granted early release from prison on a licence.

This chapter will assess why this was the case. It will begin by describing and analysing legislation from the 1850s and 1860s that sought to deal with repeat offenders and licence-holders. This first section will also seek to explain why successive governments believed these earlier efforts required augmentation and will focus on periods of alarm in London concerning the effects of the ending of transportation. It will also address the genesis and ideology of the S.S.A., and analyse the impact of its advocacy. The second section will assess events from

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\(^1\) The Earl of Carlisle, ‘Address on the Punishment and Reformation of Criminals’, *Transactions of the National Association for the Promotion of Social Science 1858*, London: John W. Parker and Son, 1859, pp. 70, 72.


1868 and 1869 and determine how they shaped the Habitual Criminals Act 1869. Here the significant role of the S.S.A., in particular, will again be considered.

The Habitual Criminals Act 1869 has been interpreted by numerous historians as part of a process of adaptation to changed circumstances, notably the decline and eventual cessation of transportation to Australia, an adaptation that was driven, it is argued, by public alarm in London, stoked by the city’s newspapers, about the accumulation of criminals at home. For example, Victor Bailey has argued that following the British government’s acceptance in 1840 of the demands of the colonists of New South Wales that they should take no further convicts, the public, especially in London, became increasingly alarmed at newspaper reports of a dangerous criminal class, leading governments to implement legislation in 1853, 1857, 1864, and 1869. According to this account, there was no ‘coherent penal policy’, rather, as Peter Bartip has said, a kind of ‘hand to mouth pragmatism’ as governments sought to deal with public unease about crime. Lawrence Goldman has correctly noted the dominance in the relevant historiography of this discourse depicting mid-Victorian penal reform as a ‘piecemeal adaptation to essentially pragmatic considerations’. However, as we shall see, this view does not fully explain the reasons for the key penal changes of the 1850s and early 1860s regarding the criminal class, and entirely misidentifies the key precipitant of the Habitual Criminals Act 1869. It also ignores the very important part played by members of the S.S.A. in consistently advocating for the measures that would eventually form the major elements of the legislation.

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of 1857 and 1864. The pressure group’s role, as we shall see, was even more important in the
genesis of the Habitual Criminals Act 1869.

1. Legislative Change in the 1850s and Early 1860s

The Habitual Criminals Act 1869 was not the first legislative measure that sought to deal with the consequences of the cessation of transportation. Acts passed in 1853, 1857 and 1864 were designed to replace transportation with an expanded and enhanced penal regime at home. Under the acts, criminals were to be sentenced to longer terms of incarceration, in hopes of reforming them, while a licence or ticket-of-leave system was also to be introduced. This section will analyse the specific reasons for these legislative changes and what they entailed. The genesis of the Habitual Criminals Act 1869 can only be properly understood in the context of these earlier pieces of legislation, which, as we shall see, it built upon.

The gradual end of transportation to Australia necessitated a significant reassessment of penal policy. By 1840 transportation had ‘almost entirely’ replaced capital punishment as the key legal mechanism to deal with those convicted of serious crime. Capital punishment, as Michael Melling has noted, ‘proved less and less popular with the public in the nineteenth century’. Consequently, public hangings finally ceased in 1867. Radzinowicz and Hood have estimated that throughout the 1860s fewer than ten people were actually executed in Britain each year. As a result, transportation became ‘the ordinary sentence upon conviction’ for any felonious offence. However, in the 1850s and 1860s British governments were forced to respond to the imminent ending of transportation to Australia. As those transported were very unlikely to ever return, removing convicts to Australia was ‘almost as effective a way of

10 Ibid., p. 321.
preventing crime in England as was executing them’. However, from 1840 transportation to Australia was progressively ended, largely in response to objections to the practice from the colonists. The refusal of New South Wales to accept more convicts meant that from 1840 many who would previously have been transported were already being incarcerated and then released on home shores. As Randall McGowen has argued, this new reality ‘produced an anxiety ... about releasing serious offenders back into society’. Members of the legislature were not immune from these concerns. Consequently, the cessation of transportation had a significant influence on penal policy. It was, as Barry Godfrey, David Cox and Stephen Farrall have argued, ‘the catalyst for a new legislative programme’. Martin Wiener has also argued that: ‘fears induced by the ending of transportation’ were the ‘most important short-run influence’ on the penal legislation of governments in the 1850s and 1860s. Indeed penal measures of 1853, 1857 and 1864, which will be discussed below, were justified primarily on the grounds that transportation was no longer available.

The rise of the penitentiary was the other key change in Britain’s penal regime during the early and mid-nineteenth century. Since the late eighteenth century advocates of reform such as Whig politicians Samuel Romilly, Thomas Buxton and William Wilberforce had attacked the state of Britain’s prisons with some justification. As A. H. Manchester has argued, many prisons were ‘squalid nurseries of crime’ in which old and young offenders

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14 This was discussed in the previous chapter. See Stephen Nicholas and Peter R. Shergold, ‘Unshackling the Past’, in Stephen Nicholas (ed.), Convict Workers: Reinterpreting Australia’s Past, Cambridge and Sydney: Cambridge University Press, 1988, p. 3.
15 First Report from the Select Committee of the House of Commons on Transportation; Together with the Minutes of Evidence, and Appendix, [C 244] H.C. 1856, xvii, p. 179.
mixed freely. In response to such concerns a new type of prison was created. In 1816 the first new model prison, called a penitentiary, was opened at Millbank in London. Pentonville, also in London, followed in 1842. The design of these prisons was partly borrowed from the utilitarian Jeremy Bentham’s sketch of 1791, entitled Panopticon. His prison design allowed a person standing in a central hexagon to enjoy a clear line of sight into every cell in six pentagons that led from it, enabling an ‘omnipresent inspection’. Owing to the perceived benefits of this design at Millbank and Pentonville, a further fifty-six panoptic penitentiaries were constructed throughout the United Kingdom by 1848. In these penitentiaries corporal punishment was rarely used and the separation of prisoners was strictly enforced. These elements of the penitentiary regime were accompanied by religious teaching, a strict diet and a total intolerance of the prison sub-culture of drinking, gambling and the use of prostitutes that formerly prevailed. Finally, and in contrast to the former, locally run, system, ‘no aspect of prison administration was to escape the principle of uniformity’. 

Previously the focus of much punishment had been the body of the offender, demonstrating the power of the sovereign in a public display intended primarily to deter, not to reform. The penitentiary was focused instead on the mind and soul of the offender. The various activities described above, which prisoners were forced to undertake, demonstrated the extent of the control that the state could exert over offenders. The intended result, to borrow

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21 Ignatieff, *A Just Measure of Pain*, p. 78.


Michel Foucault’s memorable expression, was the creation of ‘docile bodies’ by wearing prisoners down and convincing them of the futility of rebellion in the face of the power of the state. Indeed, the first of Foucault’s seven universal maxims of good penitentiary conditions was that: ‘Penal detention must have as its essential function the transformation of the individual’s behaviour’. Thus there was a discernible ‘shift’ in the ‘objective of punishment’. The chief concern of penal policy, embodied in the new penitentiaries, was now to ‘transform the criminal’.

Legislative recognition of the decline of transportation and the desire to accommodate more offenders in penitentiaries in Britain first came in 1853. In that year Van Diemen’s Land stopped receiving convicts, meaning that of the Australian colonies only Western Australia remained a possible destination for transported criminals. This change was met by the introduction of the new punishment of penal servitude as a substitute for sentences of transportation of fewer than fourteen years, which were abolished. Penal servitude was to involve an initial period of nine months’ solitary confinement. The remainder of the sentence was then to be served at one of five prisons that had been specially designed or adapted to facilitate employment of prisoners on public works. These facilities were at Borstal, Chatham, Dartmoor, Portland and Portsmouth. As Peter Bartrip has noted, this was a ‘classic case’ of ‘reform through pressure of events’.

When introducing the bill’s second reading in the House of Lords on 11 July 1853, Lord Cranworth, lord chancellor in Lord Aberdeen’s Whig/Peelite coalition government, made it clear that the end of transportation was the reason for the legislation. A minimum of three years’ penal servitude in a large penitentiary augmented

26 Ibid., p. 269.
28 Ibid., p. 850.
magistrates’ and judges’ existing sentencing option of two years or less in one of the country’s numerous small, local gaols. The Lord Chancellor explained that penal servitude had been introduced to keep criminals off the streets for longer, as a deterrent, and to provide the best chance of reformation.

The 1853 act, which covered the entire United Kingdom, also borrowed an Australian innovation. Any criminal sentenced to penal servitude would be eligible for ‘a licence to be at large in the United Kingdom and the Channel Islands’. The main effect of these licences, commonly called tickets-of-leave, was to reduce the length of the initial sentence. Using this mechanism judges could approve a remission of between one sixth and one third of the total sentence, based upon reports from prison staff. The measure was a significant departure from past practice, as this was the first time the notion of remission for good behaviour had been introduced into law in the United Kingdom. The government hoped that licences would aid reformation, as prisoners would be aware that good behaviour would be rewarded. Licences could be revoked at Her Majesty’s pleasure. There was also a pragmatic reason for the introduction of the ticket-of-leave system. Indeed, it was primarily put in place ‘to keep faith’ with several thousand convicted criminals, sentenced to transportation but serving prison sentences in the United Kingdom with the expectation of ultimate release on licence in the colonies. Due to the fact that very few criminals were now being transported, these convicts were serving their sentences at home. The directors of convict prisons feared a breakdown of discipline would be the result of keeping these inmates confined for the full period of their sentence and urged the government to introduce a system of remission. Finally, licencing was...
also a cheaper option than continued incarceration, which was another - albeit lesser - reason for its introduction.\footnote{For the significant cost of incarceration in the nineteenth century see G. Larry Mays and L. Thomas Winfrey Jnr., \textit{Essential of Corrections}, 4th ed., Belmont: Wadsworth, 2009, p. 39.} The legislation received bipartisan support and came into effect on 1 September 1853.

The changes to the \textit{Penal Servitude Acts} were heavily criticised by a commentator who would become very influential over the course of the rest of the 1850s and the 1860s. Matthew Davenport Hill, the recorder of Birmingham, or principal magistrate in the city, was ‘a leading penal reformer of the period’.\footnote{Radzinowicz and Hood, ‘Incapacitating the Habitual Criminal’, p. 1317.} As Bartrip has noted, this position gave Hill a ‘public platform from which, through his addresses or charges to grand juries, he could air his views, particularly on matters of penal and criminal law reform’. Consequently, by 1850 Hill was widely known ‘as a “criminologist” and penal reformer’.\footnote{P. W. J. Bartrip, ‘Hill, Matthew Davenport (1792–1872),’ in H. C. G. Matthew and Brian Harrison (eds.), \textit{Oxford Dictionary of National Biography}, Oxford: Oxford University Press, 2004; online ed., Lawrence Goldman (ed.), 2004, \url{http://www.oxforddnb.com/view/article/13286} (accessed 24 Nov. 2015).} He championed a set of ideas that he had first set out in 1846, albeit to much opprobrium.\footnote{Matthew Davenport Hill, \textit{Draft Report on the Principles of Punishment: Presented to the Committee on Criminal Law Appointed by the Law Amendment Society, in December, 1846}, London: William Clowes and Sons, 1847, pp. 1-19.} Hill argued that, for recidivists, short periods of imprisonment achieved little. While he believed incorrigible offenders should be detained until ‘released by death’, if freed, ‘known criminals’ should remain the object of ‘just and unavoidable suspicion’ through supervision.\footnote{Matthew Davenport Hill, \textit{Suggestions for the Repression of Crime}, London: Patterson Smith, 1857, p. 182.} This, in Hill’s view, should be facilitated by a register of known criminals. He borrowed this idea from his brother Frederic, himself a prison inspector, who had proposed it in 1845 as a means to ensure that repeat offenders were recognised as such when they appeared before the courts.\footnote{Tenth Report of the Inspectors Appointed Under the Provisions of the Acts 5 & 6 Will. IV c. 38, to Visit Different Prisons of Great Britain, IV. Scotland, Northumberland, and Durham, [C 688] H.C. and H.L. 1845, xxiv, p. viii.}
Hill criticised the act of 1853, in particular, on the grounds that something should be done to control those released on tickets-of-leave before the expiry of their sentences. No mechanism was in place to do this. For example, police forces were not notified when a licence-holder was released into their district. The Home Office believed that surveillance of licence-holders was incompatible with the liberty of the subject. It appears this view was widely held, as Hill’s proposals were denounced in various quarters on the same grounds. Unlike many of the countries of continental Europe, Britain did not have a history of organised police forces with covert functions. However, some private forces had carried out detective work. For example, London’s so-called Bow Street runners, which were formed by the magistrate Henry Fielding in 1749 and ultimately disbanded in 1839, often engaged in surveillance. Nonetheless, ‘spy systems’ were heavily criticised by many British writers due to a perceived threat to individual liberty. Bernard Porter provides numerous examples from Britain in the nineteenth century of revulsion at police surveillance in other European countries. For instance, in 1850 the novelist Charles Dickens criticised the use of spies in Italian states. He said that: ‘They assume no distinctive dress – make no sign; they walk in darkness, and move like the pestilence.’ Englishmen, Dickens approvingly continued, spoke ‘not under the terror of an organized spy system.’ From the regular articulation of such views, it is likely that they were widely held. Therefore, as Radzinowicz and Hood have argued, when first put forward

45 Report from the Select Committee of the House of Commons on Transportation, p. 25.
46 Ibid., p. 25.
51 Dickens, ‘Spy Police’, p. 611.
in the 1840s and 1850s, many people found Hill’s surveillance proposals ‘quite unacceptable’. They ‘ran counter to deeply held notions of justice’.

Despite the opposition to Hill’s views, by 1855 London’s newspapers were expressing concerns that the ticket-of-leave system was fundamentally flawed. As several historians have noted, numerous London newspapers argued that violent crime was increasing in the capital, particularly that of ‘garotting’, in which the victim is attacked from behind and incapacitated by pressure from the assailant’s arm upon the throat. Holders of tickets-of-leave were held to be responsible. For example, the Standard, a conservative daily newspaper, argued that violent attacks were being perpetrated in London by ‘convicts who have been liberated under the ticket-of-leave system’. The Era, a liberal weekly newspaper, in discussing possible remedies for this situation, condemned the idea of early release as ‘morbidly tender’ and argued instead that ‘every judicial sentence should be fully executed’. While various newspapers expressed concern about the new system, The Times, which – of course – was highly influential, was most vocal. Rob Sindall has carried out an analysis of newspaper reports of violent crime and the ticket-of-leave system and found that during the winter months of 1856 The Times published seven editorials and thirty-one letters on the subject. It is unclear exactly why newspaper reports of the ticket-of-leave system became so numerous and negative in 1855 and 1856. Bartrip has undertaken an assessment of the judicial statistics and has found that, while the number of indictments rose in the first half of the 1850s, in London and elsewhere, ‘it is hard to maintain that there was a significant trend towards more “serious” crime, particularly given

56 Standard, 7 Jul. 1854, p. 4.
57 Era, 14 Oct. 1855, p. 9.
the population increase’. Furthermore, there was no data to corroborate the supposed link between violent crime and holders of tickets-of-leave. Nevertheless, as will be shown below, this connection was readily accepted, by politicians at least. The key factor that precipitated the spate of reports of garottings was probably the desire to sell newspapers. Several reports of attacks in 1855, allegedly carried out by licence-holders, were exploited in order to do this. Notwithstanding the lack of any firm statistical basis, violent crime in London was used by various newspapers of differing political leanings to criticise the 1853 legislation.

As a result of this perceived link between violent crime in London and the licence system, in April 1856 an inquiry was instigated by Francis Scott M.P., the Conservative member for the Scottish constituency of Berwickshire. This was necessary, he said, because of the effects of the gradual end of transportation as a penal option. Since transportation to Australia was drawing to a close, a ‘criminal population’ had built up in London that ‘formed a distinct educated, well-trained class’. The activity of this class, according to Scott, had led to a significant increase in violent crime. In calling for a select committee he argued that part of the remedy for this supposed problem was greater surveillance of licence-holders and repeat offenders, as Hill had been advocating. Scott’s motion received bipartisan support and the committee that was established as a result noted that as ‘transportation must cease, the whole mind of England’ was ‘awakened’ to the question of how to get ‘quit of the criminals’. The committee heard from magistrates and judges, prison staff, police and civil servants, who all agreed that more could be done to answer this question. The most common suggestions brought before the committee in order to strengthen the 1853 system were the use of longer terms of

63 Ibid., col. 395.
64 Second Report from the Select Committee of the House of Commons on Transportation; Together with the Minutes of Evidence, and Appendix, [C 296] H.C. 1856, xvii, pp. 36, 55.
imprisonment and police supervision of repeat offenders upon release. The committee heard
evidence from five witnesses that the punishment of repeat offenders was too lenient.\textsuperscript{65} For
example, Sir William Erle, a judge of the court of the Queen’s bench, criticised his colleagues’
current practice, asserting that ‘a heavy sentence ought to be passed on confirmed depravity’.
He claimed that: ‘the periods of imprisonment’ imposed by many magistrates and judges ‘have
been too short’.\textsuperscript{66} Supervision was also discussed as a possible remedy for the perceived defects
of the 1853 legislation. Sir Richard Mayne, commissioner of the Metropolitan Police Force,
was asked whether licence-holders and repeat offenders should be subject to police surveillance
in order to encourage rehabilitation and prevent further crime. The commissioner thought not,
as surveillance was ‘inconsistent with our habits here and offensive’.\textsuperscript{67} Yet Hill’s ideas were
now being seriously discussed.

The select committee’s conclusion was measured. It did not accept that the 1853
legislation required wholesale change, finding that licensing ‘has been too short a time in
operation in this country to enable the committee to form a clear and decided opinion either as
to the effects which it has already produced, or as to its probable ultimate working’.\textsuperscript{68} It
endorsed the principle behind the ticket-of-leave system, namely ‘that of enabling a convict to
obtain … the remission of a portion’ of the initial sentence.\textsuperscript{69} But the committee was critical of
the way this new system had been administered, noting the lack of any mechanism to enforce
licence conditions.\textsuperscript{70} While the committee did not recommend Hill’s controversial schemes of

\textsuperscript{65} These were Sir Richard Mayne, Matthew Davenport Hill, William Hart, the procurator fiscal at the sheriff court in
Lanarkshire, and Sir William Erle, a judge of the court of the Queen’s bench. See the Second Report from the Select
Committee of the House of Commons on Transportation, pp. 17, 68, 128.
\textsuperscript{66} Ibid., p. 128.
\textsuperscript{67} Ibid., p. 142.
\textsuperscript{68} Third Report from the Select Committee of the House of Commons on Transportation; Together with the Minutes of
Evidence, and Appendix, [C 355] H.C. 1856, xvii, p. iii.
\textsuperscript{69} Ibid., p. iv.
\textsuperscript{70} Ibid., p. iv.
indeterminate sentences and supervision, it did criticise the 1853 legislation. Its findings were made law by the *Penal Servitude Act 1857*, which received royal assent on 1 July.

The act, reflecting the committee’s report, steered a middle course between the earlier legislation and the ideas of Hill. Principally, it sought to increase the length of sentences by equating terms of penal servitude to the previous terms of transportation. The committee had recommended that: ‘sentences of penal servitude should be changed and lengthened so as to be identical with the terms of transportation for which they are respectively substituted’.\(^1\)

Whereas four years’ penal servitude had been deemed equivalent to seven years’ transportation under the 1853 act, the new equation was therefore seven to seven. A Home Office circular of 27 July 1857 complemented this provision by laying down longer minimum periods of confinement before release on licence.\(^2\) In addition, holders of tickets-of-leave were required to notify the police when moving to a different area of the country. As Sindall has said, some of the ‘slack administration of the 1853 act was tightened up’.\(^3\) The legislation did not seek to fundamentally alter penal policy. Nonetheless, it was a step towards the establishment of greater police control over released criminals. Bartrip and Sindall, the two historians to most fully investigate the genesis of the 1857 legislation, have argued correctly that it was largely a response to a perceived panic about crime.\(^4\) However, this legislation also represented an increasing acceptance within parliament of the views that Hill had been consistently advocating for over a decade.

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\(^1\) Ibid., p. iii.


The 1857 changes to the *Penal Servitude Act of 1853* did not satisfy Hill and his supporters, who were now able to utilise a powerful vehicle to push for the further changes they desired. This vehicle was the S.S.A., which was formed in 1857. From mid-century onwards there was a growth in the number of middle-class pressure groups, such as the S.S.A., the Vigilance Association for the Defence of Personal Rights, the Law Amendment Society and the National Reformatory Union. As Stefan Petrow has noted, these groups sought to exploit ‘the widening of the franchise’ in 1832 and then again in 1867 by presenting themselves as the representatives of the newly enfranchised middle class in an effort to alter government policy.75 The changes desired by these groups, many of whose members were influenced by evangelicalism or utilitarianism, were often those that would aid individuals to choose conduct consistent with the middle-class norm of respectability.76 This was certainly the case with the S.S.A., which was conceived in the autumn of 1856. George Hastings, the lawyer and general secretary of the S.S.A., told the group’s first annual congress that:

… it was suggested to Lord Brougham that he should take the lead in founding an association for affording to those engaged in all the various efforts now happily begun for the improvement of the people, an opportunity for considering social economics as a great whole.77

Many of the association’s early members were, as Hastings said, already actively pursuing various reforms designed to raise the moral standards of the people. The S.S.A. drew members from two particular pressure groups: the Law Amendment Society and the National

Reformatory Union. The former campaigned, primarily, for the creation of a ministry of justice and married women’s property rights, while the latter sought the establishment of reformatory schools for young offenders as a way to break up the criminal class as transportation came to an end.\textsuperscript{78} The concerns of these pre-existing pressure groups became central to the programme of the new association. As John Stuart Mill, himself a member of the governing body of the S.S.A., said, it was a forum for the expression of ‘all opinions consistent with the profession of a desire for social change’.\textsuperscript{79}

Those who joined the S.S.A. and expressed such opinions were often highly influential. Many were drawn from the ‘class of professional men with expert knowledge’, a significant number being lawyers or doctors.\textsuperscript{80} The inaugural council of the S.S.A. included numerous people of great influence, including Edwin Chadwick, the social reformer, and John Simon, the surgeon and public health reformer.\textsuperscript{81} The S.S.A. was intended as a meeting place for people such as these, men and some women, and key political leaders, thereby increasing the likelihood of legislative action that was in line with the aims of the association.\textsuperscript{82} Indeed, many more members were politicians themselves. For example, the original patrons of the association were Lord John Russell, twice a Liberal prime minister, Lord Stanley, an influential Tory who would later serve as foreign secretary in both Conservative and Liberal cabinets, and Lord Brougham, the campaigner for parliamentary reform and the abolition of slavery. Eighteen peers were members of the association’s inaugural council, as were twenty-eight MPs.\textsuperscript{83} Most politicians who became members of the S.S.A. were Liberals. In 1867 eighty-five members of the association’s governing council, whose total membership was 266, were politicians. Of

\textsuperscript{78} Goldman, ‘The Social Science Association’, p. 98.
\textsuperscript{80} Goldman, \textit{Science, Reform and Politics in Victorian Britain}, p. 2.
\textsuperscript{82} Petrow, \textit{Policing Morals}, p. 50.
these, sixty-four were Liberals. Consequently, the S.S.A. was well-placed to influence policy, and especially when the Liberal Party was in power.

The association held its first congress in Birmingham in July 1857. The president, Lord Brougham, explained that the purpose of the association was ‘to aid legislation by preparing measures, by explaining them, by recommending them to the community, or, it may be, by stimulating the legislature to adopt them’. Such efforts were focused on five areas of policy, each of which had its own department within the association. These were penal policy, legal reform, education, public health and social economy. Penal policy, which is of most interest here, was therefore a key area in which the association sought to influence the government and the legislature, and from its inception its efforts to do so were vigorous. For example, the chair of the department of penal policy gave an address at every annual S.S.A. congress. As Goldman has noted, penal reform was a ‘central theme’ of the S.S.A.

From its establishment the S.S.A. aligned itself with the then unpopular ideas of Hill, which were now being put into practice in Ireland by Sir Walter Crofton, the director of Irish prisons since 1854. In response to the cessation of transportation and the introduction of the ticket-of-leave system through the *Penal Servitude Act 1853*, Crofton implemented Hill’s ideas of a register of known criminals and supervision of holders of tickets-of-leave. There were different systems for Dublin and the rest of the country. In Dublin James Organ, whose chief employment was as a lecturer in the city’s prisons, was responsible for supervision. Commencing these latter duties in January 1856, Organ visited every licence-holder in Dublin once a fortnight and furnished regular reports to Crofton. Crofton was very happy with the

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88 Ibid., pp. 102-3, 125.
results of this system, arguing that ‘nothing can be more strict’ than the supervision carried out by Organ and that when licence conditions are breached the ticket-of-leave is ‘revoked immediately’. The female staff of Dublin’s women’s prisons carried out this same task for female licence-holders, with, according to Crofton and the other directors, similarly satisfactory results. A different system, which came into effect on 1 January 1857, operated outside Dublin. Licence-holders had to report themselves to a designated local constabulary barracks on the first day of every month. If the local police had information suggesting that the licence-holder was ‘leading an idle, irregular life’ then this would be reported to the directors, who, upon investigation, could revoke the licence. Despite this supervision, rates of revocation were very low. By August 1857 the licences of only 1 per cent of women under supervision had been revoked, while for men the figure was 3 per cent. Crofton could therefore argue that his system was leading to the reformation of criminals.

Crofton’s assertions of the success of registration and supervision in Ireland found a sympathetic audience in the S.S.A. The example of the so-called ‘Irish system’ was taken as proof that the gaze of the police, or other functionaries, discouraged crime. Members of the S.S.A. then used the apparent success of the Irish system to push for similar reforms throughout the rest of the United Kingdom. For example, the Earl of Carlisle, a Liberal member of the House of Lords, delivered a lengthy address to the 1858 congress in which he praised the Irish system, offered Crofton ‘my admiration’, and also recognised Hill as ‘a foremost authority’ on reform. He described the registration and supervision of members of the ‘criminal class’ as ‘sound’, arguing that such measures were, at least in part, the answer to the question of ‘what

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92 Ibid., p. 30.
shall we do with our convicts?’ now that transportation to Australia was coming to an end.\textsuperscript{95} Such sentiments were expressed every year from 1857 until 1862.\textsuperscript{96} As Sir Joshua Jebb – chairman of the board of directors of convict prisons – said, the ‘Irish system’ was being ‘pressed’ upon the public and the parliament by the S.S.A.\textsuperscript{97}

It is worth briefly noting that policy ‘improvisations’ involving increased state intervention were not unusual in nineteenth-century Ireland.\textsuperscript{98} Therefore, it is not surprising that it was there that Hill’s ideas were first taken up. Numerous examples of a centralising tendency in the government of Ireland, which was far more marked than in Britain, can be found. These include the establishment of dispensaries to provide free medical care to the poor in 1805, a national school system in 1831, and prison reform in 1856, all of which were ‘stages ahead’ of Britain.\textsuperscript{99} Oliver MacDonagh, who has most fully analysed this phenomenon, provides various reasons for what he calls the ‘centralised authoritarianism’ of Irish government, including a governing class that was few in number and separated from the bulk of the Irish population by religion.\textsuperscript{100} The result of these factors was a greater readiness of the state to intervene than in Britain, where supervision was widely condemned in the 1850s and 1860s. In the case of the registration and supervision of licence-holders, Crofton’s claims for the success of the system in Ireland allowed the S.S.A. to advocate from a position of strength for the same measures to be applied throughout the United Kingdom.

\textsuperscript{95} The Earl of Carlisle, ‘Address on the Punishment and Reformation of Criminals’, Transactions 1858, pp. 70, 72.
\textsuperscript{96} For example, see the address of Arthur Kinnaird, Liberal M.P., to the 1860 congress, in which he praised the ‘beneficial results’ of the Irish system, which can be found in Transactions 1860, p. 114. Also see a paper that Baron Holtzendorff, the Prussian academic, contributed to the 1861 Transactions, ‘On Police Supervision’. He argued that supervision, along the lines of that which was operational in Ireland, was necessary as criminals lacked self-control. See Transactions 1861, p. 415.
\textsuperscript{97} General Report on the Convict Prisons, pp. 1, 22.
\textsuperscript{100} MacDonagh, Early Victorian Government, p. 180-1.
The Garotting Panic of 1862 and its Impact on Penal Policy

In 1862, once again, London’s press increased its reporting of violent crime in the capital. Reports of garottings allegedly carried out by licence-holders led to greater parliamentary support for the ideas that the S.S.A. had been pursuing since its inception, and Hill longer still. A garotte attack on Liberal parliamentarian James Pilkington was the first of many similar reported offences in London in 1862 and early 1863 which, it was argued in the press, were the work of licence-holders.\textsuperscript{101} Numerous historians have argued that reports of violent crime in newspapers informed and often altered the views of their readers.\textsuperscript{102} To determine the opinions of the public concerning crime is, of course, a difficult task. As Bartrip has noted, it is hard to ascertain what ‘public opinion’ actually was in the nineteenth century, beyond ‘the sentiments expressed in parliament or the pages of the newspapers’, which represented, far more often than not, the interests of the middle and upper classes.\textsuperscript{103} Nonetheless, he argues that the alarm expressed in the newspapers had a role in forming the views of many Londoners.\textsuperscript{104} There is good reason to believe that newspapers moulded the views of a largely middle-class readership.\textsuperscript{105} Newspapers themselves certainly argued that they had shaped the views of the public in their reporting of an increase in violence on London’s streets. For example, the liberal journal \textit{All The Year Round} said that news of ‘garotte’ attacks had ‘created quite a panic in the town’ and the \textit{Illustrated London News}, which was a conservative weekly newspaper, argued that: ‘Garotting is the talk of the town’.\textsuperscript{106}

\textsuperscript{101} This was discussed in the previous chapter. For examples of this reporting see the \textit{Times}, 14 Aug. 1862, p. 8; \textit{Daily News}, 2 Dec. 1862, p. 4.
\textsuperscript{104} Ibid., pp. 150-81.
\textsuperscript{105} This was discussed in the previous chapter. Also see Sindall, \textit{Street Violence in the Nineteenth Century}, p. 36.
\textsuperscript{106} ‘Small Beer Chronicles’, \textit{All The Year Round}, vol. 8, no. 189 (6 Dec. 1862), p. 296; \textit{The Illustrated London News}, 29 Nov. 1862, p. 571.
As several historians have argued, the increased level of reporting of violent crime in London in 1862 was part of a ‘moral panic’ in the capital, during which alarm was increased in the minds of many Londoners.\textsuperscript{107} A moral panic can be defined as a period of exaggerated public alarm, which is often caused by media reports, and usually focuses upon a social group that is perceived as dangerous and a threat to the rest of society. Many contemporaries, of course, already perceived licence-holders, as deviant – members of a hostile criminal class.\textsuperscript{108} Such alarm, moral panic theory argues, may lead to and be reinforced by reactive legislation, as indeed was the case following alarm in London in 1855 and 1856, which has been discussed above.\textsuperscript{109} The renewed panic in 1862 was probably most marked among members of the middle class in London. As Sindall has explained:

For the middle classes, knowledge of events in London’s streets was restricted to their own limited personal experience and the vicarious experience of reported events in the press. The importance of an event in the public mind is largely dictated by the proportion of coverage it receives in the daily press. Consequently, the increase in reports of garotte attacks led the middle classes to feel insecure in the face of this perceived threat.\textsuperscript{110}

At least partly as a consequence of this public alarm, the government was soon under pressure to act.

In December 1862 the Liberal home secretary, Sir George Grey, instituted an inquiry into the efficacy of the \textit{Penal Servitude Acts}. He did so at the urging of London’s magistrates.


On 15 December Grey received a deputation of London magistrates, led by the lord mayor, eager to discuss the state of the law as it applied to ‘the class of hardened criminals’. Prior to the meeting, London’s magistrates had resolved that: ‘the present system of dealing with the criminal population of this country is defective’. They believed that many repeat offenders and those released on licence, who would previously have been deposited in one of the Australian penal colonies, now found their way back to their old haunts in London. In coming chapters it will be shown that London’s magistrates often interpreted legislation in a manner that minimised its negative impact upon members of the working class, largely due to the role of London’s so-called ‘police courts’ in dispensing justice, and a range of other services, to the poor. Their unusual intervention in 1862 in favour of harsher measures is, therefore, further evidence of a panic regarding crime in London. When the group of magistrates expressed the same views to the home secretary that newspapers had been expounding since the attack on Pilkington, Grey readily accepted that the post-1853 penal system required investigation and appointed a commission to inquire into the Penal Servitude Acts.

The committee of five Conservatives, five Liberals and two legal experts acknowledged the existence of public unease in London and recommended legislative change. It noted that recent acts of ‘violence in the Metropolis’ had ‘caused great alarm to the public’. The committee heard that the best way to quell this alarm was to better enforce licence conditions and sentence repeat offenders to longer periods in gaol in the first place. There were some grounds to inquire into the administration of the licence system. Horatio Waddington, under-

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111 *Times*, 16 Dec. 1862, p. 6.
112 Ibid., p. 6.
115 Ibid., p. 20.
secretary at the Home Office, admitted that in practice licence-holders experienced no
disabilities. He conceded that licences were only revoked when fresh offences were committed,
not for contravention of the various conditions that were stipulated on the licence.
Consequently, these conditions were ‘a dead letter’.116 Mayne, the commissioner of the
Metropolitan Police Force, also made it clear that there were no mechanisms to enforce licence
conditions in London. He said that ‘the reverse of inspection’ took place and admitted that ‘the
police are actually directed not to interfere with “ticket-of-leave men”’ in order, in particular,
to ensure that they were able to gain employment.117 In addition, Crofton criticised this present
system. Now the vice president of the department of penal policy within the S.S.A., Crofton
was called by the committee and questioned at length. His evidence, provided over two days,
fills fifty-eight pages of the committee’s report. He was questioned for longer than any other
witness. Crofton described the system of surveillance that had been in operation in Ireland since
January 1856 and argued that supervision of repeat offenders was imperative in order to
‘surround, by every possible means, the commission of crime by obstructions’.118 Furthermore,
as in 1856, longer sentences for repeat offenders were suggested as a further way to deal with
the public alarm. In all, five witnesses took up this position.119 The S.S.A. itself also called for
police supervision and longer sentences for recidivists at this time.120

A second select committee, also in 1863, made similar findings after, once again, being
heavily influenced by the S.S.A. On 19 February 1863, while the penal servitude acts
commissioners were still hearing evidence, the Earl of Carnarvon called for the establishment
of a further inquiry, this time to investigate discipline in local prisons. Carnarvon, who sat in

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117 Ibid., p. 433.
118 Ibid., p. 254.
119 These were Mayne, Waddington, Jebb, Sydney Gurney, the clerk of assize on the Western circuit, and John Avery, the clerk of arraigns at the central criminal court. See Report of the Commissioners Appointed to Inquire into the Operation of the Acts Relating to Transportation and Penal Servitude. Vol. 2, pp. 77, 134, 150, 154-6.
the House of Lords as a Tory, took a keen interest in penal policy.\textsuperscript{121} He was also a senior member of the S.S.A., rising to become its president in 1868.\textsuperscript{122} This additional inquiry, the establishment of which, again, received bipartisan support, was also put in place due to a belief that violent crime in London had increased of late due to the accumulation of a criminal class. For example, Carnarvon said there had been a ‘startling increase in crime’ and that ‘during a very recent period there was such insecurity in the streets of London that it was dangerous to walk about after nightfall’.\textsuperscript{123} The lords accepted Carnarvon’s arguments and appointed a select committee to inquire into ‘the Present State of Discipline in Gaols and Houses of Correction’ on 20 February.\textsuperscript{124} The twelve-man select committee had equal representation from Conservatives, including Carnarvon who chaired the committee himself, and Liberals. Despite narrow terms of reference, Carnarvon ensured that the committee served as a forum for the programme of the S.S.A. as Crofton, once again, discussed the benefits of police supervision at length. He was supported by the prison inspector John Perry, who said that the only way to restrain repeat offenders was to ‘obtain a repressive power’ over such men when ‘discharged from prison’.\textsuperscript{125} There was also much debate about the difficulty of identifying repeat offenders as such. Three witnesses said that many recidivists used aliases in order to convince magistrates and judges that they were first offenders, thereby escaping with shorter sentences.\textsuperscript{126}

The first select committee, two of whose members were actively involved in the S.S.A., made recommendations concerning both the treatment of licence-holders and the punishment

\textsuperscript{122} Ibid., pp. 87-89.
\textsuperscript{124} \textit{The Daily News}, 9 Jan. 1863, p. 4.
\textsuperscript{125} \textit{Report from the Select Committee of the House of Lords, on the Present State of Discipline in Gaols and Houses of Correction; Together with the Proceedings of the Committee, Minutes of Evidence, Appendix and Index}, [C 499] H.C. 1863, ix, p. 71.
\textsuperscript{126} These were Crofton, William Musson, the governor of Leicester gaol, and William Linton, the governor of West Sussex county gaol.
of penal servitude.\textsuperscript{127} These mirrored the evidence cited above. It did so having accepted that crime was increasing and that this was:

\[\ldots\text{at least partly attributable to defects in the system of punishment now in force, and to the fact that there has been an accumulation of discharged convicts at home, owing to the comparatively small number sent to a penal colony since 1853}.\textsuperscript{128}\]

As discussed above, there was no evidence to substantiate this position, which had been promulgated by numerous newspapers during the recent period of alarm. For example, in November 1862 a leading article in \textit{The Times} blamed the supposed increase in the crime of ‘garotting’ on the ticket-of-leave system, which, it argued, ‘seems to be established solely to catch thieves and let them go again’.\textsuperscript{129} Notwithstanding the lack of evidence that those released from prison on a licence were responsible for the alleged increase in violent crime in London, the commission concluded that penal servitude was not ‘sufficiently dreaded’, predominantly because convicted criminals were, in their view and the view of numerous witnesses, subject to sentences that were too short.\textsuperscript{130} The final report stated that: ‘the want of sufficient efficacy in the present system of punishment ... [is] mainly attributable to the shortness of punishment generally inflicted upon convicts’.\textsuperscript{131} In particular, the ‘principle’ of awarding a heavier punishment to a criminal on a second conviction ‘should be more fully acted upon’.\textsuperscript{132} The commission sought to deal with this perceived issue by increasing the minimum term of penal servitude from three to seven years. Furthermore, a mandatory minimum sentence for ‘habitual criminals’ of seven years’ penal servitude was recommended, although what ‘habitual’

\textsuperscript{127} The Conservative Sir John Pakington had been the first head of the association’s department of public health and was still an active member at this time. Spencer Walpole, again a Conservative, was also a member. See Goldman, \textit{Science, Reform and Politics in Victorian Britain}, pp. 65, 195.


