

The law & economics of private prosecutions in industrial revolution England

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Abstract Can the market provide law enforcement? This paper addresses this question by analyzing an historical case study: the system of private prosecutions that prevailed in England prior to the introduction of the police. I examine why this system came under strain during the Industrial Revolution, and how private clubs emerged to internalize the externalities that caused the private system to generate too little deterrence. The historical evidence suggests that these private order institutions were partially successful in ameliorating the problem of crime in a period when public choice considerations precluded the introduction of a professional police force.

Keywords Economics of crime · Private prosecutions · Club goods · Deterrence · Free-riding

JEL Classification K14 · N43

1 Introduction

The provision of law enforcement is traditionally held to be a public good that has to be provided by the state (for a recent statement, see Polinsky and Shavell 2007). But this view has been challenged by research demonstrating that the private provision of policing is both theoretically possible and empirically feasible (see Becker 1974; Landes and Posner 1975; Friedman 1984, and numerous others, many of whom are cited below). A number of issues, nonetheless, remain unresolved. In particular, while it is established that private law enforcement institutions can function well in small-scale and close-knit communities, it is not clear whether they are *scaleable*, that is, capable of generating an effective level of deterrence in larger societies.

In this paper, I examine an historical case study: England during the Industrial Revolution (1750–1850) to shed light on this question. I argue that the pre-modern private system of prosecutions broke down during the Industrial Revolution. However, there was no

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publicly funded, professional, police force in London until 1828 and parts of the country remained unpoliced until 1856. I show that a private-order institution was able to respond to the breakdown in law and order, and to ameliorate the problem of crime in the period prior to the introduction of the police. Clubs, known as associations for the prosecution of felons, subsidized prosecutions for their members and increased the overall level of deterrence.

The example of private law enforcement in eighteenth and nineteenth century England is important because, while most other examples of private law enforcement are based on small-scale societies, which arguably do little to inform our understanding of how such institutions would function if scaled up, England in the late eighteenth century was a large, rapidly urbanizing economy, experiencing the onset of sustained economic growth.

Economists in the Pigovian tradition identified instances of justified government provision by identifying possible market failures (Pigou 1952). This provided a clear rationale for the growth of government in the nineteenth and twentieth centuries: the rise of the state could be interpreted as representing the correction of longstanding market failures.¹ This view was entirely in keeping with the views of mid-twentieth century historians of English policing, who portrayed the traditional private system in the worst possible light: a disordered and arbitrary system that failed to provide security (Armitage 1932; Reith 1936, 1943, 1956; Critchley 1967; Tobias 1979). In their opinion, the rationale for a professional police force was clear-cut: it corrected a market failure that persisted only because of the irrational attitudes of reactionary elites.²

Revisionist historians undermined and discredited these traditional police histories in the 1970s (Silver 1967; Storch 1975, 1976; Philips 1977; Hay and Snyder 1989). Similarly, the Pigovian framework was undermined by the law and economics and public choice revolutions. The latter demonstrated that the motives of policy makers, in asserting state control over parts of the economy that had previously been privately organized, were not necessarily benign (Buchanan and Tullock 1962; Tullock 1965, 1971). The former showed that, even in the presence of externalities, government intervention may not be required in order to obtain efficiency or to provide public goods (Coase 1960; Demsetz 1970).³

More recently, economists working in the 'economics of anarchy' have demonstrated that private individuals are capable of organizing governance without government in a wide range of settings. Becker (1974), Landes and Posner (1975) and Friedman (1984) outlined

¹Classic papers in this tradition, such as Samuelson (1954) argued that private provision of a pure public good like a lighthouse was impossible.

²See in particular Reith (1943, 2–3) and Critchley (1967, 27). Hay and Snyder (1989) comment: '[m]uch of the older police history, in short, was a classic instance of the historical fallacy of presentism, the search for the origins of a present institution using modern definitions of organization and function' (Hay and Snyder 1989, 5–6). Philips and Storch (1999) have shown that many of the criticisms of lazy or incompetent village constables come straight out of the literature produced by those advocating and justifying reforms in the 1830s and 1840s. They observe '[s]ince regular police forces have long been the norm in the West, it is hard to imagine a workable society in which this was not the case. The natural tendency is to think that the establishment of paid, embodied forces was sensible, obvious and inevitable, and that people who resisted or argued against it were foolish, reactionary, wicked or all three' (Philips and Storch 1999, 6).

³Coase (1974), for example, showed that lighthouses were at least partially privately funded until the mid-nineteenth century thereby undercutting the claims of Samuelson and opening up the question of private provision of public goods such as law enforcement for debate. More recent work emphasizes the continuing involvement of the British state in lighthouse provision (Bertrand 2006; Block and Barnett 2009; Carnis forthcoming). For an analysis of the conditions under which private provision is efficient see Lindsay and Dougan (2012).

the theoretical case for the efficiency of a private system of law enforcement and a large number of studies provided empirical evidence for the private provision of law or contract enforcement services (see, *inter alia*, Friedman 1979; Landa 1981; Benson 1989; Greif 1989; Bernstein 1992).⁴ A principal finding from this work and from the extensive literature in anthropology, economics, and sociology is that, since restitution and ostracism are commonly and successfully used to resolve disputes, public forms of legal enforcement are unnecessary in small-scale societies.⁵

Importantly, private systems of law enforcement rely either on repeated interaction between individuals or on reputation. In small-scale, closely knit societies, these mechanisms are powerful in enforcing cooperation: the shadow of the future induces individuals to refrain from violence or theft (see Kandori 1992; Dixit 2004).⁶

An important question that this raises is: can private forms of law enforcement be used in modern societies comprising not dozens or hundreds, but hundreds of thousands, or millions of individuals, who do not know one another and will not necessarily interact with each other in the future? There are strong theoretical reasons for thinking that, on their own, mechanisms dependent on the Folk Theorem may be unable to support cooperation in large-scale societies. In particular, if punishing offenders is costly, then private systems of law enforcement may face a free-rider problem, and this free-rider problem may become exacerbated as the society becomes larger.⁷ In sum, the literature on private forms of law enforcement has established the effectiveness of private systems of law enforcement in small-scale, tightly knit, societies, but it has not yet demonstrated that these institutions can effectively provide similar services in larger, or more fluid, societies. This is the ‘scaleability problem’.⁸

The system of private prosecutions that operated in eighteenth and early nineteenth century England allows us to address this issue. During the Industrial Revolution, a private system of prosecutions that had worked effectively for centuries came under severe strain. However, it was not replaced by a professional police force. Parliament rejected the idea of a nationwide police force in the 1780s, and it was not until 1856 that every county in England had a police officer. The unique feature of the English example, therefore, is that it allows

⁴In fact these arguments can be dated back to an older literature (see, especially, de Molinari 1849; Rothbard 1973). But the recent empirical and game-theoretic research examining how self-enforcing contracts can support trade in the absence of government law enforcement began with the cited works. Other important contributions include Benson (1998) and Barnett (2000). This paper focuses exclusively on private forms of law enforcement and ignore other issues such as competing sources of law.

⁵Friedman (1979) studied private law enforcement in medieval Iceland. Posner (1980) considered how a range of legal questions are settled in preliterate societies. Benson (1994) examined the Anglo-Saxon legal system. Leeson (2007a) showed how order was maintained on pirate ships, despite the fact that these ships were run by criminals beyond recourse of the law. Leeson (2009) considers how a decentralized legal system emerged to govern disputes between “reivers” along the Anglo-Scottish border in the late middle ages. Skarbek (2010, 2012) studies how prison gangs provide governance.

⁶However, see Leeson (2008a) for a discussion of forms of spontaneous order that do not rely on the Folk Theorem to enforce cooperation.

⁷Most example of private law enforcement come from small-scale societies at low levels of economic development. Examples include modern Somalia (see Leeson 2007b) or the hill people of Zomia studied by Scott (2009).

⁸One important paper that does tackle the scaleability problem is Leeson (2008b) who demonstrates how, in a large-scale society, trade can still take place in the absence of third-party enforcement if individuals, who do not know one another and are socially distant, invest in signals that reduce this social distance. These investments screen out individuals who are likely to cheat and ensure that mutually beneficial trades take place. This shows how trade can still take place in a large-scale society, but does not directly address the subject of private law enforcement.

us to study how a *private* system of law enforcement responded to the increase in crime that accompanied the industrial revolution.

This is not the first paper to study how the English system of private prosecutions functioned. Friedman (1995) also considers the legal system of eighteenth century England from a law and economics perspective. He discusses how private prosecution associations increased deterrence by (1) pre-committing potential victims of crime to undertake prosecutions and (2) internalizing the benefits of deterrence among members. Allen and Barzel (2011) consider how greater standardization of production shaped the evolution of criminal law, the introduction of the police, and the introduction of factory colonies in this period.

In a companion paper, I examine how the internal organization of the prosecution associations enabled them to provide public goods privately by adopting strategies of bundling and price discrimination (Koyama 2012a).⁹ This paper differs in that it focuses on how these associations emerged in response to the Industrial Revolution, which disrupted a largely private system of law enforcement that worked relatively well in seventeenth and early eighteenth century England. It explains why the Pigovian solution of a professional police force was opposed for public choice reasons and it assesses the comparative effectiveness of prosecution associations as a private solution to the problem of crime in Industrial Revolution England.

