

Prosecution Associations in Industrial Revolution England: Private Providers of Public Goods?

Mark Koyama*

Abstract

In early 19th century England there was no professional police force and most prosecutions were private. This paper examines how associations for the prosecution of felons arose to internalise the positive externalities produced by private prosecutions. Drawing upon new historical evidence, it examines how the internal governance and incentive structures of prosecution associations enabled them to provide public goods. Consistent with Demsetz (1970), prosecution associations were economic clubs that bundled the private good of insurance with the public good of deterrence. Associations used local newspapers to advertise rewards and attract new members. Price discrimination was employed in order to elicit contributions from individuals with different security demands. Selective incentives helped overcome free-rider problems between members.

Key words: public goods , private prosecutions , insurance selective incentives

JEL classification: N43; K42

*Department of Economics and Related Studies, University of York, Heslington, York, YO10 5DD, UK, mark.koyama@york.ac.uk. This work has benefited from the comments a seminar in York. I'm particularly grateful to Pete Leeson for reading an earlier draft and to Matteo Pazzona for helpful suggestions. I am also grateful to archivists in Sheffield, Doncaster, York, and London for their assistance and to Max Satchell and the Cambridge Group for the shapefile used in Figure 4.

‘We could not adduce a stronger proof of the prostrate condition of the penal administration of the country than the great extent of the associations for self-protection to do that which is the business of a Government to do . . . such associations and such rules may be cited to prove that the community in which they arose was relapsing into a state of barbarism’

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, 97)

‘an Association for the more effectual bringing to Justice every Offender who shall hereafter be guilty of felony against the person or property of any of the Associators, will not only be the most likely method to preserve the persons and properties of said Associator safe from felony, but will at the same time conduce greatly to the *Public Good*’

Copy of a Deed of Association for the Prosecution of Felons (1799, 3)

1 Introduction

How were public goods produced prior to the rise of the modern state? How was security provided before the first professional police? It is well known that private firms are capable of providing security for their customers. This paper asks under what circumstances will, and through what institutional mechanisms can, private societies or clubs provide security on a wider basis. It draws upon historical evidence from England in the eighteenth and nineteenth centuries to examine how private associations for the prosecution of felons were able to induce their members to fund the public good of deterrence.

Until the middle of the nineteenth century, England lacked a nationwide professional police force. The responsibility for the prevention of crime lay with local magistrates, justices of the peace, hired watchmen, private individuals, and professional thief-takers. In contrast to the rest of Europe, prosecutions remained private and, as going to court was costly, disputes were often settled informally.¹ Many police functions were performed by private societies called ‘associations for the prosecution of felons’ which subsidised prosecutions and sometimes maintained local watches and patrols.

This traditional criminal justice system in England came into being over the course of the late middle ages. By the late eighteenth century, it was coming under increasing attack from critics who argued that it was out of date, unable to cope with the increase in crime brought about by population growth, urbanisation

¹Until the nineteenth century, the state only prosecuted offences like treason or coining (Godfrey, 2008, 172). In the cases in the Staffordshire and Worcestershire Quarter Sessions that he examined, Phillips found that in 1836 roughly 80 percent of cases were brought by the victims themselves (Phillips, 1977, 101). The police began prosecuting serious offences such as murder and rape from the inception but they only began to prosecute more minor offences in the 1870s and 1880s (Godfrey, 2008, 172-173). C.f. Friedman (1995, 476).

and increased migration.² However, the question of how to reform the system of police remained an open one. Was a professional police force required to deter crime? Or were private watches sufficient? Could the flaws in the system of private prosecutions be overcome through bottom-up measures such as prosecution associations, or was a unified and centralized publicly-funded system needed?

The chronology is well-established. A professional police force was introduced in London in 1829 and into the rest of the country from 1839 onwards.³ From 1856, every county and borough had to maintain their own police from local taxation. The police gradually took on the role of prosecuting criminal cases, while high profile cases became the responsibility of a public prosecutor.⁴ As a consequence, private-order institutions like prosecution associations more or less disappeared by the beginning of the twentieth century.⁵ This paper addresses a series of *economic* rather than *historical* questions: it shows how private prosecution associations functioned; how they overcame free-rider problems; and examines the internal governance mechanisms they employed to attract subscribers. It investigates the economic logic behind the organisation of these societies.

The historical record reveals how the problem of public good provision was dealt with in practice. Associations for the prosecution of felons were concerned with the provision of the public good of deterrence. They were able to provide deterrence by tying it in with a private good [mutual insurance] along the lines suggested by Demsetz (1970). Associations made use of, and, in turn, reinforced, existing norms of voluntarism, neighbourliness and cooperation. They were innovative in making use of the growth of newspaper advertising and in designing incentives schemes to overcome the problems that typically hinder the provision of public goods. Because they were voluntary societies that had to attract subscriptions, they reflected the preferences of members and adapted to local conditions.