\textsuperscript{129} \textit{Times}, 5 Nov. 1862, p. 8.


\textsuperscript{131} Ibid., p. 23.

\textsuperscript{132} Ibid., p. 72.
precisely meant was left undefined.\textsuperscript{133} Police supervision was also recommended. The commissioners called for ‘strict’ and ‘effective’ supervision of licence-holders.\textsuperscript{134} They said that the ‘best prospect of giving to society a real protection against criminals’ would be to place the holders of tickets-of-leave ‘under effective control and supervision’.\textsuperscript{135} The Carnarvon committee also supported the registering and supervision of repeat offenders, reporting that:

It is of the greatest importance that those offenders who are commencing a course of crime should be made aware that each repetition of it, duly recorded and proved, will involve a material increase of punishment, pain, and inconvenience to them.\textsuperscript{136}

Two parliamentary committees, which had been convened due to concern expressed in newspapers regarding violent crime in London, therefore gave their sanction to key elements of a controversial policy that Hill had been pursuing since 1846 and the S.S.A. since its establishment in 1857.

The work of these committees, influenced (and occasionally populated) as they were by the S.S.A., precipitated significant legislative change. Contrary to the arguments of numerous historians, these changes were part of a coherent programme.\textsuperscript{137} The \textit{Penal Servitude Act 1864}, which received bipartisan support after being introduced by the Liberal government of Lord Palmerston and covered the whole United Kingdom, put in place many of their recommendations. Consequently, it ‘provided for substantial mechanisms of control over recidivistic offenders’.\textsuperscript{138} Firstly, it enacted a system of monthly, in-person reporting by licence-holders to the police, and mandatory notification of change of address to the chief of

\textsuperscript{133} Ibid., p. 72.
\textsuperscript{134} Ibid., p. 32.
\textsuperscript{135} Ibid., p. 32.
\textsuperscript{136} \textit{Report from the Select Committee of the House of Lords, on the Present State of Discipline in Gaols and Houses of Correction}, p. xvi.
\textsuperscript{138} Melling, ‘Cleaning House in a Suddenly Closed Society’, p. 323.
police. Non-compliance with either of these provisions would result in a return to penal servitude.\footnote{139 Penal Servitude Act, 27 & 28 Vict., c. 47, 1864, s. 4.} As Bartrip has argued, these provisions put ‘teeth’ into the ticket-of-leave system.\footnote{140 Bartrip, ‘Public Opinion and Law Enforcement’, p. 169.} Secondly, the act conferred upon a policeman the very significant new power to arrest without warrant any licence-holder ‘whom he may reasonably suspect of having committed any offence, or having broken any of the conditions of his licence’.\footnote{141 Penal Servitude Act, s. 6.} This provision – enabling arrest on suspicion alone - represented a major expansion of the power of the state.\footnote{142 Bartrip, ‘Public Opinion and Law Enforcement’, p. 169.} As a result, it demonstrated the great desire within parliament to suppress the perceived threat from criminals who would previously have been transported. Thirdly, the act responded to the committee’s recommendation to alter the sentencing regime. The minimum period of penal servitude was raised to five years. In addition, those convicted of a felony who had previously been found guilty of committing a felonious offence were to be subject to a mandatory minimum period of seven years’ penal servitude.\footnote{143 Penal Servitude Act, s. 2.} Felony was a broad category of crime including all offences that had previously been punishable by death. Various forms of theft were the most commonly committed felonious offences.\footnote{144 Judicial Statistics. 1862. England and Wales. Part I. Police-Criminal Proceedings-Prisons, [C 3025] H.C. 1863, livi, p. 16; Judicial Statistics. 1863. England and Wales. Part I. Police-Criminal Proceedings-Prisons, [C 3370] H.C. 1864, lvii, p. 16.} So, for example, someone convicted twice of stealing an item from a shop, such as a piece of fruit or a loaf of bread, would face seven years’ penal servitude. These legislative changes, which predominantly resulted from the recommendations of the penal servitude acts commissioners, significantly augmented the power of the state over certain offenders. Indeed, Wiener has justifiably argued that no more influential parliamentary inquiry regarding the penal system was conducted until 1895.\footnote{145 Wiener, Reconstructing the Criminal, p. 344. Wiener is referring to the Prisons Committee: Report from the Departmental Committee on Prisons, [C 7702] H.C. 1895, ivii. The significance of this inquiry will be discussed in the later chapter concerning police supervision.}
These reforms were a triumph, albeit a partial one, for the S.S.A. As Goldman has argued, the 1864 legislation enacted several ‘longstanding elements of its [the S.S.A.’s] programme’.146 The association claimed victory. At the 1864 congress in York, Hill himself noted that: ‘we have zealously assisted in bringing over the largest part of the Irish system into our own island’.147 Hastings also argued that the association’s views concerning penal policy had now been ‘substantially accepted by Parliament, and adopted by the Home Office’.148 This was correct. Measures that had been dismissed since Hill first articulated them in the 1840s had now been accepted, after much advocacy by the S.S.A. Of course, other factors were at play. There had been much debate in the press and in parliament, which members of the S.S.A. had participated in, about the adequacy of Britain’s penal system since New South Wales refused to accept further convicts in 1840. This debate was informed by the notion that many criminals formed a distinct and hostile class. Then in 1862 a panic caused by exaggerated reports of violent crime in London led to the establishment of parliamentary committees, which recommended harsher measures against certain types of criminals, including repeat offenders. As numerous historians have argued, the legislative actions that followed can only be understood in this context of changed circumstances and public alarm.149 Nonetheless, these historians have failed to fully recognise that the specific actions that were taken were adopted from the programme of the S.S.A., demonstrating its significant influence. As we will see in the next section, the legislation of 1864, which built on that of 1857 and 1853 before it, was altered once more by the Gladstone government’s Habitual Criminals Act 1869; and as we will also see below, the S.S.A. was to play an even greater role in the passage of that act.

149 Runciman, Different, but Much the Same, p. 69; Gray, London’s Shadows, p. 112; Welshman, Underclass, p. 6; King, ‘Moral Panics and Violent Street Crime’, p. 57.
This section investigates the factors that led directly to the introduction of the Habitual Criminals Bill 1869 into parliament in February of that year. Did renewed public alarm in London play a major role in pressuring the government to implement further legislative changes, as several historians have argued?\textsuperscript{150} It also asks whether the S.S.A. had sufficient influence over the new government, which took office in November 1868, to successfully push for the adoption of further elements of its agenda. Finally, the contents of the bill will also be considered.

The 1864 legislation put in place several provisions that the S.S.A. had advocated since its inception. Nonetheless, its members continued to agitate for further reform. In a speech to the S.S.A. in September 1864 that was published as a pamphlet, Hill cautioned that it was not the case ‘that our penal code has arrived at perfection’.\textsuperscript{151} Numerous parts of his and the association’s programme had not been adopted. These included supervision of repeat offenders not in possession of a licence and a register of criminals. Hill believed these further measures were necessary in order to ensure all members of the criminal class, not just holders of a licence, were watched over by the police as a means to prevent crime and aid reformation.\textsuperscript{152} So Hill could truthfully say that the association had not ‘accomplished all it has attempted’.\textsuperscript{153} In addition, one element of the 1864 legislation was questioned by Hill. He believed that the five-year minimum term of penal servitude might be ineffective, as judges still had the option of sentencing criminals to a term of imprisonment of two years or less in a local gaol. Judges might ‘shrink’ from inflicting a lengthy term of penal servitude if they felt it was unjust.\textsuperscript{154}

\textsuperscript{152} Matthew Davenport Hill, \textit{Two Charges: Delivered by the Recorder, to the Grand Juries of Birmingham, at the Michaelmas Quarter Sessions for the years 1850 & 1851}, Bristol: n.p., 1851, p. 3.
\textsuperscript{154} Ibid., p. 9.
Nonetheless, it was possible that additional legislative changes would be able to be made more quickly and easily than those of 1864. This was because, as Hill said, there would be no need to ‘establish new principles’.\textsuperscript{155} The government, the parliament, and many members of the public had accepted that there was a growing body of repeat offenders in London who lived by crime.\textsuperscript{156} Furthermore, the principles of police surveillance and mandatory sentences for those deemed to be habitual criminals had already been enshrined in legislation. This argument of Hill’s would be validated before the end of the decade.

Key figures within the S.S.A. believed that 1868 presented the opportunity to ensure the completion of their penal project. At its congress that year, held in Birmingham in early October, Crofton gave an address arguing that the time had come for further reform. Two reasons were given. Firstly, enough time had elapsed since the enactment of the 1864 legislation in order to judge whether police supervision infringed upon the liberty of those under surveillance and, in particular, damaged their chances of gaining and maintaining employment. Crofton said that: ‘practical experience has scattered to the winds those bugbears of “interfering with the liberty of the subject”’.\textsuperscript{157} The police certainly maintained that this was the case. Colonel Henderson, the commissioner of the Metropolitan Police Force, said that after each monthly attendance at a designated police station, ‘no further steps are taken by the police’ to monitor holders of tickets-of-leave. Only if there was a suspicion that a licence-holder was leading ‘an irregular life’ would closer attention be paid. Furthermore, he said that: ‘employers are never informed by the police that they are employing a licence-holder’.\textsuperscript{158} An absence of substantiated complaints to the contrary would appear to bolster Crofton and Henderson’s

\textsuperscript{155} Ibid., p. 3.
\textsuperscript{157} Walter Crofton, ‘Address on the Criminal Class and their Control’, Transactions 1868, p. 300.
position that the liberty of licence-holders had not been infringed by the 1864 legislation. Secondly, Crofton said that after the complete cessation of transportation, which occurred earlier in 1868, police supervision was now the key defence against the ‘criminal classes’. He argued that its ‘completeness’ and ‘thoroughness’, by way of its extension to those other than ‘actual licence HOLDERS’, was imperative. ¹⁵⁹ In addition, he called for the establishment of a register of those who were criminals by ‘repute and habit’. ¹⁶⁰ In a discussion of Crofton’s address nine of ten participants backed his call for further reform, including Carnarvon, the congress’s president, and Frederic Hill. ¹⁶¹ The S.S.A. threw its weight behind the final accomplishment of its long-held penal agenda: police surveillance of all those deemed part of the criminal class.

The association’s success was made more likely by the election of a Liberal government in November 1868, with William Gladstone at its helm. As discussed, many members of the Liberal Party were also active within the S.S.A. Furthermore, the S.S.A. had very strong links to the new home secretary, the Welsh M.P. Henry Bruce. Bruce’s association with the S.S.A. commenced in 1866, when the former education minister delivered a speech on educational reform to the S.S.A. congress in Manchester, for which he was roundly congratulated. ¹⁶² Having met with various members, including the Tory reformer Lord Shaftesbury, Bruce reported to his wife that: ‘I am very glad that I have come here’. ¹⁶³ With this sympathiser now home secretary the S.S.A. sought to capitalise. Crofton led a deputation of senior members of

¹⁶⁰ Ibid., p. 303.
¹⁶¹ The only participant to oppose Crofton was the Liberal peer Lord Houghton, who argued that as the police had significant knowledge of the ‘criminal classes’ further supervisory powers were unnecessary. See ‘The Criminal Classes. Discussion’, Transactions 1868, p. 350.
the S.S.A. to meet Bruce on 14 December 1868, only five days after he took up office. The conservative *Pall Mall Gazette* reported that the deputation urged:

… the importance of taking more active measures for dealing with our criminal classes.

Sir W. Crofton was the spokesman … Mr. Bruce expressed great interest in the important subject brought before him, and after putting various questions, promised that the matter should have the attention of the Government.164

Key members of the S.S.A. were therefore quick to push the new home secretary to build upon the *Penal Servitude Act 1864*.

Crofton and the other delegates were sufficiently encouraged by their meeting to commence drafting legislation. He invited a small group, including Frederic Hill and Barwick Baker, a Gloucestershire magistrate, to London to draft a bill. Baker, whose autobiography contains an account of the meeting, recalled that:

… in a couple of hours, we had got the principles of an utterly unworkable Bill; but I said ‘that it did not signify, for that it would only be in the Home Office Closet for 10 years & before it was called out, we could have got a better Bill into shape’, and I came home well satisfied with having made a very small beginning, which might come to something after many years. What was my astonishment & I may say disgust, though certainly mingled with great pleasure! when I found our wretched little Bill actually printed to be brought before parliament.165

It is not surprising that Baker described the bill that he worked on in such disparaging terms. He was writing long after its failure, which will be discussed at length in the next chapter.

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164 *Pall Mall Gazette*, 15 Dec. 1868, p. 8. This account was reproduced in the *Times* the next day. See *Times*, 16 Dec. 1868, p. 7.
These comments therefore appear to be an attempt to deny responsibility for that failure. It was in Baker’s interests to argue that the bill presented to the home secretary by members of the S.S.A. was nothing but a ‘small beginning’. There are further reasons to believe that the thrust of this account is probably correct: that is, prominent members of the association quickly drafted a bill that was then introduced into parliament with very few alterations. After all, the Habitual Criminals Bill 1869 was introduced into the House of Lords, given the heavy schedule of the Commons, very early in the life of the new government, on 26 February 1869. In addition, during the debate that followed one Liberal peer, Lord Houghton, himself a member of the S.S.A., argued that Crofton was principally responsible for the legislation. ‘The real author of this Bill’, he said, ‘is Sir Walter Crofton’. Furthermore, Bruce also acknowledged Crofton’s role. In 1875, the year after the defeat of the Gladstone government, Bruce told the S.S.A. congress that although he had been the minister responsible for the preparation of the Habitual Criminals Act 1869 and the Prevention of Crime Act 1871, Sir Walter Crofton was ‘entitled to a great share in the authorship of those measures’. Two historians agree that the bill was, in all probability, the work of Crofton’s delegation. Goldman, in reference to Baker’s account, has argued that the S.S.A. ‘dictated the terms of the Habitual Criminals Act in 1869’. And Melling, while he does not actually mention the association, has argued that given the striking similarity between the recommendations made by Crofton’s delegation and the ultimate bill, it appears that ‘a small group of interested individuals succeeded in influencing the newly-elected Government to act on an issue of concern to them, largely in a manner suggested by them’. Bruce was a new cabinet minister with a demanding portfolio. He, as we know, also had strong connections to the S.S.A. Consequently, it is not surprising

166 Ibid., p. 175.
168 Henry Bruce, ‘The President’s Address’, Transactions 1875, p. 323.
169 Goldman, Science, Reform and Politics in Victorian Britain, p. 3.
that he allowed a small group of S.S.A. members, led by Crofton, to draft the *Habitual Criminals Bill 1869*.

The *Habitual Criminals Bill 1869* was introduced into the House of Lords on 26 February 1869 by the Earl of Kimberley, lord privy seal and, consequently, a member of Gladstone’s cabinet. The measures it contained, as Melling said, were very similar to those discussed on 14 December. The clauses of the bill were grouped into five parts. The first concerned licence-holders. It empowered any policeman to take licence-holders into custody and then bring them before a magistrate on suspicion of living by ‘dishonest means’. Failure to prove otherwise would lead to the forfeiture of the convict’s licence. The first part also stipulated that a register of licence-holders should be created, for their ‘better supervision’. The second created new powers over ‘habitual criminals’. Those convicted of a second felony and not sentenced to penal servitude would be subject to a mandatory period of seven years’ police supervision. If the individual being monitored was ‘suspected’ of living by dishonest means and could not prove otherwise to a magistrate, imprisonment with hard labour, for any period less than one year, would follow. Habitual criminals would be similarly punished if found ‘about to commit or aid in the commission of any crime’ or in any building whatsoever without a satisfactory explanation. Furthermore, thrice-convicted felons who had ceased their last term of imprisonment within the last five years would receive a mandatory minimum term of seven years’ penal servitude. Part three reversed the onus of proof on anyone in possession of stolen goods who had previously been found guilty of an offence punishable by penal servitude. Part four increased the penalty for assaulting a police officer from 5 to 20 pounds, or six months’ imprisonment on default of payment. Finally, part five contained some ‘general provisions’.
They stated that a previous conviction need not be proved by a written record but could be done so by any ‘credible witness’.\textsuperscript{171}

As the under-secretary of state for the Home Office, E. H. Knatchbull-Hugessen, explained in a letter to the lord mayor of London:

… the Act has been formed with a view to the protection of the public from the depradations [sic] of detected offenders by restraining them from lapsing into the old habits of crime. For this purpose greatly enhanced powers have been entrusted to the police.\textsuperscript{172}

In short, the bill sought to significantly increase the power of the state over licence-holders and repeat offenders in a range of ways that were consistent with the programme of the S.S.A.

However, the direct role of the S.S.A. in the genesis of this bill is little recognised in the literature concerning the changing penal system of the mid nineteenth-century.\textsuperscript{173} As Goldman has argued, ‘the organisation has been largely forgotten’.\textsuperscript{174} Numerous scholars, such as W. G. Runciman, Pete King and Drew D. Gray, have recently argued that the legislation was introduced, primarily, in response to a ‘moral panic’ in London about crime in the capital, and garotting in particular. These scholars claim that this panic was linked to the increased reporting of crime in London’s press.\textsuperscript{175} Petrow also refers to the significance of public unease as a causal factor of the 1869 legislation, although he does note that the S.S.A. played a major part in advocating for and preparing the measure.\textsuperscript{176}

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\textsuperscript{171} Habitual Criminals Bill, 32 & 33 Vict., c. 99, 1869.
\textsuperscript{173} This was discussed in the previous chapter.
\textsuperscript{174} Goldman, ‘The Social Science Association’, p. 96.
\textsuperscript{175} Runciman, \textit{Different, but Much the Same}, p. 69; King, ‘Moral Panics and Violent Street Crime’, p. 57; Gray, \textit{London’s Shadows}, p. 57.
\textsuperscript{176} Petrow, \textit{Policing Morals}, p. 17.
\end{flushleft}
concern about violent crime may have increased in the period directly before the bill was introduced. Goldman, who also recognises the important role played by the S.S.A., refers to an increase in references in *The Times* to the crime of garotting between October 1868 and April 1869. He has noted that in the first nine months of 1868, *The Times* carried only two reports of trials of those suspected of garotting, whereas in the next seven months fourteen such reports appeared.\(^{177}\) Eight letters concerning the need for further measures to control criminals appeared in the newspaper between October and April, as did six leading articles.\(^{178}\) The paper called for greater police powers, including supervision of all repeat offenders and arrest based only on suspicion, as a way of ‘dealing with the criminal classes’.\(^{179}\) Consequently, Goldman has argued that: ‘if the coverage of garottings in *The Times* is any guide, there was a sudden crisis of crime and panic from October 1868 to April 1869’.\(^{180}\)

However, the notion that a crisis existed in the months of late 1868 and early 1869 is highly questionable. When Goldman’s device of counting the cases of garotting referred to before and after October is used with other London newspapers no significant increase can be discerned. From October 1868 to April 1869 five other major London newspapers, the *Daily News*, the *Standard*, *Lloyd’s Weekly Newspaper*, the *Morning Post* and *Reynolds’s Newspaper*, only covered four cases of suspected garotting.\(^{181}\) In the preceding seven months three cases had been referred to.\(^{182}\) Furthermore, there was no increase in the number of relevant letters and leading articles. All these newspapers continued to occasionally express concern about the effects of the cessation of transportation and the ability of the authorities to deal with licence-


\(^{179}\) *Times*, 2 Dec. 1868, p. 6.


\(^{181}\) *Daily News* and *Reynolds’s Newspaper* each referred to two cases. See *Daily News*, 12 Nov. 1868, p. 6 and 8 Dec. 1868 p. 6, and *Reynolds’s Newspaper*, 17 Jan. 1869, p. 1 and 25 Apr. 1869, p. 6. The other three newspapers did not report on any cases.

holders and repeat offenders.\textsuperscript{183} However, this was not a new state of affairs. Other than in \textit{The Times}, no evidence is available to suggest an increase in the reporting of violent crime in London or the presence of an especial panic in late 1868 and early 1869. In fact, the opposite may have been the case. In a leading article regarding the \textit{Habitual Criminals Bill 1869}, the \textit{Daily News} argued that: ‘the public mind is pretty much at ease as to the classes with which it deals’\textsuperscript{184} It does not seem defensible to assert that there was a general state of alarm in London solely on the basis of reporting in \textit{The Times}. Public alarm, caused by newspaper reporting, was an important factor in precipitating legislative changes in 1857 and 1864, but not in 1869.

It appears more likely that the S.S.A. was leading the push for further penal changes, and using \textit{The Times} to do so. It is no coincidence that \textit{The Times} commenced its calls for further regulation of repeat offenders in October 1868. The S.S.A. congress, at which Crofton called for the completion of the S.S.A.’s long-held penal programme, concluded on 7 October. Only then did \textit{The Times} commence its campaign against garroting. A closer analysis of the letters published in \textit{The Times} from October 1868 is also instructive. Of the eight letters five were by Baker and one was by Edwin Hill, Matthew’s brother who had been part of Crofton’s deputation to Bruce\textsuperscript{185} These letters called for police supervision of all repeat offenders, a central office to enable the monitoring and identification of recidivists and more deterrent sentences - exactly what Crofton had advocated at the recent congress. It appears that \textit{The Times} was being used as an organ of opinion by members of the S.S.A. Thus it is not correct to argue that the press created a state of anxiety amongst Londoners that the S.S.A. could then


\textsuperscript{184} \textit{Daily News}, 6 Aug. 1869, p. 4.

\textsuperscript{185} \textit{Times}, 4 Nov. 1868, p. 5; 7 Dec. 1868, p. 5; 17 Dec. 1868, p. 6; 7 Jan. 1869, p. 5; 13 Jan. 1869, p. 5; 2 Feb. 1869, p. 5. Of the other two letters, one was from ‘A Chairman of Quarter Sessions’, arguing that men ‘addicted to robbery’ are allowed to ‘freely’ contravene the law. See the \textit{Times}, 4 Nov. 1868, p. 5. The other was by G. L. Fenwick, the chief constable of Cheshire, who believed that further, unspecified, impediments must be placed in the way of ‘robbers’. See the \textit{Times}, 12 Jan. 1869, p. 5.
exploit. Rather one newspaper in particular took its lead from the S.S.A. in repeating and publicising the association’s calls for the completion of its longstanding agenda.

3. Conclusion

The *Habitual Criminals Act 1869* was largely the result of much advocacy by the S.S.A. as transportation to the Australian colonies was ceasing to be a penal option. Firstly, the act must be seen in the context of a changing penal system. The gradual end of transportation fostered concern in London, and throughout the United Kingdom, that a large body of offenders, who previously would have been deposited in Australia, were now to be released at home. This anxiety was stoked by arguments, common in the press, that many of the convicted criminals now to be released after completing their sentences were repeat offenders who formed a distinct and hostile class.\(^{186}\) Such a class, in reality, did not exist. Yet the idea of a criminal class was a very powerful and widely accepted one. The government was explicit that the *Habitual Criminals Act 1869* was a response to the cessation of transportation and resulting accumulation of what it believed was a criminal class.

The key measures contained in the 1869 legislation built upon earlier legislative efforts that were designed to mitigate the impact of the end of transportation. Legislation of 1853, 1857 and 1864 introduced the new punishment of penal servitude, put in place and refined the licence system, and sought to institute a tailored sentencing regime for recidivists. In doing so, these acts adapted measures that were already in operation in Australia and Ireland. The *Habitual Criminals Bill 1869* expanded the powers of the state over licence-holders and repeat offenders. It augmented the ticket-of-leave system that had been first introduced in 1853 by increasing the supervisory power of the police; and it also extended mandatory sentences for recidivists, first introduced by the act of 1864. The *Habitual Criminals Bill 1869* contained, as

Radzinowicz and Hood have noted, a ‘heavy baggage of repressive measures’. But perhaps it would be more correct to say that it added further weight to the baggage of measures that had been introduced from 1853.

One of the reasons that the governments of 1857 and 1864 deemed these legislative changes to be necessary was because of public alarm in London concerning violent crime. In one respect, then, the development of this post-transportation penal system was ad hoc, as Bartrip has claimed. Yet more and more of the consistent policy of Hill, Crofton and the S.S.A. was enacted, including longer sentences for recidivists, police supervision after release and a register of criminals. This has been largely overlooked by historians of mid-Victorian crime and penal policy. Governments were clearly influenced by the reporting of crime in the 1850s and 1860s, and the increased public concern that such reporting precipitated. This is a point that numerous historians have made. However, the actions that were then taken were often borrowed from the agenda of the S.S.A. Thus the main argument in the relevant literature – that penal legislation in the period was a piecemeal and uncoordinated attempt to respond to altered circumstances – is not accurate.

This is especially true of the Habitual Criminals Act 1869. The S.S.A. called for further legislation in October 1868, based on its long-standing view that the ultimate end of transportation to Australia made an expansion of the power of the state over criminals at home vital. The Times subsequently took up this cause. Then the election of the Gladstone government in November further strengthened the position of the S.S.A. due to its ties to the new home secretary, whom it quickly and successfully sought to influence. As a result, the

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*Habitual Criminals Bill* was introduced into the House of Lords in February 1869. The prevailing interpretation of the genesis of the *Habitual Criminals Act 1869* is therefore incorrect. While public panic caused by London’s press had been an important factor in precipitating earlier legislation, this was not the case in 1868 and 1869. Instead the S.S.A., to a very great extent, was responsible for the 1869 legislation. The passage of the bill and its early operation will be the subject of the next chapter.
Chapter 2. The Passage and Early Operation of the *Habitual Criminals Act 1869*

... measures are not unfrequently passed through the Legislature with so much haste and so little consideration, that they are found to contain ambiguities [sic] and complications which render action upon them extremely difficult. This is the case with the Act of 1869, for some of its clauses are full of contradictions and defects.¹ The Earl of Carnarvon, Conservative peer, 25 Apr. 1871.

The government had high hopes that the *Habitual Criminals Act 1869* would help to answer the key question arising from the cessation of transportation: ‘What shall we do with our convicts?’² However, within two years the same government considered it necessary to repeal the legislation and, after significant changes, reintroduce its principal measures through the *Prevention of Crime Act 1871*. Why this change was made will be assessed in this chapter.

There appeared to be much agreement that the *Habitual Criminals Act 1869* would do a great deal to curtail the activities of the criminal class. Positive early appraisals of the legislation were provided by, among others, cabinet ministers, the overwhelming majority of the press, and senior police officers.³ For example, the *Pall Mall Gazette*, a conservative newspaper, said the act would ‘materially facilitate the operations’ of the police, and the superintendent of the Southwark division of the Metropolitan Police Force said it would prevent ‘the various classes of persons whom it is designed to reach’ from ‘carrying out their evil designs’.⁴ Nonetheless, within months of the legislation’s enactment it became clear – even to the government itself – that, as the Earl of Carnarvon said in the quotation above, the *Habitual Criminals Act 1869* was deeply flawed.⁵ To a very large extent it had failed to achieve its objectives, especially in

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² The Earl of Carlisle, ‘Address on the Punishment and Reformation of Criminals’, *Transactions of the National Association for the Promotion of Social Science 1858*, London: John W. Parker and Son, 1859, pp. 70, 72.
³ For example see the *Daily News*, 6 Aug. 1869, p. 4; *Morning Post*, 30 Aug. 1869, p. 9; *Times*, 27 Feb. 1869, p. 9.
London, and its repeal was deemed necessary. This chapter will, initially, provide an assessment of the parliamentary debate on the Habitual Criminals Bill 1869 and the numerous amendments that were made. The second section will analyse the working of the legislation until its repeal. Finally, the third section will provide an explanation of the new legislation of 1871 and will assess whether it remedied the perceived defects of the 1869 act.

Many historians have claimed that the Habitual Criminals Act 1869 was a repressive measure that led to unreasonable interference with a designated section of the working class by firstly police and, subsequently, magistrates and judges. While numerous historians have noted several flaws in the 1869 legislation, such as the failure to mandate monthly reporting for those under supervision and an overly broad definition of habitual criminal that meant the registers were needlessly large, they nonetheless argue that the act represented a significant increase in the power of the state over certain offenders. For example, Stefan Petrow has claimed that as a result of the Gladstone government’s habitual criminals’ legislation ‘police power over habitual criminals was immeasurably enhanced: the police thereafter had the potential to beset their every move’. Magistrates and judges, Petrow suggests, supported the police in this endeavour. He has said that: ‘police testimony largely determined whether a convict deserved rescue from, or was consigned to, a life of crime’, as magistrates and judges would convict recidivists even on the basis of questionable evidence. Several historians argue that through the application of these powers the police, supported by magistrates and judges in sentencing, actually created a criminal class. The ‘stigmatising’ effect of the legislation, it is said, acted

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6 Ibid., cols. 568-70.
8 Petrow, Policing Morals, p. 51.
9 Ibid., p. 51.
to ‘reproduce’ criminality. However, as will be discussed below, this argument is valid for the initial period after the introduction of the Habitual Criminals Act 1869 in London only to a limited extent. It exaggerates the power of the police and wrongly supposes that the government, the Metropolitan Police Force, and magistrates, were united in a desire to monitor and control the criminal class. Instead, as we shall see, the poor drafting of the Habitual Criminals Act 1869 along with the actions of magistrates ensured that its impact upon most of those it sought to target was minimal.

1. The Passage of the Habitual Criminals Act 1869

The Habitual Criminals Bill 1869 was intended to bolster the post-transportation penal regime in order to ensure, primarily, that the supposedly growing group of licence-holders and repeat offenders were subject to police monitoring following their release from prison.

Despite the vocal support of numerous London newspapers, several of the bill’s provisions, such as police supervision and mandatory minimum sentences, were nonetheless controversial. This section will analyse the legislation’s highly contested passage through parliament, with a particular focus on how the bill was amended in response to objections regarding the novelty and severity of the measure. The impact of the legislation can only be fully understood in light of these changes, which, as we shall see, were significant.

Debate in the Parliament

The Liberal Earl of Kimberley gave notice of the Habitual Criminals Bill in the House of Lords on 22 February 1869. The bill was, as rarely occurred, introduced into the Lords due to a lack of business in that chamber compared to the Commons. Kimberley presented it on 26

11 Johnston, Crime in England, p. 36.
12 This was discussed in the previous chapter.
13 This was not unusual. Legislation in the nineteenth-century was often amended significantly during its passage through parliament. Oliver MacDonagh has argued that ‘almost invariably, there was compromise … in the committee stage in parliament’. MacDonagh says this was primarily due to the advocacy of those impacted by the legislation. In this case – as we shall see – one such group was pawnbrokers. See Oliver MacDonagh, ‘The Nineteenth Century Revolution in Government: a Reappraisal’, Historical Journal, vol. 1, no. 1 (March 1958), p. 58.
February. He explained that the bill was not a response to any sense of public alarm, but rather an attempt to deal with a problem that had been increasing for some time: the expansion of the criminal class at home due to the cessation of transportation. He said that an effective system of supervision of repeat offenders, based on the Irish model, was the principal object of the bill. In the nineteenth century policy ‘improvisations’ involving increased state intervention were often implemented in Ireland before they were tried in Britain. Kimberley conceded that the bill contained harsh measures, but assured the Lords that it would effectively target ‘habitual criminals’, who were, he asserted, determined to wage ‘war on society’. The Conservative Earl of Shaftesbury spoke in reply, foreshadowing the bipartisan support that the bill was to enjoy. He said that Kimberley had exaggerated the threat from the ‘criminal class’ and criticised the failure of the bill to clearly define habitual criminality. Yet he enthusiastically welcomed the focus on receivers of stolen goods as a means to reduce crime.

The bill came up for second reading on 5 March and strong arguments were put for and against several measures contained in it. The Tory Earl of Carnarvon supported the bill on the grounds that it corrected perceived flaws in the present system: the inability to adequately track repeat offenders and to police the terms of tickets-of-leave. He believed a mandatory period of penal servitude to be followed by supervision would remedy this defect. Lord Romilly and the Duke of Cleveland, both Liberals, also supported the introduction of a mandatory minimum sentence of seven years’ penal servitude for a second felony conviction. Both believed that

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17 Ibid., cols. 345-6.
repeat offenders were too often sentenced to very short periods of imprisonment.\textsuperscript{20} However, Lords Houghton and Hylton, a Liberal and Conservative respectively, opposed the bill on the grounds that it placed too much power in the hands of policemen and that repeat offenders would become marked men, unable to obtain employment.\textsuperscript{21} As discussed in the preceding chapter, this was a common criticism of police surveillance.

On March 15 the bill went to a committee of the whole House of Lords. At this stage several important amendments were made, including an alteration to the reporting arrangements attached to tickets-of-leave. The change made by the Lords, as we shall see, came to be much criticised. The original bill contained no provision regarding reporting conditions for licence-holders and others deemed habitual criminals. Had the bill passed into law unchanged in this respect the monthly reporting clause of the \textit{Penal Servitude Act 1864} would have remained in force. By this earlier legislation licence-holders were required to report monthly and in person to a designated police station. Shaftesbury stated that according to a ‘minute inquiry’ into the operation of monthly reporting he believed it was ‘nearly an absolute failure’.\textsuperscript{22} He had a particular concern that it sometimes led to the discovery of licence-holders’ criminal pasts by their employers, thereby jeopardising their jobs. Due to such concerns about employment, Shaftesbury believed it would be wise to abolish reporting altogether. Kimberley noted Shaftesbury’s concern and agreed that it would be a ‘great hindrance’ for those under supervision to have to report themselves each month.\textsuperscript{23} Hence Kimberley introduced an amendment to the \textit{Penal Servitude Act 1864} in committee to remove the reporting requirement for licence-holders.\textsuperscript{24} The amendment was agreed to.