2 The private system of prosecutions

Law enforcement in pre-industrial England was largely private.¹⁰ However, England in the eighteenth century did not rely upon purely informal systems of restitution which are typical of small-scale societies. The legal system was centralized and publicly provided (although costs were defrayed through fees).¹¹ Nevertheless, the extent to which this system relied on private individuals is striking. Local magistrates, Justices of the Peace (JPs) and constables, involved themselves in assisting victims in pursuing and apprehending criminals, but, with the exception of crimes against the state, such as treason and coining of money, the costs associated with assembling a prosecution were borne by the victim (Hay and Snyder 1989, 26).¹² This system evolved little and in the eighteenth century most of 'the country was

⁹Historians have discussed these associations in some detail; notably Schubert (1981), King (1989) and Philips (1989). Davies (2002) summarizes the existing historical research on the rise of a professional police force and argues that at the time associations for the prosecutions of felons provided a genuine private alternative to public law enforcement. Mokyr (2008, 2009) discusses the importance of private-order organizations and social norms that encouraged honesty and fair dealing in producing an institutional backdrop conducive to the Industrial Revolution.

¹⁰Absolutist rulers introduced across continental Europe during the sixteenth and seventeenth centuries. For details on the French system, see Emsley (2007). Scotland also employed a public prosecutor and a police force.

¹¹The set of legal institutions that characterized eighteenth century England emerged during the Middle Ages as the Norman kings of England imposed their own system of royal courts and 'common law' onto a preexisting set of earlier, decentralized, Anglo-Saxon legal institutions (Pollack and Maitland 1895; Benson 1994; Klerman 2004; Stringham and Zywicki 2011).

¹²Constables were 'parish households' who took turns as 'volunteers'. As they were unpaid, they typically did little more than 'assist the private citizen who was the victim of a theft or other crime and who himself paid for the prosecution and largely organized it' (Hay 1980, 48). Even in the murder cases, the state typically refused to pay for information leading to a conviction. The notable exception to this rule were the Ratcliffe highway murders in 1811 which shocked the entire country and led to a series of Parliamentary committees that looked into police reform. James and Critchley (1971, 46) comment that '[i]t was common enough for

policed by arrangements which had been inherited from the Middle Ages' (Tobias 1979, 25).

Although there are no nationwide estimates of offenses committed, the private system of law enforcement appears to have functioned adequately in pre-industrial England. McMullan summarizes the historical consensus as follows: '[t]he "system of amateur policing," drawn as it was from the local village or ward, seems in the hands of the new social history to have been remarkably able, conscientious, efficient, and adequate to the needs of rural and small-town England' (McMullan 1987, 254). Perhaps the most compelling evidence we have for this is that the absolute number of executions fell steadily during the seventeenth and much of the eighteenth century, despite population growth and despite the fact that the number of crimes liable for the death penalty rose dramatically.¹³

A number of factors were at work limiting crime in pre-industrial England. First, the small-scale nature of the rural communities that made up most of England (outside London) meant that opportunities for property crime were rare. Valuable possessions were locked away and guarded carefully; they often were personal items that could be easily identified (and hence recovered) by their owners (Allen and Barzel 2011). Second, the existence of well-established social norms meant that a variety of alternative forms of punishment were available that could be used in conjunction with the formal legal system. Formally 'indictable' behavior could be deterred or punished by 'dismissal or chastisement by an employer; informal coercion or admonition by a priest or landowner; arbitration; and control through the poor law. Ostracism and eventual ejection from the community (an informal secular equivalent of excommunication) and control through the ritualized satire of rough music or stang riding might be added to this formidable list of methods that might be brought against the deviant or the delinquent without using the formal machinery of the law' (Sharpe 1980, 117–118).¹⁴ Third, these very same social norms also meant that the criminal justice system, when it was used, functioned effectively. Volunteer constables and Justices of the Peace assisted victims and pursued criminals because they were incentivized to do so by local social norms.

However, this changed during the eighteenth century and, by the time of the Industrial Revolution, contemporaries believed that a crime wave was underway. The view at the time was 'that 'crime has much increased' everywhere in the years before Victoria came to the throne' (Jones 1992, 51–52). No estimates of the actual number of offenses were kept until 1857, so the main evidence that we have for this crime wave comes from the increase in pre-trial committals. From 1805 onwards the number of suspects apprehended by private individuals, thief-takers, or constables, brought before magistrates, and committed to prison to await trial was recorded at a national level. These data are depicted in Fig. 1. Inevitably, it reflects attitudes towards crime and resources devoted to eradicating crime as well as the ac-

the Government to offer rewards for information that led to the conviction of an offender against the public good, but requests relating to crimes against individuals, even murder, were invariably refused'.

¹³See Beattie (1974), Sharpe (1983), and Philips and Storch (1999).

¹⁴Rough music—often the banging of tin kettles, tea trays, and drain pipes—was used to humiliate individuals who had committed offenses that were socially disapproved of, but not seen as worthy of an indictment (see Conley 1991). Similarly, Taylor observes that '[f]ace-to-face communities and informal sanctions, legitimized in part by religion and custom, meant that the legal system was often used as a last resort. The courts, dominated by amateurs, dealt with the cases that came before them with breathtaking rapidity and operated in a highly personalized manner' (Taylor 1998, 2). Stang riding refers to the practice of ritually humiliating individuals who violated a society's moral code by parading them backwards on a donkey or horse.

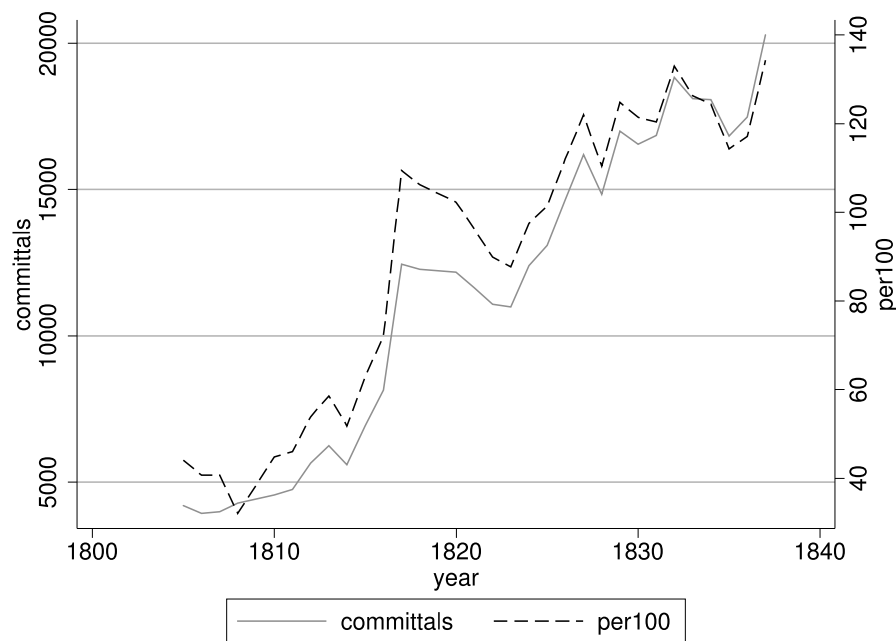


Fig. 1 The increasing number of committals between 1807 and 1838 in absolute numbers and per 100,000 people. Source: First Report from the Commissioners Appointed to Inquire as to the Best Means of Establishing an Efficient Constabulary Force in the Counties of England and Wales (1839)

tual number of offenses.¹⁵ Nevertheless, local studies certainly suggest that property crimes were increasing in the late eighteenth century (Beattie 1986, 215).¹⁶ In order to determine why the private system of prosecutions came under strain during the Industrial Revolution, it is useful to consider what economic theory says about the incentive to commit crime.

3 The problem of crime in 18th and 19th century England

3.1 The market for crime

I use the market for crime framework developed by Becker (1968) to analyze how a system of private prosecutions might work in a society like Industrial Revolution England. The supply of criminals and the demand for security of property determine the equilibrium amount of criminal activity. Potential criminals can choose between ordinary employment or criminal activities. Thus the supply of crime is a function of the cut-off level of criminal ability at which a potential criminal is indifferent between committing an offense and not committing one. This is an increasing function of the value of the goods they can acquire through theft,

¹⁵The disparity between recorded and actual crime is always a problem with criminal statistics but it is particularly acute in early nineteenth century England where no estimates of offenses were maintained until 1857. Hence the actual number of crimes—‘the dark figure’—is itself unknowable. The only nation-wide criminal statistics that we have for the first part of the nineteenth century refer to committals. These statistics were interpreted by most contemporaries as representing a crime wave (see Gatrell 1972; Philips 1977; Emsley 1996; Taylor 1998). As Philips and Storch (1999, 44–45) note, the committal statistics ‘cannot prove that ‘crime’ in Wiltshire or Herefordshire was increasing more rapidly than in Lancashire or Durham, but [they] do show why we may forgive rural gentlemen for thinking that they had a big problem on their hands’.

¹⁶Violent crime, however, continued to decline during this period (see Beattie 1974).

and a decreasing function of the probability of apprehension and prosecution and of the cost of being convicted.

Under a private system, a victim of a crime can choose whether or not to prosecute a suspect. A victim will prosecute only if the benefits exceed the costs. In equilibrium, the market level of crime will be determined by both the supply of criminals and the implied demand for crime as determined by the willingness of private individuals to prosecute.