The paper also outlines the limitations associations for the prosecution of felons faced in attempting to overcome the problems posed by free-riders. However, in so doing, it sets these deficiencies against the shortcomings of the professional police in their first decades of existence and against the general problems that beset all attempts to provide public goods.⁶

²Crime and disorder—particular in London—became a subject of intense debate in the industrial revolution period (see Philips, 1977; Beattie, 1986). Contemporaries argued that there was marked increase in crime in 1783-1784 associated with demobilization after the American war and this fear intensified in the 1790s when prospect of revolution led to a clampdown on popular protests and other forms of public disturbance. See for example the responses collected in *First Report from the Committee on the State of the Police of the Metropolis with minutes of evidence taken before the committee* (1817).

³The Metropolitan Police Act of 1829 established a centralized police force in London and some parishes in Middlesex and Sussex. In 1839 the County Police Act enabled Justices of the Peace to establish police forces in their counties. This was made compulsory by the County and Borough Police Act of 1856.

⁴By 1914 victims had ceased to play any role beyond that of ‘witnesses to their own complaint’ (Godfrey, 2008, 185).

⁵Some associations survived and survive to this day as social clubs.

⁶See, for example, Alesina et al. (1999) for an example of how heterogeneous preferences (or, more specifically, preference polarisation) undermine public good provision.

The evidence used in this paper comes from a number of sources. The rulebooks and constitutions of a small number of prosecution associations are kept by the British Library and the Cambridge University Library. In addition to information available in Parliamentary enquires, the bulk of the evidence we have for many associations comes from a number of eighteenth and nineteenth century British newspapers.⁷ For a more detailed picture of the finances of a small number of associations I have made use of handwritten account-books and minutes from the Borthwick Institute of Archives in York, local studies libraries in Sheffield and Doncaster, and the London Metropolitan Archives.

The remainder of the paper is organized as follows. Section 2 outlines why the traditional criminal justice system was seen as in crisis by the early decades of the nineteenth century. It specifies the externalities that meant that the private level of prosecutions was likely to be less than the socially optimum level. Section 3 examines how prosecution associations could have internalised these externalities. It studies how they raised money, what institutional forms they developed to attract members and prevent free-riding, how they helped bring criminals to court, and how they tried to limit rent-seeking behaviour. Section 4 concludes by considering the limitations of private provision of public goods in the nineteenth century.

2 Private Prosecutions and Deterrence

Small-scale and closely-knit societies police themselves. As Adam Smith observed: ‘[w]here there is no property, or at least none that exceeds the value of two or three days labour, civil government is not necessary’ (Smith, 1776, Bk. V. chap. 1).⁸ Kinship ties help ensure social cooperation and provides a limited form of insurance. In-group norms of solidarity limit conflict. Arbitration by established authorities (chiefs, priests etc.), often sanctioned by religious rites, settled disputes. Reliance on tradition and customary law makes sense in a largely stationary societies, in the which the problems faced by one generation are likely to be the same as those experienced by countless generations in the past. A principle of a collective responsibility ensures that promises are enforced and favors reciprocated.⁹ Violent disagreements are common in small-scale societies but they are addressed through restitution and ostracism, partly so as to prevent blood feuds from developing and causing violence to escalate.¹⁰

⁷The list consulted includes *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*.

⁸C.f. Hoebel (1967); Service (1975); Leeson (2007); Scott (2009). This is not only true of hunter-gather societies, it also applies to simple sedentary agriculturalists for whom ‘political and social authority tended to be undifferentiated, rudimentary, and relatively weak. Law, as we understand it today . . . did not exist’ (Haley, 2010, 315).

⁹The Frankpledge was the most important collective in early medieval England.

¹⁰See Posner (1979, 1980). Friedman (1979) examines the case of medieval Iceland.

Anglo-Saxon evolved on these principles and the medieval and early modern English legal system was built on Anglo-Saxon and Norman foundations.¹¹

By the eighteenth century, the English legal system was an amalgam of the private and the public. The law was publicly provided. Judges were paid out of a mixture of court fees and tax revenues. Law enforcement, in theory, remained based on ‘informal’ institutions, like the Hue and Cry and the King’s Peace, derived from much earlier medieval legal norms, and based on the principles of collective responsibility.¹² Practice, however, often departed from the theory. For example the institution of the Hue and Cry had evolved into a written warrant sent from the scene of the crime to constables in nearby villages.¹³ Prosecutions, however, remained private, the responsibility of the victim. Local magistrates—the justices of the peace (JPs) and constables—were expected to assist victims but only very rarely undertook prosecutions themselves.

This system baffled most foreigner observers. Charles Cottu observed that

‘they make no effort to seek out the proofs of a guilty action, trusting entirely for its punishment to the hatred, or revenge of the party injured, and being in reality 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. Thus the right of prosecution, instead of being exercised for the public good, by an officer commissioned for the purpose, is placed entirely in the hands of the offended party, who becomes by this means the sole arbiter of the fate of the offender, and can, according to the degree of his resentment, either prosecute him with the utmost rigor of the law, or soften a parts of its severity against him, by modifying the form of the indictment, or even pardon him altogether, by omitting to prefer any complaint against him’ (Cottu, 1820, 23).¹⁴

Responsibility devolved onto either the victim or the local community itself. The JPs were members of the gentry (they had to earn at least £100 a year) who were unpaid. The constables were local volunteers—also unpaid—and often tradesmen or artisans, who served for a year. 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).¹⁵ In a very real sense, villages policed

¹¹C.f. Pollack and Maitland (1895) and Goebel (1937). The Scottish legal system developed separately and on quite different lines.