\textsuperscript{20} Ibid., cols. 695, 712.
\textsuperscript{21} Ibid., cols. 695-6, 709-11.
\textsuperscript{22} Ibid., col. 697.
\textsuperscript{23} Ibid., col. 713.
\textsuperscript{24} 195 \textit{Parl. Deb.}, H.L. (3rd ser.), col. 222 (6 Apr. 1869).
A further amendment again reduced the power bestowed upon the police, and on this occasion the magistrates also. The bill gave any policeman the power to arrest, without a warrant, a licence-holder whom he suspected of earning his or her livelihood by dishonest means. If such a person, when brought before a magistrate, failed to establish that he or she was not earning a living in this way the licence would be revoked and the individual would be committed to return to prison for a period of up to a year. It was in reference to this provision that Kimberley had approvingly noted that the legislation created a ‘different code’ for those who set the ‘laws of society at defiance’. However, both Liberals and Conservatives voiced objections to reversing the onus of proof in this way. To alleviate this concern, Kimberley offered a compromise in committee. He proposed an amendment requiring the written authority of the chief officer of police of the relevant police district to arrest on suspicion. This amendment was accepted.

Changes were also made to the bill’s provisions regarding receivers of stolen goods; once more lessening the severity of the bill. Under the bill any person previously convicted of an offence punishable by imprisonment and subsequently discovered to have stolen goods in their possession was deemed to have known them to be stolen until they proved the contrary. This measure was aimed at curbing the activities of professional fences whom many, including the principal architects of the legislation, believed sat atop the criminal hierarchy. Nonetheless, the measure did not find much favour in the House of Lords. Carnarvon proposed an amendment deleting the words ‘punishable by imprisonment’ and replacing them with ‘involving fraud or dishonesty’ in order to reduce the number of people brought within the scope of the provision. Kimberley concurred that this new language would better target

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26 Lord Romilly (Liberal), Lord Shaftesbury (Conservative) and Lord Hylton (Conservative), 194 Parl. Deb., H.L. (3rd ser.), cols. 693-9 (5 March 1869).
receivers of stolen goods. The amendment was agreed to, as was a further change proposed by Romilly requiring seven days’ notice to be given to the accused of the intent to prove the previous conviction. Any less time, it was argued, would not be sufficient to enable the accused to prepare a defence.

The Lords also substantially altered the bill’s provisions regulating pawnbrokers. In the nineteenth century pawnbroking services were primarily used as a means for poor families to gain access to cash through pawning, with the intention of later redeeming, their own property. An 1872 select committee heard from a London missionary that half of the working class pawned their property. Pawnbrokers were therefore a vital source of funds for the poor. Yet, as Alannah Tomkins has noted, the press and other commentators often argued that many pawnbrokers aided thieves who used their shops as ‘a way to dispose of stolen goods’. Under the initial bill pawnbrokers were to be bound, at any time during business hours, to produce for the police books describing all articles currently pawned with them and all goods that the officer reasonably suspected to be stolen or fraudulently obtained. If required by the officer, the pawnbroker was compelled to deposit all such articles with the chief of police. In addition, if any officer provided information to a pawnbroker describing a certain stolen article and it subsequently came into the pawnbroker’s possession, he was bound to inform the police. These measures were designed to mitigate the risk of pawnbrokers acting as receivers of stolen goods. London’s pawnbrokers reacted angrily, quickly pledging around 800 pounds to fund a campaign opposing the bill. While they objected to the additional police powers, the chief

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31 Report from the Select Committee on the Pawnbrokers Bill; Together with the Proceedings of the Committee and Minutes of Evidence, [C 288] H.C. 1872, xii, p. 47.
33 Habitual Criminals Act, 32 & 33 Vict., c. 99, 1869, sec. 4.
objection of pawnbrokers was to having their trade referred to in a bill targeting habitual criminals. They, they believed, would damage their reputation as honest businessmen.\textsuperscript{35}

Because of this opposition the Liberal Lord Lyveden successfully proposed an amendment to strike out the relevant clauses.\textsuperscript{36} The impact of all major amendments in the House of Lords was to lessen the severity or scope of the bill – or both. Despite widespread anxiety about the cessation of transportation, and classical notions of justice continued to be strongly held by many, Conservatives and Liberals alike.\textsuperscript{37} Punishment, argued numerous peers across party lines, should be proportionate to the crime, and reformation should be its ultimate aim. The bill was accepted as amended by the committee, which reported its amendments to the House of Commons on April 16.

The Home Secretary, H. A. Bruce, presented the amended bill to the House of Commons on 12 April; at which point it was read for the first time without debate. No debate accompanied the second reading on 26 July. The bill was first debated in the Commons, albeit briefly, on 4 August in committee. Bruce outlined the bill’s key measures to the house: police supervision, a system of registration, and mandatory minimum sentences for those convicted of a third felonious offence. The present law concerning the ‘criminal class’ was, he complained, ‘too lenient’. The accumulation of this class in large cities due to the ending of transportation meant that society now needed to ‘arm itself with more effectual weapons’. However, Bruce noted concerns already expressed in the Lords regarding threats to the liberty of the subject. He was therefore ‘anxious’ not to carry ‘this repressive legislation’ any further than was necessary.\textsuperscript{38}

\textsuperscript{35} \textit{Times}, 17 March 1869, p. 12; A. Hardaker, \textit{A Brief History of Pawnbroking: with Full Narrative of how the Act of 1872 was Fought for and Obtained and the Stolen Goods Bill Opposed and Defeated}, London: Jackson, Ruston and Keeson, 1892, pp. 162-3.

\textsuperscript{36} 194 \textit{Parl. Deb.}, H.L. (3rd ser.), cols. 1344-6 (15 March 1869).

\textsuperscript{37} This has been discussed in previous chapters.

\textsuperscript{38} 198 \textit{Parl. Deb.}, H.C. (3rd ser.), cols. 1251-60 (4 Aug. 1869).
The Conservative Sir Charles Adderley spoke next and opposed the bill. He disapproved of police supervision, mandatory minimum sentences and the reversal of the onus of proof. These measures, he said, took the principle of deterrence ‘to an outrageous extent’, at the expense of reformation.\(^{39}\) Adderley found support from every other speaker in the Commons bar one. Five further members, two Conservatives, two Liberals and a Radical, argued that the legislation was unduly severe and based on new and obnoxious principles.\(^{40}\) Only the Conservative Sir George Jenkinson approved of the bill as amended by the Lords.\(^{41}\)

The middle-class men and women of the Social Science Association (S.S.A.) were drawn overwhelmingly from the liberal professions and were near unanimous in their support of the measures contained in the *Habitual Criminals Bill 1869*.\(^{42}\) The parliament, with its more diverse membership, was home to a greater variety of views. As a result of the strength of the criticism that the bill received in the House of Commons the government was forced to agree to a number of further amendments. These, as was the case in the Lords, were generally intended to mitigate the legislation’s severity. A major objection to the bill in the House of Commons was regarding police supervision. As discussed above, several members were strongly opposed to this measure. Bruce suggested an amendment to give the courts the discretion to order a lesser period than seven years. He did this to ‘meet the objections’. This amendment was accepted.\(^{43}\)

The imposition of a mandatory sentence of seven years’ penal servitude following a third conviction for a felony also attracted strong opposition, which was not only expressed in the House of Commons, but also in the press. Notably, this measure was deemed to be too

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\(^{39}\) Ibid., cols. 1260-5.

\(^{40}\) Ibid., cols 1266-73.

\(^{41}\) Ibid., col. 1273.


severe by two people who had been instrumental in the bill’s genesis. In The Times the Gloucestershire magistrate and S.S.A. member Barwick Baker voiced concern that a sentence of seven years might be considered to be too harsh by judges and juries, leading to evasion through a refusal to convict. He recommended that the clause be amended.44 Matthew Davenport Hill, the penal reformer whose ideas had - to a very great extent - influenced the position of the government on the question of habitual criminals, wrote to England’s principal legal magazine, the Law Times, regarding the legislation. In the pages of the conservative magazine he pointed out that ‘taking an apple which had fallen from a tree’ was a felony and that to pass a mandatory sentence of seven years for three such crimes was unjustifiable. He cited several recent cases in which he believed a sentence of seven years’ penal servitude would be too harsh and echoed the concern that unjust acquittals could be the only result of such a provision.45 While Baker and Hill were both important figures in the drafting of the Habitual Criminal Bill 1869, Crofton had been its key author. This explains how the two men could oppose one its provisions. The government, as the previous chapter demonstrated, was most susceptible to the views Baker and, in particular, Hill.46 In committee Bruce noted that: ‘great objection had been taken to this clause’. After a brief discussion it was agreed that the clause should be omitted entirely.47 The key mechanism to achieve one of the bill’s major objectives – longer sentences for repeat offenders – was therefore removed.

A substantial change was also made respecting registration. The original bill stipulated that a central register of ‘convicts’ - meaning licence-holders - was to be kept in London. Bruce moved an amendment substituting the word ‘criminals’ for ‘convicts’, in order to provide for

44 Times, 8 March 1869, p. 4.
the registration of more offenders. The legislation’s definition of crime included all felonies and numerous misdemeanours. The misdemeanours were obtaining money by false pretences, conspiracy to defraud and being at large at night with the intent of committing a crime, with either housebreaking instruments or a disguised face.\(^48\) Bruce said that at present many repeat offenders escaped being sentenced as such due to imperfect knowledge of their history of offending. Broadening the scope of registration would, Bruce argued, solve this problem. However, we will see that it created others. No further discussion is recorded regarding this amendment, which was agreed to.\(^49\)

Finally, further amendments were made regarding receivers of stolen goods. In the bill as amended by the Lords the burden of proof fell upon anyone found in possession of stolen goods who had a previous conviction for a crime involving fraud or dishonesty. George Young, the solicitor general for Scotland, proposed amending the clause so that a previous conviction would be ‘admissible as evidence’, but no longer prima facie evidence of guilt. He provided no reason for his amendment, which lessened the severity of the clause. With no discussion the amendment was accepted. John Stapleton, Liberal M.P. for Berwick, also introduced an amendment seeking to make it easier for policemen to gain access to premises thought to house stolen property. Stapleton believed gaining written authorisation from the chief officer of police would be a quicker and simpler process than applying to a magistrate for a warrant. His amendment, which, as we will see, proved problematic in practice, was also agreed to without discussion.\(^50\)

The committee reported on 5 August and, after a short debate, the report was accepted by the house. The Bill was considered on August 6, without debate, and was read for the third time. As Baker recalled being told by an opposition M.P., Conservative members ‘said nothing

\(^{48}\) See *Habitual Criminals Act*, s. 20.
\(^{50}\) Ibid., cols. 1281-2.
but “Aye”, and it passed very pleasantly’. The amendments made in the House of Commons were reported to the Lords on August 9, and accepted after a brief discussion. The measure was therefore supported by both major parties, despite the vigorous objections of numerous Conservatives and Liberals to the original bill. The bill received royal assent on 11 August 1869, the last day of the session. Given the strength of the British discourse regarding the liberty of the subject it is not surprising that so many members of parliament objected to the original bill and forced the government to accept alterations. However, this necessarily rushed process at the very end of a session that had been full of significant legislative measures meant the final act contained numerous defects. It will be argued in the next section that these flaws were one significant factor that undermined the intended working of the legislation.

2. The Effectiveness of the Legislation

The Habitual Criminals Act 1869 was quickly hailed a success by London’s press, the Metropolitan Police Force, the government, and the Home Office. Yet during the course of the act’s first year, strong criticisms of its operation began to appear publicly in the press and privately in letters to the Home Office. This section will examine the way the new act functioned during 1879-70. In doing so, it will challenge the existing historical consensus which considers that the act, although imperfectly drafted, still allowed the police and courts to launch a significant campaign against ‘habitual criminals’.

Several London newspapers welcomed the habitual criminals’ legislation. It was widely argued in London’s press that the measures contained in the legislation, principally the registry and police supervision, were appropriately stringent. It was claimed that the post-

53 Petrow, Policing Morals, p. 51; Wiener, Reconstructing the Criminal, p. 149; Godfrey, Cox and Farrall, Serious Offenders, p. 205.
54 Pall Mall Gazette, 21 Dec. 1869, p. 4; Daily News, 6 Aug. 1869, p. 4; Times, 27 Feb. 1869, p. 9; Times, 16 March 1869, p. 11.
transportation penal regime put in place by the *Penal Servitude Acts* of 1853, 1857 and 1864 was not harsh enough. Through inadequate prison terms and early release, the rights of members of the criminal class, it was said, were being upheld at the expense of those of respectable citizens.\(^{55}\) Tougher legislation that restricted the freedom of this group of offenders by significantly increasing the power of the police was now necessary, primarily due to the end of transportation.\(^{56}\) For example, in a leading article from December 1869 the *Pall Mall Gazette* said that: ‘This is a pretty good bill of fare’, as registration and supervision would ‘materially facilitate the operations’ of the police.\(^{57}\) The liberal *Morning Post* also approved of the legislation, arguing that through registration and supervision it would be a ‘terror’ to ‘those who prey on society’.\(^{58}\) In addition, the *Daily News*, another liberal paper, referred to the accumulation of a criminal class in London, claiming that this had occurred due to the cessation of transportation. The newspaper bemoaned the fact that: ‘our forefathers hung them [repeat offenders] and got rid of them; we imprison them, and then bid them go forth’.\(^{59}\) Consequently, the stern measures contained in the *Habitual Criminals Act 1869* were now needed.

The government claimed, very early in the life of the legislation, that the *Habitual Criminals Act 1869* had been a success. In the House of Commons Bruce robustly defended his legislation twice in the first half of 1870. On 29 April Bruce was questioned by Richard Assheton Cross, the Conservative M.P. for South West Lancashire, about the failure of the *Habitual Criminals Act 1869* to define what police supervision actually meant. Bruce admitted that the omission left the legislation ‘open to criticism’, but nonetheless confidently predicted that the registration of criminals, ‘which was now being carefully pursued’, and police

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57 *Pall Mall Gazette*, 21 Dec. 1869, p. 4.  
58 *Morning Post*, 10 Aug. 1869, p. 4.  
supervision would ‘have excellent effects’. On 5 May Bruce received a pre-arranged question, this time from Stapleton - a friendly Liberal M.P. - seeking information on the working of the legislation. Bruce approvingly informed the House that between 9 August 1869 and 28 March 1870 a total of 12,277 criminals had been registered, 2,501 of these in London. In addition, within the Metropolitan Police District thirty people had been convicted under the act for receiving stolen goods, eight of harbouring thieves, six of purchasing small amounts of metal, sixty-four of assaulting a policeman (where the sentence was greater than two months in duration), and 287 for loitering and vagrancy. These data demonstrated, according to Bruce, that ‘the enforcement of the Act has had a beneficial influence’. Kimberley also said, albeit without recourse to any evidence, that, ‘in the metropolis’ in particular, the legislation ‘had been made [sic] instrumental in breaking up many haunts of thieves, and in otherwise putting a check upon the criminal classes’. These claims were repeated in a Home Office report of 1872 regarding the effectiveness of the Gladstone government’s habitual criminals’ legislation. However, Bruce’s statistics are of questionable worth when assessing the impact of the legislation. Other than the purchase of small amounts of metal, each of the other crimes he listed were offences prior to the enactment of the habitual criminals’ legislation; and he provided no evidence of the success of the legislation’s two principal provisions: registration and police supervision. Many criminals had been registered, he said, but no evidence was provided that more crimes were being prevented or repeat offenders recognised as a result. Nonetheless, according to the government, its efforts against repeat offenders were succeeding.

The leadership of the Metropolitan Police Force also believed that the Habitual Criminals Act 1869 provided the police with useful tools in order to combat recidivism. The

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commissioner claimed that the act had led to less loitering, fewer assaults on the police and a reduction in theft. These apparently good results, it was argued, were enabled by the new system of registration, which facilitated the identification of repeat offenders. Between 1 May and 31 December 1870, 262 applications had been received by staff at the registry of habitual criminals from all the police forces of England and Wales, to search through their records in order to ascertain if an individual was a repeat offender. Thirty-nine of these applications led to a positive identification. While the commissioner conceded that these results ‘hardly appear satisfactory’, he nonetheless argued that a ‘consideration of the facts’ would ‘change such an impression’. Chief among these, Henderson believed, was that police forces were not accurately recording the number of positive identifications. In any case, the number of applications and successful identifications was far higher in London than elsewhere, presumably because the registry was housed in the capital and, therefore, was easier for members of the Metropolitan Police Force to access. Of all 262 applications, 145 had been made by members of the Metropolitan Police Force, leading to twenty-five identifications. This seemingly low number of identifications across an eight-month period was nevertheless sufficient for Henderson to pronounce in ‘favour of the working of the “Habitual Criminals Act”’. The Home Office, most of London’s newspapers and the Metropolitan Police Force had all strongly supported the Gladstone government in its efforts to overcome the perceived threat from repeat offenders. It is not surprising, therefore, that any early indications of success were hailed from these quarters, and by the government itself, as evidence of the legislation’s effectiveness. However, despite these positive appraisals of the functioning of the Habitual Criminals Act 1869, the legislation - as we will see - was in fact deeply flawed.

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65 Ibid., p. 27.
66 Ibid., p. 8.
67 Ibid., p. 8.
68 Ibid., p. 8.
The Deficiencies of the Legislation

Concerns about the act were raised in correspondence between senior officers of the Metropolitan Police Force and the Home Office, in the parliament and the press. These justified concerns were primarily regarding two issues: errors and impracticalities resulting from the process of amendment, and the actions of London’s magistrates to lessen the severity of the legislation.

Various pieces of correspondence between senior members of the Metropolitan Police Force and the Home Office pointed out serious problems regarding the regime of police supervision that the Habitual Criminals Act 1869 had ushered in and also the conduct of magistrates. Many licence-holders and repeat offenders were escaping longer sentences and police supervision, commissioner Henderson argued, as a result of a failure on behalf of magistrates and judges to properly examine their past. With their criminal histories unknown, many recidivists were therefore escaping the provisions of the legislation. This view was put to Henderson in May 1870 by C. Kendall, the man charged with compiling the register of habitual criminals. He said that ‘as a rule’ magistrates refused to remand defendants so that their background could be checked. Additional time was needed, said Kendall, so that the registry of habitual criminals could be thoroughly searched. He provided two examples of cases in which repeat offenders had been sentenced as if first offenders by London magistrates when information concerning their past offences was contained in the register.69 The Home Office had already been informed by prison officials that there were ‘many cases’ in which London magistrates did not allow for fulsome checks to be made.70 Consequently, Henderson recommended the act should be amended mandating a week’s remand for any ‘suspected

persons’. The Home Office thought the issue was pressing enough to immediately draft a circular to all magistrates calling for ‘a more frequent resort on the part of magistrates to the practice of remanding for further enquiry’ all those suspected of ‘living a life of habitual crime’. Therefore, due to the actions of London magistrates and for reasons that will be discussed below, the Habitant Criminals Act 1869 did not prove initially effective in ensuring repeat offenders in the capital were identified and sentenced as such, which was one of its key objectives.

According to Henderson, magistrates and judges were also undermining police supervision. On 19 May 1870 the commissioner received further correspondence from Kendall, in which he complained that he was often ‘unable to obtain relevant information’ about those under supervision because magistrates and judges did not make it sufficiently clear in sentencing if they were imposing police supervision. As a result, prison wardens did not send information about these offenders to the registry before their release from prison, which was the practice for those about to be released under police supervision. Henderson forwarded Kendall’s letter to the Home Office and himself argued that there were many cases in which licence-holders and repeat offenders had escaped surveillance even though the magistrate or judge who sentenced them intended police supervision to be applied. Because of this problem he asked that the amending legislation should stipulate that supervision be pronounced as part of the sentence.

Henderson made various other complaints to the Home Office about a lack of cooperation from London’s magistrates which, in the commissioner’s view, significantly undermined the effectiveness of the 1869 legislation. Indeed, the evidence he put to the Home

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71 Henderson to Liddell, 6 May 1870.
Office shows that in numerous instances in London the *Habitual Criminals Act 1869* was not being enforced in the manner that the government and the parliament had intended. Henderson first complained to the Home Office about the conduct of London’s magistrates on 30 December 1869. He referred to a recent case that had come before the magistrate John Paget in which the police were alleging that two defendants, Thomas Riley and Jeremiah Calden, had been found loitering with intent to commit a felony, which was a crime under section 9 of the legislation. The two men, Henderson claimed, were known thieves, had run away from the police, and were observed concealing themselves while watching people’s pockets. Despite this Paget had found both men not guilty. Henderson, as if to confirm the criminality of the men, noted that they went on to commit and be convicted of theft within a month of their acquittal. He argued that: ‘the view taken by the magistrate appears to nullify the power of the police to carry into effect the law according to the intention of parliament’.\(^{75}\) While the Home Office was concerned enough to seek legal advice regarding Paget’s verdict, Adolphus Liddell, the permanent under-secretary, told Henderson that the home secretary ‘cannot interfere with their [the magistrates’] discretion’.\(^{76}\) As will be discussed in the later chapter on sentencing, judicial discretion was a long-standing principle of the British justice system.\(^{77}\) No actions were taken, therefore, in regard to some London magistrates who were failing to fully implement the *Habitual Criminals Act 1869*.

Henderson and other senior officers within the Metropolitan Police Force were also frustrated by the way London’s magistrates interpreted the sections of the legislation regarding receivers of stolen goods. Numerous London magistrates read the statute in a way that, as far as possible, limited the powers of the police. For example, on 11 November 1869 the *Daily News* reported on the recent proceedings at London’s magistrates’ courts, including an

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application by Inspector Rutt of N division to W. Cooke, the magistrate at the Clerkenwell police court, for a search warrant. Rutt told the magistrate that he had information that stolen door-knockers were being hidden at a certain address. However, Cooke refused the application on the grounds that under part four of the Habitual Criminals Act 1869 ‘the police had ample powers’ to authorise searches. On hearing of the matter Henderson immediately sought legal advice from the chosen solicitors of the Metropolitan Police Force, Ellis and Ellis. He was told that he did not have the power to authorise a search in this case. Therefore the magistrate, either out of ignorance or, more probably given the clarity of section 11 of the act, quite deliberately, used the legislation to limit the power of the police rather than increase it as the parliament intended. In addition, on 13 January 1870 Russell Gurney, the recorder of London, disallowed an attempt by members of the Metropolitan Police Force to prove former convictions against several men charged with burglary. The police did this in order to ‘avail themselves of a provision of the Habitual Criminals Act’ that made it clear that anyone in possession of stolen goods who had previous convictions could be treated by the court as a ‘habitual criminal’ and, as a result, be made subject to police supervision. However, the accused had to be given seven days’ notice of police attempts to prove prior convictions. Gurney argued that such notice had to be in writing, despite the act not stating as much, and refused the request of the police. Again, a magistrate had acted to mitigate the severity of the new act. Gurney may have done so out of a desire to keep faith with members of the working class, who appeared in police courts far more than members of other classes, often used these courts as a source of legal advice, and were the target of the Habitual Criminals Act 1869. If magistrates had vigorously enforced the legislation they would have risked alienating members

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79 Habitual Criminals Act, s. 11; Ellis and Ellis, solicitors, to Edmund Henderson, 11 Nov. 1869, T.N.A., MEPO 3/88.
80 Times, 13 Jan. 1870, p. 11; Habitual Criminals Act, sec. 11.
of the working class, for whom the courts had been established. This, and other reasons for the manner in which the legislation was interpreted by London magistrates, will be discussed in detail below.

Metropolitan Police files contain one further example of magistrates frustrating their efforts to enforce the new legislation. On 18 May 1870 the superintendent of F division wrote to the commissioner regarding a matter that had been brought before a police magistrate the day before. Francis Peppiatt was charged with, and admitted to, purchasing 42 pounds of lead in contravention of the *Habitual Criminals Act 1869*, which specified that no lesser quantity than 112 pounds of the metal could be bought. Peppiatt claimed that he was ignorant of the law and, nonetheless, knew the seller to be honest. The magistrate, Thomas Arnold, had strong views regarding the need for London’s working class to have ready access to the services of second-hand dealers in order to gain access to money when their wages were insufficient to meet their everyday needs. He said that he ‘did not think’ the act was intended to ‘prevent metal dealers’ from purchasing goods from ‘respectable persons’ and dismissed the charge. Thus a clear breach of the legislation was ignored. The police believed that these examples were indicative of the attitude of police magistrates across the board towards the enforcement of the legislation and it seems likely that they were correct. For example, in 1869 Sir Thomas Henry, London’s chief magistrate, informed Liddell that he and his fellow magistrates would place no weight upon evidence of recidivism garnered from the registers. He said that London’s magistrates looked ‘upon “Photographs” and “descriptive returns” as a very dangerous class of evidence’. They did not, he argued, prove identity and could even lead to cases of mistaken identity. Consequently, prisoners in London were not remanded so past offending could be

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82 See his comments concerning pawnbroking, which will be quoted below, in the *Report from the Select Committee on the Pawnbrokers Bill*, pp. 20-2.
investigated. As the superintendent of H division, whose remarks Henderson forwarded to the Home Office, said, there was a failure of ‘all magistrates’ to fully implement the legislation.

Complaints about the operation of the act were also made in parliament. A debate on the working of the Habitual Criminals Act 1869 took place in the House of Lords on 24 March 1870 as a result of a question from Carnarvon, who had a deep interest in effective remedies to the perceived problems of an accumulation of repeat offenders in Britain. In this debate a number of serious problems with the drafting of the act were identified. For example, section 14 wrongly stated that several forms to be used in the act’s administration were in the second schedule, while they were, in fact, in the third. Therefore this clause ‘was inoperative’. There were also problems with section 11, regarding receivers of stolen goods. Before amendment in the House of Commons the clause had said that anyone in receipt of stolen goods would, before being tried, have seven days in which to prove that they had no knowledge of the goods’ provenance. While these words were omitted in the final legislation after alterations made in the Commons, they were left in the form of notice which was to be given to the prisoner. Judicial opinion, Carnarvon reported, was that the clause was inoperative because of this discrepancy. The Earl of Albemarle, a Liberal peer, also said that confusion had been created as the legislation did not say whether ‘legal proof’ of former convictions was required at trial. As a magistrate himself he could attest to the fact that in some cases repeat offenders were not being recognised and sentenced as such due to uncertainty about what constituted proof of a criminal history. Kimberley responded to these issues on behalf of the government and said

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85 Kendall to Henderson, 6 May 1870.
87 This was discussed in the previous chapter.
89 Ibid., col. 564.
90 Ibid., col. 567.
that the provisions of the legislation were not as clear as was ‘desirable’. Indeed, the government accepted that the ‘defects pointed out by’ Carnarvon were significant enough to necessitate ‘a Bill to amend the Habitual Criminals Act’.

Evidence was also presented in London’s press that suggested the legislation’s flaws were extensive. In particular, it was argued that police supervision – in London especially – was not being carried out effectively. Following news that the government was to introduce an amending bill an article appeared in the *Law Times* articulating what the magazine thought the focus of the new act should be. The magazine argued that as it stood the legislation was ‘singularly defective’. The key reason for this was the administration of police supervision. It was correctly noted that there was very little hope of maintaining surveillance over anyone who did not wish to be monitored. Those under supervision neither had to inform police of a change of address nor ever report themselves, personally or in writing, to the police. The *Law Times* urged the government to include a clause in the new act mandating that supervision should entail monthly reporting. Crofton, a key architect of the original legislation, backed this call for a more rigorous approach to police supervision. He penned a letter to *The Times* in February 1871 arguing that unnamed ‘improvements’ were required to the act that he had played such a significant role in developing. He was careful not to appear critical of the government and noted that it would be ‘unreasonable’ to think that ‘a statute containing such novel and stringent principles should at once be made perfect’. In an address to the annual congress of the S.S.A. later that year Crofton detailed what he believed were the legislation’s defects. While ‘impracticabilities’ had certainly arisen because of drafting errors, he said police supervision had also been largely ineffective. He supported the reintroduction of monthly reporting in order

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91 Ibid., col. 568.
92 Ibid., col. 568.
to enable a closer surveillance by the police. The S.S.A., which had so persistently and successfully advocated for this legislation, was still seeking to influence government through monitoring its impact.

A further issue that was raised in the press, as it had been by the police, concerned the alleged failure of London’s magistrates to properly enforce the legislation by neither acting upon nor seeking information about the criminal history of defendants. The Law Times argued strenuously that this was the case. In June 1870 the magazine said that magistrates ‘notoriously’ failed to properly inquire into the background of those brought before them. The consequence of this, purportedly, was that many repeat offenders were presumed to be first offenders and, as a result, received shorter sentences. Serious offenders were generally referred by magistrates to the Middlesex sessions or London’s central criminal court at which a jury trial would occur and long sentences of penal servitude could be handed down. However, according to the Law Times, the ‘indiscriminate’ application of magistrates’ summary jurisdiction meant that for many repeat offenders no such referral was being made. They were therefore escaping with sentences of imprisonment, which were of a maximum duration of two years. Shortly after making this claim the magazine produced some evidence. In September 1870 it reported on a case that had been heard by the London magistrate Edmund Woolrych. Two boys, one sixteen and the other fifteen, were brought before Woolrych charged with picking pockets at the Crystal Palace. At the trial a warder from Coldbath-fields prison confirmed that both boys had previous convictions for theft. They were sentenced to periods of three months’ imprisonment. Despite the youth of the two defendants the Law Times responded angrily to the brevity of the sentences, which it argued undermined the ‘purpose of the Habitual Criminals Act’: to subject repeat offenders to periods of penal servitude followed by police supervision.

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The reluctance of London’s police magistrates to enforce the *Habitual Criminals Act 1869* as the parliament had intended requires explanation. When the purpose and various roles of London’s magistrates’ courts are considered, it is not surprising that magistrates often sought to lessen the severity of the legislation. Stipendiary magistrates’ courts, commonly called police courts, were first established in London in 1792 as a consequence of the passage of the *Middlesex Justices Act 1792*. They were courts of summary jurisdiction, and wielded immense power. Without the aid of a jury, police magistrates had a large say in deciding the fate of all those charged with a crime in the Metropolitan Police District. Persons convicted of crime came overwhelmingly from the working class.\(^98\) While initially police magistrates could only convict for a misdemeanour, their jurisdiction was greatly expanded by the *Juvenile Offenders Act* and the *Criminal Justice Act*, both of 1855, which enabled them to punish numerous felonies including larceny. When defendants were brought before them, London’s twenty-three police magistrates had three options: acquit; sentence offenders to a period of imprisonment of two years or less in a local gaol; or refer defendants to a higher court, at which a jury trial would occur and a heavier sentence could be administered.\(^99\) A contemporary observer noted that: ‘Within that margin your discretion is unfettered’.\(^100\) The power of London’s police magistrates over the predominantly working-class cohort brought before them was therefore enormous.

However, London’s thirteen police courts were not solely oppressive institutions. They conducted a vast amount of business, both criminal and non-judicial, at the behest of members of the working class, including its poorest members who were often believed to form part of a criminal class.\(^101\) This point is not sufficiently recognised by historians who have analysed the

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\(^101\) Davis, ‘A Poor Man’s System of Justice’, p. 326.
working of London’s police courts. As Jennifer Davis has said, there is a significant level of agreement among such historians that these courts reflected the ‘values and concerns’ of the middle class.\textsuperscript{102} Numerous historians, such as David Philips and R.D. Storch, have utilised social control interpretations and argued that London’s police courts were part of a broader system designed to control the working class.\textsuperscript{103} However, this analysis is undermined by the fact that the police courts were, in many respects, a working-class resource. As the late nineteenth-century police magistrate Henry Waddy explained:

\begin{quote}
The Act of Parliament by which they were authorised described them as offices which were to be ‘available for the poor,’ the word ‘poor’ being used to denote, not the pauper or the outcast, but the working-man of the period, uneducated, ignorant of his legal rights, and unable to enforce them even when he understood them, unless a court should be provided for him, where he might find both guidance and redress. To be ‘available for the poor’ was the original purpose of the police courts. It has never been lost sight of since, and abides as the one essential justification for their continuance.\textsuperscript{104}
\end{quote}

Police courts were indeed available for the poor in a wide range of ways. A huge amount of the courts' time involved hearing complaints from members of the working class, especially against allegedly violent husbands, bad neighbours, and unscrupulous employers.\textsuperscript{105} These complainants were overwhelmingly drawn from the working class.\textsuperscript{106} For instance, in 1868

\begin{thebibliography}{99}
\bibitem{102} Davis, ‘Law Breaking and Law Enforcement’, p. 265.
\bibitem{106} Davis, ‘Law Breaking and Law Enforcement’, pp. 262-3; Plowden, \textit{Grain or Chaff?}, p. 266.
\end{thebibliography}
Mrs Wilson, who was a resident in a well-known rookery called Jennings’ Buildings, applied to the Hammersmith police court for a summons against her abusive husband. People also came in large number to use the police courts as a free source of legal advice. For example, as Lydia Murdoch has shown, the views of magistrates were often sought regarding how to deal with troublesome children. Finally, magistrates regularly provided funds to those in need from the poor boxes that were housed in London’s thirteen police courts. Davis’ work clearly demonstrates that many members of London’s working class viewed the courts as a resource, bringing criminal and non-criminal matters to them far more often than members of the middle or upper classes. She has correctly noted that this has been ‘largely overlooked by historians’ who instead see the police courts as part of penal system specifically designed to control the working class.

The purpose and roles of London’s police magistrates led them to be anxious to make sure members of the working class did not view the courts as manifestations of an oppressive class. Firstly, police magistrates took their role supporting London’s poor very seriously: a function that was explicitly articulated in the legislation that established the courts. As a result, and as Davis has shown, the police courts were not ‘merely expected to function in tandem with the metropolitan police as an efficient engine for the suppression’ of the working class. Indeed, London’s police magistrates often sided with the working class in opposition to policies and practices that were widely supported by the middle and upper classes. For example, they refused to condemn the use of pawnbrokers, instead noting their role in providing finance to the working class. The magistrate Arnold told a select committee in 1872 that: ‘the poor are so

110 Ibid., p. 105.
often short of money and wanting money for ordinary purposes’. 113 Davis has noted that such views were ‘in contrast to a fairly general middle-class attitude’. 114 Furthermore, police magistrates refused to enforce the provisions of the Metropolitan Street Act 1839 by convicting petty street traders - commonly called costermongers – as doing so would deprive very poor members of the working class of any means of subsistence. 115 London’s police magistrates, as S. J. Stevenson has said, often demonstrated a ‘liberal paternalism’ when dealing with the working class. 116 Additionally, they had a vested interest in ensuring working-class cooperation. It has been demonstrated above that members of the working class generated the vast majority of the police courts’ work. The widespread use of these courts by the working class shows that they were generally regarded as legitimate sources of authority and power. One contemporary observer went so far as to say that police magistrates were ‘loved’ by the poor. 117 However, the affection of the working class could not be taken for granted. The strict application of statutes that explicitly targeted members of the working class risked disaffecting the courts’ key constituency, as actions by various police forces in the mid-nineteenth century had often angered working-class communities. 118 As police magistrate Alfred Plowden noted, he had ‘to walk very warily to avoid accusation of over severity’. 119 For these reasons London’s police magistrates often failed to fully implement the Habitual Criminals Act 1869, which, of course, specifically targeted a portion of the working class.

113 Report from the Select Committee on the Pawnbrokers Bill, p. 21.
114 Davis, ‘A Poor Man’s System of Justice’, p. 325.
115 Ibid., p. 325.
117 Gamon, The London Police Court Today and Tomorrow, p. 103.
119 Plowden, Grain or Chaff?, p. 232.
Further Parliamentary Debate

In an effort to pressure the government to remedy some of the defects of the Habitual Criminals Act 1869 the Conservative Party, in this instance led by Carnarvon, initiated another debate on the legislation on 25 April 1871. In asking when the promised amending legislation would be forthcoming, he condemned the working of police supervision under the act. Because the section of the Penal Servitude Act 1864 that mandated monthly reporting had been repealed in the House of Commons supervision was, according to Carnarvon, ‘a complete nullity’. He correctly noted that those leaving prison to be supervised in the community were under no compulsion to inform the police where they were going. Their name and brief description were included in the Police Gazette, a bi-weekly publication of the Metropolitan Police Force that carried details of stolen property and individuals wanted for crime. However, this was all the information police forces had at their disposal in order to facilitate the supervision of licence-holders and repeat offenders who were at liberty to move around the country without informing the police. Therefore, ‘all pretence of supervision’ had been ‘abandoned’. Brandishing ‘a large number of letters from the police authorities of the principal towns’ in his support, Carnarvon called for monthly reporting to form part of the amending legislation. Others agreed that the provisions regarding police supervision needed to be strengthened. The Duke of Richmond, another Conservative, argued that at present ‘there was no supervision at all’ as criminals leaving prison were not required to give authorities an address. Finally, the Liberal Morley agreed that the provisions of the 1869 act regarding supervision were unsatisfactory. Despite their non-cooperation with the act, there was no criticism of London’s magistrates during these debates. This was probably the case due to the respect with which judicial discretion was regarded by members of parliament across party lines.²¹⁰ Kimberley responded on behalf of

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²¹° Sir Charles Adderley (Conservative) and Henry Bruce (Liberal), 198 Parl. Deb., H.C. (3rd ser.), cols. 1260-5, 1279 (4 Aug. 1869).
the government and conceded that Bruce was ‘not quite satisfied with the stringency of the regulations with respect to criminals reporting themselves’. The government was therefore forced to acknowledge that the principal measure of the Habitual Criminals Act 1869 had not led to the close monitoring of licence-holders and designated repeat offenders. As a result of this and other acknowledged flaws in the Habitual Criminals Act 1869 the government introduced the Prevention of Crime Bill 1871. This new bill, and its passage through parliament, will be analysed in the next section.