If individuals internalize the effect that decisions to prosecute have on the overall level of deterrence, and hence on the incentive that the marginal criminal has to become a criminal, then a private and decentralized system of prosecutions can achieve the socially optimal level of prosecution and crime. What incentive did individuals face in pre-industrial England? The main direct benefit an individual obtained was the recovery of goods that had been stolen. But a prosecutor also benefited indirectly to the extent that he lowered the probability of being the victim of a crime in the future by increasing the level of deterrence (or by incarcerating a particular criminal); in a small society this probability was positive. An individual could also obtain a reputation for prosecuting all offenses against him. And, in a small-scale society, neighbors could bring social sanctions to bear on individuals who did not prosecute crimes against their own persons or property. Hence, in a tightly knit society, with strong social norms, it is possible for a private system of prosecutions to approach the efficient level of prosecutions. However, the theory predicts that as societies become larger and more fluid, the incentive individuals have to prosecute will diminish and the gap widened between the socially efficient level of prosecutions and the actual level of prosecutions.

3.2 The industrial revolution and the market for crime

The Industrial Revolution exacerbated this problem in several ways. On the supply-side, urbanization and industrialization strengthened the incentives individuals had to commit crimes—particularly property crimes. Contemporary writers argued that economic growth reinforced the ‘temptation’ to steal (Fielding 1751, 4; Colquhoun 1796, 34).¹⁷ The consumer revolution of the eighteenth century meant that there were many more valuable personal possessions that a thief could steal than had previously been the case: wrist-watches and ready-to-wear garments became common (see Brewer and Porter 1993; Lemire 1991; de Vries 2008; Styles 2007; Koyama 2012b).¹⁸

Allen and Barzel (2011) argue that theft became easier as standardized products increasingly replaced personalized items. Greater standardization lowered the probability of detection. But it was not only standardized manufactured goods that became easier to steal. Better toll roads encouraged horse theft (Styles 1989, 20). The rise of new industrial towns made faceless crimes much more common and made it easier for criminals to escape with their ill-gotten gains (Critchley 1967, 21).¹⁹

¹⁷Colquhoun (1803, 6) argued that ‘[t]he progressive, and (of late years) the very rapid increase of its Trade, and the consequent influx of Wealth, without such checks as regularly applied are necessary to restrain the progress of vicious inclinations, has certainly tended in an eminent degree, to the production of crimes’.

¹⁸In 55 cases from the Northern Circuit Assize in the second half of the eighteenth century, men whose occupations were listed as laborers, husbandmen and servants reported watches stolen from them (Styles 2007, 344).

¹⁹The old system was particularly ill-equipped to deal with crime in the fast-growing manufacturing towns of the north like Manchester, where the number of constables and magistrates did not keep up with population growth. The result was that it became extremely difficult for victims of crime to even report offenses (Radzinowicz 1958, 208). Cf. Radzinowicz (1958, 208–209). For details on Middlesbrough, see Taylor (2002).

The Industrial Revolution was characterized by rapid population growth, urbanization, and structural change as much as by per capita income growth (see Crafts 1985; Harley 1999). Total output increased, but real wages were stagnant, while income inequality grew dramatically (Allen 2009).²⁰ Manufacturing boomed in Lancashire and the Midlands, but in other parts of the country, such as East Anglia, the traditional textile industry went into decline, causing widespread hardship and unemployment (Mokyr 1988; Hudson 1989).²¹ Economic growth, greater inequality and standardization increased the returns to crime directly, while stagnant or falling real wages reduced the value of the next best alternative to crime.

Social norms in pre-industrial society encouraged prosecutors to internalize the positive externalities that they generated. Urbanization eroded these norms. Moreover, as informal alternatives to the criminal justice system began to disappear, the costs of using the law courts increased as the law became more professional and the use of lawyers became more common.²²

Reformers from the mid-eighteenth century onwards noted that too few individuals carried prosecutions to conclusion.²³ The advocate of police reform, Patrick Colquhoun (1796, 212) stated this reasoning most clearly: ‘many persons who suffer by means of small robberies, afraid of the trouble and expense of a discovery and prosecution, submit to the loss without enquiry’ and in so doing provide ‘a great encouragement to thieves of every class’. It was not just that undertaking a prosecution was costly: rather there was an incentive to free-ride on the prosecutions of others, with the result that the actual number of prosecutions was below the socially optimal number. Henry Fielding (1751, 108) noted that ‘[r]obbery is an Offence not only against the Party robbed, but against the Public, who are therefore entitled to Prosecution; and he who prevents or stifles such the Prosecution is no longer an innocent Man but guilty of high Offence against the Public Good’.

²⁰There was dramatic structural change. The share of population in agriculture fell from 48 % in 1750 to 20 % in 1850 (Mokyr 2004, 4–10). Per capita income growth was low: 0.17 % between 1760 and 1800 and 0.52 % between 1800 and 1830 according to Craft’s (1985) estimates. The gradual rise in income is consistent with real wages that did not increase at all between 1800 and 1830 according to Allen (2009), as the number of days worked increased (Koyama 2012b).

²¹Among contemporary writers, John (1829, 25) recognized the role of inequality and the uncertainty of employment in ‘pushing’ individuals into crime, observing that ‘[c]rimes have multiplied from peculiarities in our condition—the extremes of indigence and opulence . . . the fluctuations in employment and subsistence—the enormous increase in property and population . . . the avidity of gain—the temptations to luxury and dissipation—and the rivalry in individual expense and ostentation which peculiarly marks the present period’. An unknown writer (Anonymous 1836, 10, emphasis added)—an opponent of a *nationwide* police force—conceded that ‘No doubt the progress of society and *the large increase of population engaged in manufactures*, has created a necessity where these changes have occurred, of a more vigilant and organized Police’.

²²According to Smith (2006, 44): the ‘increased presence and activity of defense counsel at the eighteenth-century Old Bailey only further contributed to the problems faced by prosecutors in proving private ownership of nondescript goods . . . [I]n 1784 James Scott, who had been indicted for stealing forty four pounds of spermaceti, was acquitted after his counsel, William Garrow, subjected the prosecutor’s witnesses to a withering cross-examination concerning the precise age, shape, color, and size of the “spermaceti cake” alleged to have been stolen from the victim. After the court instructed the jury that it was “incumbent” on the prosecution’s witnesses not to “swear rashly” at trial to the article’s purported identification, the jury acquitted the defendant’.

²³See Report of the Commissioners for inquiring into County Rates (1836, 8).

The growing gap between the market and the socially optimal number of prosecutions explains the sense of crisis that pervades contemporary discussions of crime.²⁴ Colquhoun (1796, 246–247) argued that the problem was so grave that a public prosecutor was required. ‘Experience’ had taught him that the moral arguments in favor of prosecuting ‘powerful as they are, will neither awaken in the mind of men that species of public spirit which shall induce’ individuals ‘to become willing prosecutors under all the trying delays, added to the expense often of bringing a number of witnesses from the country, and keeping them hanging on in the court of justice, perhaps for several days together’. A public prosecutor, acting in combination with a professional police force, would not ‘only remove that aversion which prosecutors manifest on many occasions, to come forward, for the purpose of promoting the ends of public justice; but it would prevent, in a great measure, the possibility of compounding felonies or of suborning witnesses’ (ibid., 252).²⁵

3.3 A professional police force?

Advocates of police reform contrasted the largely private English system with the public French system. Charles Cottu (1820, 23), who visited England in the 1810s, observed that the English were uninterested in the causes of crime and were ‘very indifferent as to the condemnation of the accused, should those whom he has injured suffer themselves to be touched with commiseration, or overcome by indolence’.²⁶ The anonymous author of the *Code D’Instruction Criminelle* (thought to be James Mill) argued that the French system was superior to the English system in that it excelled in the ‘preliminary business’ of assembling a case, securing the suspect, and searching for evidence for his guilt. Whereas, in England, ‘[t]here is no public prosecutor’:

‘we trust entirely to the information of the individual whom the crime has injured. For want of a prosecutor, we bind this voluntary informer to prosecute; which is imposing upon him so great a burden, in loss of money, loss of time, and in trouble of various kinds, that, in a great proportion of instances—in, probably, by the majority of instances—where the injury is not of an atrocious sort, the injured person conceals it, and withholds complaint. Instead of taking measures to secure the notice of crimes, we thus take measures to secure their concealment’ (Anonymous 1810, 108).

From the point of Utilitarian reformers, as for modern Pigovian economists, the solution to this problem seemed obvious: introduce a publicly funded and professional police force and public prosecutor.

²⁴Cf. Fielding (1751), Colquhoun (1796), Wade (1829) and the eight Parliamentary Reports commissioned during this period. Piecemeal reforms were carried out. Parliament granted poor prosecutors some expenses after 1752, if they were successful in securing a prosecution, and an act of Parliament in 1754 allowed courts to pay the expenses of poor witnesses. In 1818 and 1826, this allowance was expanded so as to cover expenses incurred prior to the trial for felony cases (but not for misdemeanors).