¹²C.f. Critchley (1967, 21) and (Tobias, 1979).

¹³By the early eighteenth century these warrants were preprinted notes that contained blank spaces in which the constable could fill out the name of the suspect. See *Writ of arrest* (1724).

¹⁴Alexis de Tocqueville was more scathing, writing ‘[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’ (de Tocqueville, 1958, 63).

¹⁵The Crown in general only prosecuted cases like treasure or coning, occasionally prosecuting ordinary cases in exceptional

themselves.

Minor crimes could be prosecuted before a magistrate and dealt with summarily. Felonies had to be prosecuted at the Quarter Sessions which met four times year in each county. Serious crimes were punished at the Assize courts which were held twice a year in most counties. Prosecuting was costly. Prior to the trial the prosecutor had to give evidence before a magistrate, assemble witnesses, collect depositions, and hire legal counsel. The trial itself was a major expense in terms of both time and money. And after the trial, the prosecutor might have to intervene again if the defendant sought a pardon (Hay and Snyder, 1989, 26). The costs of prosecuting one thief in 1829, a man called Thomas Mills, totaled £6, 6s, 8d, including the cost of taking Mills to Buckingham to be examined, paying witnesses, hiring a conveyance to the goal, and rewarding an informant (*Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention*, 1839, 29).¹⁶ And this was comparatively cheap. By the mid-nineteenth century the average cost was between £20 and £50 at the Assize courts and £8 at the Quarrrter Sessions (*Report of the Commissioners for inquiring into County Rates*, 1836, 15).

Plaintiff and defendant had an incentive to settle before the case reached court and this practice—known as compounding—was major reason why most minor crimes never ended up in court. Such bargains were mutually advantageous: they might save the prosecutor the expenses involved in paying the constable and sometimes paying witnesses, hiring the services or guards and doctors and transporting the defendant to court whilst sparing the defendant the possibility of being imprisoned, transported or executed. However, privately beneficial arrangements of this kind imposed a negative externality on the rest of society—crime was encouraged rather than deterred because the costs of being a criminal were lower.¹⁷

Two externalities: deterrence and displacement

How effective was the private system of prosecution in ensuring that the socially optimal level of deterrence was provided? There were two possible externalities associated with prosecuting a case privately that might cause the market level of prosecutions to deviate from the socially optimal level.

The first externality was the standard deterrence externality. Each individual's decision to prosecute influenced the overall level of crime because it affected the overall level of deterrence. This deterrence effect suggests that too few prosecutions would occur because the effects of each individual prosecution

circumstances (Hay and Snyder, 1989, 26).

¹⁶Prior to decimalization, there were 240d or 20s to the £. A guinea was 21s. Farmer labourers earned around 22d per day during the summer time according to the 1834 Poor Law report (Clark, 2007). Per capita nominal GDP is estimated as being around £24 in 1801. (Officer, 2010).

¹⁷Friedman (1995) suggests that compounding also encouraged prosecutions to take place in the first place because by effectively converting a criminal case into a civil case they could make it worthwhile for a victim of crime to start a prosecution.

on the overall level of deterrence were not taken into account by each individual prosecutor. Furthermore, victims of crime—unless motivated by feelings of injustice or revenge—had little incentive to see cases through. Plaintiff and defendant could settle before the case reached court and this practice—known as compounding—was a major reason why most minor crimes never ended up in court. In deciding to settle a case out of court, individual victims had little to incentive to consider how their actions encouraged future crime both by ensuring that a criminal would be free to commit more offenses and by weakening the overall effect of deterrence (thereby encouraging other potential felons). This was recognized as a problem: while magistrates encouraged parties to settle privately for misdemeanours, compounding a felon was a crime.¹⁸

However, as well as the the positive, deterrence, externality, there was a counter-veiling negative, displacement, externality. Individuals who were known to prosecute every offense against them—no matter how trivial— or who did not settle, could acquire a reputation that might be useful in deterring future crime. In so far, as this was reputation was a personal one then it displaced crime on to others, those less able, or more reluctant, to initiate or conclude prosecutions. This negative externality would led to too many prosecutions taking place.

A private system of prosecutions was unlikely to be optimal from the perspective of the first best. However, the two counter-veiling externalities meant that a private system of prosecutions might generate an outcome close to the social optimal. *A priori* it is not clear which externality would dominate. However so long as these externalities were small, or if they balanced each other out, the actual number of prosecutions would remain close to the socially optimal level.

The deterrence externality was less important in rural communities because these had additional, informal, means of controlling crime. In seventeenth century rural England for example, many offences might be punished through ‘dismissal or chastisement by an employer; informal coercion or admonition by a priest or landowner; arbitration; and control through the poor law’ rather than through ‘the formal machinery of the law’ (Sharpe, 1980, 117-118). The size of the displacement effect was dependent on the individual victims being known to criminals. It was likely to be strongest in a small-scale society: acquiring a reputation for prosecuting all crimes is only valuable if potential criminals know the identity of potential victims.¹⁹

¹⁸Despite this, the practice was almost never punished and continued to be seen as an issue throughout the period (Hay and Snyder, 1989, 38).