3. The Prevention of Crime Act 1871

The Prevention of Crime Bill 1871 sought to improve the Habitual Criminals Act 1869 in two key ways: by making the registration of criminals more likely to lead to their identification and by strengthening the system of police supervision. Regarding registration, section 6 of the bill stipulated that the register of habitual criminals should include photographs of all those listed: a development that will be discussed further in the next chapter. As we will see below, the government hoped this would make it easier to carry out searches at the registry. The other significant change was to police supervision. Monthly reporting by licence-holders and repeat offenders under police supervision was introduced – or reintroduced in the case of the former - in sections 5 and 8. By agreement between the individual under supervision and their local police force this could be done in writing. The same two sections said that licence-holders and repeat offenders under police supervision must inform the police of their address on leaving prison, and of subsequent changes of address. In addition, section 7 made the imposition of police supervision optional for twice-convicted felons who had not been sentenced to penal servitude. While judges could previously sentence this cohort of criminals to seven years’ supervision or less, they could not sentence them to no supervision at all.

Although the government did not explain the reason for this change, it was presumably an attempt to limit the huge number of offenders who had been made subject to supervision. In numerous other ways the bill attempted to address the ambiguities of the earlier legislation. For example, section 19 altered the language regarding receivers of stolen goods in order to clarify that the police needed to give an accused receiver seven days’ notice in writing if they intended to introduce evidence of prior convictions for crimes of fraud or dishonesty.

In parliament the government explained that the legislation would hopefully remedy the faults of the early act. Unlike the legislation of 1869, the *Prevention of Crime Bill 1871* had an uncomplicated passage through parliament. After being read for the first time on 23 June 1871, the bill was second read and debated in the House of Lords on 4 July, during which no opposition to the measure was expressed. Subsequently, Bruce introduced the bill into the House of Commons on 26 July and the second reading took place on 14 August, albeit without debate. In the Commons, as the Lords, the views of members concerning the measure were overwhelmingly positive. The committee reported on 18 August, when the bill was read a third time without debate. The legislation came into force on 2 November after having received royal assent on 21 August. While the *Prevention of Crime Act 1871* improved the earlier legislation in a number of ways, it was also, as we shall see in the coming chapters, an imperfect instrument. Firstly, as discussed above, numerous errors of drafting in the 1869 act were corrected. Additionally, the mandated photographing of all those registered as habitual criminals and the re-introduction of monthly reporting had the potential to enable a closer monitoring of repeat offenders by policemen. However, once again, various problems

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regarding both registration and police supervision soon became apparent. These will be discussed at length in the coming chapters.

Conclusion

In London the *Habitual Criminals Act 1869* was a highly ineffective instrument of social control. To some extent this was because of numerous major amendments that were hurriedly made as the legislation passed through parliament. Some Liberals, Conservatives and Radicals argued that the principles embodied in the bill went against important norms of justice. Consequently, multiple alterations were made, with the effect that the final act was significantly less severe. These amendments – rushed through at the end of the session – also introduced errors. While early assessments of the legislation’s operation were predominantly positive, several significant problems soon became apparent. The regime of police surveillance, in particular, was heavily criticised on the basis that those being supervised were under no obligation to inform the police of their address or to report themselves; the latter being due to an amendment in the House of Commons. Registration was also far less effective in enabling the identification of licence-holders and repeat offenders than the government had hoped. This was at least partly due, as the government argued when introducing the new legislation of 1871, to the vast number of those registered. Once again, this resulted from an amendment to the original bill. Furthermore, the Metropolitan Police Force collected much evidence to suggest that London’s police magistrates, on many occasions, were failing to fully enforce the legislation.

As numerous historians have argued, despite its many amendments the legislation did give the Metropolitan Police Force significant additional powers.\(^{126}\) However, both flaws in the legislation and the actions of police magistrates meant that the impact of these additional

powers upon habitual criminals in London was much more limited than its sponsors had hoped. The dominant position in the relevant literature is that, despite some defects, the Habitant Criminals Act 1869 was an oppressive instrument of control that enabled the monitoring and even creation of a criminal class. The historians who make this case claim that the state, represented, in this case, by members of parliament, magistrates, judges and the police, sought to control the working class, and met with significant success in this endeavour. Indeed, they utilise social control interpretations to claim that this legislation was part of a much larger apparatus of control. In this chapter it has been shown that, at least in London, this thesis is incorrect. A lack of time to fully consider the many amendments to the original legislation meant numerous errors were introduced, making parts of the act inoperative. Furthermore, police magistrates took their role as purveyors of justice to London’s poor very seriously and consequently were loath to alienate them by enforcing harsh measures. However, in 1871 the Gladstone government sought to strengthen the measures contained in the earlier legislation. Whether it did so successfully will be the subject of the coming chapters. We shall start with an analysis of the registration of licence-holders and repeat offenders.

Chapter 3. The Registration of Habitual Criminals, 1871-1895

Sir Walter Crofton … proceeded to advocate for the establishment of a central office for the registration of licence-holders, which should be in communication with the various police authorities throughout England, and thus make supervision more uniform and effective. But, further, Sir Walter Crofton pointed out that this salutary control should not be confined to convicts, but be extended to all those who are criminals by habit and repute; in other words, that society should undertake its legitimate defence against the class whose livelihood it is to prey on honest industry.¹ George Hastings, barrister and member of the Social Science Association, 1869.

One of the keys means by which the Gladstone government envisioned the Prevention of Crime Act 1871 would curtail the activities of the criminal class was through a system of registration. As was the case with the legislation of 1869, the new act mandated the keeping of registers of ‘habitual criminals’ throughout the United Kingdom.² The government hoped these registers, which were now to include photographs, would aid the police in identifying and then supervising licence-holders and repeat offenders. In addition, the registers were intended to ensure that magistrates and judges had full information before them regarding a defendant’s criminal past, hopefully resulting in the application of longer sentences as fewer repeat offenders would be able to escape recognition as such.³ The extent to which the various registers accessible to the Metropolitan Police Force were, as the legislation’s chief architect Sir Walter Crofton hoped, a ‘salutary control’ and defence against the criminal class will be assessed in this chapter.⁴ The chapter will commence by describing the system of registration that was put in place as a result of the habitual criminals’ legislation. It will then analyse the effectiveness of the registry in London up until 1880. In 1880, a new Convict Supervision Office (C.S.O.) was created at Scotland Yard that augmented the system of registration in

London. The second section, therefore, will assess the effectiveness of registration in London up to 1895.

Most historians have claimed that the registration of ‘habitual criminals’ as a result of the legislation of 1869 and 1871 had a stigmatising effect, leading to harsh treatment at the hands of police, magistrates and judges. For example, Stefan Petrow has said that registration served to ‘brand certain criminals as habitual’. There is agreement among the historians who have investigated registration that, prior to the decision to introduce finger-printing in 1895, the means of identifying licence-holders and repeat offenders were imperfect, as the registers were cumbersome and inexact. Nonetheless, most historians who have analysed the working of registration claim that many people unfortunate enough to have their names listed in one or more of the many registers and, therefore, to be branded a habitual criminal, were, as a consequence, hounded by the police and subjected to severe treatment by magistrates and judges. However, as this chapter will demonstrate, those who argue this position fail to fully recognise the many shortcomings of the system of registration. Utilising social control interpretations, these historians claim that the police, magistrates and judges, as representatives of the middle and upper classes, were unified in a desire to repress those registered as habitual criminals. This view, as we shall see, is incorrect, and especially so in London.

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5 Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals; with Minutes of Evidence and Appendices, [C 7263] H.C. and H.L. 1894, lxxii, pp. 1-16.
7 Petrow, Policing Morals, p. 85.
10 Petrow, Policing Morals, p. 51.
1. The Registration of ‘Habitual Criminals’ Before 1880

The Liberal government and the Conservative opposition hoped that the registration of ‘habitual criminals’ would enable police monitoring of a group of offenders – licence-holders and repeat offenders – who were often called a criminal class. This was largely not achieved in London between 1869 and 1871 due, primarily, to the huge numbers who were registered. New legislation was introduced in 1871 that mandated the photographing of all ‘habitual criminals’ in an effort to make searches at the registry less time-consuming and more likely to result in a successful identification. This section will analyse the extent to which the changes made through the Prevention of Crime Act 1871 were effective up to 1880, at which point the C.S.O. was established in London. As we shall see, despite the aid of photographs and further efforts to refine the system of registration during the 1870s, on the whole, registration remained ineffective in London, contrary to the views of numerous historians.

The registry was intended to complement an existing system of identification, the basis of which was personal recognition of offenders by police officers and prison warders. Since the inception of the Metropolitan Police Force, members had been encouraged to hone their knowledge of criminals by conducting visits to prisons to view prisoners before release and to courts in order to ascertain if those about to be tried were known to them. In the 1860s any person committed for trial in London or remanded in custody by a police magistrate was sent to Holloway prison, and these prisoners were viewed three times a week during an hour set aside for exercise. Warders from all London prisons along with detectives from every division of the Metropolitan Police Force attended at these times. Metropolitan police orders,

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13 Prevention of Crime Act, s. 6.
which were issued daily from the commissioner’s office, also show that the police and warders
were deployed to courts for the purpose of recognising repeat offenders. The memoirs of
senior detective Frederick Wensley show that these duties were taken very seriously. Some
policemen, according to Wensley, spent much time increasing their ‘knowledge of crooks by
going to the courts and noting hundreds of professional thieves’. Information gleaned from
these visitations was used as part of a register kept at the main station of each Metropolitan
Police Force division. The registers that were introduced as a result of the Gladstone
government’s habitual criminals’ legislation built upon this system.

This legislation led to the creation of a registry in London, which housed two registers
and albums of photographs of habitual criminals from across England. The Prevention of Crime
Act 1871 stipulated that registers of ‘all persons convicted of crime’ should be kept under the
management of the commissioner of the Metropolitan Police Force. The legislation’s
definition of crime included all felonies and numerous misdemeanours. The misdemeanours
were: obtaining money by false pretences; conspiracy to defraud; and being at large at night
with the intent of committing a crime, with either housebreaking instruments or a disguised
face. The legislation also mandated that inmates of all British prisons convicted of crime
should be photographed, as the government believed this would prove ‘very useful’ in proving
whether a certain individual was a repeat offender. Initially two registers were created in
London and housed at a new habitual criminals’ registry at Scotland Yard. From 1871 to 1895
the processes for the maintenance of the registers were the same. Shortly before the release of
any habitual criminal (as defined by the 1871 act) or other prisoner completing a period of

16 Metropolitan Police Orders, 14 Sept. 1857, T.N.A., MEPO 7/19; Metropolitan Police Orders, 29 Apr. 1865, T.N.A.,
18 Ibid., p. 13.
19 Metropolitan Police Orders, 2 Dec. 1832, T.N.A., MEPO 8/3.
20 Prevention of Crime Act, s. 6.
21 Ibid., s. 20.
penal servitude, a form was prepared by the prison in which they were incarcerated and forwarded to the registry. This return, called a Form R, contained a physical description of the prisoner, a list of his or her previous convictions and a description of any distinctive marks on the prisoner’s body, such as scars and tattoos.23 One London prisoner who wrote anonymously in 1877 confirmed that this work was carried out conscientiously by prison staff, as ‘marks upon’ the bodies of prisoners were ‘noted in their descriptions’.24

This information was then used to compile two registers, which were updated annually and contained the details of all those liberated during the previous calendar year. The habitual criminals’ register contained a list of all names in alphabetical order and, in columns alongside each name, the person’s distinctive marks, details of previous convictions, their address on release, if known, and the prison from which they were liberated.25 A second register, of distinctive marks, was intended to enable the identification of an individual whose name was unknown, based on bodily marks. The register used nine divisions: the head and face, the throat and neck, the chest, the belly and groin, the back and loins, the arms, the hands and fingers, the thighs and legs and the feet and ankles. Various categories were then listed under each of these divisions so that a policeman could easily search for tattoos, amputations, burns, fractures and numerous other types of marks.26 For example, it was noted that Thomas Brown, who was sentenced to seven years’ penal servitude in London on 16 September 1878 for larceny, had a fractured nose, a blue mark behind his left ear and scars on the end of his thumb.27 In addition, albums of photographs were compiled. By 3 July 1872 the Home Office had issued instructions...

23 Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals, pp. 6-7.
24 Anonymous, Five Years’ Penal Servitude by One who has Endured it, London: Richard Bentley and Son, 1877, p. 157.
26 For an extract from the register, copies of which are no longer in existence, see Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals, p. 7.
27 Police Gazette, 2 Jan. 1885, p. 5.
to all British prisons on the photographing of ‘habitual criminals’. Policemen from any force could request a search based on a name, distinctive mark, or other details of appearance, or they could attend the registry personally to carry out a search themselves. The government and opposition believed that – with the addition of albums of photographs - the registry would better facilitate the identification of ‘habitual criminals’, but not all relevant parties were of this view. Sir Thomas Henry, London’s chief magistrate until his death in 1876, believed that the type of information contained in the registers did not conclusively prove identity and could lead to cases of mistaken identity. As we will see, the hostility of London’s most senior police magistrate to the new system of registration did not augur well for its success. Indeed, as a Home Office inquiry of 1895 found, while evidence from the registers was admissible in court, magistrates and judges generally believed that identity could only be proved by additional evidence from a policeman or prison warder who personally recognised the defendant.

The system of registration put in place as a result of the Prevention of Crime Act 1871 was noted with satisfaction by a small number of sources. In their contributions to the annual reports of the commissioner of the Metropolitan Police Force, several superintendents argued that the registry was enabling the identification of repeat offenders. For example, in 1871 the superintendent of the Southwark division claimed that the registers were effective and that: ‘this system appears to work well’. The superintendent of the Clapham division agreed, writing that the new system ‘aid[s] Police in tracing offenders’, as did the superintendent of the Whitechapel division in 1872. One London newspaper, the liberal Morning Post, also argued

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28 Photographs were to be taken in a standard size and attached to forms entitled, ‘Particulars of a Person convicted of a crime specified in the 20th Section of the Prevention of Crimes Act, 1871’. See Prevention of Crime Act, 1871.
that the registry was working well. A leading article of August 1872 on the publication of the commissioner’s annual report said, albeit without evidence, that the registry was ‘a decided improvement on the previous state of things’. In 1873 these views were reiterated in another leading article on the decrease of recorded crime. These three senior police officers, whose remarks presumably influenced the *Morning Post*, clearly believed that the registry aided their work, as it indeed had done in ten cases that had been identified in the Southwark division.

Despite a small number of positive assessments of the registry, there is far more evidence to suggest that it was highly ineffective in the early years of its operation. The compilation of the two registers was still being carried out in strict keeping with the wording of the act. Consequently, all those convicted ‘of crime’, including numerous petty misdemeanours, were listed. This meant that 169,521 criminals were registered by 1876, and this figure was growing by 28,000 names each year. As a result, searches were very time consuming and rarely led to positive identifications, as noted by numerous officials, including senior members of the Metropolitan Police Force, and several London newspapers. For example, the chairman of the board of directors of convict prisons, Sir Edmund Du Cane, criticised the working of the registry in an address to the Social Science Association (S.S.A.) in August 1875. He said that: ‘It has not been made much use’ of due to the fact that it was ‘too cumbersome’. In his memoirs Du Cane also claimed that the registry was overly bulky. This was also the view of both senior members of the Metropolitan Police Force and the Home Office. Possible changes to the way the registry functioned were broached by the commissioner of the Metropolitan Police Force with the Home Office in 1874. Commissioner Edmund

38 Sir Henry Selwin-Ibbetson (Conservative), 229 *Parliamentary Debates*, H.C. (3rd ser.), col. 1596 (8 June 1876).
Henderson wrote to the Home Office on 22 June 1874 detailing his concerns. He thought too many names appeared in the register and advised that only those ‘who can reasonably be called Habitual Criminals’ should be listed.\footnote{Edmund Henderson, commissioner of the Metropolitan Police Force, to Godfrey Lushington, Home Office clerk, 22 June 1874, T.N.A., MEPO 6/90/2.} The Home Office agreed. Godfrey Lushington, a senior clerk in the criminal department of the Home Office, wrote a paper for the home secretary in January 1875, in which he argued that the registry had been a ‘comparative failure’. This was, in Lushington’s view, because of the ‘enormous number’ of registered criminals. He said that: ‘the present statutory requirement to register and photograph all persons convicted of “crime” … is a reductio ad absurdum of the system of registration’, and that a choice needed to be made between the ‘total abolition of the system of registration and a complete reconstitution of it’.\footnote{Godfrey Lushington, Memorandum: ‘Registry of Criminals’, Jan. 1875, T.N.A., MEPO 6/90/2, pp. 8, 10.} He favoured the latter, via a change to the definition of crime in the legislation to reduce the size of the registers. Given the vast number of criminals whose details were kept at the registry, there is every reason to accept the negative assessment of these officials.

The available data further demonstrates that the registry was of very limited use in identifying licence–holders and repeat offenders in London. For a four-year period from 1870 to 1873 detailed data was compiled regarding the number of applications made by members of the Metropolitan Police Force to the registry concerning people already in custody who were suspected of being repeat offenders.
3.1. The use and success of the Registry in London, 1870-3

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications to Registry</th>
<th>Successful identifications</th>
<th>Percentage of applications that were successful</th>
</tr>
</thead>
<tbody>
<tr>
<td>1870 (1 May-31 Dec.)</td>
<td>145</td>
<td>25</td>
<td>17.2</td>
</tr>
<tr>
<td>1871</td>
<td>793</td>
<td>111</td>
<td>13.9</td>
</tr>
<tr>
<td>1872</td>
<td>953</td>
<td>188</td>
<td>19.7</td>
</tr>
<tr>
<td>1873</td>
<td>852</td>
<td>180</td>
<td>21.1</td>
</tr>
</tbody>
</table>

When weighed against the fact that official reports numbered the known thieves at large in London at 3,467 in 1873, and that 140,000 people were registered, the number of successful identifications seems to fall far short of the parliament’s desires. However, while the registry was a ‘comparative failure’ in London, as Lushington had said, elsewhere it was a total failure. In a number of major cities only one application to the registry was recorded in each year of the early 1870s. This was the case for Leeds in 1870, Birmingham and Norwich in 1871, Coventry in 1872 and Bolton in 1873, and no applications at all were made by the police forces of numerous cities. In investigating the neglect of the registry by forces outside London commissioner Henderson had been told by officers of other police forces that they were reluctant to use ‘a Register kept by a local body like the Metropolitan Police’, a plausible explanation that, as we will see, was accepted by the government. While greater than from

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elsewhere, the volume of applications from members of the Metropolitan Police Force, and resulting identifications, was low. Even in these cases the benefit of the registry was questionable. Several senior police officers reported to the Home Office that: ‘save in few cases, the identifications would have been made without the help of the register’, through other means such as the inspection of remand prisoners by police officers and warders.47 Leon Radzinowicz and Roger Hood only slightly exaggerated when they said that before 1876 the registry ‘proved useless as a means of identification’.

Ultimately Benjamin Disraeli’s Conservative government acted in an effort to increase the registry’s effectiveness. In March 1875 the registry was relocated from Scotland Yard to the Home Office, from which copies of the habitual criminals’ register were then annually sent to all police forces. This was done in order to encourage greater usage of the registry’s information by forces beyond London.49 The issue of the registers’ bulk required a legislative response: the passage of the Prevention of Crimes Amendment Bill through the parliament in 1876. This legislation, which consisted of one page, gave discretionary powers to the home secretary to stipulate who should appear in the registers. Sir Henry Selwin-Ibbetson, Under-Secretary of State for the Home Department in Disraeli’s government, told the Commons that the bill’s object was to ‘simplify’ registration. He noted that the names of 169,521 offenders appeared in the habitual criminals’ register, many of whom had committed only ‘trifling offences’, making searches for serious repeat offenders ‘cumbrous’.50 The bill elicited little discussion, no opposition, and was passed on 30 June 1876. On 15 March of the next year a Home Office circular informed magistrates and judges that henceforth the registry would include only the details of those ‘convicted on indictment of crime, a previous conviction

48 Radzinowicz and Hood, Incapacitating the Habitual Criminal, p. 1348.
having been proved against’ them, and those who had been discharged from a sentence of penal servitude.\textsuperscript{51} The government hoped that these provisions would reduce the number of petty offenders listed in the pages of the registers, making searches quicker and more likely to lead to successful identifications of serious criminals.\textsuperscript{52}

These alterations, which had bipartisan support, led to a small amount of positive commentary. In a leading article in 1879 \textit{The Times} argued that the 1876 legislation had remedied the registry’s prior faults as the condensed registers were easier to search and more likely to facilitate the identification of serious criminals. In short, the registry was now an ‘invaluable apparatus’.\textsuperscript{53} Du Cane, perhaps predictably given that he had been placed in overall charge of the registry in 1875 following its relocation to Scotland Yard, also spoke very positively about it. Writing in 1885 he said that the registers took a convenient and useful form, meaning that evidence pertaining to suspects was able to be sourced ‘at once’.\textsuperscript{54} However, as we will see in the following section, the changes made in 1876 were not a panacea, nor was the creation of an entirely new body to help the police monitor recidivists in London.

\begin{itemize}
\item[2. The Effectiveness of Registration from 1880 to 1895]
\end{itemize}

Predominantly due to their bulk, the registers of habitual criminals had initially proven to be largely ineffective tools for identifying criminals. In 1876 a change was made with the intention of limiting the registers’ size, the outcome of which we are yet to fully analyse. In addition, in 1880 a new apparatus was established in London, the Convict Supervision Office (C.S.O.), which also contained registers of criminals in the capital. This section will assess whether these further changes to registration in London facilitated more identifications of repeat offenders and, as a consequence, closer monitoring by members of the Metropolitan

\begin{itemize}
\item[\textsuperscript{51}] Metropolitan Police Orders, 15 March 1877, T.N.A., MEPO 3/88.
\item[\textsuperscript{52}] Sir Henry Selwin-Ibbetson (Conservative), 229 \textit{Parliamentary Debates}, H.C. (3\textsuperscript{rd} ser.), col. 1597. (8 June 1876).
\item[\textsuperscript{53}] \textit{Times}, 3 Apr. 1879, p. 9.
\item[\textsuperscript{54}] Du Cane, \textit{The Punishment and Prevention of Crime}, p. 195.
\end{itemize}
Police Force and punishment by London’s magistrates and judges. While the C.S.O. was certainly more effective than the registry, which almost completely ceased to be used, its utility was greatly constrained by technical difficulties and the actions of London’s police magistrates.

A significant change to the system of registration in London was made in 1880 with the creation of the C.S.O. This office, with a small staff of plain-clothes police, was charged with carrying out the various duties associated with the supervision of ‘habitual criminals’ in London. The office was established in response to a recommendation of an 1879 inquiry into the Penal Servitude Acts, which was instituted following revelations of the poor conditions that those undergoing sentences of penal servitude were subjected to in prison. The bipartisan committee consisted of four members of parliament and two medical doctors. These commissioners heard some objections to police supervision, especially from The Royal Society for the Assistance of Discharged Prisoners. The organisation criticised the ‘supervision of convicts by the police, on the ground that it has been occasionally the cause of men losing their employment’, as a police presence outside an individual’s workplace had, it claimed, led to the discovery of some people’s criminal past. This charitable society sought to aid the reintegration of prisoners into society and, in particular, employment. As a result of the society’s evidence, the commissioners came to the view that: ‘the best remedy as regards the metropolis … will be found in appointing special police officers to be employed exclusively’ in supervising licence holders and other supervisees. The government acted on this recommendation by establishing the C.S.O.
Under the leadership of Chief Inspector Neame, the C.S.O. established its own registers and processes for making information available to the police. This was made possible through the wealth of information that the C.S.O. received from prisons and the Metropolitan Police Force. From its inception the office received descriptions of all those convicted of crime in London from the various divisions of the Metropolitan Police Force. The governors of London’s various jails also forwarded descriptions, including photographs, of all prisoners about to be released following periods of penal servitude, and those who had been sentenced to police supervision. This information was then used to compile numerous registers. These included books, arranged alphabetically, containing the names of all prisoners released from penal servitude and those subject to police supervision, with brief descriptions; albums of photographs; a register of tattoos; volumes of criminals who were thought to be addicted to certain specific types of crime, such as stealing bicycles; and a register of distinctive marks.62 Therefore, the office, as a Home Office inquiry noted, sought to contain ‘the whole of the records of crime and habitual criminals’ in London.63 Members of the Metropolitan Police Force could access the information contained at the C.S.O. by filing search forms. Such a form, containing a physical description, could be submitted to the office following the arrest of an alleged criminal who the police believed may have offended previously, precipitating a search by staff of the C.S.O., and members of the Metropolitan Police Force could also attend the office to personally carry out searches. In addition, information was routinely disseminated. Albums containing photographs of the most serious criminals, who, according to the Metropolitan Police Force, included violent burglars, were sent to all divisions thrice yearly, informations were sent daily to all metropolitan police stations containing the details of those in custody, and the Police Gazette, issued bi-weekly, also furnished descriptions of ‘habitual

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62 Ibid., pp. 9-10.
63 Ibid., pp. 9-10.
criminals’ who were about to be discharged from custody and those who had failed to report
themselves to the police on release. The C.S.O., like the registry, therefore sought to aid the
police in identifying members of the criminal class.

There is some evidence from police sources that the records held at the C.S.O. aided
identification, despite the fact that consulting them could be very time consuming. In his
memoirs, which were published in 1932, Wensley recounted a number of examples of the
registers’ usefulness. He reported that he regularly utilised the registers when he was still a
constable, with some success. Two examples are recounted in his memoirs in which
information was found at the C.S.O. that enabled him to prove that individuals were repeat
offenders. However, in both cases the searches were ‘prolonged’.

Journalists Charles Clarkson, a former officer in the Metropolitan Police Force, and J. Hall Richardson argued that
experiences like Wensley’s were not uncommon. In their book Police!, published in 1889, they
said one would regularly ‘see detectives poring over the “black books” with a view to the
identification of suspected persons’. According to the authors, these volumes of photographs
were a ‘terror to the evil doers’, presumably because they were such an aid to identification.

This evidence must be treated with caution. As Terence Stanford has said, when assessing the
writing of former police officers ‘care has to be taken as they frequently project a favourable
view of their actions which might not necessarily be correct’, in this case emphasising, as
Wensley does, their own efforts to identify repeat offenders. Moreover, the assertion by
Clarkson and Richardson that the office was widely used by members of the Metropolitan
Police Force requires testing.

64 Ibid., p. 10.
65 Wensley, Forty Years of Scotland Yard, pp. 15-6, 73.
66 Ibid., p. 73.
1889), pp. 359-60.
68 Ibid., p. 360.
69 George Stanford, The Metropolitan Police 1850-1914: Targeting, Harassment and the Creation of a Criminal Class,
The little data that exists shows that these authors overstated the case, at least in the first decade of the office’s operation. Firstly, the number of visits to the office by members of the Metropolitan Police Force was quite low. James Monro, assistant commissioner of the Metropolitan Police Force, wrote an internal evaluation of the office in 1886 in which he admitted that there had only been 250 visits in 1880, albeit rising to 525 in 1885.\(^\text{70}\) Most importantly, the number of successful identifications as a result of these visits and search forms received was low. In 1890, the first year for which this data is available, a total of 176 identifications were made.\(^\text{71}\) To put this into context, in the same year 1,797 successful identifications were made through the ongoing mechanism of viewing those remanded at Holloway prison. Any person committed for trial in London or remanded in custody by a police magistrate was sent to Holloway prison to be viewed by members of the Metropolitan Police Force and warders in order to identify repeat offenders. However, of the 1,797 identifications at Holloway in 1890, only 244 were made by policemen, with the remainder being made by prison warders.\(^\text{72}\) The reasons for the low proportion of identifications by police at Holloway prison will be discussed below. The available evidence regarding the effectiveness of the registers is incomplete. Nonetheless, what survives shows that the C.S.O., like the registry, was only of limited use and, throughout the 1880s, prison inspections remained the main means by which repeat offenders were identified.

However, a change to the way criminals were registered at the C.S.O. in 1890 led to greater use of the office by members of the Metropolitan Police Force. Section 7 of the *Prevention of Crime Act 1871* gave broad and unprecedented powers to police and magistrates in order to check the activities of repeat offenders.\(^\text{73}\) For example, ‘habitual criminals’ could

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\(^{72}\) *Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals*, pp. 9-10.

\(^{73}\) *Prevention of Crime Act*, s. 7.
be sentenced to no more than one year’s imprisonment for a range of ‘special offences’, which
included appearing to gain a livelihood through dishonest means, being about to commit a
crime and being in numerous places (including in a building, yard, dwelling-house, orchard, or
garden) without a plausible explanation.\(^{74}\) Until 1890 the C.S.O. had kept lists of all those
‘coming within the provisions of the 7th section of the Prevention of Crimes Act’.\(^{75}\) For
example, 1,226 people were registered under that section in 1890. The legislature had been
clear that the ‘special offences’ in section 7 only applied to registered ‘habitual criminals’.
However, in 1890 a decision was made by the Metropolitan Police Force to compile
information regarding Londoners suspected of these offences ‘to an extent not hitherto
attempted’.\(^{76}\) This was done in order to enable a more ‘vigilant inquiry’ into those whose
criminal history was unknown, but who were likely - in the view of the police - to have been
previously convicted.\(^{77}\) According to the commissioner, until this point many ‘habitual
criminals’, ‘being apparently “first offenders”’, had ‘been unregistered’.\(^{78}\) The change resulted
in a 75 per cent increase in those registered under section 7 in one year alone, from 1,226 in
1890 to 2,144 in 1891.\(^{79}\) In the following year, 1892, this figure jumped by a further 170 per
cent to 5,799.\(^{80}\) The Metropolitan Police Force was attempting to better target those it believed
were members of a criminal class.

This change preceded, yet - as will be discussed below - may not have entirely caused,
a significant increase in the usage of the registers kept at the C.S.O., and substantial growth in
the number of successful identifications. In 1890, before the change was affected, there were

\(^{74}\) Ibid., s. 7.
\(^{75}\) Report of the Commissioner of Police of the Metropolis, 1891, p. 6.
\(^{76}\) Prevention of Crime Act, s. 7; Report of the Commissioner of Police of the Metropolis, 1891, p. 6.
\(^{79}\) Ibid., p. 5.
1,573 ‘attendances’ by members of the Metropolitan Police Force to use the registers.\textsuperscript{81}

Attendances increased significantly in 1891, doing so again in the following years.

### 3.2. Attendances at the Convict Supervision Office, 1890-4\textsuperscript{82}

<table>
<thead>
<tr>
<th>Year</th>
<th>1890</th>
<th>1891</th>
<th>1892</th>
<th>1893</th>
<th>1894</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attendances</td>
<td>1,573</td>
<td>2,617</td>
<td>4,000</td>
<td>4,853</td>
<td>4,669</td>
</tr>
<tr>
<td>Percentage increase on previous year</td>
<td>-</td>
<td>66.4</td>
<td>52.8</td>
<td>21.3</td>
<td>-3.8</td>
</tr>
</tbody>
</table>

The number of search forms received by the office also increased. While no figure is recorded for 1890, in 1891 the ‘number of search forms received from the divisions’ was 2,665. This figure rose significantly in each of the next three years.

### 3.3. Search forms filed at the Convict Supervision Office, 1891-4

<table>
<thead>
<tr>
<th>Year</th>
<th>1891</th>
<th>1892</th>
<th>1893</th>
<th>1894</th>
</tr>
</thead>
<tbody>
<tr>
<td>Search forms filed</td>
<td>2,665</td>
<td>5,582</td>
<td>13,140</td>
<td>14,422</td>
</tr>
<tr>
<td>Percentage increase on previous year</td>
<td>-</td>
<td>109.5</td>
<td>135.4</td>
<td>9.8</td>
</tr>
</tbody>
</table>

Importantly, the number of successful identifications made as a result of attendances and the receipt of search forms also climbed. As noted above this figure was only 176 in 1890, yet it rose to almost 3,000 in 1894.\textsuperscript{83}

\textsuperscript{81} Ibid., p. 5.
3.4. Identifications made at the Convict Supervision Office, 1890-4

<table>
<thead>
<tr>
<th>Year</th>
<th>1890</th>
<th>1891</th>
<th>1892</th>
<th>1893</th>
<th>1894</th>
</tr>
</thead>
<tbody>
<tr>
<td>Successful</td>
<td>176</td>
<td>563</td>
<td>1,265</td>
<td>2,124</td>
<td>2,901</td>
</tr>
<tr>
<td>identifications</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage</td>
<td>-</td>
<td>219.9</td>
<td>124.7</td>
<td>68</td>
<td>36.6</td>
</tr>
<tr>
<td>increase on</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>previous year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The commissioner said that these figures ‘cannot but be considered satisfactory’, despite involving ‘a large expenditure of time and labour’.\(^{84}\) They demonstrate that by the last decade of the century the registers at the C.S.O. were used on a considerable scale and that many licence-holders and repeat offenders were identified as a result. The increase in the usage of the registers at the C.S.O. was due, according to the leadership of the Metropolitan Police Force, to the change that had been made in 1890. In 1891 the commissioner noted that the inclusion of details regarding suspected repeat offenders was ‘bearing fruit’.\(^{85}\) He went further the following year, labelling the change ‘one of the most important enactments of the Criminal Law’.\(^{86}\) Petrow and Christopher Harding have also said - with some justification - that the change led to greater usage of the registers, as they became easier for the police to use.\(^{87}\) The alteration to the way the registers were compiled in 1890, to include those suspected, but not proven, to be repeat offenders, was one reason for the increase in the number of police attendances and use of search forms. This was because policemen believed that information concerning the subject of their search was more likely to be found in the registers than had previously been the case.

\(^{84}\) Report of the Commissioner of Police of the Metropolis, 1894, p. 6.  
\(^{85}\) Report of the Commissioner of Police of the Metropolis, 1892, p. 5.  
\(^{86}\) Report of the Commissioner of Police of the Metropolis, 1893-4, p. 5.  
However, it is hard to believe that this one change led to such a significant increase in the usage of the resources compiled by the C.S.O. It is highly probable that greater interest in the problem of recidivism in the late 1880s and 1890s at least partly precipitated the increased usage of the registers at the C.S.O. The late Victorian period saw the rise of views that linked crime, and recidivism, to heredity. The so-called Italian school of positivist criminology, pioneered by psychiatrist Cesare Lombroso, denied the role of free choice in crime, which had hitherto been widely accepted, and instead popularised the idea of the born criminal.88 Lombroso’s conception, articulated in his popular work of 1876, Criminal Man, was that as a result of bad heredity criminals were not ‘normal’, but a kind of ‘savage’, predisposed to law-breaking.89 Importantly, according to Lombroso, criminals were readily identifiable by their physical features, such as a large forehead.90 These ideas influenced many British commentators. David Taylor has quoted numerous late nineteenth-century writers who believed, as the Reverend Osborne Jay of East London did, that there was a ‘submerged and semi-criminal class’, which displayed ‘inherited defects’.91 Taylor has therefore argued that late Victorian social commentators increasingly referred to and accepted Lombrosian ideas.92 Indeed, Mary Gibson and Nicole Hahn Rafter have claimed that by the time of the first International Congress of Criminal Anthropology in 1885, Lombroso’s work linking recidivism to heredity ‘went practically uncontested’ across western Europe.93 This was probably one reason why, as Charles Troup, an under-secretary at the Home Office, told an

89 Pick, Faces of Degeneration, p. 17.
93 Lombroso, Criminal Man, p. 29. Garland has also noted increased focus on the issue of recidivism in the early 1890s. See Punishment and Welfare, pp. 59-61.
1895 select committee that had been established to investigate how the prison system could better combat recidivism, the ‘police have been paying more attention in tracing habitual criminals in the last few years’. Given the prevalence of the idea that criminals could be discerned by their physical features, it is likely that members of the Metropolitan Police Force, and other forces, consequently made greater use of registers of habitual criminals and volumes of photographs that provided information regarding criminals’ appearance.