²⁵The writings of Fielding, Colquhoun and Edwin Chadwick should be treated cautiously as they were not disinterested observers, but partisan political entrepreneurs trying to push through a program of police reform. But this argument was not seriously contested even by those who in favor of retaining the traditional system. For further evidence on the reluctance to prosecute see Hay (1975, 41), Beattie (1986, 35), Phillips (1989, 115–116), Jones (1992, 5).

²⁶According to Alexis de Tocqueville ([1835] 1958, 63): ‘[i]t is impossible to imagine anything more detestable than the criminal investigation police in England ... There is no official charged with a duty to prosecute, which both makes worse the defect mentioned above, that of placing justice out of reach of the poor, and means that the criminal law is never enforced continuously or firmly’. Interestingly, however, Cottu, unlike de Toqueville, actually was favorably disposed towards the English legal and criminal justice system as a whole.

Parliament did discuss introducing a publicly funded police force as early as the 1780s. However, such a force was not introduced for several decades and there was no nationwide force until 1856. Opposition was widespread. Hay (1975, 18) observes that the rural ‘gentry would not tolerate even the idea of a police force,’ as ‘they remembered the pretensions of the Stuarts and the days of the Commonwealth, and they saw close at hand how the French Monarchy controlled its subjects with spies and informers’. Rural elites also controlled the magistrates and retained discretionary authority over local constables which they stood to lose if a national police force came into being.

The fears of the gentry were shared widely. A willingness to take on the responsibility of a prosecution privately was seen as the price of a liberal society, and it was believed that ‘[s]ome degree of trouble and expense in the vindication of our rights is the condition of a free government’ (Anonymous 1836, 34). The legal theorist William Paley (1830, 164) stated that

‘[t]he liberties of a free people ... permit not those precautions and restraints, that inspection, security, and control, which are exercised with success in arbitrary governments ... least of all will they tolerate the appearance of an army force, or of military law, or suffer the streets and public roads to be guarded and patrolled by soldiers; or lastly, entrust the police with such discretionary powers, as may make sure of the guilty, however they involve the innocent’.²⁷

Whig reformers who aimed at overturning many aspects of the old eighteenth century criminal justice system (such as the reliance of capital punishment) shared Paley’s opposition to a police force. One historian observes that ‘to the notion that the law might be more effectively enforced if there were a reformed and efficient police, they exhibited in general a notorious repugnance. If in this they were partly influenced by a dislike of putting stronger instruments of power in the hands of the government, they were also manifesting a deep-rooted popular prejudice which characterized all parties and all classes’ (Gash 1961, 320).²⁸ A public police force might not be used to crush English liberties directly, but it could still be an inefficient and bloated source of patronage for the King’s ministers, and thereby corrode these freedoms indirectly. Given that in late eighteenth and early nineteenth century administrations, there was little distinction between private and public office or the associated income streams, these fears were neither irrational nor necessarily driven by ideology.²⁹

²⁷William Blackstone was of the same opinion. (Radzinowicz 1948, 418–419) noted that ‘It is not surprising that Blackstone should not have recognized ‘Police’ as an institution ... He was an exponent of the liberal doctrine and of the liberal spirit, anxious to see the rights of the subject secured and respected, and the actions of the government jealously watched, lest it drift into arbitrariness and despotism’.

²⁸As late as 1822, a committee reporting to the Home Secretary Robert Peel advised against the introduction of a London police force observing that ‘[i]f a new system of police were to be constructed *ab initio* for the regulation of a great city, such defects [i.e., the inadequate incentive for private individuals to undertake prosecutions] would no doubt be remedied’ but arguing that despite this such a change could not be recommended on the grounds that it would impinge to greatly on individual freedoms: ‘[i]t is difficult to reconcile an effective system of police with that perfect freedom of action and exemption from interference, which are the great privileges and blessings of society in this country; and your committee think that the forfeiture or curtailment of such advantages would be too great a sacrifice for improvements in police or facilities in the detection of crime, however desirable in themselves if abstractly considered’ (Report from the Select Committee of the Police of the Metropolis 1822, 9–11).

²⁹Historians traditionally seen the eighteenth century British state as corrupt (Rubinstein 1983; Root 1991). The spoils system, or what later became known as ‘Old Corruption’ consisted of the widespread sale of offices and favors (Haring 1996; Philips 2004). Allen (2011) argues persuasively that this system made a lot of sense in a world of high measurement costs (the ‘spoils’ were a form of efficiency wages). Nevertheless, this set of

4 Prosecution associations

The private system of prosecutions was unable to cope with crime in Industrial Revolution England. The Pigovian solution to the problem of crime in early-nineteenth century England was off the table for public choice reasons. This gives us a unique opportunity to see how private-order institutions were able to respond to a recognized market failure and to address the scalability critique.

Beginning in the mid-eighteenth century, private associations and organizations began to be formed across the country. These associations emerged out of agreements neighbors made with one another to prosecute any crime committed against them. Over time, the agreements became more formal. Associations drew up constitutions, membership lists, and rules that committed them to fund prosecutions on behalf of their members. Members paid entry fees and annual subscriptions which were used to help pay for the expenses involved in apprehending and prosecuting a suspect. Most associations had their own solicitor who represented the association in court and provided legal advice to members. The funds of an association were also used to pay informers and to advertise rewards.³⁰

4.1 The emergence of prosecution associations

The surviving data on associations for the prosecution of felons are patchy. Nevertheless, the data that is available suggests that the number of associations grew rapidly after 1780. There are data on 534 separate associations. However, a great deal of information is missing for many of these associations. For example, unless an account book for an association survived we do not know how many members it had, what its rules were or how many cases it prosecuted; for many associations we do not even know when they were founded or when they were dissolved. The surviving account books do, however, provide a wealth of qualitative information about how associations operated. But the small number of associations for which we have this kind of detail precludes using this information in a regression framework. Figure 2 plots the founding dates for the 215 associations for which it is possible to identify a founding date. Associations began to emerge in noticeable numbers only after 1750; the number of associations grew rapidly in the last two decades of the eighteenth century and the first two decades of the nineteenth century.³¹

Figure 2 indicates that prosecution associations emerged at the same time as contemporaries argued that England was in the midst of a crime wave. Contemporaries held that crime rates spiked in the aftermath of major wars as large number of demobilized soldiers and sailors returned to civilian life (Beattie 1986, 213–235). Consistent with this view, the

institutional arrangements was not necessarily one to which one would want to entrust a professional police force.

³⁰For an example of the kinds of relationships associations built with solicitors see Cawthorne Association (1843).

³¹The total number of 534 associations comes from the following sources: a list of associations that claimed expenses from the County Rates between 1830 and 1835 (Report of the Commissioners for inquiring into County Rates 1836, 319–327); the list of associations compiled by Philips (1989); a search of local newspapers, the details of all associations for the prosecution of felons list on the Access Archives website; and the records of local archives in Doncaster, London, Sheffield, and York. The newspapers consulted were *The Derby Mercury*, *The Leeds Mercury*, *The Leicester Chronicle*, *The Hull Packet and East Riding Times*, *The Ipswich Journal*, *Jackson's Oxford Journal*, *The Newcastle Courant*, *The York Herald and General Advertiser*, *The Sheffield Independent*, and *Yorkshire and Derbyshire Advertiser*, *The Bury and Norwich Post and East Anglian*, and *Gazetter and New Daily Advertiser*.

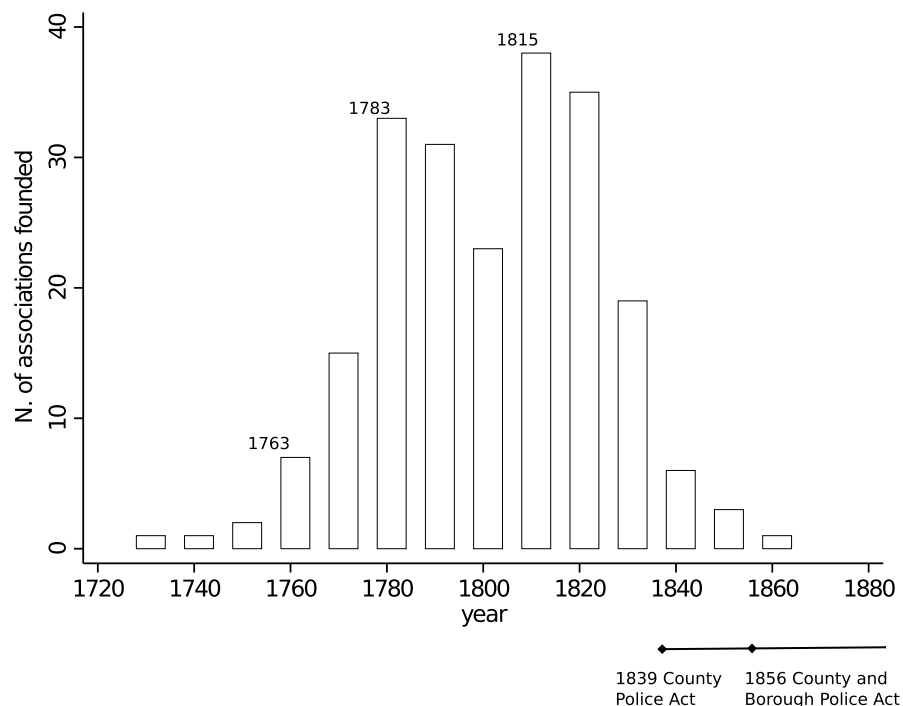


Fig. 2 The number of associations founded per decade. The dates refer to major demobilizations. The total sample consists of 215 associations

number of associations founded spiked at the end of the American War of Independence and at the end of the Napoleonic Wars. The expansion of prosecution associations was associated with the marked increase in the number of committals depicted in Fig. 1.