¹⁹As the theory of repeated games makes clear individuals have an incentive to take costly actions today in order to benefit in the future when they expect to interact with the same individuals in the future or when information concerning their actions disseminates rapidly among the community.

The optimal level of prosecutions

The standard market for crime framework is based the idea that the level of crime is described by supply and demand. The supply of crime q is an increasing function of the cut-off level of criminal ability \hat{x} at which a potential criminal is indifferent between offending and not offending (see Ehrlich, 1981, 1996) . The population of potential criminals varies in terms of their criminal ability x_i . The value to engaging in a robbery for individual i is $\pi_i = x_i - c - \Lambda p\gamma$, where ability x_i determines i 's ability to steal, c is the direct cost involved in theft, Λ is the probability that a victim will prosecute the criminal, p measures how likely this is to succeed, and γ is the cost of being convicted. There are n potential victims of crime. Victims are randomly chosen so that criminals face a common $\Lambda p\gamma$. The marginal thief has ability \hat{x} such that $\hat{x} = c + \Lambda p\gamma$. The overall supply of robberies q is a function of this cut-off: $q(\hat{x}) = (1 - \hat{x})m$.

The 'demand' for crime depends on the amount of resources invested in deterring it. The likelihood of being prosecuted affects \hat{x} . The likelihood of a victim j prosecuting λ_j depends on the costs and benefits of prosecuting: the value of the goods j hopes to recover d_j , the cost of prosecuting v . Formally the market level of prosecution is given by:

$$\Lambda = \sum_{j=1}^{j=n} \lambda_j \text{ where } \lambda_j = \begin{cases} 1 & \text{if } pd_j \geq v, \\ 0 & \text{otherwise.} \end{cases} \quad (1)$$

Therefore we can write $\hat{x}(d^m)$ where $d^m = v/p$ is the cut-off level of criminal damage at which a victim of crime decides to prosecute under a system of private prosecutions. This describes a tolerance or a derived-demand for crime. It slopes downwards because at higher level of crime individuals are more willing to prosecute.

The socially optimal level of prosecutions $\Lambda(d^*)$ is

$$\Lambda(d^*) = \sum_{j=1}^{j=n} \lambda_j \text{ where } \lambda_j = \begin{cases} 1 & \text{if } pd_j + \epsilon_{q\Lambda} q(x) \geq v, \\ 0 & \text{otherwise.} \end{cases} \quad (2)$$

where $\epsilon_{q\Lambda} = \frac{\Lambda}{q(\hat{x})} \frac{dq(x)}{d\Lambda} = \frac{\Lambda p\gamma}{(c + \Lambda p\gamma - 1)}$ is the elasticity of the market supply of crime with respect to an increase in the proportion of crimes prosecuted. There is a cut-off level of d above which pursuing a prosecution is socially beneficial:

$$d^* = \frac{v - \epsilon_{q\Lambda} q(x)}{p} = \frac{v}{p} - \frac{\Lambda\gamma}{\Lambda p\gamma + c - 1}. \quad (3)$$

The market level of prosecutions implies a cutoff value of $d^m = v/p$ which is which corresponds to higher level of crime than is socially optimal: $q^m > q^*$.²⁰ The market level of prosecutions is not optimal for

²⁰Compared to the market equilibrium, the socially optimal level of prosecutions $\Lambda(d^*) = d - v/p - (\Lambda\gamma)/(\Lambda p\gamma + c - 1)$ intersects the x -axis at a lower value of d and is flatter in Λ - d space (the limit of d^* as Λ goes to zero is $\frac{v}{1+p-c}$).

society because each individual prosecutor does not take into account the effect his decisions have on the total supply of crime. Thus the socially optimal level of prosecutions implies a higher value of d : $d^* > d^m$.

This captures the deterrence externality. This problem was, as we have noted, much greater in urban and industrial areas than in rural areas where the displacement externality was likely to be at least as strong. To analyze this effect it is useful to distinguish between the social optimally level of deterrence in a rural county d_{rural}^* as opposed to that in an urban area d_{urb}^* . In the former region we suppose that the individual incentive to prosecute is augmented by the personal gains that might accrue to gaining a reputation for prosecuting are equal to μ .²¹ Thus $d_{\text{rural}}^m = v/p - \mu$ may be less than d_{rural}^* implying that too many prosecutions might take place in the rural region if μ was large enough. Clearly in either region The privately derived demand for crime $\hat{x}(d^m)$ was unlikely to be at the socially optimal level of prosecutions $\hat{x}(d^*)$ because each individual decision to prosecute has external effects. Theoretically, we do not know whether $\hat{x}(d^*)$ exceeded or was less than $\hat{x}(d^m)$.