*The Report of the Troup Committee*

Further significant evidence regarding the efficacy of the system of registration in London, including both the registry and the C.S.O., is contained in a Home Office committee report from 1895, which considered the best means to identify repeat offenders. In 1887 the Home Office had been alerted to the so-called anthropological system of identification developed by the Parisian police officer Alphonse Bertillon, based on measuring and recording the lengths of numerous bones. Edmund Spearman, a former civil servant, advised officials that the system was simple, accurate and economical. The case for the anthropological system was taken up by the British Association for the Advancement of Science and eventually, as Radzinowicz and Hood have noted, the government ‘bow[ed] to pressure’ and put in place an inquiry. A committee of Troup, the prisons inspector Arthur Griffiths, and Melville Macnaghten, a chief constable in the Metropolitan Police Force, was appointed by the Liberal Home Secretary Herbert Asquith to inquire into the ‘best means available for identifying habitual criminals’.

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94 *Prisons Committee*, p. 409.
97 *Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals*, p. 4.
Notwithstanding the changes of 1876 to the compilation of the two key volumes housed at the registry, the committee justifiably found that the registry was still very little used by members of the Metropolitan Police Force, and other forces for that matter. The committee argued that this was primarily because of the inexact nature of the information contained therein, which made searches long and often fruitless. Firstly, the use of aliases was widespread. My analysis of the surviving registers shows that of those criminals whose names appeared in the pages of the register of habitual criminals, 83 per cent had previously used either an alias or an alternate spelling of their own name. This necessitated detailed cross-referencing, often in various copies of the register, which was compiled annually. As the committee noted, this meant that the amount of ‘time and labour which the searches’ involved was prohibitive, which was one of the reasons why the registry was ‘so little used by the police’.

In addition, the committee said that members of the Metropolitan Police Force did not often refer to the register of distinctive marks, predominantly due to the imprecise information it contained. Du Cane argued strongly to the contrary believing that the police could often ‘trace’ the ‘antecedents’ of repeat offenders due to ‘the fact that, in a vast proportion of cases, the habitual criminal carries on his person marks which afford a certain clue to his identity’. However, the committee heard opposing evidence, notably from Mr Grace, the Home Office clerk who compiled the registers under the direction of Du Cane. He conceded that many entries in the register were ‘vague’, resulting in very few successful identifications being made. Indeed, less than 10 per cent of applications based on an offender’s scars led to an identification in the register of distinctive marks. Grace concluded that: ‘it would be better to define the marks

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98 ‘Alphabetical Register of Habitual Criminals who have been Liberated, Subject to the Penalties of the 8th Clause of “The Habitual Criminals Act, 1869;” or of the 7th or 8th clauses of “The Prevention of Crimes Act, 1871”’.
99 *Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals*, p. 18.
very closely’.\textsuperscript{101} As this was not done, the register was used only as a ‘last resort’.\textsuperscript{102} The committee accepted the clerk’s evidence, noting that a large number of convicted criminals had similar tattoos and no other marks registered. For example, in the 1892 register twenty-eight entries listed a tattooed ring on the second finger of the left hand. In only three cases was a further distinctive mark listed, meaning that searches based on this information would be very unlikely to lead to a successful identification.\textsuperscript{103} The committee agreed with Grace that: ‘this difficulty could to a large extent be overcome by more minute descriptions’, yet found that the inclusion of further information would make the register ‘almost unmanageable’ based on its increased size and complexity.\textsuperscript{104} There was therefore an inherent difficulty in compiling data both detailed enough to identify criminals and concise enough to make the register usable.\textsuperscript{105} As this difficulty had not been overcome, the register was little used, and even then with limited success.

A further issue that made successful searches of the registers unlikely was the fact that the information contained in them was not up-to-date. The registers covered each calendar year, but they were not made available until between July and December in the following year. For example, the register of habitual criminals for 1890 was not printed until 7 October 1891 and the register of distinctive marks for the same year was not made available until 9 December 1891. Between 1869 and 1895 the details of repeat offenders were not available until at least eight, and at the most twenty-three, months after their release from prison, due to the huge task of compiling such large documents. It is possible that over such a lengthy period some criminals with one previous conviction would have committed further crimes. Due to the delay in printing and circulating the registers these individuals would not be registered as habitual criminals.

\textsuperscript{101} Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals, p. 43.
\textsuperscript{102} Ibid., p. 43.
\textsuperscript{103} Ibid., p. 8.
\textsuperscript{104} Ibid., p. 8.
\textsuperscript{105} Ibid., p. 8.
criminals for some time. Officers at the registry were aware that the late circulation of the registers was far from desirable. Grace admitted that: ‘A large number [of criminals] will be reconvicted before the register comes out’, meaning time spent searching the registers for such individuals was bound to be wasted. Consequently, Grace was of a view that: ‘the registers should be published monthly’. The committee agreed that the belated availability of the registers was a ‘drawback’.

The outcome of these various deficiencies, which persisted after the changes of 1876, was that the police rarely used the registry. The committee received a return from the registry itself showing that on average fewer than 220 enquiries were received each year from all police forces across England. And Commissioner Henderson admitted that members of the Metropolitan Police Force did not find the registry of much value in ‘its present form’. Clarkson and Richardson also claim that the registry was rarely visited by policemen. The registry was, as the committee noted, the ‘only agency specially established by Parliament’ for ‘identifying old offenders’. It is clear that the registry, and therefore the Gladstone government’s habitual criminals’ legislation that precipitated its establishment, largely failed to achieve this purpose.

Nonetheless, the C.S.O. was also established as a result of the Prevention of Crime Act 1871. Despite the increase in the use of the office in the early 1890s, which has already been discussed, the committee argued with justification that the C.S.O. was not as effective as pre-existing methods of identification in London. The longstanding practice of viewing prisoners while in jail was far more successful. Those remanded at Holloway prison were viewed by both

106 Ibid., p. 43.
107 Ibid., p. 8.
108 Ibid., p. 44.
109 Ibid., p. 68.
110 Clarkson and Richardson, Police!, p. 8.
111 Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals, p. 6.
policemen and warders to ascertain whether they were recidivists. Data regarding the number of prisoners identified as having been previously convicted is available for the period from 1883 to 1893, and was tabulated in the report of the Troup committee.

### 3.5. Prisoners identified in Holloway by Criminal Investigations Officers and Warders as having been previously convicted

<table>
<thead>
<tr>
<th>Year</th>
<th>Identities</th>
<th>By Warders</th>
<th>By Police</th>
</tr>
</thead>
<tbody>
<tr>
<td>1883</td>
<td>1,826</td>
<td>1,427</td>
<td>399</td>
</tr>
<tr>
<td>1884</td>
<td>1,986</td>
<td>1,730</td>
<td>256</td>
</tr>
<tr>
<td>1885</td>
<td>2,081</td>
<td>1,834</td>
<td>247</td>
</tr>
<tr>
<td>1886</td>
<td>1,913</td>
<td>1,727</td>
<td>186</td>
</tr>
<tr>
<td>1887</td>
<td>1,594</td>
<td>1,367</td>
<td>227</td>
</tr>
<tr>
<td>1888</td>
<td>1,711</td>
<td>1,495</td>
<td>216</td>
</tr>
<tr>
<td>1889</td>
<td>1,462</td>
<td>1,188</td>
<td>274</td>
</tr>
<tr>
<td>1890</td>
<td>1,797</td>
<td>1,553</td>
<td>244</td>
</tr>
<tr>
<td>1891</td>
<td>1,671</td>
<td>1,485</td>
<td>185</td>
</tr>
<tr>
<td>1892</td>
<td>1,964</td>
<td>1,765</td>
<td>199</td>
</tr>
<tr>
<td>1893</td>
<td>1,949</td>
<td>1,759</td>
<td>190</td>
</tr>
</tbody>
</table>

The results of this method of identification far exceeded those accomplished as a result of the numerous registers, both at the registry and the C.S.O., for all years other than 1893.\(^{112}\) yet warders identified vastly more repeat offenders in prison than policemen. Warders identified 78 per cent of repeat offenders in 1883, rising to 90 per cent in 1890. The discrepancy is not entirely surprising given that warders had far greater opportunity than policemen to study the features of repeat offenders in person, and at close quarters, during their periods of incarceration. A comparison of these figures with those above regarding successful identifications made at the C.S.O. shows that from 1891 onwards the registers actually

\(^{112}\) Ibid., p. 11.

\(^{113}\) Ibid., p. 10.
facilitated more identifications by the police. Presumably the changes to the way the registers were compiled in 1890, along with the popularity of Lombrosian criminology, caused policemen to devote more energy to efforts to identify criminals at the C.S.O. than at Holloway, as from that year identifications from the registers rose dramatically while those by the police at prison fell significantly. The available data concerning identifications by the police shows that, on the whole, they were able to use neither the system at Holloway nor the registers with much success. The task of recognising repeat offenders was one London policemen clearly found inherently difficult, which is one reason for the failure of the registers to fully achieve the aims of the government. The reasons why policemen failed to identify more repeat offenders will be discussed in the coming pages. Despite the limited success of the police in identifying repeat offenders at Holloway prison, the Troup committee was correct to conclude that the viewing of prisoners was still the ‘most effective’ method of identification in London.\textsuperscript{114}

The committee further criticised registration in London by asserting that more repeat offenders escaped recognition in the capital than anywhere else in the United Kingdom. It is, of course, impossible to ascertain exactly how many of those registered as habitual criminals escaped recognition as such, but individual cases can be cited. The committee asked the prison department of the Home Office if any prisoners were recognised as repeat offenders only after being sentenced during the twelve months preceding 31 October 1893, and three examples in London were provided.\textsuperscript{115} Charles Murdoch, head of the criminal department of the Home Office, provided three further examples of failures in London between 1888 and 1893 and presented some statistics, albeit that did not solely relate to London. He asked his clerks to examine seventy-two cases in which licence-holders were convicted in magistrates’ courts in

\textsuperscript{114} Ibid., p. 10.
\textsuperscript{115} Ibid., p. 17.
1893. In only thirty-four cases, or 47 per cent, could it be proved that the individual was known to be a licence-holder before sentencing. In the remaining thirty-six cases Murdoch presumed that the licence-holder’s identity was unknown, as in these cases the clerk of the court did not report the conviction of a licence-holder to the Home Office, which was a legal requirement.\textsuperscript{116}

While these data were not specific to London, it seems likely that comparatively more registered habitual criminals escaped recognition in the capital, for reasons that will be discussed below. Cecil Douglas, justices’ clerk at the mansion house, and Grace both argued that more recidivists in London went unidentified. This was also the view of the commissioner of the Metropolitan Police Force and his senior officers, despite the fact, which was noted by the committee, that their ‘bias would naturally be to minimise the proportion who escape’.\textsuperscript{117}

The committee was provided with some data to support this position.\textsuperscript{118} The Home Office prepared a comparative table of persons tried on indictment, meaning at a higher court than the magistrates’, in London and three other large population centres. During the first three months of 1893 the courts in Lancashire recorded previous convictions against 70 per cent of defendants. In Liverpool the figure was 79 per cent, and in Norfolk and Suffolk it was 61 per cent. However, in London only 47 per cent of those tried at the higher court were recorded as having committed earlier offences.\textsuperscript{119} As the committee noted, it seems unlikely that significantly fewer repeat offenders operated in London than elsewhere.\textsuperscript{120} Rather, it appears that in London, more so than elsewhere, many of those registered as habitual criminals were able to keep the courts in ignorance of their criminal histories.\textsuperscript{121}

\textsuperscript{116} Ibid., p. 64.
\textsuperscript{117} Ibid., p. 16.
\textsuperscript{118} Ibid., pp. 43-46.
\textsuperscript{119} Ibid., p. 72. The total number of persons convicted was as follows: London, 653; Lancashire, 343; Liverpool, 177; Norfolk and Suffolk, 36.
\textsuperscript{120} Ibid., p. 18.
\textsuperscript{121} Ibid., p. 18.
The committee heard that there were several reasons for the ongoing failure of identification in London, some of which were specific to the capital and some were not. Firstly, a successful identification was not a guarantee of a conviction recognising past crimes. A longstanding concern of the police was the refusal of some prison warders to go to court in order to testify that an individual on trial had previously been a prisoner, meaning that some recidivists were sentenced as first offenders despite the fact that the police believed they had uncovered evidence of past crimes in the registers.  

For example, in 1863 George Everest, the principal clerk for criminal business at the Home Office, told a select committee that there was a ‘great unwillingness’ on the part of prison officers to give evidence regarding the identity of a prisoner, due to the ‘low rate of remuneration to witnesses’. As the Troup committee noted, identification was ‘always dependent on personal recognition by police or prison officers. This is the means by which identity is proved in criminal courts’. While he did not provide any data, in 1889 the commissioner of the Metropolitan Police Force said that the number of identifications leading to convictions had declined over the previous six years in London due to the low ‘number of warders attending’. This was the case, he believed, because of the time involved, and travel and accommodation expenses for warders from beyond London. It is possible that a less tangible impact was on the behaviour of police in utilising the registers. If a conviction was not assured as a result of a long and laborious search of the registers, even when successful, then some police would rationally have used them less than if this had not been the case.

122 Report from the Select Committee of the House of Lords, on the Present State of Discipline in Gaols and Houses of Correction; Together with the Proceedings of the Committee, Minutes of Evidence, Appendix and Index, [C 499] H.C. 1863, ix, p. 221.


126 Ibid., p. 22.
The key reason why many London recidivists were not identified, according to the committee, was the size and nature of the city itself. Its report said that identifying repeat offenders was very difficult in large cities, and ‘especially ... in London’, which was, of course, the largest city in the United Kingdom, and one in which the committee believed criminals were prone to move between different police divisions for the purpose of evading recognition. The committee said that: ‘the problem of identification is far more difficult and complex’ in London than elsewhere.\textsuperscript{127} Some commentators disagreed with this assessment and argued that London’s criminal class lived in clearly defined areas – often called rookeries – and were, as a result, easily monitored by the police.\textsuperscript{128} However, as S. J. Stevenson has noted, many other mid and late Victorian commentators claimed that ‘habitual criminals’ in London were highly mobile, thereby using the size of the city to escape the gaze of the police.\textsuperscript{129} Some scholarship contradicts this discourse, providing compelling evidence that the poorest members of London’s working class, from whom it was often argued that the criminal class emanated, were largely immobile.\textsuperscript{130} This work has implications for our assessment of whether the committee, the Metropolitan Police Force, and the Home Office were correct in asserting that the principal reason for the especial failure of the registers in London was the ability of repeat offenders to evade recognition by the police in such a large city. David Green and Alan Parton claim that, despite the increasing capacity of many members of society to travel (in particular by train), the inner-city poor lived their lives within a very small area. They write that the poor lived, worked and enjoyed leisure pursuits within ‘tightly circumscribed spatial limits’.\textsuperscript{131} And Lynn

\textsuperscript{127} Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals, pp. 6, 9. Also see the evidence of Cecil Douglas, justices’ clerk at the Mansion House, and Grace, pp. 43-6, to this effect.


Lees has undertaken work tracking the movements of poor Irish families (believed by some commentators at the time to constitute a large element of the criminal class) in London around mid-century in which she finds very little evidence of significant changes of location. While several families moved between areas that were close to one another, notably Southwark and Bermondsey, their new abode was always no more than half a mile from their previous home. This immobility, it is argued, was caused by various factors, including the need to live close to places of employment, and the grouping together of dwellings with affordable rents. Finally, and most importantly, Stevenson has carried out an analysis of the location of registered habitual criminals in London between 1869 and 1871. He found that the positive correlation between the criminal’s stated address on release from prison and that of their next of kin was .911, and that in London’s East End there was a correlation of .898 between the address of the next of kin and the destination of letters sent by the prisoner while incarcerated. This evidence suggests that much of the lives of those registered as habitual criminals in London were confined to a small area. As Stevenson has argued, it therefore appears the idea that ‘habitual criminals’ were mobile was a ‘myth’, and that few regularly moved about in order to conceal their identity from the police.

Given the immobility of London’s working class, another reason must be found for the particular failure of registration in the capital. As was the case from 1869-71, the attitudes and actions of London’s police magistrates were major factors that contributed to the legislation’s ineffectiveness. Many members of the police believed magistrates and judges refused to take a

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132 Mayhew said that Irish cockneys represented ‘the most unprincipled part of the population of London’. See Quennell (ed.), London’s Underworld, p. 79. [I would put this amazing quote in the body of the chapter]
134 Ibid., p. 36.
criminal’s record into consideration in sentencing.\textsuperscript{137} While the actual extent to which the Gladstone government’s habitual criminals’ legislation led to longer sentences for repeat offenders will be discussed at length in a following chapter, it can be demonstrated that many policemen, along with some prison officials, believed past convictions were not taken into account in sentencing. While Petrow has argued strongly that police and magistrates worked together to oppress those believed to be part of a criminal class, between 1869 and 1871 senior members of the Metropolitan Police Force justifiably believed that London’s police magistrates were actively working against their efforts to enforce the Liberal’s habitual criminals’ legislation, and this continued to be the case.\textsuperscript{138} For example, J. B. Manning, the governor of London’s Pentonville prison, denounced the sentencing practices of many magistrates and judges in 1894.\textsuperscript{139} When testifying before the Troup committee Manning said that magistrates and judges in London disregarded past convictions, ‘to a very large extent’.\textsuperscript{140} Indeed, the committee said that it had ‘repeatedly’ heard policemen complain that: ‘It is in vain for us to exert ourselves to discover the history of offenders, if no difference is to be made between a hardened criminal and a first offender’ in sentencing.\textsuperscript{141} The committee accepted this evidence and believed that the police relaxed their efforts to provide the court with accurate histories of a defendant’s convictions as a result.\textsuperscript{142} Given the fact that senior London police officers so frequently criticised the sentencing practices of magistrates and judges, it is not altogether surprising that the committee concluded that police were discouraged from pursuing time-consuming searches for records of prior convictions.

\begin{footnotesize}
\textsuperscript{137} For the ubiquitous nature of this view see \textit{Judicial Statistics, England and Wales, 1893. Part I – Criminal Statistics}, [C 7725] H.C. 1895, cviii, p. 78.
\textsuperscript{138} Petrow, \textit{Policing Morals}, p. 51.
\textsuperscript{139} \textit{Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals}, p. 42.
\textsuperscript{140} Ibid., p. 44.
\textsuperscript{141} Ibid., p. 15.
\textsuperscript{142} Ibid., p. 16.
\end{footnotesize}
It remains to be demonstrated that London magistrates were particularly averse to punishing offenders based on evidence garnered from the various registers. As quoted above, Henry, London’s chief magistrate, made his view clear to the Home Office that photographs and registers did not prove identity and could give rise to cases of mistaken identity.\textsuperscript{143} It is possible that other magistrates and judges in London held this view, and that this influenced the behaviour of the police. Stevenson has extracted data regarding prosecution rates of those registered as habitual criminals from a range of sources.

3.6. The rate of prosecution of habitual criminals in various English cities, 1871-90\textsuperscript{144}

<table>
<thead>
<tr>
<th>City</th>
<th>Population in thousands (1871)</th>
<th>Population per police constable (1871)</th>
<th>Average prosecutions of habitual criminals per 10,000 p.a. (1871-90)</th>
</tr>
</thead>
<tbody>
<tr>
<td>London</td>
<td>3,254.3</td>
<td>339</td>
<td>2.01</td>
</tr>
<tr>
<td>Liverpool</td>
<td>489.5</td>
<td>582</td>
<td>8.54</td>
</tr>
<tr>
<td>Manchester</td>
<td>351.2</td>
<td>456</td>
<td>12.47</td>
</tr>
<tr>
<td>Birmingham</td>
<td>343.8</td>
<td>661</td>
<td>1.58</td>
</tr>
<tr>
<td>Leeds</td>
<td>259.2</td>
<td>762</td>
<td>2.78</td>
</tr>
<tr>
<td>Sheffield</td>
<td>239.9</td>
<td>750</td>
<td>0.51</td>
</tr>
<tr>
<td>Bristol</td>
<td>182.5</td>
<td>506</td>
<td>2.98</td>
</tr>
<tr>
<td>Bradford</td>
<td>145.8</td>
<td>729</td>
<td>3.05</td>
</tr>
<tr>
<td>Newcastle-on-Tyne</td>
<td>128.2</td>
<td>642</td>
<td>4.30</td>
</tr>
<tr>
<td>Hull</td>
<td>121.6</td>
<td>767</td>
<td>4.02</td>
</tr>
</tbody>
</table>

Based on the comparatively low rate of both arrests and prosecution in London, despite its relatively large police presence and the tendency of many members of the working class in

\textsuperscript{143} Henry to Liddell, 13 March 1869.

\textsuperscript{144} The sources used by Stevenson in extracting this data were the annual reports of H. M. inspector of constabulary, the commissioner of police of the metropolis, poor law commissioners and the local government board, and the annual volumes of judicial statistics. See Stevenson, ‘The ‘Habitual Criminal’ in Nineteenth-Century England’, p. 52.
major cities to live their lives within a small area, Stevenson is right to label London an ‘exceptional case’. The key reason for the low rate of prosecution in London, according to Stevenson, is that many magistrates refused to fully implement the Gladstone government’s habitual criminals’ legislation. Their antipathy towards the act was known to the police. They therefore arrested relatively few repeat offenders as they believed magistrates were unlikely to convict. This explanation, as we will see, is a plausible one.

Some evidence of magistrates’ opposition to the Prevention of Crime Act 1871, albeit not restricted to London, can be found in Home Office papers. In 1886 a Home Office memorandum was penned by Lushington regarding ‘irregular sentences under section 5 and 7 of the Prevention of Crime Act 1871’. The paper said that sentencing irregularities were ‘frequent occurrence[s]’. A term of imprisonment of less than one year was often the punishment for a breach of the ‘special offences’ that were listed in section 7 and discussed earlier in this chapter. Such a breach contravened the conditions outlined on tickets-of-leave. Under section 5 magistrates could revoke the licence, thereby returning the defendant to prison for the remainder of their initial term of penal servitude. But the Home Office asserted that it was ‘the rule’ that magistrates, eager to avoid such a harsh punishment for a minor offence, were ‘not revoking the licence’. Furthermore, when challenged by Home Office officials about instances of this broader failure to properly enforce the legislation, magistrates had – in every case - requested that ‘the prisoner should be discharged’ rather than face a lengthy term of penal servitude. In the end, the Home Office had to send a circular to all magistrates urging them to fully enforce section 7 of the act. Therefore, contrary to the view of Petrow, breaches

145 Ibid., p. 47.
146 Ibid., pp. 46-8.
148 Prevention of Crime Act, s. 7.
of the Liberal government’s habitual criminals’ legislation by those registered as habitual criminals did not necessarily lead to lengthy periods in prison, or even a further conviction.\textsuperscript{151}

London’s police magistrates took their role as advisers to the poor very seriously and, as a consequence, often acted in the interests of their working-class clientele and against positions that appeared to be widely held within the middle class.\textsuperscript{152} In the next chapter we will also see that London’s police magistrates, more so than magistrates and judges anywhere else in the United Kingdom, continued to successfully oppose police supervision, making it inoperative until 1879. Again, it will be argued that they did so out of a conviction that the Liberals’ habitual criminals’ legislation unreasonably targeted members of the working class, with whom they were eager to maintain good relations. As Stevenson has said, ‘the politics of the judiciary’ should be taken into consideration as a ‘factor operating to control’ the number of registered habitual criminals who were ‘punished’.\textsuperscript{153}

\textit{Conclusion}

In London the various registers of habitual criminals were of limited use in identifying criminals until the 1890s. In part this was because of technical limitations. Before more sophisticated means of identifying repeat offenders were developed late in the century, any registers were bound to be lengthy, inexact, cumbersome and time consuming to utilise. Yet problems with the legislation itself also contributed significantly to the failure of the system of registration to live up to politicians’ expectations. The legislation’s definition of crime, which included all felonies and several misdemeanours, led to the registration of huge numbers of petty offenders. Searches of the registers were therefore time consuming and rarely led to a

\footnotesize{\textsuperscript{151}Petrow, \textit{Policing Morals}, p. 51.}
\footnotesize{\textsuperscript{152}This was discussed at length in the previous chapter. Also see Ellis and Ellis, solicitors, to Edmund Henderson, 11 Nov. 1869, T.N.A., MEPO 3/88; Adolphus Liddell to Edmund Henderson, 14 Jan. 1870, T.N.A., MEPO 3/88; Draft circular, 6 May 1870, T.N.A., HO 12/184/85459A/40; Superintendent of F division to Edmund Henderson, 18 May 1870, T.N.A., MEPO 3/88.}
\footnotesize{\textsuperscript{153}Stevenson, ‘The ‘Habitual Criminal’ in Nineteenth-Century England’, p. 46.}
successful identification. Even after this defect was remedied in 1876 and then the C.S.O. was established in 1880, the numerous registers available to members of the Metropolitan Police Force remained large and contained information that was often unhelpfully broad. It was predominantly for these reasons that the Troup committee found the registers were so little used.

Registration had the potential to brand individuals as criminal in the eyes of the police, magistrates and judges. This is a point that numerous historians have made.\textsuperscript{154} However, the impact of registration upon those believed to be part of a criminal class was much more limited in London than the Gladstone government had hoped. The dominant position in the relevant literature is that, despite their deficiencies, the various registers of habitual criminals were oppressive instruments of control that enabled the monitoring and even creation of a criminal class. The historians who make this case utilise social control interpretations to assert that this legislation was part of a larger attempt, carried out by the middle and upper classes, to control the working class. Politicians, the police, and magistrates and judges were, it is argued, participants in this project.\textsuperscript{155} In this chapter it has been shown that, at least in London, this thesis is incorrect. However, the Gladstone government’s habitual criminals’ legislation introduced other measures designed to control elements of the working class, such as the supervision of some registered habitual criminals. Whether police surveillance in London met with more success will be the subject of the next chapter.


Chapter 4. Police Supervision of Habitual Criminals, 1871-1895

His [Robert Audley’s] generous nature revolted from the office into which he had found himself drawn – the office of spy, the collector of damning facts that led to horrible deductions.\(^1\) *Lady Audley’s Secret, 1862.*

A further objective of the Gladstone government’s habitual criminals’ legislation was the establishment of a thorough system of police supervision. The *Prevention of Crime Act 1871* allowed magistrates and judges throughout the United Kingdom to impose a period of police supervision in the community of up to seven years upon anyone convicted of crime, who had previously been found guilty of an indictable offence. The act defined crime as all felonies and the misdemeanours of obtaining money by false pretences; conspiracy to defraud; and being at large at night with the intent of committing a crime, with either housebreaking instruments or a disguised face.\(^2\) Supervision, which was also extended to all those whose sentences of penal servitude had been remitted and were at large in Britain subject to the conditions of a licence, which was commonly called a ticket-of-leave, entailed monthly reporting to a local police station - by male criminals - and surveillance by the police. Women were excused from reporting as the government presumably believed they did not pose as great a risk to society as male offenders.\(^3\) Under the 1869 act licence-holders and those sentenced to supervision were not required to report themselves each month and the courts were obliged to sentence all those guilty of multiple crimes, as defined by the legislation, to supervision. However, under the 1871 act magistrates and judges were given the discretion not to impose supervision upon repeat offenders. This greater discretion was intended to ensure that petty offenders were no longer sentenced to supervision, thereby reducing the number of people subject to police supervision and making the task of monitoring criminals who posed a


\(^{2}\) *Prevention of Crime Act, 34 & 35 Vict., c. 112, 1871*, s. 6, 8, 20.

significant danger to society more manageable for the police. Meanwhile monthly reporting was introduced in response to criticisms that police had little knowledge, such as a residential address, of those they sought to supervise. The government and the opposition hoped that the new legislation would lead to a closer monitoring of repeat offenders than had occurred between 1869 and 1871. The Conservative position, articulated by the Earl of Carnarvon, was that supervision would be transformed from a ‘sham into a reality’ as, the party believed, those subject to it would now be closely watched and, therefore, deterred from committing further crimes. The extent to which police supervision achieved this objective in London will be assessed in this chapter. The chapter will begin with an explanation of how police supervision operated in London, and will then analyse the effectiveness of supervision until 1880. A new Convict Supervision Office (C.S.O.) was created in 1880 to coordinate police supervision in London. The system of police supervision was also altered through new legislation that came into force in September 1879. Consequently, the second section will analyse the effectiveness of supervision in London from 1880 to 1895.

Numerous historians have claimed that police supervision of licence-holders and repeat offenders was carried out in a heavy-handed manner, which forced those under surveillance to turn, once more, to crime. For example, Helen Johnston - whose research is primarily provincially focused - has said that police supervision led to employers, landlords and associates becoming aware of an individual’s criminal history. Johnston argues that this served

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5 Ibid., cols. 1084-5.
6 Ibid., col. 1087.
7 Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals; with Minutes of Evidence and Appendices, [C 7263] H.C. and H.L. 1894, lxxii, pp. 1-16.
to ‘reproduce’ criminality, as opportunities for honest employment, in particular, were denied.\(^9\)

There is a consensus among the historians who have assessed the system of police supervision that it was highly flawed in its early years, with many under supervision able to escape the gaze of the police altogether.\(^{10}\) Nonetheless, most historians who have analysed the operation of police supervision believe that, as refinements were made over time, the police were increasingly able to monitor so-called habitual criminals in a manner that endangered employment and, consequently, left them with little option but to commit further crimes.\(^{11}\)

As Barry Godfrey, David Cox and Stephen Farrall have said, based on their research in the north of England, police ‘attention must have fallen heavily on … those who were thought dangerous enough to be sentenced to police supervision’.\(^{12}\) The consequence of this attention, according to Stefan Petrow, was that the police were able to ‘manufacture a criminal class’.\(^{13}\) However, as Mary Elizabeth Braddon implied in *Lady Audley’s Secret*, her best-selling novel of 1862, spies and spying were widely regarded with hostility in mid and late Victorian Britain.\(^{14}\)

This chapter will show that, as a consequence, London’s police magistrates and members of the Metropolitan Police Force acted to frustrate supervision, as it was envisaged by members of parliament.

1. The Supervision of ‘Habitual Criminals’ Before 1880

The Liberal government and the Conservative opposition anticipated that the supervision of licence-holders and repeat offenders would entail the close monitoring of this

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12 Godfrey, Cox and Farrall, *Serious Offenders*, p. 186.
13 Petrow, *Policing Morals*, p. 82.
cohort of offenders. Such supervision, it was hoped, would deter ‘habitual criminals’ from committing further crime due to the increased likelihood of detection.\textsuperscript{15} This was not achieved in London between 1869 and 1871 due, primarily, to the huge numbers subject to supervision and the absence of any mechanism to compel those under supervision to report themselves to the police.\textsuperscript{16} New legislation was introduced in 1871 with the intention of remedying these shortcomings.\textsuperscript{17} This section will analyse the extent to which supervision was effective up to 1880, at which time the C.S.O. was established. As we shall see, despite the introduction of monthly reporting and the other measures of the \textit{Prevention of Crime Act 1871}, supervision was particularly ineffective in London from 1871 to 1880.

There were two elements to the system of supervision: monthly reporting by the licence-holder or repeat offender, and regular surveillance of that person by the police. Firstly, monthly reporting was seen as vital to the system of police supervision in London. Twice a week a detective from the criminal investigation department of every Metropolitan Police Force division, along with one inspector, would attend Millbank and Brixton prisons: the institutions from which, respectively, male and female licence-holders were released. These policemen met with all those about to be released from prison subject to the conditions of a ticket-of-leave and gave male prisoners a form that specified their obligation to report themselves monthly to their nearest police station, and also to report any change of address. The penalty for non-compliance, they were informed, was up to one year’s imprisonment with hard labour.\textsuperscript{18} Men released into police supervision and not in receipt of a ticket-of-leave were given the same form, but by prison officials and not the police. All licence-holders and repeat offenders under supervision, both male and female, were then required to report themselves to

\textsuperscript{15} Douglas Straight (Conservative), 208 Parl. Deb., H.C. (3rd ser.), cols. 1756-9 (16 Aug. 1871).
\textsuperscript{16} The Earl of Morley (Liberal), 207 Parl. Deb., H.L. (3rd ser.), cols. 1082-6 (4 Jul. 1871).
\textsuperscript{17} \textit{Prevention of Crime Act}, 1871, s. 6, 8, 20.
their nearest police station within forty-eight hours of release, at which time the requirement to report monthly was stressed once again to the men. Men subject to police supervision were therefore clearly informed of the primary importance of monthly reporting.

Secondly, the police were to monitor licence-holders and repeat offenders sentenced to police supervision in the community. To aid them in this endeavour policemen were given written information about those under supervision and how surveillance was to be carried out. Brief information regarding every person sentenced to supervision within the Metropolitan Police District, including their age, address, and any distinctive marks, was communicated weekly to all police stations in the district in order to aid police in monitoring them. The commissioner informed all policemen that, while carrying out this task, every effort must be made to guard against the repeat offender’s criminal history being made known, ‘improperly or injuriously’, to his or her employer or other acquaintances. To this end the police were told to only carry out surveillance while out of uniform. It is not surprising that policemen were so instructed. Evidence suggests that many members of the working class strongly opposed the growing power of police forces in the nineteenth century, and their focus on policing spaces such as streets and music halls in poor communities. In particular, the notion that the police would surreptitiously monitor working-class activity met with fierce animosity from the working class, and many within the middle and upper classes also. Longstanding respect for the liberty of the subject meant that spying by the police, or other representatives of the state, was strongly opposed in nineteenth century Britain. The leadership of the Metropolitan Police

19 William Harris, chief inspector, executive division, Metropolitan Police Department, Report of the Commissioners Appointed to Inquire into the Working of the Penal Servitude Acts, pp. 394-5.
20 Ibid., p. 395.
Force was cognisant of this widespread sentiment. As a consequence, it often opposed, or sought to lessen the severity of, measures that were unpopular with working-class communities. The Metropolitan Police Force was, from its inception, a tool of the middle and upper classes that clearly served their interests through a focus, in particular, on theft and other property crime. Nonetheless, the force was not a completely willing element in a broader apparatus of social control, as some historians suggest. And as we will see, instructions to take great care when monitoring licence-holders and repeat offenders, which were often issued to policemen in London and were in keeping with other communications from the leadership of the Metropolitan Police Force, did not bode well for the close surveillance of members of the so-called criminal class in London.

Yet some sources commended the system of police supervision that had been augmented by the Prevention of Crime Act 1871. In their contributions to the annual reports of the commissioner of the Metropolitan Police Force two superintendents argued that supervision would be strengthened by the legislation. In 1871 the superintendent of Clapham division wrote that the ‘criminal classes’ would now be able to be ‘kept under a more effectual supervision’. The superintendent of Wandsworth division echoed this sentiment. For reasons that will become apparent, no other senior members of the Metropolitan Police Force praised police supervision in the 1870s. Indeed, there is much evidence to suggest that supervision was most ineffective in London between 1871 and 1880, due primarily, as with registration, to the actions of the police magistrates. Section 20 of the Prevention of Crime Act 1871 stated that all those

reporting monthly to the police must do so to the chief officer of police or an individual nominated by him.\textsuperscript{28} By May 1872 London’s chief magistrate, Sir Thomas Henry, had informed the Metropolitan Police Force that the capital’s police magistrates interpreted this section as meaning that reports had to be made to the commissioner himself, or to someone specifically chosen by him. Furthermore, London’s magistrates would refuse to convict for failure to report unless the commissioner personally took the stand to provide sworn information as to the infringement.\textsuperscript{29} This, as Henry was presumably well aware, was impossible. However, this situation persisted throughout the 1870s. In 1879 Chief Inspector William Harris noted that as a result of the way in which London’s police magistrates interpreted section 20 of the \textit{Prevention of Crime Act 1871}, the Metropolitan Police Force had ‘not proceeded against anyone’ for failure to report ‘since 1871’.\textsuperscript{30} The reporting requirement, which, as discussed, was central to the system of police supervision, was not interpreted so strictly anywhere else in the United Kingdom. In all other areas courts accepted the officer on duty as the nominee of the chief officer, and were happy to receive his evidence of a failure to report.\textsuperscript{31} Given the negative attitude of London’s police magistrates to the Gladstone government’s habitual criminals’ legislation, it is not surprising that, as with registration, they acted to undermine supervision. In their view it inappropriately targeted their working-class clientele, with whom they were eager to maintain good relations.\textsuperscript{32}

\textsuperscript{28} \textit{Prevention of Crime Act}, 1871, s. 20.
\textsuperscript{29} Douglas Labalmondrie, assistant commissioner of the Metropolitan Police Force, to the Home Office, 6 May 1872, T.N.A., HO 45/9320/16629A.
The manner in which London’s police magistrates interpreted section 20 of the *Prevention of Crime Act 1871* meant that those subject to police supervision could easily avoid being watched by the police. Without any way to compel licence-holders and those sentenced to supervision to report themselves, many were lost track of in London. This point was made in evidence to a parliamentary committee, the genesis of which was discussed in the previous chapter, in 1879 by Edmund Henderson, commissioner of the Metropolitan Police Force, William Hardman, the chairman of the Surrey quarter sessions, and Chief Inspector Harris.\(^{33}\)

Hardman said that supervision was ‘entirely futile’ in London because ‘it is so easily avoided’, and the commissioner produced evidence showing many did avoid surveillance.\(^{34}\) Of the 4,316 prisoners who had been released into the Metropolitan Police District between 1875 and 1879 with an obligation to report themselves, 987 had failed to do so, or 23 per cent.\(^{35}\) Henderson plausibly asserted that those who evaded the police were probably those most in need of supervision, as those who were committing further crimes were more likely to seek to avoid being monitored by the police than those living honestly.\(^{36}\) This was certainly sometimes the case. For example, in his memoirs Arthur Harding, a leading figure within an East End gang in the late nineteenth century, said that the eastern-European burglar Steinie Morrison had been wanted by the police for failure to report, before ultimately being convicted of murder.\(^{37}\) As the majority of male licence-holders and those sentenced to supervision in London reported themselves regularly, the measure was not futile as Harman claimed. Surveillance was, however, very easy to evade.