4.2 The sizes of prosecution associations

The theory of club goods explains how these associations were able to internalize the externality of deterrence among members (Buchanan 1965). Clubs provide goods to members that are non-rival (to a certain point) and excludable. Prosecution associations functioned as economic clubs. An association was committed to prosecuting all crimes against members in return for a membership fee. It generated a direct and excludable benefit for members, but it also provided an indirect and non-excludable benefit to non-members as it increased the level of deterrence and thereby reduced the total amount of crime. In order to survive, associations had to provide sufficient benefits to members to justify their membership fees.

The club goods framework predicts that an association would first attract members with valuable property to protect as they were most likely to be victims of crime and also most likely to prosecute crimes in any case. This prediction is consistent with the evidence. The membership of rural associations comprised local landowners and did not include the majority of the population.

Nevertheless, it is important to emphasize that the number of individuals who joined associations for the prosecution of felons was not insubstantial. It is impossible to gauge systematically the average size for most of the associations for which we have records, as these fluctuated year-by-year. But we can look at a snapshot of rural associations' sizes by examining the number of members of those associations that advertised in the *Ipswich Journal* in January 1800. This Suffolk newspaper contains advertisements from five rural associations, the Barking Association which had 27 members, the Benacre Association with

60 members, the Bungay Tunns Association which had 34 members, the Hoxne Association with 54 members, and the Stadbrook Association which comprised 31 members (*Ipswich Journal* 1800, Saturday, January 4). It is likely that these associations represented a significant fraction of the property owners in these communities. For example, the membership of the Wheldrake Association, in Yorkshire, was limited to a rural parish of a few thousand acres and, when it formed in 1816, its 50 members comprised the majority of farmers in the area (Wheldrake Association 1816–1864). Urban associations were larger. When the Hammersmith Association was reformed in 1818, it initially comprised 188 members (Hammersmith Association 1818). The Association of Cawthorne, a large coalmining village outside the industrial town of Barnsley had at first 173 members in 1843 (Cawthorne Association 1843).

The club goods framework predicts that where property is highly unequally distributed as in the countryside, association membership was likely to be restricted to landowners; but where it was more evenly distributed, as in the cities, membership was more likely to be diverse. This is consistent with the evidence. While the membership of many rural associations comprised landowners, urban associations like the Cambridge Association drew on a much broader membership base that included merchants, shopkeepers, blacksmiths, brewers, bankers and textile workers (Cambridge Association 1841).³²

Maintaining membership was a critical problem for all of the associations. Associations bundled other benefits (such as annual dinners and social occasions) with membership and relied on social prestige to attract and retain members (see Koyama 2012a, 14–15). They also practiced price discrimination, which allowed them to reduce their membership fees in order to attract individuals with less property to protect (and, hence, less demand for the services provided by the association). Some associations tied membership fees to income or wealth. Others based their membership rates on property values.³³ The Caddesley Corbett association charged its poorest members just 10s and its richest members £1 (Caddesley Corbett Association 1799).³⁴

4.3 The number of prosecutions and marginal deterrence

Some historians have suggested that associations for the prosecution of felons were a peripheral phenomena that did little to reduce overall levels of crime because they carried out only a relatively small number of prosecutions (see Schubert 1981, 28–29; Beattie 1986, 49–50). In fact, it is difficult to estimate the proportion of prosecutions were undertaken by prosecution associations. Many associations were small and prosecuted only a few criminals, but some were remarkably active. The City of York Association recorded (and offered rewards relating to) 10 to 20 offenses annually and appears to have prosecuted successfully between

³²Little and Sheffield (1983) found that the social membership of the Halifax associations was likewise diverse. They report that the occupations of the members of the committees they studied included ‘gentlemen, merchant, weaver, attorney, clergy and dyer’ (Little and Sheffield 1983, 799).

³³The Ecclesfield association tied its membership fees to the local tax (poor) rate its members were assessed for. Individuals who were assessed at £60 for the poor rate had to pay an annual membership fee of 60d (Ecclesfield Association 1843).

³⁴Article III of the Burnham Association (1833, 4–5) states that: ‘every Member occupying a Farm, or having Stock of a Farm description, and equally liable to risk, shall pay into the hands of the Treasurer the sum of one Pound and one Shilling. Tradesmen, Shopkeepers, and Market Gardeners the sum of Fourteen Shillings; and persons retired from business and occupying property under Twenty Pounds a Year, the sum of Seven Shillings’. See Koyama (2012a) for a list of associations known to practice price discrimination.

5 and 10 of them during the 1850s (City of York Association [no date](#)). Philips (1989) surveyed a large number of associations and he found that while on average many associations prosecuted a relatively small number of cases each year, in some periods associations could be involved in a relatively large number of them. The Harleston Association in Norfolk was involved in seven prosecutions per year between 1808 and 1815. More than 13 criminals were prosecuted in an average year by the Salt Hill Association between 1836 and 1860 (Philips 1989, 167–168).³⁵

However, the true measure of the impact of prosecution associations was not the number of prosecutions they undertook, but which crimes they prosecuted. Associations were publicly committed to prosecuting all crimes suffered by their members. However, there is evidence that they were more selective. For example, there are only two known cases of associations prosecuting murder cases (Philips 1989, 145). No matter what, victims prosecuted serious crimes against them (with the assistance of local magistrates and constables). Associations concentrated on prosecuting property crimes and the cases recorded in the account books often pertain to extremely minor crimes.³⁶ This suggests that one achievement of prosecution associations was to increase deterrence of crime at the margin. Theoretically, the reason why the existence of prosecution associations can reduce the overall level of crime significantly is that the additional prosecutions in which an association would engage are precisely those marginal cases that private individuals acting on their own would not prosecute. Hence, an association that prosecuted only a small number of cases could nevertheless make a decisive difference in terms of increasing the overall probability of prosecution.

4.4 Property crimes and public order crimes

The above analysis suggests that associations should have predominantly been concerned with property crimes. The free-rider problem to which they emerged in response was likely to be most acute for theft and robbery. Violent crimes (especially rape and murder) were likely to be prosecuted regardless of the cost-benefit calculation of the individual victim. Associations had little incentive to prosecute more general ‘public order’ offenses such as disorderly behavior or rioting.³⁷

Advocates of police reform criticized constables and associations for not prosecuting public order offenses. Associations acted against specific crimes committed against members. The Parliamentary commissioner, William Henry Newham, wanted the police to be used to remove paupers from cities and towns, and noted that a regular police could be used to suppress the ‘great evils that we suffer from ... the ill-regulated state of the beer-shops, pilfering, poaching, petty offences’ (*Evidence taken by the constabulary force* 1839, 17).

In the wake of the French Revolution, and the Peterloo Massacre of 1819, public fear of rioting and civil disorder increased. Prosecution associations and other informal forms of policing were relatively ineffective in dealing with riots. The new police forces, first

³⁵The Wheldrake Association in North Riding, for example was small and inactive; it subsidized only a few prosecutions in its 48-year history (Wheldrake Association [1816–1864](#)). Other associations such as the Bradfield and Doncaster Associations were involved in between one and two prosecutions a year (Bradfield [1838–1886](#); Doncaster Boro’ [1821–1838](#)).

³⁶For example in 1825 the Wheldrake Association reimbursed George Rotsey for going to Riccall to a magistrate accompanied by three women who had been stealing chips of wood (Wheldrake [1816–1864](#)).

³⁷Phillips (1989, 142) notes that ‘[r]ural associations most commonly prosecuted thefts of farm animals (especially sheep and poultry), farm produce, and wood taken from trees, hedges, fences, and stiles. Urban associations were more likely to prosecute theft of raw material from places of work, theft from shops and houses, and garden produce, laundry stolen from gardens’.

introduced in London, in contrast, were seen as particularly useful ‘in meeting the recurrent concern with arson, riot, and politicized disorder as a background motif of the first half of the nineteenth century’ (Hay and Snyder 1989, 6). Indeed, elites outside London accepted the County Police Act of 1839 in reaction to the riots and public disorder associated with Chartism (Hart 1955, 426).

There was another side to this, however. While local prosecution associations protected the property of the middle and upper classes from the depredations of the poor, the new police introduced in the 1830s were employed to reform the manners and behavior of the working classes (Storch 1975, 1976, 1989; Davies 2002).³⁸ The police punished crimes that previously had gone unpunished under the traditional system. They increasingly became involved in suppressing ‘immoral behavior’, notably prostitution, gambling and public drunkenness. Hay (1980, 58) summarizes the revisionist view that ‘the new police were frequently the agents of a middle-class assault on popular mores, not just crime or riot, and they introduced constant surveillance into working-class communities which had long since escaped the knowledge of squire and parson’. Hence, the shift from private to public policing was, in part, a response to the greater demand for protection against riots and the maintenance of public order. However, once the police were created, they were used to prosecute behavior that had not previously been considered criminal.