This simple framework sheds light upon the emergence of crime as a major political issue in eighteenth and nineteenth century England. Contemporary testimony suggests that in 1700, outside of London, which was recognised as having its own unique policing problems, the ‘market’ level of prosecutions q_{rural}^M was close to the social optimal q_{rural}^* . Depending on the strength of either the positive externality (which meant there were ‘too few’ prosecutions) or the negative externality (which meant there were ‘too many’) q_{rural}^M might exceed q_{rural}^* (figure 1) or fall short of it (figure 2). In either case the difference between socially optimal level of prosecutions and the ‘market level’ of prosecutions was perceived as tolerable. A willingness to privately take on the responsibility of a prosecution was seen as the price of a liberal society, that in the words of an anonymous county magistrate ‘[s]ome degree of trouble and expense in the vindication of our rights is the condition of a free government’ (Anonymous, 1836, 34). Thus in most of England prior to the industrial revolution, the traditional system of private prosecutions functioned tolerably and was accepted.²²

²¹This is a crude reduced form simplification. In a more formal model this could be treated as a function of the size of a community.

²²Hence defenders of the traditional system amongst rural magistrates in the 1830s would argue that ‘[a]s the disposition to prosecute will always tend to proportion itself to the extent of injury arising from the prevalence of crime, dexterity in conducting prosecutions to a successful issue will be improved in proportion to the frequency with which they occur. Under these natural influences the principal office of the governing power might seem to be to provide criminal laws sufficient for the vindication of person and property, and to remove all needless impediment of trouble and expense in the way of their administration, while the occasions in which every man should avail himself of these laws, would in great measure be safely left to the self-regulating operation of society’ (Anonymous, 1836, 33-34).

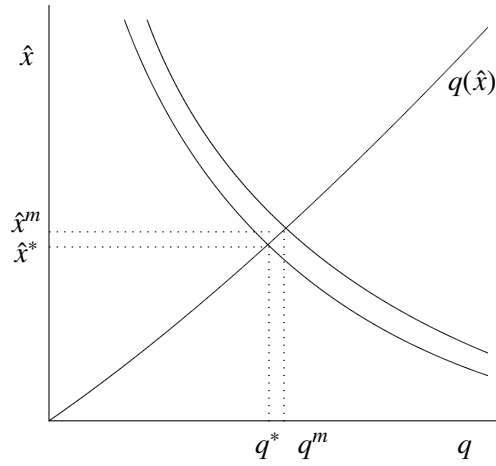


Figure 1: The market level of prosecution in a close-knit society where $q_{rural}^* < q_{rural}^m$.

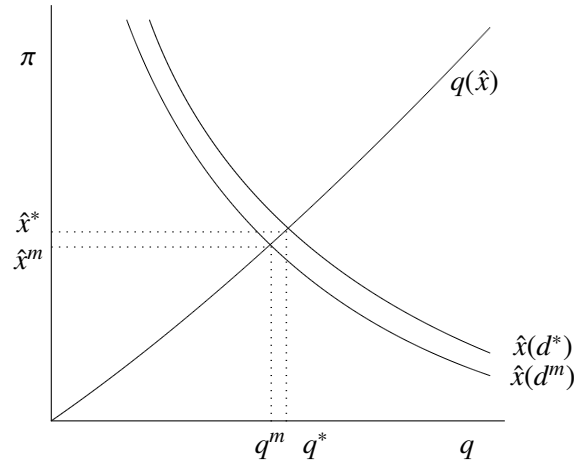


Figure 2: The level of prosecution in a close-knit society where $q_{rural}^* > q_{rural}^m$.

The effects of industrialization, urbanization and migration

The above framework suggests that industrialization and urbanisation could have changed this by driving an increasingly largely wedge between the market and the socially optimal level of prosecutions. This would explain why in the view of one traditional historian of the police: ‘the breakdown in law and order marched in step with the progress of the Industrial Revolution’ (Critchley, 1967, 21).

There were many possible reasons why crime, or the rather the visibility and social salience of crime, increased during this period. Contemporaries argued that economic growth increased the ‘temptation’ to steal.²³ Recent research suggests other factors were at work. Real wages stagnated and inequality increased (Allen, 2009). Industrialization also saw increased tension between employers and employees. The shift from artisan production and cottage industries, in which the scale of production was small, and whatever hierarchy there was in the workplace was flat, to large-scale production, either in workshops or in factories, changed the relationship between workers and bosses. This conflict can be seen in a series of anti-embezzlement laws passed during the second part of the eighteenth century. Workers had traditionally seen the scraps and by-productions of the production process as theirs. Employers increasingly wished to centralize all production and monopolize and criminalized this behaviour (see Ignatieff, 1978, 26-27). Laws against workers breaking contracts and preventing trade unions have been interpreted in a similar light. Industrialisation and the standardisation of manufacturing goods made theft more difficult to detect (Allen and Barzel, 2011).²⁴ And better toll roads were said to encourage horse theft (Styles, 1989, 20). Furthermore population growth, rural-urban migration and the rise of new

²³ See (Fielding, 1751, 4) and Colquhoun (1796, 34).