The surveillance of those subject to police supervision in London was made more difficult as their residential addresses were often unknown. Many of those about to be released

\(^{33}\) *Report of the Commissioners Appointed to Inquire into the Working of the Penal Servitude Acts*, pp. 360, 395-6, 1012-3.

\(^{34}\) Ibid., p. 1012.

\(^{35}\) Ibid., p. 360.

\(^{36}\) Ibid., p. 360.

from a period of incarceration under police supervision refused to disclose their intended place of residence. The *Prevention of Crime Act 1871* stated that those subject to supervision must inform the police of any change of address, but not their initial address on leaving prison.\(^{38}\) In October 1872 Colonel Cobbe, the inspector of constabulary for the Midlands, who was responsible for reporting to parliament on the efficiency of police forces in that part of England, informed the Home Office of this problem. He attached a copy of the most recent *Police Gazette*, which included details regarding fourteen prisoners in England and Wales who were about to be released into police supervision. For their ‘intended residence after liberation’ five prisoners had provided a specific street address, seven had only stated the town in which they would live, and two gave no information.\(^{39}\) This meant, according to Cobbe, that: ‘the worst and most dangerous class’ of criminals ‘have all opening to evade the law by giving no destination’.\(^{40}\) It is likely that this was not problematic for local police forces in many villages and smaller towns, as their size would have made locating those under supervision relatively straightforward. However, in the United Kingdom’s most populous city the failure of many of those subject to supervision to state an address meant they could effectively disappear, compounding the problems that beset monthly reporting in London. In 1872 the Home Office also received correspondence from Commissioner Henderson, which informed it that the inability to oblige those sentenced to supervision to provide a residential address was a particular problem in London. He stated that, when coupled with the incapacity to enforce monthly reporting in London, police supervision was ‘a dead letter’ as the criminals believed by the police to be most at risk of reoffending could evade surveillance.\(^{41}\) Before 1880 the ease

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\(^{38}\) *Prevention of Crime Act*, 1871, s. 8.

\(^{39}\) *Police Gazette*, 4 Oct. 1872, p. 4.

\(^{40}\) Colonel Cobbe, inspector of constabulary, to the Home Office, 16 Oct. 1872, T.N.A., HO 45/9320/16629D.

\(^{41}\) Edmund Henderson, commissioner of the Metropolitan Police Force, to the Home Office, 12 Nov. 1872, T.N.A., HO 45/9320/16629D.
with which supervision could be avoided therefore meant the provision was particularly ineffective in London.

Furthermore, many of London’s repeat offenders were not being sentenced to police supervision. Data contained in the annual reports of the commissioner of the Metropolitan Police Force show that in each of the years 1872 and 1873, which are the last years in which these data are available, fewer than 350 people were sentenced to police supervision in the Metropolitan Police District.

**4.1. People convicted within the Metropolitan Police District and sentenced to a period of police supervision, 1870-3**

<table>
<thead>
<tr>
<th>Year</th>
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<tr>
<td>1870</td>
<td>764</td>
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<td>1871</td>
<td>755</td>
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<tr>
<td>1872</td>
<td>306</td>
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<td>1873</td>
<td>337</td>
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These figures, which decreased statistically significantly by 56 per cent from 1870 to 1873, show that London’s magistrates and judges utilised the discretion afforded them by the *Prevention of Crime Act 1871* to submit fewer repeat offenders to supervision. While under the *Habitual Criminals Act 1869* all ‘habitual criminals’ were to be sentenced to supervision, the *Prevention of Crime Act 1871* gave magistrates and judges discretion to impose supervision or not. Given the attitude of London’s magistrates towards this legislation it is not surprising that in 1872 and 1873 they, along with London’s judges - whose, often similar, views will be addressed in the next chapter - used their discretion to limit the impact of supervision. While this data only covers the period from 1870 to 1873, it shows that police supervision, which, in

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43 Prevention of Crime Act, 1871, s. 8.

any case, was easily avoided in London, was imposed upon fewer than half the number of repeat-offenders in both of these years than it had been before the legislative change of 1871.

Action was eventually taken in an effort to enable police supervision to be more effectively administered in London. In 1879 a parliamentary committee accepted evidence that it was ‘practically impossible in the metropolis’ to ‘enforce the law which requires convicts on licence and other persons under supervision to report themselves’. Consequently, the committee recommended an immediate amendment to the *Prevention of Crime Act 1871*.\(^{45}\)

This recommendation was accepted and the Conservative home secretary, Richard Assheton Cross, hurriedly prepared a short bill designed to make monthly reporting enforceable in London and to compel licence-holders and those sentenced to police supervision to provide the address of their place of residence or face up to one year’s imprisonment. Concerning monthly reporting the legislation stated that: ‘The power of a chief officer of a police district to direct that the reports required’ by the *Prevention of Crime Act 1871* ‘shall be made by some other person and shall extend to authorise him to direct such reports to the constable or person in charge of any particular police station or office without naming the individual person’.\(^{46}\) So the government acted in response to the London police magistrates’ unique interpretation of the reporting provisions of the *Prevention of Crime Act 1871*, that only the chief officer of police could provide evidence of a failure to report. The bill was presented to parliament, debated, and passed - with bipartisan support - in August 1879, receiving royal assent on the 15\(^{th}\). It came into force on 1 September 1879 and gave parliamentary sanction to the notion that, to a large extent, supervision in London had hitherto been a failure.\(^{47}\)

*Claims of Police Harassment*

\(^{45}\) *Report of the Commissioners Appointed to Inquire into the Working of the Penal Servitude Acts*, p. lxiv.

\(^{46}\) *Prevention of Crime Act*, 42 & 43 Vict., 1879, c. 55, s. 2.

\(^{47}\) 249 *Parl. Deb.*, H.L. (3\(^{rd}\) ser.), col. 1029 (15 Aug. 1879).
Despite the fact that police supervision was especially ineffective in London in the 1870s, members of the Metropolitan Police Force were persistently accused of abusing their new powers. According to numerous historians, these accusations demonstrate that the police vigorously and inappropriately enforced supervision in a manner that created a ‘criminal class’. However, as we will see, claims of undue interference in London were largely unfounded. Firstly, it was alleged that policemen hounded those under supervision by overtly monitoring them while at or nearby their place of work, or - more damaging still - by directly informing their employers of their criminal pasts, resulting in the loss of their jobs. The police supposedly acted in this way in order to achieve a reputation for being thorough in the performance of their duties and to gain promotion. William Ranken and Lawrence Cave both put this argument to the penal servitude acts commission in 1879. These men were the honorary secretaries of London’s Royal Society for the Assistance of Discharged Prisoners, which was a charitable society seeking to aid the reintegration of prisoners into society and, in particular, employment. The former said that numerous cases of men losing their employment as a result of the actions of police had come to his notice and called for the introduction of a system similar to Dublin’s, where supervision was carried out by civilians. Supervision, according to Ranken, was a ‘constant source of difference’ between the society and the Metropolitan Police Force, due to the high volume of complaints. Cave also said that he was aware of some cases of improper interference. The Metropolitan Police Force admitted that accusations of this kind were consistently levelled against its members. For example, in a review of the C.S.O.

51 This system was discussed in Chapter 1. Also see Patrick Carroll-Burke, Colonial Discipline: the Making of the Irish Convict System, Dublin: Four Courts Press, 2000, pp. 102-3.
53 Ibid., p. 1119.
that was conducted in 1886 Assistant Commissioner James Monro said that prior to the establishment of that office in 1880 many repeat offenders had, when brought before the courts, claimed that police interference had prevented them from securing employment. The Metropolitan Police Force had been continually frustrated by the ‘numerous complaints’ from those under supervision that they had been ‘prevented from earning an honest living’. As Monro said: ‘There was scarcely an assize, sessions or police court at which these pleas were not put forward’.  

Several of these pleas survive. The Irish republican Michael Davitt said that the harassment of those under supervision was a widespread problem and that policemen acted in this way ‘in order to get promotion and a character for vigilance’. Davitt, who had been arrested in London and convicted of conspiring against the crown presumably came to this conclusion following discussions with other prisoners, given that his numerous lectures and publications on prison reform included much evidence from prisoners themselves. Davitt’s account, and those mentioned above, was in keeping with views published anonymously in 1877 and 1880 by men claiming to have been imprisoned. In 1877 the author of *Five Years’ Penal Servitude by One who has Endured it* claimed, based on conversations with prisoners who had been subject to supervision, that the police intentionally pointed out those under supervision to their employers, causing their dismissal. The author of this work was the London stockbroker Edward Callow, who had been sentenced to five years’ penal servitude in 1868 for defrauding his employer by issuing false cheques worth up to 700 pounds.

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57 Anonymous, *Five Years’ Penal Servitude by One who has Endured it*, p. 269.
1880 a London ‘ticket-of-leave’ man who claimed to have personal experience of police supervision made the same point. He said that: ‘policemen are naturally anxious to show their acuteness and activity to their superiors and the man with honest intentions is often foiled in his attempts to gain an honest living by the assiduity of the police’.\textsuperscript{59} In the 1870s it was regularly alleged that members of the Metropolitan Police Force zealously used their supervisory powers to target repeat offenders, endangering their employment.

However, despite these complaints, it seems probable that inappropriate conduct by the police towards those under supervision was relatively rare. As discussed, police supervision in London could be easily avoided and, in the years for which data is available, it affected less than half of those repeat offenders convicted in London who were eligible to be sentenced to the punishment. In addition, the Metropolitan Police Force vigorously denied wrongdoing. Commissioner Henderson said that the police carefully investigated all allegations of undue interference. Based on the findings of these investigations he asserted that there had only been two confirmed cases of improper behaviour by a member of the Metropolitan Police Force towards an individual under supervision. He believed the figure was so low because the leadership of the force was ‘always trying to impress upon the police the great care’ that must be shown in undertaking these duties.\textsuperscript{60} Such directions had indeed been given. For example, following the passage of the \textit{Habitual Criminals Act 1869}, the home secretary penned a circular, which was distributed to police forces, stating that care should be taken regarding how supervision was enacted ‘so as not to interfere with but as far as possible to assist the efforts of those who evince a desire to return to an honest life by earning an honest livelihood’.\textsuperscript{61} Furthermore, in 1872 Metropolitan Police Force rule number 372 was put in place, which articulated how carefully supervision should be undertaken.

\textsuperscript{60} Report of the Commissioners Appointed to Inquire into the Working of the Penal Servitude Acts, p. 361.
\textsuperscript{61} Henry Bruce, home secretary, Circular, 8 Nov. 1869, T.N.A., HO 12/184/85.
It said that:

When the divisional police are directed to make inquiries respecting licence holders or supervisees, the greatest care must be taken not to injure them directly or indirectly either with their employers or landlords. Officers should be employed on this duty who are not well known in the locality immediately in the neighbourhood in which they live, and on no account is a man in uniform ever to be employed on such duty.  

Similar directives had also been given in the 1840s and 1850s. Several scholars argue convincingly that members of the Metropolitan Police Force were well aware of the need to maintain good relations with working-class communities, not appearing heavy-handed in their application of the law. For instance, Arthur Harding said that policemen were always kind to working-class children. Speaking of London’s Kingsland Road police station, he said that:

They used to make a fuss of you there. They knew that you was hungry. And so they’d give you a slice of bread and jam. Sometimes the policeman would carry you, sometimes he would walk you back home.

Therefore, Henderson’s assertion that very few constables defied express instructions and acted inappropriately is a reasonable one. The discrepancy between the very numerous claims and the number of substantiated cases was due, he argued, to a belief among offenders that magistrates might take pity on someone who alleged that their offending was necessary after having been hounded out of honest employment by the police. As Henderson said, surely with

65 Samuel, East End Underworld, p. 36.
some justification, ‘of course they are all ready to say that the police’ harass them. The social commentator Charles Booth echoed this view in 1902.

The penal servitude acts commission was certainly not convinced by reports that those under supervision were regularly interfered with. It noted that the evidence it had received was conflicting and found that any ‘interference’ from members of the Metropolitan Police Force was ‘comparatively rare’. Yet the commissioners agreed with Ranken that it was potentially problematic for supervisory duties to ever be carried out by local policemen who may be known in the community. The committee accepted that the criminal past of those under supervision might be uncovered as a result of this surveillance. Consequently, the commission recommended that plain-clothes policemen specially selected for their discretion and with no other duties should carry out supervision in London. This recommendation was accepted and led directly to the establishment of the C.S.O. in 1880. Nonetheless, we will see in the next section that the changes of 1879 and 1880 to the manner in which supervision was carried out in London did not significantly increase the effectiveness of police supervision in the capital.

2. The Effectiveness of Police Supervision from 1880 to 1895

Due primarily to the way London’s police magistrates interpreted the Prevention of Crime Act 1871, police supervision had initially been very ineffective as a means of monitoring those designated as habitual criminals in London. As discussed in the previous section, in 1879 a legislative change was made in order to enable those required to report themselves to the police each month to do so to the police officer on duty at a particular station without that person being specifically chosen for the task by the chief officer of police. Furthermore, in

\[\text{\footnotesize \cite{66:Report of the Commissioners Appointed to Inquire into the Working of the Penal Servitude Acts, pp. 360-2.}\]
\[\text{\footnotesize \cite{68:Report of the Commissioners Appointed to Inquire into the Working of the Penal Servitude Acts, p. xxxv.}\}
\[\text{\footnotesize \cite{69:Ibid., p. ixiv.}\}
\[\text{\footnotesize \cite{70:Monro, ‘A Report of the History of the Department of the Metropolitan Police known as the Convict Supervision Office’, p. 9.}\}
\[\text{\footnotesize \cite{71:Prevention of Crime Act, 1879, s. 2.}\}
1880 the C.S.O. was established in London with a staff of plain-clothes policemen whose sole duties concerned supervision. This section will analyse whether these alterations enabled police supervision to become more effective in London. Firstly, the changes to the way reporting was carried out meant that fewer people could avoid monthly interactions with the police. However, due primarily to the unwillingness of staff at the C.S.O. to carry out close surveillance, the monitoring of licence-holders and repeat offenders remained largely ineffective in the London.

From its foundation the C.S.O. adopted a new conception of police supervision in keeping with the views of its founder, Howard Vincent, who was the director of criminal investigation within the Metropolitan Police Force. As a consequence, those under supervision were unlikely to be closely monitored in the manner the parliament had intended when passing the Liberal government’s habitual criminals’ legislation. In April 1880 Vincent proposed the establishment of the C.S.O. as a response to the report of the penal servitude acts commissioners. 72 Commissioner Henderson accepted the proposal, and Vincent oversaw the establishment of the new office. 73 Vincent strongly believed that the key function of the police with regard to repeat offenders should be to aid their efforts to reform. Most, he asserted, were keenly desirous to return to the ranks of respectable society after having initially fallen into crime through circumstance rather than choice. However, as he wrote in 1883, the ‘prison taint’ often prevented repeat offenders from gaining employment, leading to a ‘relapse’ into crime. Consequently, he believed that the key aim of the police concerning repeat offenders should be to enable their return to honest employment. 74 When it was first introduced both the Liberal government and the Conservative opposition conceived of supervision as a way to deter further

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72 Howard Vincent, director of criminal investigation, to Edmund Henderson, 28 Apr. 1880, T.N.A., HO 45/9570/76871.
offending by members of a ‘criminal class’, who freely chose a life of crime.\textsuperscript{75} The founder of the C.S.O. had a very different view.

Vincent’s ideas informed the practice of the C.S.O. The regulations that guided the actions of staff at the C.S.O., along with the department’s stated objectives, clearly embraced the notion that reformation, rather than deterrence, was the chief aim of the policing of this group of offenders. The department’s regulations, which cautioned that the ‘greatest tact and discretion’ must be taken when carrying out supervision, compelled staff ‘to assist by all means in their power all those who desire or appear to desire to lead an honest life’ and also to make ‘every effort’ to work ‘in harmony’ with London’s Discharged Prisoners’ Aid Societies.\textsuperscript{76} These regulations were intended to aid staff in the attainment of the department’s two objectives. The first ‘object’ was ‘the reformation, or restitution to honest labour, of old offenders, thereby preventing fresh crime’, and the second was ‘the prosecution and punishment of habitual criminals’. However, this second objective was qualified. The staff of the C.S.O. was told to only proceed against ‘habitual criminals’ who ‘wilfully and persistently break the law’.\textsuperscript{77} This new system only applied to male licence-holders and repeat offenders. Two civilian female ‘visitors’, who were appointed by the home secretary, carried out the supervision of women in London. London’s Discharged Prisoners’ Aid Societies for women approved of this arrangement, which was modelled on the system that operated in Dublin for both men and women. The emphasis of the visitors was, again, upon finding work for female repeat offenders.\textsuperscript{78} As several historians have noted, the primary aim of police work concerning those categorised as habitual criminals in London changed. As Martin Weiner has noted, referring to increased cooperation between prisoners’ aid societies and the police in order to

\textsuperscript{75} The Earl of Morley (Liberal), 207 Parl. Deb., H.L. (3\textsuperscript{rd} ser.), cols. 1082-6 (4 Jul. 1871); Douglas Straight (Conservative), 208 Parl. Deb., H.C. (3\textsuperscript{rd} ser.), cols. 1756-9 (16 Aug. 1871).
\textsuperscript{77} Ibid., p. 9.
\textsuperscript{78} Ibid., pp. 11, 12.
help criminals integrate back into society, the aim of supervision shifted from a deterrent surveillance to what he called ‘social aid’.\(^\text{79}\)

In 1886 the Metropolitan Police Force carried out a review of the workings of the C.S.O. At the review’s completion Assistant Commissioner Monro, who had been placed in charge of the C.S.O., compiled a report, which was provided to the Home Office. Whilst, as we will see, the document was flawed, it was unequivocal in its view that supervision was now effective in London.\(^\text{80}\) Those under supervision were well known to the police, it argued, because of monthly reporting and regular communication between police forces. The result was a ‘considerable diminution in crime’.\(^\text{81}\) In referring to the findings of this report, Assistant Commissioner Robert Anderson claimed that supervision was now ‘a powerful engine for the punishment of the hopelessly depraved’ in London.\(^\text{82}\) There is some evidence that the staff of the C.S.O. worked hard, and with some success, alongside London’s eleven discharged prisoners’ aid societies in an effort to achieve the new objective of reformation.\(^\text{83}\) In 1880 Vincent had sent a circular to many London businesses asking if they would be willing to employ men who had been placed under supervision. From the positive responses a list of 1,000 businesses was compiled and passed to London’s discharged prisoners’ aid societies, which ensured that if a vacancy arose suitable candidates were provided.\(^\text{84}\) Candidates had often been trained in various trades, including shoe and chair mending, and plumbing, by William


\(^{81}\) Ibid., pp. 14, 19.


\(^{83}\) The discharged prisoners’ aid societies in London were the Royal Society for the Assistance of Discharged Prisoners, Westminster Memorial Refuge, Metropolitan Discharged Prisoners’ Aid Society, St Giles Christian Mission, Sheriff’s Fund, Surrey Society for the Employment and Reformation of Discharged Prisoners, Elizabeth Fry Refuge for the Reception of Female Prisoners, British Ladies’ Society for Promoting the Reformation of Female Prisoners, Prison Mission, Dalston Refuge, Royal Female Philanthropic Society. See Vincent, ‘Discharged Prisoners’, p. 327.

Wheatley and his staff at the Mission Refuge.\textsuperscript{85} Monro claimed that ‘several thousand persons’ had been led back to honest employment as a result of this system in the first six years of the C.S.O.’s operation, meaning that ‘in very numerous instances’ they had ‘retrieved their character’.\textsuperscript{86} Vincent had a more far conservative figure, which was, therefore, perhaps more accurate. He said that by the end of 1883 the C.S.O. had been ‘instrumental’ in the successful employment of 300 men who had been under supervision.\textsuperscript{87} In practice the primary focus of police work in London regarding those under supervision therefore changed fundamentally as the staff of the C.S.O. worked, not without success, to bring about the reformation of licence-holders and repeat offenders.

Nonetheless, several sources believed that the C.S.O. also successfully deterred those subject to police supervision from committing further crimes. For example, in 1880 Sir Walter Crofton, a key proponent of police supervision whose influence in the framing of the \textit{Habitual Criminals Act 1869} has been discussed in an earlier chapter, asserted that the legislative change of 1879, coupled with the establishment of the C.S.O., meant that those subject to supervision in London were now closely watched and brought to justice when they offended.\textsuperscript{88} \textit{The Times}, in a leading article, mounted a similar argument in 1886.\textsuperscript{89} Finally, in 1889 Charles Clarkson, a former member of the Metropolitan Police Force, and journalist J. Hall Richardson, provided fulsome praise for the system of supervision in London in a book about policing. They asserted that surveillance, whilst carried out carefully and, therefore, not injurious to an individual’s employment, was a real check on offending due to the high probability of arrest in the event of a crime being committed. They said that for those who were ‘well-disposed’, the system had ‘no draw-backs’ and that supervision ‘exercised a wholesome influence upon many clever

\textsuperscript{86} Ibid., p. 10.
\textsuperscript{89} \textit{Times}, 2 Dec. 1886, p. 9.
thieves who ostensibly lived in London’ as the ‘risk of recognition is now too great’ to contemplate committing further crimes. Numerous sources said that the changes to police supervision in London that had been made in 1879 and 1880 meant that licence-holders and repeat offenders were now subject to thorough surveillance.

Senior police officers differed in their analysis of the effectiveness of supervision in London. According to Monro, thorough communication between different districts of the Metropolitan Police Force, and with other forces, meant that there was no escape from surveillance for those under supervision who meant to commit further crimes. He said that, as a consequence of this information sharing, criminals now ‘dread supervision more than actual imprisonment’. It is possible that Monro, whose report was made available to the press, was exaggerating the effectiveness of the department that he himself oversaw. Even after the changes that were brought about by the *Prevention of Crime Act 1879*, others argued that supervision was able to be evaded with little difficulty. This was the view of Vincent, who – in direct contrast to Monro - bemoaned a lack of communication between different police forces. This enabled, he argued, the ‘worst offenders’ to move about unnoticed. Sir James Fraser, the head of the City Police until 1890, shared this view. He said, albeit with some exaggeration, that police supervision ‘was the most absurd measure that ever was passed’ and that those who wished to avoid surveillance simply ‘disappeared’ by failing to report. Vincent also claimed that close supervision was ‘the exception rather than the rule’. In other words, knowledgeable

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94 *Prisons Committee*, p. 334.
sources made very different assessments of police supervision in London in the 1880s and 1890s.

The available data are also open to differing interpretations. By 1891 21,388 people were subject to police supervision in London. 96 According to the available police statistics, which are reproduced below, members of the Metropolitan Police Force apprehended a small proportion of these people between 1888 and 1894.

4.2. Habitual criminals apprehended in the Metropolitan Police District for failure to report, 1888-94 97

<table>
<thead>
<tr>
<th>Year</th>
<th>1888</th>
<th>1889</th>
<th>1892</th>
<th>1893</th>
<th>1894</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>119</td>
<td>101</td>
<td>63</td>
<td>81</td>
<td>71</td>
</tr>
</tbody>
</table>

4.3. Licence holders, supervisees, and expirees apprehended for fresh offences, 1888-94 98

<table>
<thead>
<tr>
<th>Year</th>
<th>Number convicted</th>
<th>Number discharged</th>
<th>Total apprehended</th>
<th>Total number of licence holders, supervisees, and expirees registered 99</th>
</tr>
</thead>
<tbody>
<tr>
<td>1888</td>
<td>647</td>
<td>99</td>
<td>746</td>
<td>36,778</td>
</tr>
<tr>
<td>1889</td>
<td>820</td>
<td>126</td>
<td>946</td>
<td>38,862</td>
</tr>
<tr>
<td>1890</td>
<td>627</td>
<td>74</td>
<td>701</td>
<td>40,701</td>
</tr>
<tr>
<td>1892</td>
<td>-</td>
<td>-</td>
<td>872</td>
<td>44,167</td>
</tr>
<tr>
<td>1893</td>
<td>-</td>
<td>-</td>
<td>881</td>
<td>45,662</td>
</tr>
<tr>
<td>1894</td>
<td>-</td>
<td>-</td>
<td>926</td>
<td>47,464</td>
</tr>
</tbody>
</table>

99 Expirees were those whose sentences of police supervision had concluded. See the Report of the Commissioner of Police of the Metropolis, 1889, p. 6.
These data show that less than 1 per cent of those subject to police supervision in London were apprehended each year for failing to report themselves, while only around 2 per cent either currently or previously under supervision were apprehended for committing a new offence. One interpretation of these figures is that police supervision functioned incredibly effectively in London. The low number of arrests for failure to report could indicate that the vast majority of those under supervision were now complying with this requirement. Meanwhile, relatively few arrests for fresh offences could mean that police monitoring in the community had its desired effect. However, these figures could also suggest that members of the Metropolitan Police Force did not closely monitor those sentenced to police supervision in London. An annual rate of apprehension of 2 per cent appears very low. Policemen, under instruction from their superiors, sought not to alienate working-class communities that were wary of the police and strongly opposed to anything resembling a ‘spy-system’. The East End criminal Arthur Harding thought this was the case. In reference to a row of tenements called the Gibraltar Building, in which ‘there were always fights going on’ and that ‘had a very bad character’, he said ‘the police gave the inhabitants a wide berth.’ A low arrest rate could indicate that the police in London, eager not to cause the disaffection of members of the working class, did not place a high priority on watching licence-holders and repeat offenders. Given the aim of the C.S.O., to provide support to habitual criminals rather than to carry out surveillance, this interpretation appears most likely. It is the conclusion that Radzinowicz and Hood have come to after assessing data regarding prosecutions of those subject to supervision in the 1890s. Few prosecutions, according to these scholars, shows that police forces opposed imposing supervision as spying was widely believed to be an inappropriate function of the police. Supervision was, they claim, ‘too foreign to the body politic of England ever to be put into

101 Samuel, East End Underworld, pp. 84-5.
effect’. Martin Wiener has also concluded that this data shows supervision was ‘eventually less applied’. While the evidence is inconclusive, it does appear likely that the police in London were reluctant to carry out surveillance of licence-holders and repeat offenders.

*Continuing Claims of Police Harassment*

Notwithstanding the work of the C.S.O. to aid licence-holders and repeat offenders in finding employment many complaints of undue police interference continued to be made. As previously, it was often alleged that the police hounded men out of employment in order to gain a reputation for vigilance and, consequently, a promotion. This was the view of George Bidwell, a London-based forger from America, who even argued that licence-holders were blackmailed by police who threatened to expose them to their employers. According to Bidwell the police interfered with licence-holders and repeat offenders in this way in order to gain ‘fame and promotion’. Four witnesses made similar points before a Home Office inquiry that had been established in 1895 to investigate how the prison system could better combat recidivism. One of these, called Mr E in order to protect his identity, was a licence-holder who said his employer was told of his criminal past by police who were supervising him. He claimed that as a result his employment as a dishwasher on London’s Hackney Road was terminated. His view of supervision in London was that: ‘it is tyrannous. It is a terrible thing’. As discussed, numerous historians also argue that the police used their supervisory powers inappropriately.

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105 Rev. G. D. Merrick, chaplain at Holloway and Newgate prisons; Mr E; Captain Henry Wilson, inspector of prisons; Michael Davitt, *Prisons Committee*, pp. 57, 322, 393, 443.
However, other sources claimed that any improper interference with those under supervision was rare between 1880 and 1895. Several officials at the periphery of the system of police supervision argued that no persecution of licence-holders and repeat offenders occurred. In Monro’s report on the C.S.O. he included comments from numerous London judges, prison officials and staff of charitable organisations about the alleged harassment of those undergoing supervision. Many argued very strongly that this did not occur. For example, Stephen Johnson Field, a justice of the Queen’s bench division of the high court in London, said that he had ‘never once seen it [police interference with those under supervision] proved’, a view that was echoed by Sir Ford North, another justice of the same division of the high court.\footnote{Monro, ‘A Report of the History of the Department of the Metropolitan Police known as the Convict Supervision Office’, p. 19.} The governor of the convict prison at Wormwood Scrubs in London asserted that: ‘stories of persecution … had no foundation in fact’, and the chaplain of London’s Clerkenwell prison, the Reverend J. W. Horsley, said he had personally investigated numerous complaints against the police and always found them to be baseless. William Wheatley, who ran the St. Giles Christian Mission in London, which sought to aid the reformation of criminals, also stated categorically that there was ‘not an atom of truth’ in allegations that police hounded habitual criminals out of employment.\footnote{Ibid., pp. 19, 20.} Even the leadership of the Royal Society for the Assistance of Discharged Prisoners, which had previously been so critical of police supervision, said that it was ‘comparatively rare’ for surveillance to lead to the loss of employment, and that there was no desire by the ‘police to injure individual convicts’.\footnote{Ibid., p. 6.} Numerous knowledgeable parties therefore articulated strong and contradictory views regarding police interference with those they sought to supervise in London.

Nonetheless, it appears more likely that policemen did not regularly hound those under supervision. The leadership of the Metropolitan Police Force was very eager to avoid any...
appearance that licence-holders and repeat offenders received attention from the police that would be detrimental to them pursuing honest lives in the future.\textsuperscript{110} In addition, with the establishment of the C.S.O., the focus of police work regarding those designated as habitual criminals shifted from deterrence to the provision of support, especially for employment. As a result, the staff of the C.S.O. was explicitly warned that great care was needed when carrying out surveillance. They were forbidden from allowing the ‘dissemination of any information to employers and others’ of the ‘antecedents’ of those under supervision.\textsuperscript{111} In their memoirs two former members of the Metropolitan Police Force argued that the rank and file acted upon these directives. Writing in 1910, Richard Quinton said that the ‘hunting’ of those under supervision did not occur because such conduct was ‘officially discountenanced’.\textsuperscript{112} Meanwhile Frederick Wensley, who was a constable in Whitechapel from 1888 to 1895, said that orders from the commissioner regarding how supervision should be carried out were obeyed as to do otherwise could result in a policeman losing his employment.\textsuperscript{113} As George Stanford has found, members of the Metropolitan Police Force were repeatedly warned about the need for discretion when dealing with repeat offenders and a failure to heed these warnings could lead to policemen being ‘disciplined’.\textsuperscript{114} There is contradictory evidence regarding police treatment of those subject to supervision, and what data exists is open to differing conclusions. However, given the clarity with which policemen were cautioned against improper treatment of licence-holders and repeat offenders it appears probable police action that was likely to precipitate the

\textsuperscript{110} Metropolitan Police Orders, 10 Jul. 1845, T.N.A., MEPO 7/131; Metropolitan Police Orders, 20 March 1856, reproduced in \textit{Report of the Commissioners Appointed to Inquire into the Operation of the Acts Relating to Transportation and Penal Servitude}, p. 150; Bruce, Circular, 8 Nov. 1869; \textit{Prisons Committee}, p. 393.


\textsuperscript{113} Frederick Wensley, \textit{Forty Years of Scotland Yard: the Record of a Lifetime’s Service in the Criminal Investigation Department}, New York: Garden City Publishing Co., 1930, p. 72.

discovery of a criminal’s past offending was rare.\textsuperscript{115} Police orders and other directives urging policemen to be cautious when dealing with those under supervision have not been considered by the historians who claim that the supervisory power of the police was an oppressive tool, which was deliberately used to hound repeat offenders out of employment, thereby creating a criminal class.\textsuperscript{116} The existence of these instructions, and evidence that they were heeded by policemen, renders the conclusion of these historians unlikely in the case of London.

\textit{Conclusion}

Police supervision was largely ineffective in London from 1871 to 1895. Up until 1880 this was primarily the case due to the way in which London’s police magistrates interpreted the reporting provisions of the \textit{Prevention of Crime Act 1871}. Because they insisted on the commissioner of the Metropolitan Police Force himself taking the stand to provide evidence of a failure to report, no one in London was convicted of not reporting between 1871 and 1879, when further legislation was passed. As a result, 23 per cent of licence-holders and repeat offenders did not report each month and avoided supervision altogether. While the \textit{Prevention of Crime Act 1879} enabled monthly reporting to be enforced in London, it appears probable that those subject to police supervision were, in most cases, not monitored closely. The leadership of the Metropolitan Police Force was anxious not to sour relations with working-class communities and urged policemen to exercise great caution when carrying out surveillance, lest the employment of the individual being watched be endangered by the discovery of their criminal past. Furthermore, with the establishment of the C.S.O. the focus of supervision shifted from a deterrent surveillance to rehabilitation. Assistant Commissioner


Anderson referred to this situation when he wrote in 1891 that there was a ‘morbid sympathy for hardened offenders’. He was reduced to ‘pleading for a due administration of the existing law respecting police supervision’. The monitoring of designated offenders in the community, which was a key aim of the Gladstone government, was never fully embraced by the leadership of the Metropolitan Police Force, who instructed policemen accordingly.

As discussed in the Introduction to this thesis, the oppressive potentiality of police supervision greatly unsettled many mid and late Victorians of all social classes. It was widely believed that greatly increasing the power of the police could lead to the liberties of many within working-class communities being infringed. And numerous historians assert that this is exactly what occurred. It has been argued that, notwithstanding early problems of implementation in London, supervision enabled the police to target the poorest elements of the working class for arrest, therefore creating a criminal class. However, as was the case with registration, this chapter has shown that neither police magistrates nor the Metropolitan Police Force were uncritical and willing actors in a project to control the working class, as several historians allege. Nonetheless, the Gladstone government’s habitual criminals’ legislation had one further objective: the imposition of lengthy sentences upon repeat offenders. While registration and supervision were, to a large extent, both ineffective in London, the next chapter will analyse the sentencing of repeat offenders in order to determine whether this final aim was achieved.

Chapter 5. The Sentencing of Habitual Criminals, 1871-1895

It is of the greatest importance that those offenders who are commencing a course of crime should be made aware that each repetition of it, duly recorded and proved, will involve a material increase of punishment, pain, and inconvenience to them.\(^1\) Select Committee Report, 1863.

The Gladstone Liberal government, along with the Conservative opposition, hoped that its habitual criminals’ legislation would lead to lengthier sentences for repeat offenders. During the period in which transportation was ceasing to be a penal option, there was much criticism of sentences for repeat offenders that were perceived to be too short either to act as a deterrent or to provide enough time for an individual to be reformed whilst imprisoned.\(^2\) In particular, members of the influential Social Science Association (S.S.A.), which had played a vital role in the drafting of the habitual criminals’ legislation of 1869 and 1871, argued that now repeat offenders could not be sent abroad, from whence they had rarely returned, long sentences of incarceration should be imposed instead in order to act as a deterrent to crime and protect society.\(^3\) As quoted above, the report of a select committee from 1863 shows that members of parliament largely agreed.\(^4\) A clause of the Habitual Criminals Bill 1869 stipulating that a minimum period of seven years’ penal servitude must be imposed upon an offender after a third conviction for a felony was removed in the committee stage due largely to its perceived harshness.\(^5\) This was discussed in Chapter 2. However, the legislation contained other

\(^1\) Report from the Select Committee of the House of Lords, on the Present State of Discipline in Gaols and Houses of Correction; Together with the Proceedings of the Committee, Minutes of Evidence, Appendix and Index, [C 499] H.C. 1863, ix, p. xvi.