4.5 Specialization and integration

Another notable feature of prosecution associations was the extent to which they were vertically integrated. They were often involved in all stages of a criminal investigation from the apprehension and arrest of suspects to securing convictions in court. This high degree of vertical integration made sense. There were fixed costs involved in setting up an association and members could not be expected to be involved in numerous different organizations, each providing separate but related services. In a world of high information costs, associations harnessed the local knowledge of individual members—who were typically long-time residents, rooted in their community and in possession of specific knowledge that no outsider could easily know.³⁹ Association meetings provided forums where this information could be disseminated among individuals who had an incentive to use it to identify likely suspects, locate criminal hiding places, or get witnesses to come forward.⁴⁰

The local character of most associations, however, meant that there was no formal communication or cooperation between different associations. The professional police were less vertically integrated. They were involved in the apprehension and arrest of suspects, but did not prosecute them directly until the late nineteenth century. But they were more horizontally integrated, even though each local force retained a high degree of independence.

³⁸ ‘Studies of the introduction of new police forces into communities suggest that one immediate effect which they produced is a marked increase in prosecutions for minor public order offences—brawls, drunkenness, disorderly conduct in public, etc. The new police bring with them a heightened sensitivity to disorder which has previously been tolerated or at least not punished by legal sanctions; the imposition of this new order is initially resisted by the people who feel its effects resulting in a sharp initial rise in prosecutions for such offences’ (Philips 1977, 84).

³⁹ It is reasonable to infer that members knew many offenders because when an offender was a stranger this was usually mentioned. The Harrow-on-the Hill Association for instance noted on September 12, 1812, that the daughter of Mr Sim ‘had been stopped and robbed by a Person unknown in a field leading from Kenton to Edgware’ (Harrow Association 1801–1826, 12).

⁴⁰ See, in particular, the detailed account books kept by the Harrow Association (1801–1826), the Bradfield Association (1838–1886), and the Bolton Percy Association (1825–1890).

The downside to the absence of any horizontal integration across associations was a lack of specialization. Associations may have perfected amateur policing, but they did not provide opportunities for individuals to acquire any particular skill in investigating crime: ‘formal detection was mostly ad hoc, contingent on the good will and free time of law-enforcers who were not experts in gathering information or acting upon it’ (Shpayer-Makov 2011, 19). It was always possible to hire specialists but the small size of most associations meant that they pursued only a small number of crimes and this ensured that they typically could not afford to employ private detectives.⁴¹

After the 1856 County and Borough Act, police forces were directed to cooperate with one another. This could be a source of tension. Conley (1991) reports several clashes between county and borough police forces in the 1860s.⁴² However, it also enabled police forces to share information and skills. The 1830s and 1840s saw the expansion of the rail network across Great Britain, and the 1850s saw the introduction of the telegraph. These developments made horizontal integration increasingly valuable. From mid-century onwards police forces began to train specialist detectives who could be assigned to investigate particularly difficult cases (Shpayer-Makov 2011). In 1842, Scotland Yard—the first modern detective agency—was established within the Metropolitan police. These detectives specialized in solving cases that required a degree of expertise and training such as fraud, forgery, embezzlement, extradition cases, or matters involving foreign governments. Scotland Yard was ‘where real professionalism was expected to be found’ and these detectives were sent elsewhere in the country as police specialists: with ‘the establishment of an official detective department at Scotland Yard, and the reputation it acquired as an elite force, communities with and without police detectives applied to the Yard for aid in serious and unsolved cases’ (Shpayer-Makov 2011, 45). Thus, as the opportunities for productive specialization in detecting crimes increased, so did the relative merits of a professional police force over the older private prosecution associations.

5 Conclusion

Pre-industrial England relied on a private system of law enforcement. Victims and their families were responsible for prosecutions. This created an incentive to free-ride and underprovide deterrence. Nevertheless, the available evidence suggests that the system functioned effectively enough so long as communities remained small-scale and so long as informal norms supported it and limited the incentive victims had not to engage in costly prosecutions.

Industrialization exacerbated the free-rider problem. Critics of the private system argued that a professional police force and a public prosecutor should replace it. Importantly, this did not happen for several decades, and in the meantime, individuals increasingly relied on private associations for the prosecution of felons. Associations emerged out of local and informal agreements amongst neighbors, but they ‘scaled-up’ and were sufficiently successful that they spread across the country during the late eighteenth and early nineteenth centuries.

⁴¹See Philips (1989). I found no instances of associations hiring professional thief-takers, although they frequently paid small rewards to local constables.

⁴²For example: ‘when a murder was committed on a road leading out of Maidstone, both the Maidstone police and the county police claimed jurisdiction. In a heated exchange reported in the local press, the county police superintendent called the Maidstone superintendent a donkey and claimed unwarranted interference had permitted the murderer to escape. The case was never solved’ (Conley 1991, 29).

Drawing on the theory of club goods, this paper has shown how these associations could ameliorate this free-rider problem and increase the overall number of criminal prosecutions. This analytic narrative cautions against extrapolating from institutional mechanisms that can function in small-scale societies and arguing that they can be relied upon in the large, open-access, market societies, while also suggesting that private-order legal institutions can be scaled-up to a considerable extent. However, it is important to note that this scalability was limited. While prosecution associations partially rectified the problems associated with individual prosecutions, the limits imposed by distance and geography meant that they remained relatively small.

Prosecution associations had shortcomings. They could not provide preventative policing. They responded after the fact to crimes and struggled to undertake large-scale operations against well-organized criminals. Some associations, notably the Barnet Association, were successful in maintaining a permanent watch, but many other societies found it too costly to do so (for more details see Koyama 2012a, 117–120). Associations often formed in response to specific threats and once these threats were overcome they might then disappear. Charles Bathurst of Gloucester in answer to the Constabulary Force Commissioners, describes a successful association at Cheapstow that he suggests had formed to break up a sheep-stealing gang and was now inactive (Evidence Taken by the Constabulary Force Commissioners 1839, 39).⁴³ Other associations were unable to prevent free-riding and declined owing to their inability to collect fees.⁴⁴

But the problems associated with prosecution associations have to be seen in context. The new police faced arguably still more serious problems. A full consideration of the foundation of the first police forces in England is beyond the scope of this article. Nevertheless, it is important to note that while there was resistance to the Metropolitan police force established by Robert Peel in 1828 was modest, ‘[m]ost of the backbenchers who acquiesced in the appearance on London’s streets of blue-uniformed and truncheoned ‘Peelers’ would have been mortified had they known that these strange novelties formed the advance guard of a professional police force which would appear throughout the country within thirty years’ (Evans 2001, 244). Many areas of the country resisted the introduction of police forces.⁴⁵ In Yorkshire in 1839, for example, magistrates were ‘bombarded with petitions from numerous townships whose inhabitants, like those from Kirby Moorside, had ‘learnt with great Alarm, that the Establishment of a Rural Police is intended’ despite the fact that in their opinion there were ‘no instances of insubordination or riotous Proceedings ... but that on the contrary, the Riding is in a state of perfect tranquility that rendered a police force ‘altogether unnecessary and uncalled for’ (quoted in Taylor 2002, 26).⁴⁶

⁴³Similarly we are told that ‘[n]otwithstanding the great benefits said to have been derived at Stow in the Wold from the operations of a Constabulary paid by voluntary subscription, those benefits it appears are in danger of abandonment, unless a measure for a compulsory rate be conferred. It has become difficult to get in the subscriptions. “The farmers have no longer fear depredations, and they do not choose to part with their money” (Halford 1839, 26).

⁴⁴This problem affected an association in Wandsworth. According to James Collingbourn there had been an association for the prosecution of felons but it was ‘a temporary one; it is hardly an association; it has been formed, but it has fell off; it did not exist above eighteen months’ (Report from the Select Committee of the Police of the Metropolis 1828, 240).

⁴⁵In 1839 a proposed expansion of the Metropolitan police was opposed strongly by the Clapham Association both because it deprived the council magistrates of their authority and because it would ‘increase the patronage of the Government’ and the burdens of the people’ without enjoying ‘the confidence of the public’ (Clapham Association 1809–1840, unnumbered).

⁴⁶This resistance came from several quarters: classical liberals combined with trade unionists; see Storch (1976).