²⁴ Allen and Barzel (2011) argue that standardisation drove the evolution of the criminal justice system in this period. This paper complements their argument.

industrial towns in the North or Midlands made ‘faceless’ or anonymous crime much more possible and made it more likely for criminals to escape.²⁵

The social context of crime changed in this period. Urbanisation led to the gradual breakdown of traditional social norms which could manage crime through alternative, informal, channels. The decline of the live-in apprentice system led to a decline of a form of ‘patriarchal discipline which had operated largely in independence from the criminal law’ (Sharpe, 1980, 112). In the language of the model, the gap between the socially optimal level of prosecutions and the privately provided level increased. More specifically, this argument suggests that the socially optimal level of prosecutions actually rose with urbanisation: $q_{urb}^* > q_{rural}^*$. This shifting out of $\hat{x}(d^*)$ is depicted in figure 3.

While ‘[m]ost people seemed agreed, for example, that ‘crime has much increased’ everywhere in the years before Victoria came to the throne,’ it has proven impossible to quantify this (Jones, 1992, 51-52). Criminal statistics for the period are highly flawed.²⁶ The 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 kept until 1857. Hence the true 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 interpreted by most contemporaries as representing a crime wave (see Gatrell, 1972; Philips, 1977; Emsley, 1996; Taylor, 1998).²⁷ In fact they also reflected changing attitudes towards crime and institutional and legal changes that made prosecutions easier.²⁸ Nevertheless, historians do accept the view that crime rates were probably going up (Gatrell, 1980, 239). Local studies certainly support this view (see Beattie, 1986).

The cost of prosecuting became a major social issue in the second half of the eighteenth century. The cost of prosecuting cases at both the Assizes and Quarter Sessions increased over the course of the eighteenth

²⁵Migration was seen by contemporaries as a particular source of social dislocation. John Wade, for instance, commented on the ‘differences observable between small and moderately-sized towns, consisting of a settled population, and great capitals, a large proportion of whose inhabitants are migratory, are very striking. In the former, the retreats and opportunities for delinquency are few and limited; the pursuits and even character of each person are matters of notoriety and interest; not to be known is to be an object of inquiry or suspicion: in a word, every one is the police of his neighbour, and unconsciously exercises over him its most essential duties. But this is widely different from the mode of living in a great city, especially in London. Here there is no such thing as vicinage,—no curiosity about neighbours—everyone is engrossed in his own pursuit, and neither knows nor cares about any human being except the circle to which he has been introduced and with which he is connected by ties of business, pleasure, or profit. It is from these circumstances that London affords so many facilities for the concealment of criminality’ (Wade, 1829, 6).

²⁶See Gatrell (1972); Philips (1977); Gatrell (1980); Emsley (1996) for in depth discussions of the problems historians face interpreting them.

²⁷As Philips and Stoch 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’ (Philips and Storch, 1999, 44-45).

²⁸As Gatrell observes ‘all that may then have been happening was that as the energy put into detection and prosecution mounted, the known rate of crime was made to converge year by year with the dark figure of crimes actually committed’ (Gatrell, 1980, 251).

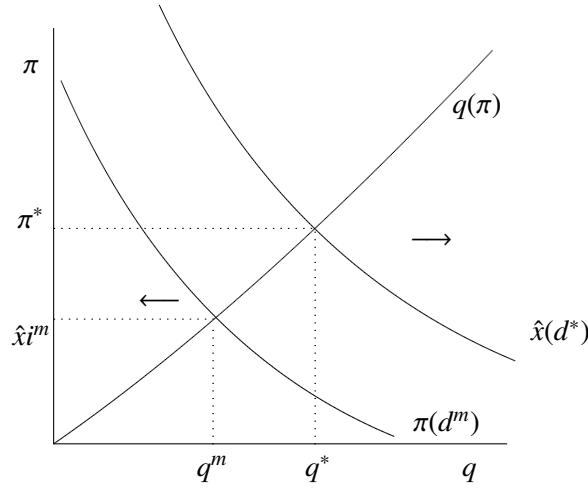


Figure 3: The market level of prosecutions in an industrialising society: $\hat{x}_{\text{urb}}^m > \hat{x}_{\text{urb}}^*$.

century as the law became increasingly professionalized and prosecution lawyers common. Reformers like Henry Fielding, Patrick Colquhoun and Edwin Chadwick argued that the reluctance to prosecute was a principal reason for this rapid increase in crime.²⁹ The costs of prosecuting was viewed as a particular deterrent to poor prosecutors. Fielding stated a commonly held sentiment when he noted that when the combined costs and loss of time were added up ‘the whole amounts to an Expence which a very poor Person, already plundered by the Thief, must look on with such Horrour (If he should not be absolutely incapable of the Expence) that he must be a Miracle of Public Spirit, if he doth not rather choose to ceal the Felony, and sit down satisfied with his present Loss’ (Fielding, 1751, 110).