\(^4\) Report from the Select Committee of the House of Lords, on the Present State of Discipline in Gaols and Houses of Correction, p. xvi.

\(^5\) For the debate regarding the omission of the mandatory minimum period of seven years’ penal servitude see 198 Parl. Deb., H.C. (3rd ser.), cols. 1278-9 (4 Aug. 1869).
mechanisms that, the government and the opposition still hoped, would remedy, in the Liberal Duke of Cleveland’s words, the ‘admitted and increasing evil’ of short sentences. One intended function of the registers was to ensure that magistrates and judges had full information before them regarding a defendant’s criminal past, hopefully resulting in the application of longer sentences as fewer repeat offenders would be able to escape recognition as such. Meanwhile, supervision was, in part, intended to ensure offending behaviour was detected and then punished. As Stefan Petrow has said, ‘refinements of the system of supervision, registration, and identification were essential steps towards singling out for special punishment habitual offenders’.8

Whether longer sentences of incarceration were imposed upon repeat offenders in London as a consequence of this legislation will be assessed in this chapter. Firstly, the chapter will analyse whether this objective was achieved between 1871 and 1879, at which point relevant legislative and operational changes were made. The Prevention of Crime Act 1879 enhanced judicial discretion by removing the minimum period of seven years’ penal servitude for previously convicted felons. As will be discussed, the government accepted the finding of a select committee that this measure had been perceived to be overly harsh by judges and actually led to more short sentences being imposed.9 Then the creation of the Convict Supervision Office (C.S.O.) in London in 1880 significantly altered the process of registration in the capital to, it was hoped, enable more recidivists to be identified, thereby ensuring magistrates and judges had the fullest possible information before them when sentencing. As a

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result of these changes, the second section of the chapter will examine the sentencing of those designated as habitual criminals in London from 1880 to 1895.

As noted in previous chapters, several historians who have studied the workings of the habitual criminals’ legislation of 1869 and 1891 have argued that those subject to it were targeted for arrest by the police and were dealt with severely when brought before magistrates and judges.\textsuperscript{10} For example, Petrow believes that magistrates, judges, the police, and the parliament were united in their aspiration to repress members of the criminal class.\textsuperscript{11} He has found that: ‘in court police testimony largely determined whether a convict deserved rescue from or was consigned to a life of crime’. According to Petrow, this was because an adverse report from the police would inevitably lead to a conviction, regardless of other evidence.\textsuperscript{12} Barry Godfrey, David Cox, and Stephen Farrall, whose work concentrates largely on the north of England, have also said that habitual criminals’ legislation led to severe sentences for repeat offenders.\textsuperscript{13} They argue that the ‘application of the acts’ of 1869 and 1871 led to ‘life trashing’ sentences, even for those who had committed ‘relatively minor offences’.\textsuperscript{14} It will be argued that the historians mentioned above were wrong when they claimed that there was a general desire among magistrates and judges to punish repeat offenders harshly. London’s police magistrates believed that an important part of their role was to act as advisers to the working class. Consequently, regardless of seemingly dominant middle-class views, many regularly acted in the interests of members of the working class, who used the courts far more often than members of other social groups.\textsuperscript{15} And while several London judges routinely imposed long

\textsuperscript{11} Petrow, \textit{Policing Morals}, p. 51.
\textsuperscript{12} Ibid., p. 51.
\textsuperscript{13} Godfrey, Cox and Farrall, \textit{Serious Offenders}, pp. 161-77.
\textsuperscript{14} Ibid., p. 177.
sentences of penal servitude upon repeat offenders, others were convinced of the merits of being flexible when it came to sentencing recidivists. Consequently, many police magistrates and judges in London sought to resist pressure to apply longer sentences.

1. The Sentencing of ‘Habitual Criminals’ before 1880

An increase in the length of sentences passed upon repeat offenders was a clear aim of the parliament in passing the Gladstone government’s habitual criminals’ legislation. In this section the effectiveness of the legislation in bringing about such a change before 1880 will be assessed.

Prior to the introduction of the habitual criminals’ legislation of 1869 and 1871 strong views were often expressed against the great ‘evil’ of short sentences for repeat offenders, which, allegedly, were increasingly replacing longer terms of transportation.16 There is some evidence that the lengths of sentences passed upon London’s repeat offenders were, in general, decreasing in the years before 1869. For example, data from London’s central criminal court, which throughout the nineteenth century heard London’s most serious criminal cases, showed that as transportation was ceasing shorter periods of detention were being imposed upon repeat offenders in the capital. Figures regarding the sentencing of repeat offenders following convictions for robbery, burglary, forgery, and larceny between 1838-42 and 1858-1862 show that while 83 per cent of those convicted for these crimes were sentenced to transportation for seven years or more in the five years from 1838, only 50 per cent were incarcerated for three years or more in the same period commencing in 1858, with the remainder undergoing periods of imprisonment of up to two years.17 Many repeat offenders in London were therefore not

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receiving periods of incarceration that were as lengthy as former sentences of transportation. While further data regarding the sentencing of repeat offenders is hard to come by, the annual volumes of judicial statistics showed that across England and Wales the length of sentences for all offenders was decreasing. For example, between 1857 and 1868 the proportion of long sentences of three years’ penal servitude or more fell from 17 per cent to 13 per cent.\footnote{Judicial Statistics, England and Wales, 1869, Part I – Criminal Statistics, [C 4196] H.C. 1869, lviii, p. xxv.} The Home Office and many members of parliament bemoaned this trend. In 1864 Horatio Waddington, under-secretary at the Home Office, criticised ‘the shortness of punishment generally inflicted upon convicts’, by which he meant criminals who had previously been convicted.\footnote{Correspondence Between the Secretary of State for the Home Department and the Directors of Convict Prisons, on the Subject of the Recommendations of the Royal Commission on the Penal Servitude Acts, [C 61] H.C. 1864, xlix, p. 1.} An 1863 select committee also found that there had been a ‘remarkable diminution’ in the length of sentences over the last ‘20 or 30 years’, which was the result of an ‘increasing leniency’ on the part ‘of the courts of law’.\footnote{Report of the Commissioners Appointed to Inquire into the Operation of the Acts Relating to Transportation and Penal Servitude. Vol. 2, pp. 23-4.} While the evidence regarding repeat offenders is incomplete, that which exists shows that the duration of sentences they received decreased in the years before 1869. The legislation of 1869 and 1871 was intended to rectify this perceived problem.

It is necessary, at the outset, to explain the scope of discretion enjoyed by London’s magistrates and judges in sentencing repeat offenders between 1871 and 1880. In short, while not entirely unfettered, they enjoyed great freedom in sentencing despite the desire of parliament to see longer sentences imposed. Anyone convicted of a felony, which were crimes that had at one point been capital offences, could receive a sentence as lenient as one day’s imprisonment in a local jail, or as harsh as a maximum term of penal servitude, which, for many offences, was life.\footnote{D. A. Thomas, Constraints on Judgement: the Search for Structured Discretion in Sentencing, 1860-1910, Cambridge: Institute of Criminology Occasional Series No. 4, 1979, p. 1.} As discussed in Chapter 1, sentences of penal servitude had been
introduced as a substitute for transportation, and were carried out in specially constructed penitentiaries. All those arrested by the police in London, either for a felony or a less serious misdemeanour, were first taken before a police magistrate. He could hear the matter himself and, upon conviction, sentence the offender to a period of no more than two years’ imprisonment, or refer those charged with felonies for trial at a higher court. The two criminal courts in the nineteenth century were the quarter sessions and the assizes, the latter dealing with the most serious cases. In London those committed for trial were dealt with at either the Middlesex sessions or the central criminal court, which was London’s court of assize. Judges at these higher courts could, if the jury found the offender guilty, impose a penalty of up to two years’ imprisonment in a local jail, or a period of penal servitude of five years or more for first offenders or seven years or more upon someone who had previously been convicted of a felony. Two proposed mechanisms to ensure some uniformity in sentencing were debated in the second half of the nineteenth century: a sentencing code and a court of appeal. However, neither was adopted before 1895, probably, as Leon Radzinowicz and Roger Hood have found, as they were believed to pose a threat to judicial discretion, which was a cherished element of the British judicial system. Consequently, as Sir William Erle, a judge of the court of the Queen’s bench, told a parliamentary committee in 1856, the law left ‘an almost absolute discretion in the judge after conviction’. In 1863 the commissioner of the Metropolitan Police Force, Sir Richard Mayne, also correctly noted that judges ‘have almost unlimited discretion whether they will pass a very long sentence of penal servitude, or a very short sentence of imprisonment’.

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While the parliament hoped the legislation of 1869 and 1871 would lead to the imposition of longer sentences, magistrates and judges retained great discretion in sentencing.

While the legislation received some support, based on its perceived potential to precipitate longer sentences for repeat offenders, the Prevention of Crime Act 1871 did not quell criticism of the sentencing of recidivists in London, which persisted through the 1870s. Initially the Standard, a conservative newspaper, had argued that the ‘best’ element of the Habitual Criminals Act 1869 was that it would lead to ‘tougher sentences’ for members of the so-called criminal class.27 The Times also believed the legislation would end the imposition of ‘short sentences’ upon ‘well-known and inveterate offenders’.28 However, numerous London newspapers quickly found that this eventuality had not come to pass and that the capital’s magistrates and judges, despite the desire of the parliament in passing the Habitual Criminals Act 1869 and the Prevention of Crime Act 1871, continued to utilise their discretion to pass sentences upon those with previous convictions that were deemed overly lenient. For example, in 1871 a leading article appeared in the conservative Pall Mall Gazette denouncing the leniency shown to London’s recidivists. Repeat offenders, the newspaper claimed, could expect a ‘gentle caution’ from a magistrate or a sentence so light ‘that they themselves are tickled with the fun of the proceedings’.29 The Standard, despite its early optimism, also wrote in 1871 that recidivists continued to receive sentences that were too short. It said that magistrates were to blame for sentencing so many repeat offenders summarily rather than referring them to higher courts where a long period of penal servitude could be imposed.30 A further leading article in the following year, which discussed violence by trade union members in London, criticised what the newspaper thought were very lenient sentences for recidivists.31 The article said that

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29 Pall Mall Gazette, 9 Sept. 1871, p. 4.
31 Standard, 30 Aug. 1872, p. 4.
the sentencing of repeat offenders in London was ‘a great scandal’. \(^{32}\) In the pages of other London newspapers in the early 1870s senior officials, such as Barwick Baker, the Gloucestershire magistrate and S.S.A. member, and Sir John Pakington, the chair of the international prison congress and a Conservative member of parliament, also denounced the manner in which those with many previous convictions often received ‘repeated short sentences’. \(^{33}\) Much criticism of sentencing in London continued in the 1870s.

In the late 1870s numerous senior London judges also argued that sentences for repeat offenders were, if anything, becoming increasingly lenient. This was largely due, they plausibly claimed, to the significant gap between the maximum period of imprisonment in a local jail and the minimum term of penal servitude for repeat offenders. \(^{34}\) Following the tabling of a parliamentary report in 1863 the Palmerston Whig/Liberal government had introduced legislation that increased the minimum sentence of penal servitude. After 1863, a felony conviction attracted a minimum sentence of five years for a first-time offender and seven years for a repeat offender. \(^{35}\) It was hoped that increasing the minimum term of penal servitude would lead to more long sentences being passed, especially upon repeat offenders, who, the government believed, were part of a dangerous ‘criminal class’. \(^{36}\) However, as discussed earlier in this chapter, magistrates and judges retained the discretion to sentence repeat offenders to a period of less than two years’ imprisonment in a local prison. Numerous judges argued that the long minimum period of penal servitude for repeat offenders unintentionally led to a general lessening in the severity of punishments inflicted upon recidivists. When faced with the choice of inflicting a sentence of seven years or more in a penitentiary, or up to two years in a local

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\(^{32}\) Standard, 8 March 1877, p. 3; 7 Nov. 1881, p. 2.


\(^{35}\) Penal Servitude Act, 27 & 28 Vict., c. 47, 1864, s. 2.

jail, many judges, it was claimed, opted for the latter in order to avoid imposing a punishment that, they believed, was unduly severe.\textsuperscript{37} Edward Cox was a London judge who advocated the imposition of harsh penalties for habitual criminals.\textsuperscript{38} He believed that many of his colleagues were often reluctant to impose a sentence of seven years’ penal servitude.\textsuperscript{39} He criticised the \textit{Penal Servitude Act 1864} for forcing judges to inflict an ‘inadequate penalty of imprisonment where the proper sentence would have been three or four years penal servitude’.\textsuperscript{40} Therefore, ‘by aiming at excessive severity’, he found that ‘the law has practically driven reluctant Judges to excessive leniency’.\textsuperscript{41}

Similar views were also expressed by a group of judges to a select committee in 1879, the genesis of which has been discussed in previous chapters. In 1878 Richard Assheton Cross, the Conservative home secretary, appointed four legal experts to inquire into a draft code relating to indictable offences. They, like Cox, believed that the seven-year minimum period of penal servitude for previously convicted felons had achieved the opposite of its objective: a decrease in the duration of sentences passed upon repeat offenders. Sir Robert Lush, a judge of the high court and a visiting justice at London’s central criminal court, gave evidence on behalf of the commission and explained that, given the significant difference between the maximum period of two years’ imprisonment and the seven-year minimum period of penal servitude, ‘there must be an error on one side or the other’ and it was rarely ‘on the side of excess’. Lush said that many short sentences were passed, even though they were felt to be inadequate by the judges who imposed them.\textsuperscript{42} According to Lush, these views were widely held by members of the judiciary. Indeed, he said that: ‘every judge I am acquainted with’ believed the seven-year


\textsuperscript{38} Cox, \textit{The Principles of Punishment}, pp. 130-48.

\textsuperscript{39} Ibid., p. xvii.

\textsuperscript{40} Ibid., p. 147.

\textsuperscript{41} Ibid., p. 147.

\textsuperscript{42} \textit{Report of the Commissioners Appointed to Inquire into the Working of the Penal Servitude Acts}, pp. xxxi-ii.
minimum led to more short sentences being imposed, and the select committee accepted Lush’s evidence that this was indeed the case. Three historians have also argued that many sentences of imprisonment were imposed following the legislative change of 1863 as the minimum period of penal servitude was often deemed overly harsh. David Garland has said that the ‘ironic effect’ of the seven-year minimum was to ‘make imprisonment in local prisons the mainstay of the whole system’, ensuring ‘a very large number of short sentences’. Radzinowicz and Hood have also found that the measure led to increased leniency, thereby mirroring the views of many informed contemporaries.

The surviving data relating to the sentencing of London recidivists during the early 1870s also point to a decline rather than an increase in the length of sentences. The annual reports of the commissioner of the Metropolitan Police Force contained data regarding the sentencing of all those found guilty of crime, as defined by the legislation 1871. The legislation’s definition of crime included all felonies, and the misdemeanours of obtaining money by false pretences, conspiracy to defraud, and being at large at night, intent of committing a crime, with either housebreaking instruments or a disguised face. The data, which is reproduced below, show that penal servitude came to be used slightly less between 1870 and 1873 as a penal option in London.

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43 Ibid., p. xxxii.
46 *Prevention of Crime Act*, 1871, s. 20.
5.1. Persons convicted within the Metropolitan and City of London Police Districts of crime, with sentences and proportion of all convictions, 1870-3

<table>
<thead>
<tr>
<th></th>
<th>1870</th>
<th>1871</th>
<th>1872</th>
<th>1873</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of persons</td>
<td>7,160</td>
<td>6,183</td>
<td>6,134</td>
<td>6,047</td>
</tr>
<tr>
<td>convicted in all courts</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentenced to 10 years</td>
<td>87 (1.2)</td>
<td>84 (1.4)</td>
<td>78 (1.3)</td>
<td>96 (1.6)</td>
</tr>
<tr>
<td>or over</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Between 7 and 10</td>
<td>359 (5)</td>
<td>297 (4.8)</td>
<td>243 (4)</td>
<td>216 (3.6)</td>
</tr>
<tr>
<td>years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Between 5 and 7 years</td>
<td>157 (2.2)</td>
<td>129 (2.1)</td>
<td>120 (2)</td>
<td>139 (2.3)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Between 12 months</td>
<td>900 (12.6)</td>
<td>867 (14)</td>
<td>712 (11.6)</td>
<td>752 (12.4)</td>
</tr>
<tr>
<td>and 2 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Between 6 and 12</td>
<td>1,169 (16.3)</td>
<td>1,085 (17.6)</td>
<td>1,062 (17.3)</td>
<td>1,084 (17.9)</td>
</tr>
<tr>
<td>months</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Between 3 and 6</td>
<td>1,715 (24)</td>
<td>1,401 (22.7)</td>
<td>1,245 (20.3)</td>
<td>1,439 (23.8)</td>
</tr>
<tr>
<td>months</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under 3 months</td>
<td>2,567 (35.9)</td>
<td>2,174 (35.2)</td>
<td>2,251 (36.7)</td>
<td>2,116 (35)</td>
</tr>
<tr>
<td>Fined, or sentenced to</td>
<td>206 (2.9)</td>
<td>146 (2.4)</td>
<td>423 (6.9)</td>
<td>205 (3.4)</td>
</tr>
<tr>
<td>a period in a reformatory school</td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

These data show that the proportion of sentences of five years or more decreased slightly, albeit statistically significantly, from 8.4 per cent in 1870 down to 7.5 per cent in 1873. The greatest decrease was in the imposition of sentences of seven years or more, which dropped from 6.2 per cent to 5.2 per cent over this period. There was also an increase in the percentage of sentences of between six and twelve months’ imprisonment, from 16.3 per cent in 1870 to 17.9 per cent in 1873, while the proportion of sentences of imprisonment for other periods remained

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48 The sum of all recorded convictions in 1872 is 6,134. However, 5,716 is the total figure that is stated in the report. The reason for this discrepancy is unclear. See the Report of the Commissioner of Police of the Metropolis, 1873, p. 21.

49 The sum of all recorded convictions in 1873 is 6,047. However, 5,882 is the total figure that is stated in the report. Again, the reason for this discrepancy is unclear. See the Report of the Commissioner of Police of the Metropolis, 1874, p. 26.
relatively stable. Therefore, in London in these years there was a slight shift away from the use of long sentences of penal servitude for criminals guilty of these offences. It should be noted that these data are not confined to repeat offenders. However, data from the early 1890s shows that in London only 47 per cent of those tried at the higher courts were recorded as having committed earlier offences, and the home office committee that was presented with this statistic believed that it significantly underestimated the true figure. Furthermore, in newspaper reports of London trials at the higher courts in the 1870s over half of defendants are noted as repeat offenders. For offenders convicted in London during 1870-73, sentences of penal servitude did not rise as a proportion of total sentences passed, but instead fell slightly. Although the figures do not allow us to identify recidivists, it seems safe to assume that the same sentencing pattern applied to them as well.

There were several reasons, in addition to the minimum period of seven years’ penal servitude, for the failure of the habitual criminals’ legislation of 1869 and 1871 to precipitate longer sentences for repeat offenders in London in the 1870s. The attitude of London’s police magistrates was one. In 1869 Sir Thomas Henry, London’s chief magistrate, informed Adolphus Liddell, the permanent under-secretary at the Home Office, that he and his fellow magistrates would place no weight upon evidence of recidivism garnered from the registers. This was because, in his view, neither descriptive returns nor photographs definitively proved identity. Indeed, both types of evidence could lead to cases of mistaken identity. Numerous examples of London magistrates seemingly disregarding evidence of prior convictions in sentencing could be cited. For instance, in October 1885 Michael Hayes was convicted of

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50 Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals; with Minutes of Evidence and Appendices, [C 7263] H.C. and H.L. 1894, lxxii, p. 72.
assaulting James Sedler in the Little Wonder beer shop on Commercial Road, punching him in
the head and then kicking him once he had fallen to the ground. The magistrate, Thomas
Saunders, said the attack, which lasted half an hour and led to Sedler’s hospitalisation, was
‘most cruel and brutal’. However, despite this, and the fact that Hayes was known to be a repeat
offender, he received one month’s imprisonment.\textsuperscript{54} Then in September 1889 Robert Curtis, a
striking dock worker, was convicted on four charges of assaulting numerous men working at
the London docks. On one occasion he led a group of fifteen or sixteen men in an unprovoked
attack upon one William Woodhouse, a dock labourer. In court a constable proved a previous
conviction against Curtis. Yet the Thames police court magistrate, Frederick Lushington, said
that he ‘should not take into account what the constable had said’, and sentenced Curtis to three
months’ imprisonment for each offence.\textsuperscript{55} London’s police magistrates had a dim view of the
Gladstone government’s habitual criminals’ legislation on the basis that it unreasonably
targeted their working-class clientele. Therefore they actively worked to mitigate its severity.\textsuperscript{56}
During the mid and late Victorian period the overwhelming majority of offenders in London
were dealt with by magistrates, with only between 4 and 8 per cent annually committed for trial
at a higher court.\textsuperscript{57} The attitude of London’s magistrates towards the habitual criminals’
legislation was therefore a further factor that worked against the parliament’s objective of
ensuring repeat offenders received lengthier sentences.

The failure of police supervision to ensure all designated criminals were closely
monitored was a further reason why a general increase in the length of sentences for recidivists

\textsuperscript{54} \textit{Times}, 7 Oct. 1885, p. 4.
\textsuperscript{55} \textit{Times}, 7 Sept. 1889, p. 3.
\textsuperscript{56} Ellis and Ellis to Henderson, 11 Nov. 1869; Liddell to Henderson, 14 Jan. 1870; Draft circular, 6 May 1870;
 Superintendent of F division to Henderson, 18 May 1870; Jennifer Davis, ‘A Poor Man’s System of Justice: the London
 Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals},
p. 42.
was not achieved. As discussed in the previous chapter, police supervision was largely ineffective in London from 1871 to 1895, which meant that magistrates and judges often did not have access to fulsome information regarding the criminal behaviour of defendants who had been under surveillance when sentencing them. Before 1880 London’s police magistrates interpreted the monthly reporting provisions of the Prevention of Crime Act 1871 to mean that the commissioner of the Metropolitan Police Force himself must testify concerning a failure to report. Thus, no one in London was convicted of not reporting between 1871 and 1879, when further legislation was passed, and many repeat offenders avoided supervision altogether by failing to report. The police believed, with some justification, that the most dangerous and persistent criminals were those who sought to avoid the gaze of the police in London by failing to report. A close supervision of these criminals may have provided police with incriminating evidence that, in turn, could have led to longer sentences at trial. However, as demonstrated in the previous chapter, many of those subject to police supervision were not closely monitored.

Disagreement among London’s judges regarding appropriate punishment was a further reason why the sentencing of repeat offenders did not increase in severity. London’s judges did not share the police magistrates’ animosity towards the legislation of 1869 and 1871, presumably because the higher courts, unlike the police courts, had not been established explicitly as a resource for the use of the working class. Indeed, several openly advocated the imposition of longer sentences for repeat offenders. However, as we will see, they nonetheless did not universally accept that evidence of recidivism should lead to increasingly lengthy sentences. As Sir Henry Hawkins, a judge of the high court, noted, a ‘diversity of

58 Edmund Henderson to the Home Office, 12 Nov. 1872, T.N.A., HO 45/9320/16629D.
60 Ibid., p. 360.
opinion’ was inevitable amongst any large group of people.63 Virtually all judges, of course, were middle-aged or elderly, middle-class, public-school and Oxbridge-educated men, who had practised for many years as barristers in the same courts, while based in the London inns of court.64 Nonetheless, while judges had few major class or ideological differences, those of personality and prejudice were only natural. Given the significant discretion they enjoyed, and the lack of a sentencing code or court of appeal, it is ‘no matter for wonder’ that the various opinions of judges concerning the punishment of repeat offenders translated into very different sentencing practices.65

Between 1871 and 1879 three judges presided at the Middlesex sessions: Edward Cox, for the duration of the period, William Bodkin, until 1874, and Peter Edlin, from 1874 onwards. Meanwhile, until 1878 the two permanent judges at the central criminal court, the recorder and the common serjeant, were Russell Gurney and Thomas Chambers. These judges had quite different views regarding the punishment of repeat offenders. Cox and Bodkin both advocated the imposition of long sentences of penal servitude for repeat offenders. In 1877 Cox wrote that: ‘penal servitude should be inflexibly awarded’ to ‘professional criminals’, even if the most recent offence was not a serious one.66 This was because, in Cox’s view, those who lived by crime were not capable of rehabilitation.67 Newspaper reports, which often contained significantly more information than court records, show that Cox was true to his word.68 In January 1875 Henry Duce came before him, charged with wounding two police constables. It was alleged that Duce had been acting in a disorderly fashion before being asked to move on from the City road by constable John King. He disobeyed this instruction and said ‘I will do

66 Ibid., p. 136.
67 Ibid., pp. 135-48.
for you’ before attacking King and then assaulting another constable. After several other convictions were proven against Duce he was sentenced to five years’ penal servitude. Press reports of the Middlesex sessions also demonstrate that Bodkin believed repeat offenders should often be given lengthy sentences of penal servitude. For example, in 1872 he sentenced William Jones to ten years’ penal servitude for stealing a chest of tea worth 5 pounds. He did so after the police had proved several previous convictions. In numerous other cases he imposed long sentences of penal servitude upon repeat offenders for seemingly minor crimes. However, Peter Edlin took a different approach. While not entirely averse to imposing sentences of penal servitude, he did not rigidly hold that recidivists should be punished thus. In 1875 one previously convicted thief was so happy at being sentenced to six months’ imprisonment for the theft of a watch that she said: ‘I can do that little lot upon my head’. In addition, in 1876 Edlin sentenced Abraham Isaacson to twelve months’ imprisonment for receiving stolen goods. The judge noted that Isaacson was ‘guilty of a serious offence’ and that he had been a receiver ‘for some time’. Yet he accepted that the prisoner was contrite and, therefore, did not impose a sentence of penal servitude. Given the perceived seriousness of the offence it is hard to believe that either Cox or Bodkin would have done likewise.

Judges at London’s central criminal court, which heard London’s most serious criminal cases - usually involving violence - also did not inflexibly believe that repeat offenders should receive increasingly lengthy sentences. Gurney and Chambers held the two permanent

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69 Standard, 7 Jan. 1875, p. 6.
70 Times, 5 Nov. 1872, p. 9.
72 For examples of Edlin sentencing repeat offenders to penal servitude see the Times, 23 Apr. 1877, p. 11; 9 March 1880, p. 4; 21 Dec. 1887, p. 6. For examples of repeat offenders being sentenced to periods of imprisonment see Reynolds’s Newspaper, 9 Jan. 1887, p. 4; 27 Nov. 1887, p. 4; 9 Dec. 1888, p. 4; Times, 20 Jan. 1875, p. 11.
73 Times, 20 Jan. 1875, p. 11.
74 Times, 19 Aug. 1876, p. 11.
76 For information regarding the sort of cases heard at the central criminal court see David Bentley, English Criminal Justice in the Nineteenth Century, London and Rio Grande: the Hambledon Press, 1988, pp. 55-6.
judicial positions at the court until 1878. Both these men were members of parliament when
the habitual criminals’ legislation was debated, and both supported it. Chambers had also
previously supported the notion that repeat offenders should receive harsher penalties than first
offenders.  

However, they also both spoke out against the clause in the *Habitual Criminals Bill 1869* that mandated a seven-year minimum sentence for repeat offenders on the grounds
that it was overly harsh. Gurney, a Conservative, said that: ‘there would be many cases where
… seven years would be too severe a sentence’.  

Chambers, a Liberal and a member of the
S.S.A., agreed with Gurney, and presented parliament with a hypothetical case in which a
young boy, due to poverty, stole several pieces of food over a period of years. Judges and juries,
he believed, would ‘shudder at the consequences’ of convicting in such a case.  

A survey of
the sentences handed down by Gurney and Chambers in the 1870s confirms that they often
imposed periods of penal servitude upon repeat offenders. Nonetheless, they also often took
circumstances into account, as Gurney had explained to the parliament in 1869, and passed
shorter sentences of imprisonment upon recidivists. Consequently, as Cox said, there was a
marked diversity of opinion regarding the sentencing of repeat offenders: some judges held
‘leniency, others severity, to be the best policy’.  

A variety of opinion as to the value of long
mandatory sentences was not unique to judges. They were simply reflecting differing public
and expert opinion. However, of course, judges were the ones who actually had to impose
sentences. The different views of judges regarding sentencing, which could be acted upon due

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79 Ibid., col. 1262.
80 For examples of sentences of penal servitude for repeat offenders see the Times, 21 Jan. 1871, p. 9; 2 May 1871, p. 1.; 10
1871, p. 9; 24 Nov. 1871, p. 11.
81 Cox, The Principles of Punishment, p. xii.
82 For examples of those seeking harsher sentences see Lord Cleveland (Liberal), 194 Parl. Deb., H.L. (3rd ser.), col. 712 (5
March 1869); Henry Bruce (Liberal), 198 Parliamentary Debates, H.C. (3rd ser), cols. 1251-60, 1276-8 (4 Aug. 1869) and
200 Parl. Deb., H.C. (3rd ser.), col. 2134 (29 Apr. 1870); The Earl of Shaftesbury (Conservative), 194 Parl. Deb., H.L. (3rd
ser.), col. 1326 (15 March 1869); The Transportation of Criminals, pp. 1-3; Baker, ‘On the Theory and Practice of Sentences
for Crime’, p. 32. For examples of those who opposed long mandatory sentences see ‘The Habitual Criminals Act’, Law
to the wide discretion they enjoyed, presented an obstacle to the achievement of longer sentences for recidivists in London.

There were numerous reasons for the failure of the legislation of 1871 to effect a general increase in the severity of sentences for repeat offenders in London. The penal servitude acts commissioners, who reported to parliament in 1879, accepted that the sentencing of repeat offenders was not becoming more severe. In particular, they justifiably found that the seven-year minimum period of penal servitude for repeat offenders, ‘although sound in principle, in so far as it aimed at securing that a severer punishment should be inflicted on persons convicted a second time of a serious crime, has failed in obtaining the object in view’. As a result of this finding the Conservative Home Secretary, Richard A. Cross, prepared a short bill that repealed the section of the Penal Servitude Act 1864 that had stipulated a minimum period of seven years’ penal servitude upon a second conviction for a felony. Repeat offenders, like other criminals, could now be sentenced to either a period of two years or less in a local prison or five years or more in a penitentiary. This change was made in order to encourage judges to impose more sentences of penal servitude upon recidivists. It passed with bipartisan support in August 1879 and came into force on 1 September 1879. The next section will assess whether this change, along with the establishment of the C.S.O. – which was discussed in previous chapters – led to longer sentences for repeat offenders in London.

2. The Sentencing of ‘Habitual Criminals’ from 1880 to 1895

There is no evidence that the sentences inflicted upon repeat offenders in London before 1880 had increased in length as the parliament had hoped. Indeed, sentences - in general - decreased in severity slightly. This was largely due to the minimum term of seven years’ penal servitude for those previously convicted of a felony, the attitude of London’s police magistrates

84 Prevention of Crime Act, 42 & 43 Vict., 1879, c. 55, s. 1.
towards both evidence garnered from the registers and the legislation of 1869 and 1871 in general, the failure of police supervision to enable a close surveillance over many licence-holders and repeat offenders, and the very different views of judges concerning sentencing. In 1879 a legislative change was made that reduced the gap between the maximum period of imprisonment and the minimum term of penal servitude. This section will assess the sentencing of repeat offenders following this change.

Firstly, there is evidence that magistrates continued to find ways to lessen the severity of the 1871 legislation even after the amendments that were made in 1879. In 1886 a Home Office memorandum was written by Godfrey Lushington, the permanent under-secretary, regarding the sentences imposed upon those designated as habitual criminals. His inquiries found that magistrates regularly acted to reduce the severity of the legislation when sentencing recidivists. For example, a term of imprisonment of less than one year was normally the punishment for those found guilty of one of several offences listed in section 7. These offences included gaining a livelihood by dishonest means, giving a false name to a magistrate, and being found in any place ‘about to commit … any offence’. The commission of any of these offences violated the conditions outlined on tickets-of-leave, which, as discussed in the previous chapter, were given to criminals when a portion of their sentence of penal servitude was remitted. Consequently, magistrates could revoke a criminal’s licence upon conviction for any of these offences, which would result in their return to prison for the remainder of their initial term of penal servitude. However, the Home Office found that magistrates never sent criminals back to penal servitude for committing these offences. As they had done regarding

86 Prevention of Crime Act, 1871, s. 7.
87 Ibid., s. 7.
both registration and supervision, magistrates therefore acted to reduce the harshness of the law, sentencing those in receipt of a licence to lesser periods of incarceration than the *Prevention of Crime Act 1871* allowed.

In addition, there is much anecdotal evidence that repeat offenders in London, far more often than not, continued to be sentenced to periods of imprisonment rather than lengthier terms of penal servitude. Many members of the Metropolitan Police Force and numerous London prison officials expressed this view in the 1890s. Discussion of the sentencing practices of judges and the proper extent of judicial discretion increased in the 1890s as a result of the controversial statements and sentences of Charles Hopwood, the recorder of Liverpool since 1886, who advocated short periods of imprisonment for repeat offenders.\(^90\) Both houses of parliament, in 1889 and then 1890, debated Hopwood’s approach and the broader issue of inequality in sentencing.\(^91\) Then in 1892 the council of judges, which had been established through the *Judicature Act 1873* to investigate defects in the administration of the law, was asked by Lord Herschell, the lord chancellor in the new Gladstone government and the instigator of the debate in the lords in 1890, to inquire into how inequality in sentencing might be reduced.\(^92\) The council reported in 1894, acknowledging ‘a great diversity in the sentences passed by different Courts in respect of sentences of the same kind’, and recommended the establishment of a court of appeal.\(^93\) These debates and the inquiry, which came about as a consequence of the sentencing practices of Hopwood, gave, as Thomas has said, ‘a renewed vigour to the discussion of disparity of sentences throughout the 1890s’.\(^94\) The assertion that magistrates and judges rarely took previous convictions into account in sentencing featured heavily in this discussion. For example, as noted in Chapter 3, in 1895 a parliamentary

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\(^{90}\) Thomas, *Constraints on Judgement*, p. 67.

\(^{91}\) 336 *Parl. Deb.*, H.C. (3\(^{rd}\) ser.), cols. 1002-56 (24 May 1889); 343 *Parl. Deb.*, H.L. (3\(^{rd}\) ser.), cols. 924-55 (21 Apr. 1890).

\(^{92}\) Thomas, *Constraints on Judgement*, p. 67.

\(^{93}\) Quoted in the *Times*, 6 Aug. 1892, p. 10.

\(^{94}\) Thomas, *Constraints on Judgement*, p. 67.
committee that had been established to inquire into the state of Britain’s prisons reported that it had ‘repeatedly’ heard police officers complain that: ‘It is in vain for us to exert ourselves to discover the history of offenders, if no difference is to be made between a hardened criminal and a first offender’ in sentencing.\(^95\) Several prison officials in London made similar objections to the sentencing practices of the police magistrates. For example, J. B. Manning, the governor of London’s Pentonville prison, said that magistrates did not ‘trouble about previous convictions’. When asked directly if they ‘ignore previous convictions’, he agreed that they often did.\(^96\) Given the attitude of London’s police magistrates to the habitual criminals’ legislation it seems that Manning’s statement was correct. In addition, Captain Helby, the governor of London’s Wandsworth prison, and Colonel Garcia, the Home Office’s prisons inspector, also argued that previous convictions were generally not taken into consideration by magistrates and judges. The latter said that: ‘the present system of giving short sentences to habitual criminals works … very badly’.\(^97\) This was the case, these officials argued, as short sentences did not deter or reform recidivists, who simply emerged from jail after a short period to commit further crimes.\(^98\) Many policemen and prison officials in London were convinced that short sentences of imprisonment were the usual punishment for the capital’s repeat offenders due to the failure of magistrates and judges to take evidence of previous convictions into account.