Prosecution associations persisted after the introduction of professional police forces across England between 1828 and 1856. They worked in cooperation with the new police.⁴⁷ Many associations continued to pay rewards to policemen into the 1880s or later, just as they had previously paid constables. However, in the long-run the emergence of the police robbed prosecution associations of their principal reason for existing, particularly as the police began to take over the burden of prosecuting felons from the 1870s onwards; those societies that survived did so mainly on the basis of their success as convivial societies.⁴⁸

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References

- Allen, R. C. (2009). Engels' pause: technical change, capital accumulation, and inequality in the British Industrial Revolution. *Explorations in Economic History*, 46(4), 418–435.
- Allen, D. W. (2011). *The institutional revolution*. Chicago: Chicago University Press.
- Allen, D. W., & Barzel, Y. (2011). The evolution of criminal law and police during the pre-modern era. *Journal of Law, Economics, & Organization*, 27(3), 540–567.
- Anonymous (1810). Code d'instruction criminelle. *Edinburgh Review*, 17, 88–114.
- Anonymous (1836). *Some remarks on the report of the constabulary force*. Leicester: Combe and Crossley.
- Armitage, G. (1932). *The history of the Bow street runners, 1729–1829*. London: Wishart & Co.
- Barnett, R. (2000). *The structure of liberty: justice and the rule of law*. Oxford: Oxford University Press.
- Beattie, J. M. (1974). The pattern of crime in England 1660–1800. *Past & Present*, 62(1), 47–95.
- Beattie, J. M. (1986). *Crime and the courts in England, 1660–1800*. Princeton: Princeton University Press.
- Becker, G. S. (1968). Crime and punishment: an economic approach. *Journal of Political Economy*, 76(2), 169–217.
- Becker, G. S. (1974). Crime and punishment: an economic approach. In *Essays in the economics of crime and punishment, NBER chapters* (pp. 1–54). Cambridge: National Bureau of Economic Research.
- Benson, B. L. (1989). The spontaneous evolution of commercial law. *Southern Economic Journal*, 55(3), 644–661.
- Benson, B. L. (1994). Are public goods really common pools? Considerations of the evolution of policing and highways in England. *Economic Inquiry*, 32(2), 249–271.
- Benson, B. L. (1998). *To serve, and protect*. New York: New York University Press.
- Bernstein, L. (1992). Opting out of the legal system: extralegal contractual relations in the diamond industry. *The Journal of Legal Studies*, 21(1), 115–157.
- Bertrand, E. (2006). The Coasean analysis of lighthouse financing: myths and realities. *Cambridge Journal of Economics*, 30(3), 389–402.
- Birmingham Association (1799). *Copy of a deed of association for the prosecution of felons*. 1609/3301. British Library, Birmingham: T.A. Pearson's Printing Office.
- Block, W., & Barnett, W. (2009). Coase and Bertrand on lighthouses. *Public Choice*, 140(1), 1–13.
- Bolton Percy Association (1825–1890). The association of the Parish of Bolton Percy for the prosecution of felons, cheats and for the defraying of all expenses of advertisement, handbills, etc. Box PR/BP. York: Borthwick Institute for Archives.

⁴⁷The Stockton association raised a cheer to '[t]he Police force' on the grounds that '[w]ithout all of the force in detecting crimes the Association would lose three parts of its value' (Stockton Association 1874). Rural prosecutions associations could cooperate with the police because they were much more modest affairs and did not attempt to provide their own watches.

⁴⁸The Darlington Society, founded in 1811, was still going in 1875 with hundred members. It was still active and in 1874 had made four separate prosecutions and secured four convictions. At the general meeting, reported in the *Northern Echo*, the attorney Mr W. Hodgeson commented 'on the advantages to be derived from such an association and expressed his surprise that instead of having only 100 members they had not five or six times as many' (Darlington Association 1875). Some societies still continue to this day as social clubs.

- Bradfield Association (1838–1886). *Minute book of the Bradfield Association for the prosecution of felons*, MD 3595. Sheffield: Sheffield Archives.
- Brewer, J. & Porter, R. (Eds.) (1993). *Consumption and the world of goods*. London: Routledge.
- Buchanan, J. M. (1965). An economic theory of clubs. *Economica*, 32(125), 1–14.
- Buchanan, J. M., & Tullock, G. (1962). *The calculus of consent: logical foundations of constitutional democracy*. Indianapolis: Liberty Fund.
- Burnham Association (1833). *Rules and regulations of the Burnham Association for the protection of persons and property and the prosecution of felons*. RB 23 A 33427. London: British Library. London: J. H. Roberts.
- Cambridge Association (1841). *Rules of the town of Cambridge Association for the prosecution of felons*. Cam.c.500.36. Cambridge University Library. Cambridge: Glover and Foister, Falcon Yard.
- Carnis, L. (forthcoming). The provision of lighthouse services: a political economy perspective. *Public Choice*. doi:10.1007/s11127-012-9951-y.
- Cawthorne Association (1843). *Rules of the Cawthorne Association for the prosecution of felons, cheats, etc*. Minute Book. RB. 23 A 33428. London: British Library. Barnsley: John Ray.
- City of York (no date). City of York Association for the prosecution of felons, cheats, etc. Minute Book.
- Clapham Association (1809–1840). *Minute book of the committees of Vestry*. P925/TR11-1. London: London Metropolitan Archive.
- Coase, R. (1960). The problem of social cost. *Journal of Law & Economics*, 3(1), 1–44.
- Coase, R. (1974). The lighthouse in economics. *Journal of Law & Economics*, 17(2), 357–376.
- Colquhoun, P. (1796). *A treatise on the police of the metropolis*. London: C. Dilly.
- Colquhoun, P. (1803). *A treatise on the functions and duties of a constable*. London: J. Mawman and J. Hatchard.
- Conley, C. A. (1991). *The unwritten law: criminal justice in Victorian Kent*. Oxford: Oxford University Press.
- Cottu, C. (1820). The administration of the criminal code in England. *The Pamphleteer*, 16(31), 1–145.
- Crafts, N. (1985). *British economic growth during the industrial revolution*. Oxford: Clarendon Press.
- Critchley, T. A. (1967). *A history of police in England and Wales 900–1966*. London: Constable and Company.
- Darlington Association (1875). The Darlington association for the prosecution of felons. *Northern Echo*, 1572, Thursday, January 21.
- Davies, S. (2002). The private provision of police during the eighteenth and nineteenth centuries. In D. Beito, P. Gordon, & A. Tabarrok (Eds.), *The voluntary city* (pp. 151–181). Michigan: University of Michigan Press.
- de Molinari, G. (1849). De la production de la sécurité. *Journal des Economistes*, 277–290.
- de Tocqueville, A. ([1835] 1958). *Journeys to England and Ireland*. New Haven: Yale University Press.
- de Vries, J. (2008). *The industrious revolution*. Cambridge: Cambridge University Press.
- Demsetz, H. (1970). The private production of public goods. *Journal of Law & Economics*, 13(2), 293–306.
- Dixit, A. (2004). *Lawlessness and economics*. Oxford: Princeton University Press.
- Doncaster Association (1821–1838). *Book of proceedings of the Doncaster Boro' Stoke Association for the prosecution of felons*, DS/80/1. Doncaster: Doncaster Archives Department.
- Ecclesfield Association (1843). *Rules of the Ecclesfield General Association for the prosecution of felon*. British Library RB.23.a.1948. Sheffield: J. Burton.
- Emsley, C. (1996). *Crime and society in England 1750–1900* (2nd ed.). London: Longman.
- Emsley, C. (2007). *Crime, police, and penal policy: European experiences 1750–1940*. Oxford: Oxford University Press.
- Evans, E. J. (2001). *The Forging of the modern state*. London: Longman.
- Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention (1839). C.T.246.(3). London: British Library.
- Fielding, H. (1751). *An enquiry into the causes of the late increase of robbers*. London: A. Millar.
- First report from the commissioners appointed to inquire as to the best means of establishing an efficient constabulary force in the counties of England and Wales* (1839). Stamford Street: W. Clowes and Sons.
- Friedman, D. (1979). Private creation and enforcement of law: a historical case. *The Journal of Legal Studies*, 8(2), 399–415.
- Friedman, D. (1984). Efficient institutions for the private enforcement of law. *The Journal of Legal Studies*, 13(2), 379–397.
- Friedman, D. (1995). Making sense of English law enforcement in the eighteenth century. *The University of Chicago Law School Roundtable*, 475, 475–505.
- Gash, N. (1961). *Mr. Secretary Peel: the life of Sir Robert Peel to 1830*. Cambridge: Harvard University Press.
- Gatrell, V. (1972). Criminal statistics and their interpretation. In E. A. Wrigley (Ed.), *Nineteenth-century society* (pp. 336–386). Cambridge: Cambridge University Press.