This reluctance can be understood in terms of the above framework. Fielding understood this problem explicitly in terms of externalities: ‘[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’ (Fielding, 1751, 108). Colquhoun argued that ‘many persons who suffer by means of small robberies, afraid of the trouble and expence of a discovery and prosecution, submit to the loss without enquiry, while others, from being strangers to the law, and to the proper mode of application, fall into the same mistake, which, by proving a great encouragement to thieves of every class, is of course an injury to the public’ (Colquhoun, 1796, 212).³⁰

The increasing anonymity of life in London, or in the fast growing industrial towns like Manchester, Birmingham, Liverpool, Sheffield, Leeds, or Middlesbrough, reduced the incentive to prosecute, and

²⁹Fielding (1751); Colquhoun (1796); Chadwick (1829). The testimony of these writers should be treated cautiously as they they not disinterested observers but partisan political entrepreneurs trying to push through a programme of police reform.

³⁰For further evidence on the reluctance to prosecute see Hay (1975b, 41), Beattie (1986, 35), Philips (1989, 115–116) and Jones (1992, 5).

increased the size of the first externality, weakened social norms against not prosecuting or compounding crimes, and exacerbated the incentive to free ride. Urbanisation led to a breakdown in informal means of dealing with local disturbances as '[s]mall communities, characterised by face-to-face contact and codes of behaviour, often informally enforced, were gradually replaced by larger communities which were more impersonal and in which the informal 'ties that bind' were less secure' (Taylor, 2002, 4). In the new circumstances brought about by the industrial revolution, the 'discretionary accommodation of the eighteenth-century system of private prosecution seemed far less acceptable' (Hay and Snyder, 1989, 36).

To overcome this reluctance to prosecute, Colquhoun and Chadwick were in favor of a centralized police and a state prosecutor along French lines.³¹ According to their analysis individuals had a civic duty to prosecute but they faced the wrong financial incentives.³² 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' (Colquhoun, 1796, 252). Calls for a professional police force and a state prosecutor came to Parliament's attention on several occasions before 1839. They were rejected because there seemed to be serious disadvantages to these proposals. A public prosecutor would have considerable political power and opportunities for patronage. Rural and urban policing demands were very different. A centralized system of police might impose inappropriate policies on local regions. Residents of rural areas were worried about police coming in from outside. A professional police force would be accepted after 1839 but this reform was delayed for many decades because of the objections raised by members of rural elite.³³

Piecemeal reforms could be carried out to improve the existing private system. Parliament granted poor prosecutors some expenses after 1752 if they were successful in securing a prosecution and an act of Parliament of 1754 allowed courts to pay the expenses of poor witnesses. In 1818 this allowance was expanded so as to cover expenses incurred prior to the trial (Philips, 1993, 166).³⁴ These expenses were not intended to cover the full cost incurred by a prosecutor. Private initiatives also emerged in conjunction with these reforms. The most prominent private response was the association for the prosecution of

³¹For Colquhoun's views on the French system see Colquhoun (1796, 387). The anonymous author of the *Code D'Instruction Criminelle* (probably, James Mill) explicitly compared the French and English systems, noting that the former practised the preliminary stages of criminal investigation to 'a high degree of perfection' whereas 'no provision whatsoever is made in English procedure' for investigating crimes (*Code d'Instruction Criminelle*, 1810, 108).

³²Colquhoun noted that 'experience' had taught him that the moral arguments in favour 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 expence 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' (Colquhoun, 1796, 246-247).

³³See Philips and Storch (1999) for detailed survey of these debates.

³⁴This covered felony cases but not misdemeanours. Moreover even for felonies expenses incurred prior to the indictment had been made were not covered (Philips, 1977, 113). These were covered in 1826 by the Criminal Justice Act.

felons.³⁵

3 How Prosecution Associations Operated

Associations for the prosecution of felons were clubs whose members joined together to subsidize the cost of prosecutions and reward individuals who provided information that led to convictions. Prosecution associations were not vigilantes. They never tried or punished suspects (Philips, 1989, 119).³⁶ They cooperated with, and supplemented, the legal system. The precise number of prosecution associations will never be known. Estimates suggest that there were perhaps as many as four thousand of them between 1750 and 1850 (King, 1989).³⁷

In the course of research for this paper I have come across 534 separate associations.³⁸ Figure 4 depicts how these associations were distributed across the country according to the county borders of 1831. The counties of Essex, Lincolnshire, Northumberland, Staffordshire, and Warwickshire contained the largest number of known associations. I have been able to identify founding dates for 215 of these associations. Figure 5 plots these. It substantiates the view that most of them were founded in the first two decades of the nineteenth century in what has been described as ‘a countrywide movement’ (Baker and Collins, 2002, 173). The large increase in the number of associations founded after 1783 and 1815 is consistent with Beattie’s findings that crime spiked when a major war drew to a close.

The large number of unavoidable problems with the data on associations for the prosecutions of felons and the criminal statistics for the period in general mean that it is not feasible at this stage to conduct further empirical analysis. In particular the absence of data on the number of offenses prevents us from attempting to measure the effect that associations had on crime—identifying the causal impact of

³⁵Another earlier response was the professional thief-taker, a profession that dates back to the sixteenth century and flourished in eighteenth century England. The ‘thief-takers were mustered to protect and secure streets, houses and institutions and on occasion horse patrols were deployed to guarantee safety on outlying roads’ (Styles, 1987, 101). Thief-takers often faced perverse incentives and there were reports of them paying thieves to commit robberies so that they could then claim a reward for recovering the stolen goods. They acted as middlemen between victims and local officials’ (McMullan, 1996, 91–92).