Numerous other informed sources also bemoaned the purported failure of magistrates and judges to ensure that those with former convictions were sentenced to periods of penal servitude. In 1890 the central committee of discharged prisoners’ aid societies said that short sentences for recidivists were ‘a public scandal’.\(^99\) This committee had been established in 1863.

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\(^95\) Prisons Committee: Report from the Departmental Committee on Prisons, [C 7702] H.C. 1895, lvi, p. 15.
\(^96\) Ibid., p. 44.
\(^97\) Ibid., pp. 142, 217.
\(^98\) Ibid., pp. 15, 44, 142, 217.
in order to coordinate the activities of London’s prisoners’ aid societies and liaise with government.\textsuperscript{100} In a letter to the editor of \textit{The Times} the honorary chairman of the committee, Thomas Murray Browne, who was Barwick Baker’s nephew, argued that there was a ‘mass of evidence’ that repeat offenders ‘received repeated short sentences’.\textsuperscript{101} Instead, Browne called for progressively lengthy periods of penal servitude for recidivists, as his uncle had done previously. The leadership of London’s Elizabeth Fry women’s refuge, the Howard Association, and the St. Giles’ Christian mission shared similar sentiments.\textsuperscript{102} It was claimed that repeat offenders were routinely given short sentences, which neither enabled the reformation of the offender nor the deterrence of others. Long sentences of penal servitude, these sources claimed, enabled criminals the time to reflect upon their previous misdeeds and to develop a Christian faith, leading to their rehabilitation. Lengthy periods of incarceration were also dreaded by criminals. They therefore acted, claimed the sources, as a deterrent to crime. Consequently, the consistent imposition of long sentences of penal servitude was sought.\textsuperscript{103} In addition, in the 1890s numerous letter writers to \textit{The Times} also criticised the perceived leniency of sentences for repeat offenders. Many sentences, it was argued, were so short that they caused ‘astonishment’ among the police, and left criminals ‘laughing’.\textsuperscript{104} This ‘craze’ for short sentences was thought to be due either to the despair of magistrates, who felt all options had already been tried and failed, or to significant differences of opinion on the bench regarding the sentencing of recidivists.\textsuperscript{105} In 1892 Sir Walter Crofton, the director of Irish prisons who had been so influential in the drafting of the 1869 legislation, urged magistrates and judges to ‘protect society’ by inflicting lengthier ‘punishment for persistence

\textsuperscript{101} \textit{Times}, 4 Feb. 1890, p. 14.
\textsuperscript{102} See the comments of Miss Fry, William Wheatley and William Tallack in the report of the \textit{Prisons Committee}, pp. 183, 233, 245.
\textsuperscript{104} F. C. Pawle, letter to the editor of the \textit{Times}, 6 Dec. 1892, p. 3.
\textsuperscript{105} A. C. P., letter to the editor of the \textit{Times}, 1 Nov. 1892, p. 13; Sir Walter Crofton, letter to the editor of the \textit{Times}, 10 Nov. 1892, p. 3; Quarter Sess., letter to the editor of the \textit{Times}, 25 Jan. 1890, p. 7.
in crime’. Finally, some London magistrates and judges criticised their colleagues for not giving due weight to previous convictions in their sentencing. Ralph Littler, a judge of the Middlesex sessions, and Westminster magistrate John Sheil both did so in the 1890s, with the former objecting to what he believed was the norm of imposing ‘short sentences’ upon repeat offenders. Therefore, of those with a knowledge of sentencing practices there was a consensus that a short period of imprisonment, rather than a lengthy term of penal servitude, remained the usual punishment for repeat offenders in London.

The available data suggests that the views expressed above were well founded and that, in fact, fewer repeat offenders in London were being sentenced to long periods of incarceration between 1880 and 1895 than had previously been the case. Figures regarding the types of sentences imposed upon those convicted were included in the annual reports of the commissioner of the Metropolitan Police Force for the years 1893, 1894 and 1895, and are tabulated below, along with the available figures from the 1870s.

5.2. Sentences of penal servitude in London, including as a percentage of all those convicted, 1870-3 and 1893-5

<table>
<thead>
<tr>
<th></th>
<th>1870</th>
<th>1871</th>
<th>1872</th>
<th>1873</th>
<th>1893</th>
<th>1894</th>
<th>1895</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total convictions</td>
<td>46,193</td>
<td>48,265</td>
<td>54,928</td>
<td>52,851</td>
<td>60,528</td>
<td>62,372</td>
<td>60,858</td>
</tr>
<tr>
<td>Sentences of 5 years to life imprisonment</td>
<td>603 (1.3)</td>
<td>510 (1.1)</td>
<td>441 (0.8)</td>
<td>451 (0.9)</td>
<td>383 (0.6)</td>
<td>379 (0.6)</td>
<td>340 (0.6)</td>
</tr>
<tr>
<td>Sentences of 7 years or more</td>
<td>446 (1.0)</td>
<td>381 (0.8)</td>
<td>321 (0.6)</td>
<td>312 (0.6)</td>
<td>62 (0.1)</td>
<td>49 (0.01)</td>
<td>29 (0.01)</td>
</tr>
</tbody>
</table>

106 Sir Walter Crofton, letter to the editor of the Times, 10 Nov. 1892, p. 3.
These data show that London’s judges were imposing far fewer long sentences than they had in the first years following the passage of the Gladstone government’s habitual criminals’ legislation. For example, in 1870, 603 convicted criminals in London received sentences of penal servitude, of which five years was the minimum. By the 1890s both the number and proportion of sentences of five years or more had dropped significantly. Despite significant growth in the total number of convictions, the number of sentences of five years or more decreased to 340 in 1895. Furthermore, the number of offenders being sentenced to long periods of seven years’ penal servitude or more decreased markedly, from 446 in 1870 to only 29 in 1895. This data does not solely relate to repeat offenders. However, data from the 1890s demonstrates that 47 per cent of those committed to stand trial in London had been convicted previously.\textsuperscript{109} In addition, in newspaper reports of London trials at the higher courts in the 1890s, over half of defendants are noted as repeat offenders.\textsuperscript{110} Therefore, such a large decrease in the imposition of long sentences of penal servitude in general clearly indicates a significant reduction in the use of this punishment upon London’s repeat offenders. One reason for the declining use of long sentences was that proportionally fewer criminals charged with serious crimes were being brought before the courts. For example, the number of felonies relating to property each year, and serious crimes against the person – such as murder and manslaughter – fell significantly between 1871 and 1895 as a proportion of all convictions.\textsuperscript{111} This was one reason why between 1871 and 1895 London’s magistrates referred increasingly fewer defendants to the higher courts for trial. In 1871, of all those brought before the magistrates, 5 per cent were committed for trial. But by 1895 this figure had fallen, statistically significantly.

\textsuperscript{109} Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals, p. 72.
\textsuperscript{110} For example see the \textit{Times}, 9 March 1880, p. 4; 21 Dec. 1887, p. 6; \textit{Reynolds’s Newspaper}, 9 Jan. 1887, p. 4; 27 Nov. 1887, p. 4; 9 Dec. 1888, p. 4.
\textsuperscript{111} Report of the Commissioner of Police of the Metropolis, 1894, pp. 4-5; Report of the Commissioner of Police of the Metropolis, 1895, p. 5.
to 3.7 per cent. Defendants were being brought before the courts, convicted of less serious crimes and sentenced to shorter periods in jail. Yet sentences for crimes that were often carried out by repeat offenders decreased in duration between 1871 and 1895. Of those convicted in London of larceny from the person, which included pick-pocketing, 16 per cent were sentenced to five years’ penal servitude or more in 1873, falling to only 0.34 per cent in 1894. Meanwhile in 1873 19 per cent of receivers of stolen goods, who were widely believed to facilitate much habitual criminality, were sentenced five years’ penal servitude or more, declining to 2 per cent in 1894. Both these decreases are statistically significant. Habitual criminals in London were therefore being sentenced to shorter, not longer, periods of incarceration.

Evidence suggests that the decreasing severity of sentences was not confined to London. Data contained in the annual volumes of judicial statistics shows that the proportion of longer sentences decreased significantly from 1871 to 1895 across England and Wales. Statistics compiled by Gatrell also indicate that sentences became more lenient over time. He found that across Britain 12 per cent of those convicted of a felony or malicious wounding were sentenced to penal servitude in 1871. This figure fell to 9 per cent by 1895. Sentences of penal servitude, whilst becoming less common, were also becoming less severe. Between 1883 and 1894 the proportion of those guilty of indictable offences and sentenced to a period of ten years’ penal servitude or more fell from 1.5 per cent to 0.6 per cent. Again, these reductions are statistically significant. Consequently, the Home Office was correct in noting that: ‘there has been a tendency to reduction in the amount of sentence’, which was most

significant ‘in the longer sentences of penal servitude’.\textsuperscript{117} This ‘undeniable’ tendency, it was justifiably argued, was ‘very marked’.\textsuperscript{118} Increasing leniency was being shown in sentencing, not only in London, but across England and Wales.

There were other factors influencing the trend towards greater leniency in the sentencing of recidivists during 1880-95, in addition to magistrates’ resistance to lengthy mandatory sentences. The rise of the so-called Italian school of criminology is one.\textsuperscript{119} According to \textit{The Times}, a key reason for the trend towards shorter sentences was the emergence of what it called ‘modern controversies’ about the causes of crime. As the newspaper said, and as noted in previous chapters, prior to the final two decades of the nineteenth century there had been a widely ‘accepted opinion’ that crime was primarily the result of the free choices of the criminal.\textsuperscript{120} However, the Italian psychiatrist Cesare Lombroso was largely responsible for popularising the notion of the born criminal, primarily through his work of 1876, \textit{Criminal Man}.\textsuperscript{121} He argued that those who repeatedly broke the law did not do so as a result of free choice, but rather bad heredity. Repeat offenders could not be held fully responsible for their crimes, as they were the result of degenerate stock.\textsuperscript{122} As shown in Chapter 3, Lombrosian ideas were highly influential in Britain, particularly in the last two decades of the nineteenth century.\textsuperscript{123} As some magistrates and judges came to believe that recidivists were not fully responsible for their crimes, they responded by inflicting less severe punishments than

\textsuperscript{117} Judicial Statistics, England and Wales, 1895, p. 78.
\textsuperscript{122} Pick, \textit{Faces of Degeneration}, p. 17; Lombroso, \textit{Criminal Man}, p. 51.
had been imposed previously. Newspaper reports of some decisions by London judges, which will be discussed below, show that this was the case in certain instances.\textsuperscript{124}

Furthermore, some magistrates and judges felt greater leniency was a rational response to a declining crime rate. The official figures show that crime rates declined significantly between 1871 and 1895, both in London and elsewhere in Britain. This trend was revealed in the annual reports of the commissioner of the Metropolitan Police Force and in the volumes of judicial statistics. In London recorded felonies relating to property fell from 4.4 per 1,000 people in 1871 to 2.9 in 1895, while offences against the person dropped from 7.5 per 100,000 people in 1871 to 7.2 in 1895.\textsuperscript{125} The judicial statistics for England and Wales also show that during this period recorded crime per capita decreased markedly.\textsuperscript{126} Numerous historians, whilst recognising the many problems one encounters when attempting to interpret criminal statistics, believe that crime, in actual fact, did decrease in Britain during the latter half of the nineteenth century.\textsuperscript{127} As V.A.C. Gatrell and Martin Weiner, among others, have shown, this was due to a variety of factors, including improved education levels and the declining acceptance of violence to settle disputes.\textsuperscript{128} Some magistrates and judges responded to the decreasing crime rate by imposing more lenient sentences, as they believed it was now less important to deter criminals through the imposition of harsh punishments. This was the view of the Home Office, which, in 1895, said that: ‘The knowledge that crime is diminishing encourages judges and magistrates to deal with crime more leniently’.\textsuperscript{129} Some judges openly admitted as much. For example, in 1885 the lord chief justice, Lord Coleridge, said that he, and several other judges, accepted the logic that the severity of sentences should be mitigated in

\begin{footnotesize}
\textsuperscript{124} Reynolds’s Newspaper, 9 Jan. 1887, p. 4; Times, 3 May 1892, p. 4.
\textsuperscript{125} Report of the Commissioner of Police of the Metropolis, 1896, pp. 45-6.
\textsuperscript{126} Judicial Statistics, England and Wales, 1895, pp. 18-9.
\textsuperscript{129} Judicial Statistics, England and Wales, 1895, p. 80.
\end{footnotesize}
response to the decreasing recorded rate of crime. With the threat of crime receding, he believed
sentences could be further reduced ‘without detriment to the administration of the criminal
law’. Sir Henry Hawkins also said that judges reduced the severity of their sentences when
the crime rate fell. As Gatrell found regarding the end of public executions, ‘humane feelings
prevail when their costs in terms of security … are bearable’. J. M. Beattie has also argued
that changes in the incidence of crime influenced sentencing in this way. For some London
magistrates and judges, ‘humane feelings’ towards repeat offenders prevailed as a result of the
declining rate of recorded crime.

As was the case in the 1870s, between 1880 and 1895 there is evidence that London’s
judges disagreed regarding the appropriate punishment of repeat offenders. The actions of
numerous judges who did not believe that repeat offenders should routinely receive
increasingly lengthy sentences also contributed to the tendency to greater leniency. From 1880
to 1895 five judges presided at the Middlesex sessions: Peter Edlin, until 1889, John
Dunnington Fletcher, from 1879 to 1889, Samuel Prentice, between 1880 and 1884, and Ralph
Littler and Richard Loveland Loveland, both from 1889. From 1880 onwards there is evidence
that, as previously, Edlin often did not sentence repeat offenders to periods of penal servitude.
In 1887 he sentenced James Davis, who had broken into a dwelling house and stolen 30 pounds
worth of goods, to fourteen months’ imprisonment, despite the fact that he had been ‘many
times convicted’. The few reports of trials conducted by John Dunnington Fletcher suggest
that his disposition towards repeat offenders was harsher. He sentenced John Bowen, who had
previously been convicted for theft, to five years’ penal servitude and three years’ supervision

130 Lord Coleridge, lord chief justice of England, to Lord Cairns, the Lord Chancellor, 26 March 1885, reproduced in
Thomas, Constraints on Judgement, p. 61.
134 Gatrell, The Hanging Tree, p. 12.
135 Reynolds’s Newspaper, 9 Jan. 1887, p. 4.
for stealing 1 pound from a man in 1882.\textsuperscript{136} And Mary Dawson, another repeat offender, also received five years’ penal servitude from Fletcher, this time for stealing only 8 shillings. She clearly believed the punishment was overly harsh, as she reportedly tried to assault a warder as she was escorted from the court.\textsuperscript{137} Prentice had a more merciful disposition towards repeat offenders. For example, in 1880 he heard the case of Charles Downs, who had been arrested for stealing cloth from a dealer and, during the trial, was proven to have been convicted four times before, including for the very serious crime of forgery. Prentice said he ‘hesitated whether it was not his duty to send Downs into penal servitude, but he would give him one more chance’, and sentenced him to twenty months’ imprisonment.\textsuperscript{138} Presumably it was because of sentences such as this that the \textit{Biograph and Review}, a short-lived biographical magazine, commended Prentice for his ‘very fair’ rulings.\textsuperscript{139} Fletcher would indeed have found it his duty to sentence Downs to a period of penal servitude.

On the retirement of Fletcher and Edlin in 1889, two more judges were appointed to preside at the Middlesex sessions who, once again, had quite different views on the sentencing of repeat offenders. Ralph Littler advocated lengthy sentences of penal servitude for recidivists and was often criticised for his severity. In 1894 he informed the court that his policy was to impose ‘long sentences on habitual offenders’, and Littler acted on this view.\textsuperscript{140} For example, Arthur Harding, the leader of an East End gang, said that his gang:

\begin{quote}
…never used to go to Hampstead Heath. That was because it was in Middlesex and the judge at Middlesex Sessions – Sir Ralph Littler – was the hottest judge in England …
\end{quote}

He gave a man 14 years for breaking a window and stealing a bottle of whiskey. He

\begin{footnotes}
\item[136] \textit{Morning Post}, 12 Jan. 1882, p. 6.
\item[137] \textit{Reynold}s\textquotesingle s \textit{Newspaper}, 11 Jan. 1885, p. 2.
\item[138] \textit{Times}, 8 Jan. 1880, p. 11.
\item[140] \textit{Reynold}s\textquotesingle s \textit{Newspaper}, 8 Jul. 1894, p. 4.
\end{footnotes}
said he would make Middlesex so safe that a man could hang his watch and chain on a lamp post and nobody would take it.\textsuperscript{141}

Interestingly, Harding’s comments suggest that harsh sentences did in fact act as a deterrent – if not to crime in total, then at least to crime in certain areas. Littler’s long sentences for repeat offenders were also criticised in parliament, and in one of his obituaries it was noted that he would often ‘impose heavy sentences on habitual criminals’.\textsuperscript{142} However, Loveland Loveland appeared to have a different view. He regularly did not impose sentences of penal servitude upon repeat offenders. In many instances he sentenced recidivists who had been convicted on multiple occasions to periods of imprisonment.\textsuperscript{143} The judges at the Middlesex sessions therefore continued to have differing views about the sentencing of repeat offenders.

Likewise, judges at the central criminal court, once again, embraced quite different sentencing practices. From 1878 until 1891 Thomas Chambers was recorder, at which point Charles Hall was appointed, and William Thomas Charley was common serjeant until 1892, when Forrest Fulton was appointed to the position. These judges were also members of parliament, all bar Chambers as Conservatives, and Charley and Chambers were members of the S.S.A. Newspaper reports of cases at which they presided show that Hall and Fulton generally imposed harsher penalties upon recidivists than Charley and Chambers, whose approach to sentencing has been discussed above. Numerous examples could be cited of the former two judges punishing recidivists more harshly than first offenders.\textsuperscript{144} For example, in 1893 Fulton sentenced Joseph Riley and Charles Turner to ten years’ penal servitude for being in possession of counterfeit coins, while Walter Closier, who was indicted along with the

\textsuperscript{144} For example see the \textit{Times}, 10 Jan. 1893, p. 11; 14 Jan. 1896, p. 9.
others, received three years. The only difference between Closier and the others, according to the newspaper report, was that they had previously been convicted.\textsuperscript{145} Reports suggest Charley was more lenient. In 1892 Charley sentenced the convicted coiner Alfred Phillips to three years’ penal servitude, even though he had previously served a sentence of five years’ duration for the same offence.\textsuperscript{146} In other cases Charley also imposed more lenient sentences upon repeat offenders than they had previously received.\textsuperscript{147} The impression that Hall and Fulton were more severe than Charley is corroborated by some contemporary commentary regarding these judges. In its obituaries for the former two judges The Times said that their sentences were often overly harsh. Hall, according to the newspaper, imposed periods of penal servitude that were ‘unduly severe’, while Fulton also erred on the ‘side of severity’.\textsuperscript{148} Meanwhile Charley was criticised by the Belfast News-Letter for passing sentences that were perceived to be too lenient. The newspaper said that his sentences made a ‘mockery of justice’.\textsuperscript{149} As was the case at the Middlesex sessions, numerous long sentences of penal servitude were inflicted upon repeat offenders at the central criminal court between 1880 and 1895. However, the length of these sentences generally decreased over time, at least in part, because judges had differing views regarding the sentencing of repeat offenders.

In addition, from 1880 to 1895 registration and police supervision remained less effective in London than the Gladstone government had hoped. As a result, much evidence about offenders, which may have led to the imposition of lengthier sentences, was not available to magistrates and judges. The various registers of habitual criminals were lengthy, inexact, cumbersome and time consuming to utilise.\textsuperscript{150} Regarding police supervision, the Prevention of

\textsuperscript{145} The Times, 11 Apr. 1893, p. 12.
\textsuperscript{146} The Times, 3 May 1892, p. 4.
\textsuperscript{147} The Times, 26 Jul. 1892, p. 12.
\textsuperscript{148} The Times, 10 March 1900, p. 13; 27 June 1925, p. 16.
\textsuperscript{149} Belfast News-Letter, 1 Aug. 1892, p. 5.
\textsuperscript{150} Report of a Committee Appointed by the Secretary of State to Inquire into the Best Means Available for Identifying Habitual Criminals, p. 11.
Crime Act 1879 meant that monthly reporting could be enforced in London.\textsuperscript{151} However, it remained the case that those subject to police supervision were often not monitored closely. From its inception in 1880 the C.S.O., which was responsible for supervision in London, focused more on the provision of employment opportunities for licence-holders and repeat offenders than their surveillance.\textsuperscript{152} As a result, much criminal behaviour went unrecorded. Furthermore, it is probable that those subject to supervision were often not monitored closely by the police for fear of enabling the discovery of the individual’s criminal past by their employer or associates.\textsuperscript{153} For these reasons registration and police supervision rarely yielded useful information to magistrates and judges about any further law breaking by recidivists, which may have led to longer sentences.

Conclusion

In London the habitual criminals’ legislation of 1869 and 1871 did not lead to longer sentences for repeat offenders. Indeed, from 1880 to 1895 the average length of sentences imposed upon recidivists in London decreased significantly. There are several reasons for this. Firstly, police magistrates in London were careful not to alienate their working-class clientele and, as a response, acted to mitigate the severity of the habitual criminals’ legislation in numerous ways. Secondly, while numerous judges in London often sentenced repeat offenders to long periods of penal servitude, others did not accept that recidivists should be subject to harsher punishments than had previously been the case, and could act on their views due to the great discretion judges enjoyed. In addition, the failure of registration and police supervision to fully achieve the objectives of the parliament also meant that magistrates and judges often

\textsuperscript{151} Prevention of Crime Act, 1879, s. 2.


did not have access to full information regarding the criminal past of defendants. As a result, police magistrates and judges in London did not impose longer sentences on habitual criminals. Finally, the wide acceptance of Lombrosian criminology and a declining rate of recorded crime also contributed to a reduction in the severity of sentences for repeat offenders.

However, a number of historians have claimed, inaccurately, that the Gladstone government’s habitual criminals’ legislation led to sentences for recidivists that were increasingly harsh.154 Most of these historians were influenced by the concept of social control, which sees the actions of magistrates and judges as part of a concerted campaign by the middle and upper classes to restrict and regulate working-class behaviour.155 Indeed, as Martin Wiener has noted, social control interpretations of responses to crime in the nineteenth century have often asserted the existence of an ‘ever-expanding “carceral archipelago”’, with more and more members of the working class becoming subject to long periods of incarceration.156 In addition, the misconception that magistrates and judges consistently acted in keeping with the desires of the parliament has been allowed to persist as a feature of the literature concerning the acts of 1869 and 1871 due to limited research on sentencing practices in this period.157 On the contrary, it is clear that these acts failed to produce longer periods of incarceration for London’s repeat criminal offenders.

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Conclusion

This study has analysed the reasons for the introduction of the habitual criminals’ legislation of 1869 and 1871, and assessed its effectiveness in London before 1896. In short, it has shown, firstly, that the Social Science Association (S.S.A.) played a pivotal role in influencing the government to introduce the Habitual Criminals Bill into parliament in February 1869; and, secondly, that the impact of the acts of 1869 and 1871 was far more limited than members of parliament had hoped. In doing so this thesis has demonstrated that most historians who have studied these acts have misunderstood the reasons for their passage and exaggerated their impact. As will be discussed below, this study also raises serious doubts about the adequacy of our current understanding of the outcomes of other government measures introduced during the mid and late Victorian periods that were, like the Gladstone government’s habitual criminals’ legislation, intended to control the working class.

Key findings

The 1869 and 1871 acts resulted from major changes in Britain’s penal system. The ending of transportation to the Australian colonies, which began in 1840 and was completed in 1868, precipitated alarm throughout the United Kingdom that a large body of offenders, who previously would have been deposited in Australia, were now to be released at home on the expiry of these sentences. There was fear that many of these offenders were recidivists, members of a professional criminal class, who were habituated to a life of crime.¹ The Habitual Criminals Act 1869 was, as the government acknowledged, a response to the ending of transportation and the consequent increase in the number of criminals being released into the community at home.²

¹ Times, 14 Aug. 1862, p. 8; Daily News, 2 Dec. 1862, p. 4.
The Gladstone government’s habitual criminals’ legislation was intended to regulate and restrain licence-holders and repeat offenders through registration, supervision and more severe sentencing. These acts were more than mere hasty responses to newspaper-inspired moral panics about an imagined criminal class, as some historians have suggested. On the contrary, they reflected a detailed penal reform agenda developed from the mid 1850s onwards by leading members of the S.S.A.; an agenda that enjoyed considerable support in parliament and especially among the ranks of the Liberal Party. Since its establishment in 1857 the S.S.A. had consistently advocated for a register of criminals, police supervision of repeat offenders, and a strict and deterrent sentencing regime for members of the criminal class.\(^3\) These measures, due to the group’s great influence, formed the core of the 1869 act. As a consequence of the strong links between the government and the S.S.A., the association was able to influence Henry Bruce, the home secretary, to introduce the *Habitual Criminals Bill* into parliament in February 1869. The legislation, therefore, was a triumph for the S.S.A., demonstrating the political influence of the organisation.

Yet the acts did not achieve what their framers and supporters had originally hoped. There were a variety of reasons for this failure, some involving problems with the provisions of the acts themselves, but others involving those called upon to enforce the acts. Firstly, numerous amendments were made to the 1869 act, which had to be rushed through given that parliament was very shortly to rise.\(^4\) These changes, which were significant, substantially reduced the severity of the legislation and contained several important drafting errors. Consequently, major problems became obvious shortly after the legislation came into force. In particular, amendments to the two principal provisions of the legislation, registration and police supervision, reduced the effectiveness of the act in London. In addition, London’s police

\(^3\) For example see Matthew Davenport Hill, *Papers on the Penal Servitude Acts: and on the Regulations of the Home Department for Carrying them into Execution*, London: Longman, Green, Longman, Roberts and Green, 1864, p. 3.

magistrates often refused to fully enforce the legislation, as they would continue to do until 1895. The government acknowledged that the legislation had been largely ineffective and repealed it in 1871, re-enacting its key measures through the *Prevention of Crime Act 1871*.\(^5\)

Despite the new legislation, from 1871 to 1895 the numerous registers of habitual criminals were less useful than had been hoped by the parliament. While the registry was intended to ensure repeat offenders were recognised as such, prior to the 1890s the registry was rarely used by members of the Metropolitan Police Force.\(^6\) Even when it was, few recidivists were identified in this way. There were two principal reasons for this. Firstly, its utility was significantly lessened by technical limitations. Secondly, the manner in which the registers were compiled mitigated against their usefulness. The definition of crime in the *Prevention of Crime Act 1871*, like that in the 1869 act, meant that vast numbers of offenders who had only committed misdemeanours, and who could not reasonably be termed habitual criminals or thought of as members of a criminal class, were registered. This made the registers very bulky and difficult to search. Therefore, the many registers of habitual criminals remained little used until 1889, when a further change was made to their composition ensuring that more criminals believed by the police to be habituated to crime were listed.\(^7\)

Police supervision was, if anything, even less effective in London than registration. The capital’s police magistrates ensured that this was the case. Before convicting an individual under supervision of failing to report themselves to their local police station, magistrates insisted that the commissioner of the Metropolitan Police Force had to personally provide testimony.\(^8\) As a result of this unique interpretation of the reporting provisions of the 1871 act,

\(^8\) Douglas Labalmondiere, assistant commissioner of the Metropolitan Police Force, to the Home Office, 6 May 1872, T.N.A., HO 45/9320/16629A.
not one conviction for failing to report was secured in London before 1880. This significant problem was rectified through the Prevention of Crime Act 1879. Yet it is likely that, even after this time, most of those who experienced supervision in London were not carefully watched. Following the formation of the C.S.O. in 1880 the emphasis of supervision changed from deterrence to rehabilitation.\(^9\) Therefore, staff at the C.S.O. spent far more time and energy trying to secure employment for those under supervision than they did in watching them. In addition, members of the Metropolitan Police Force were consistently reminded of the importance of forging good relations with members of London’s working class and not carrying out heavy-handed surveillance.\(^10\) Because of these factors police supervision in London never achieved anything like its oppressive potential.

The habitual criminals’ legislation also failed to ensure longer sentences for recidivists. Instead, between 1871 and 1895 the sentences passed upon London’s repeat offenders became significantly more lenient.\(^11\) Once again, the police magistrates undermined the intentions of the parliament. To an even greater extent than the Metropolitan Police Force, London’s police magistrates were mindful of not alienating members of the working class. Perhaps not surprisingly, therefore, magistrates acted to mitigate the severity of the habitual criminals’ legislation, and other laws, in numerous ways.\(^12\) Further reasons for the failure of the acts to increase the severity of sentences were ongoing disagreements on the bench concerning the proper punishment of recidivists, the rise of Lombrosian criminology and a declining rate of

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crime. While the acts had staunch supporters in the S.S.A., in parliament and in the press, they had equally staunch opponents among many police, magistrates and judges. And, over time, it was the views of the latter group, charged with imposing the legislation on London’s working class, that prevailed, rendering the acts largely ineffective.

**Impact upon the literature**

The findings of this thesis contradict arguments put forward by leading historians of late nineteenth-century British penal policy. In short, there is a broad consensus that changes in penal policy resulted, first and foremost, from moral panics about crime, and that the measures which were enacted as a consequence were readily used in a repressive way by agencies of the state against members of the working class. However, this narrative - which is heavily influenced by theoretical work on moral panics and their effects, and social control interpretations of changing penal policies - is simply incorrect in the case of the Gladstone government’s habitual criminals’ legislation.

Until the 1980s numerous historians put forward Whig accounts of Britain’s changing penal system in the nineteenth century. In such accounts the arguments of Victorian reformers were largely accepted. It was claimed that a move away from the previous solely physical regimes to the use of the penitentiary, in which punishment was tailored to the individual, aiming to change behaviour by a calibrated system of both physical and mental rewards and punishments, was evidence of progress. Then, since the 1980s, many scholars have utilised social control interpretations to re-evaluate the British penal system of the 19th century. They have claimed that penal changes did not result from an effort to punish more humanely, but to punish more effectively. The state, represented in particular by the government, parliament, parliament.

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police forces, magistrates and judges, was unified in its objective of better controlling elements of the working class that were deemed a threat. While legislative measures were not part of a coherent programme, they nonetheless specifically targeted an identifiable sub-section of the working class, the criminal class. The scholars who make this revisionist argument see the *Habitual Criminals Act 1869* and the *Prevention of Crime Act 1871* as key evidence of the state’s desire to suppress the criminal class and, more broadly, to discipline what were perceived as the most unruly and least law-abiding elements of the working class.15

Revisionist accounts, which now dominate the literature, often claim that the development of the post-transportation penal system was *ad hoc*, with legislation primarily being introduced in response to public panics about crime, rather than as a result of a plan.16 Crime reporting in the 1850s and 1860s, and the panics it caused, clearly influenced various governments. Yet penal policy in these decades was not totally *ad hoc*. Rather, legislative measures were often borrowed from the agendas of Sir Walter Crofton, and then - after 1857 - the S.S.A.17 This was particularly so in 1869, when there was no panic about crime. Therefore, the principal understanding of the reasons for the introduction of the *Habitual Criminals Bill 1869* into parliament is not correct.

Once enacted the habitual criminals’ legislation gave the Metropolitan Police Force significant additional powers, as several historians have pointed out.18 Indeed, the dominant

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17 The Earl of Carlisle, ‘Address on the Punishment and Reformation of Criminals’, *Transactions of the National Association for the Promotion of Social Science 1858*, London: John W. Parker and Son, 1859, pp. 70, 72.

position in the relevant literature is that, despite some defects, the acts of 1869 and 1871 were
oppressive instruments of control that enabled the monitoring and even creation of a criminal
class. Numerous historians have shown, quite correctly, that registration had the capacity to
label individuals as criminal in the eyes of the police, magistrates and judges.\(^\text{19}\) Furthermore,
they have claimed that contemporaries were right to be troubled about police supervision, for
it infringed the rights of members of the working class. Supervision was used in an oppressive
way that endangered employment and, therefore, rehabilitation.\(^\text{20}\) Finally, several historians
have argued that longer sentences for repeat offenders resulted from the implementation of the
acts of 1869 and 1871.\(^\text{21}\) However, due to a range of factors - including the refusal of both
police magistrates and the Metropolitan Police Force to strictly enforce the legislation - the
impact of the acts upon habitual criminals in London was much more limited than its sponsors
had hoped, and than many historians claim. The theoretical frameworks of moral panic and
social control have been very useful in explaining the reasons for, and impact of, many actions
of the state.\(^\text{22}\) Yet they are insufficient to explain the genesis and outcomes of the habitual
criminals’ acts of 1869 and 1871. Indeed, the utilisation of these frameworks has led to
conclusions that are incorrect.

Future directions

This thesis not only has implications for the study of the state’s efforts to curtail the
activities of repeat offenders in the United Kingdom in the mid and late Victorian period.

\(^{19}\) Petrow, Policing Morals, p. 51; Martin Wiener, Reconstructing the Criminal: Culture, Law and Policy in England, 1830-
Research, vol. 15, no. 4 (1990), p. 129; Emsley, Crime and Society in England, p. 174; Wiener, Reconstructing the Criminal,
p. 149; Godfrey, Cox and Farrall, Serious Offenders, p. 205; Petrow, Policing Morals, p. 151; Jennifer Davis, ‘From
‘Rookeries’ to ‘Communities’: Race, Poverty and Policing in London, 1850-1985’, History Workshop, no. 27 (Spring,
1989), pp. 68, 71.
36.
Several scholars who incorrectly claim that the habitual criminals’ legislation of Gladstone’s first government had a significant negative impact on many members of the working class also argue, more generally, that the outcome of increased police power during the nineteenth century was ‘nightmarish’ for the poor.\textsuperscript{23} For example, V. A. C. Gatrell has said that, primarily because of the expanded scope of police action, the mid and late Victorian state came very close to the ‘total regulation’ of working-class lives.\textsuperscript{24} And Stefan Petrow discusses legislation in four areas – habitual criminals, prostitution, gambling and drinking – that undoubtedly greatly enhanced the powers of the police.\textsuperscript{25} The police, Petrow implausibly argues, were in fact ‘all powerful’.\textsuperscript{26} Helen Johnston has, very recently, carried out some further research on these topics, which primarily focusses on the provinces. Like Petrow, she claims that the police and the Home Office shared a ‘goal’ to ‘remove or limit the possibilities of temptation to crime or immorality by regulating the “purveyors of immoral behaviour”’. She borrowed the latter expression from Petrow, and specifically referred to criminals released on licence, alcohol licencing, prostitution and bookmakers.\textsuperscript{27} Various other scholars have noted the increased legislative mechanisms through which the police had the potential to exert greater control over the working class.\textsuperscript{28} They argue that the police used these mechanisms, often with the cooperation of magistrates and judges, to ruthlessly suppress numerous working-class activities in an effort to alter the morals of the poor, imposing the middle-class norms of respectability.\textsuperscript{29} However, as this thesis has shown and as Dany Lacombe has noted, the state ‘does not have

\textsuperscript{23} Petrow, \textit{Policing Morals}, pp. 294-5.  
\textsuperscript{24} Gatrell, ‘The Decline of Theft and Violence in Victorian and Edwardian England’, pp. 244-5.  
\textsuperscript{25} Petrow, \textit{Policing Morals}, pp. 294-5.  
\textsuperscript{26} Ibid., p. 299.  
\textsuperscript{27} Ibid., p. 296; Johnston, \textit{Crime in England}, p. 152.  
this unity’. My findings regarding the ineffectiveness of the habitual criminals’ legislation of 1869 and 1871 in London raise serious doubts about the accuracy of the prevailing consensus in the literature concerning nineteenth-century British penal policy: that legislative attempts to control the working class were vigorously enforced by the police and the courts, resulting in great hardship for elements among the working class. These doubts beg further research. Studies of the impact of the legislation in other parts of Britain will help to illuminate whether the actions of London’s police and magistracy were unusual. In addition, given the reluctance of members of the Metropolitan Police Force and London’s police magistrates to fully enforce the acts of 1869 and 1871, it is likely that they also acted to mitigate the severity of other legislation. Other efforts to control sections of the working class in London are, therefore, ripe for re-evaluation. A reassessment of the impact of government intervention in the three policy areas which are identified by Petrow, and also discussed by Johnston, would be an excellent place to start. Given the errors in their analysis of habitual criminals’ legislation, it is entirely possible that they are also wrong concerning the outcome of laws regarding prostitution, gambling and drink. However, this reappraisal will have to be left to other scholars.

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