- Greif, A. (1989). Reputation and coalitions in medieval trade: evidence on the Maghribi traders. *The Journal of Economic History*, 49(4), 857–882.
- Halford, H. (1839). Some remarks on the report of the constabular force.
- Hammersmith Association (1818). *Accountbook of the Hammersmith Association for the prosecuting thieves and felons*, P80/PAU/11. London: London Metropolitan Archives.
- Haring, P. (1996). *The waning of 'old corruption': the politics of economical reform in Britain, 1779–1846*. Oxford: Clarendon Press.
- Harley, K. (1999). Reassessing the industrial revolution: a macro view. In J. Mokyr (Ed.), *The British industrial revolution: an economic perspective* (2nd ed., pp. 160–206). Oxford: Westview Press.
- Harrow Association (1801–1826). *Harrow on the hill association book*, DRO/003/H/01/001. London: London Metropolitan Archive.
- Hart, J. (1955). Reform of the borough police, 1835–1856. *English Historical Review*, 70(276), 411–427.
- Hay, D. (Ed.) (1975). *Albion's fatal tree*. London: Allen Lane.
- Hay, D. (1980). Crime and justice in eighteenth- and nineteenth-century England. *Crime and Justice*, 2, 45–84.
- Hay, D., & Snyder, F. (1989). Using the criminal law, 1750–1850. In D. Hay & F. Snyder (Eds.), *Policing and prosecution in Britain 1750–1850* (pp. 3–52). Oxford: Clarendon Press.
- Hudson, P. (Ed.) (1989). *Regions and industries: a perspective on the industrial revolution*. Cambridge: Cambridge University Press.
- Ipswich Journal (1800). Saturday, January 4, advertisements & notices.
- James, P., & Critchley, T. A. (1971). *The maul and the pear tree*. New York: Warner Books.
- Jones, D. (1992). *Crime in nineteenth century Wales*. Cardiff: University of Wales Press.
- Kandori, M. (1992). Social norms and community enforcement. *Review of Economic Studies*, 59(1), 63–80.
- King, P. (1989). Prosecution associations and their impact in eighteenth-century Essex. In D. Hay & F. Snyder (Eds.), *Policing and prosecution in Britain 1750–1850*. Oxford: Clarendon Press.
- Klerman, D. (2004). Jurisdictional competition and the evolution of the common law: a hypothesis. *Australian Journal of Legal History*, 8, 1–19.
- Koyama, M. (2012a). Prosecution associations in industrial revolution England: private providers of public goods? *The Journal of Legal Studies*, 41(1), 95–130.
- Koyama, M. (2012b). The transformation of labor supply in the pre-industrial world. *Journal of Economic Behavior & Organization*, 81(2), 505–523. doi:10.1016/j.jebo.2011.07.015
- Landa, J. (1981). A theory of the ethnically homogeneous middleman group: an institutional alternative to contract law. *The Journal of Legal Studies*, 10(2), 349–362.
- Landes, W. M., & Posner, R. A. (1975). The private enforcement of law. *The Journal of Legal Studies*, 4(1), 1–46.
- Leeson, P. T. (2007a). An-arrrgh-chy: the law and economics of pirate organization. *Journal of Political Economy*, 115(6), 1049–1094.
- Leeson, P. T. (2007b). Better off stateless: Somalia before and after government collapse. *Journal of Comparative Economics*, 35(4), 689–710.
- Leeson, P. T. (2008a). Coordination without command: stretching the scope of spontaneous order. *Public Choice*, 135(1), 67–78.
- Leeson, P. T. (2008b). Social distance and self-enforcing exchange. *The Journal of Legal Studies*, 37(1), 161–188.
- Leeson, P. T. (2009). The laws of lawlessness. *The Journal of Legal Studies*, 38(2), 471–503.
- Lemire, B. (1991). *Fashion's favourite: the cotton trade and the consumer in Britain, 1660–1800*. Oxford: Oxford University Press.
- Lindsay, C., & Dougan, W. R. (2012). Efficiency in the provision of pure public goods by private citizens. *Public Choice*. doi:10.1007/s11127-012-9942-z.
- Little, C. B., & Sheffield, C. P. (1983). Frontiers and criminal justice: English private prosecution societies and American vigilantism in the eighteenth and nineteenth centuries. *American Sociological Review*, 48(6), 796–808.
- McMullan, J. L. (1987). Crime, law and order in early modern England. *British Journal of Criminology*, 27(3), 252–274.
- Mokyr, J. (1988). Is there still life in the pessimist case? Consumption during the industrial revolution, 1790–1850. *The Journal of Economic History*, 48(1), 69–92.
- Mokyr, J. (2004). Accounting for the industrial revolution. In R. Floud & P. Johnson (Eds.), *The Cambridge economic history of modern Britain* (Vol. I, pp. 1–28). Cambridge: Cambridge University Press.
- Mokyr, J. (2008). The institutional origins of the industrial revolution. In E. Helpman (Ed.), *Institutions and economic performance* (pp. 64–120). Cambridge: Harvard University Press.
- Mokyr, J. (2009). *The enlightened economy*. Princeton: Princeton University Press.
- Paley, W. (1830). *Principles of moral and political philosophy* (Vol. 2). Boston: Whitaker.

- Philips, D. (1977). *Crime and authority in Victorian England*. London: Croom Helm.
- Philips, D. (1989). Good men to associate and bad men to conspire. In D. Hay & F. Snyder (Eds.), *Policing and prosecution in Britain 1750–1850*, Oxford: Clarendon Press.
- Philips, D. (2004). A ‘weak’ state? The English state, the magistracy and the reform of policing in the 1830s. *English Historical Review*, 119(483), 873–891.
- Philips, D., & Storch, R. D. (1999). *Policing provincial England* (pp. 1829–1856). London: Leicester University Press.
- Pigou, A. C. (1952). *The economics of welfare*. New Jersey: Transaction Books.
- Polinsky, A., & Shavell, S. (2007). The theory of public enforcement of law. In *Handbook of law and economics* (Vol. 1, pp. 403–454).
- Pollack, A., & Maitland, F. (1895). *The history of England law, before the time of Edward I* (Vol. 1). Cambridge: Cambridge University Press.
- Posner, R. A. (1980). A theory of primitive society, with special reference to law. *Journal of Law & Economics*, 23(1), 1–53.
- Radzinowicz, L. (1948). *A history of English criminal law and its administration from 1750, Vol. 1: the movement for reform*. New York: MacMillan.
- Radzinowicz, L. (1958). *A history of English criminal law and its administration from 1750* (Vol. 4). New York: MacMillan.
- Reith, C. (1936). *The police idea*. London: Oliver and Boyd.
- Reith, C. (1943). *British police and the democratic ideal*. London: Oxford University Press.
- Reith, C. (1956). *A new study of police history*. London: Oliver and Boyd.
- Report from the Select Committee of the Police of the Metropolis (1822). London.
- Report from the Select Committee of the Police of the Metropolis (1828). London.
- Report of the Commissioners for inquiring into County Rates (1836). London.
- Root, H. L. (1991). The redistributive role of government: economic regulation in old regime France and England. *Comparative Studies in Society and History*, 33(2), 338–369.
- Rothbard, M. N. (1973). *For a new liberty*. New York: MacMillan.
- Rubinstein, W. (1983). The end of ‘old corruption’ in Britain 1780–1860. *Past & Present*, 101(1), 55–86.
- Samuelson, P. A. (1954). The pure theory of public expenditure. *Review of Economics and Statistics*, 36(4), 387–389.
- Schubert, A. (1981). Private initiative in law enforcement: associations for the prosecution of felons, 1744–1856. In V. Bailey (Ed.), *Policing and punishment in nineteenth century Britain* (pp. 25–42). New Jersey: Rutgers University Press.
- Scott, J. T. (2009). *The art of not being governed: an anarchist history of upland Southeast Asia*. New Haven: Yale University Press.
- Sharpe, J. A. (1980). Enforcing the law in the 17th century English village. In V. Gatrell, B. Lenman, & G. Parker (Eds.), *Crime and the law: the social history of crime in Western Europe since 1500* (pp. 97–119). London: Europa.
- Sharpe, J. A. (1983). *Crime in seventeenth-century England*. Cambridge: Cambridge University Press.
- Shpayer-Makov, H. (2011). *The ascent of the detective*. Oxford: Oxford University Press.
- Silver, A. (1967). The demand for order in civil society: a review of some themes in the history of urban crime, police, and riot. In D. J. Bordua (Ed.), *The police: six sociological essays* (pp. 1–25). London: Wiley.
- Skarbek, D. (2010). Putting the “con” in constitutions: the economics of prison gangs. *Journal of Law, Economics, & Organization*, 26(2), 183–211.
- Skarbek, D. (2012). Governance and prison gangs. *The American Political Science Review*, 105(4), 702–716.
- Smith, S. B. (2006). The emergence of public prosecution in London, 1790–1850. *Yale Journal of Law & the Humanities*, 18, 29–62.
- Stockton Association (1874). Stockton Association for the prosecution of felons. *The Daily Gazette*, 21, 3.
- Storch, R. D. (1975). “The plague of blue locusts”: police reform and popular resistance in Northern England 1840–1857. *International Review of Social History*, XX, 69–90.
- Storch, R. D. (1976). The policeman as domestic missionary: urban discipline and popular culture in northern England, 1850–1880. *Journal of Social History*, 9(4), 481–509.
- Storch, R. D. (1989). Policing rural southern England before the police. In D. Hay & F. Snyder (Eds.), *Policing and prosecution in Britain 1750–1850* (pp. 211–266). Oxford: Clarendon Press.
- Stringham, E., & Zywicki, T. (2011). Rivalry and superior dispatch: an analysis of competing courts in medieval and early modern England. *Public Choice*, 147(3), 497–524.
- Styles, J. (1989). Print and policing: crime advertising in eighteenth-century provincial England. In *Police and prosecution in Britain in the eighteenth and nineteenth centuries* (pp. 55–111). Oxford: Oxford University Press.
- Styles, J. (2007). *The dress of the people*. New Haven: Yale University Press.

- Taylor, D. (1998). *Crime, policing and punishment in England, 1750–1914*. London: MacMillan Press.
- Taylor, D. (2002). *Policing the Victorian town: the development of the police in Middlesbrough c. 1840–1914*. London: Palgrave MacMillan.
- Tobias, J. (1979). *Crime and police in England, 1700–1900*. London: Gill and Macmillan.
- Tullock, G. (1965). *Bureaucracy*. Indianapolis: Liberty Fund.
- Tullock, G. (1971). Public decisions as public goods. *Journal of Political Economy*, 79(4), 913–918.
- Wade, J. (1829). *A treatise on the police and crimes of the metropolis*. New Jersey: Patterson Smith. Reprinted in 1972 with a new introduction by J.J. Tobias.
- Wheldrake Association (1816–1864). *The accounts of the Wheldrake and Langwith Association for the prosecution of felons and cheats & etc., PR/WHEL*. York: The Borthwick Institute for Archives.