³⁶See Little and Sheffield (1983) for a comparison between the vigilante movement and associations for the prosecution of felons.

³⁷The figure Mokyr (2009, 377) reports of 450 association in total between 1750 and 1850 is thus too low. Many small-scale or short-lived prosecution agreements did not leave records. George Young supposed that there were 500 prosecution associations (Young, 1936, 53). It seems that this estimate comes from the *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, 97). This, however, was an estimate of the number of prosecution association active in 1839, and not an estimate of the total number that *had* existed. The higher estimate I report is based on local studies that have uncovered many associations that we otherwise were unaware of.

³⁸This list was obtained by combining the following sources. The list of associations that are recorded as having 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.

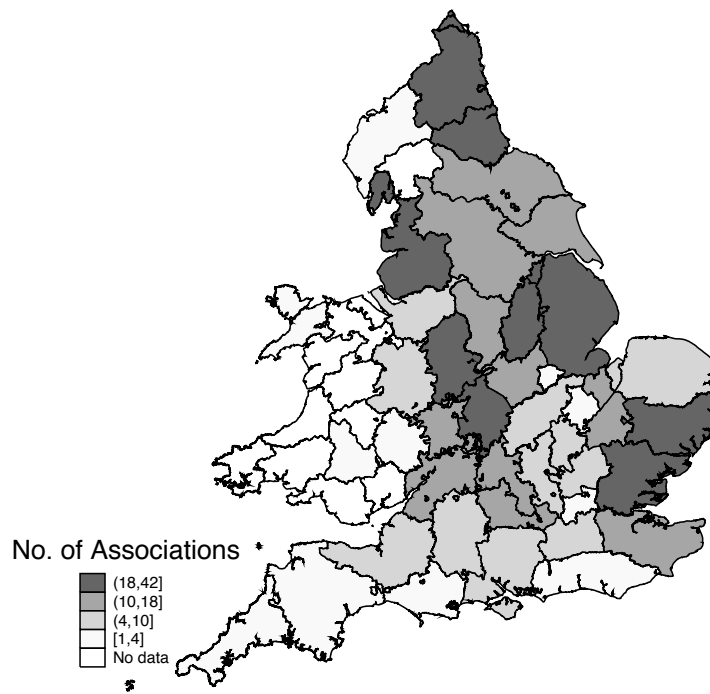


Figure 4: The number and geographical distribution of 534 associations for the prosecution of felons distributed by 1831 county. The GIS file was provided by the Cambridge Population Group.

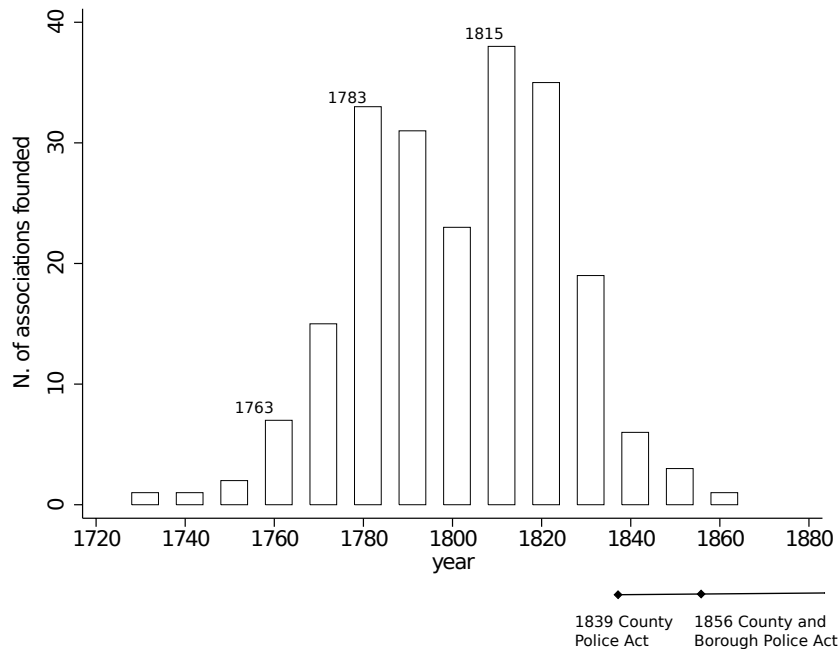


Figure 5: The number of associations founded per decade. The dates refer to major demobilizations. The total sample consists of 215 associations.

prosecution associations is simply not possible.³⁹ The data is biased in a number of ways. It is not a complete record of the number of associations. The records for many smaller associations do not survive. Some county records offices kept more complete records than others. One of the sources used, the *Report of the Commissioners for inquiring into County Rates*, only contains data from 37 out of 54 counties in England and Wales in 1831.⁴⁰ The general picture—that associations for the prosecution of felons were particularly thickly distributed in the Midlands and north of the country—is consistent with the findings of other historians (see Schubert, 1981; King, 1989; Philips, 1989).

3.1 The theory of clubs

The most natural theoretical framework with which to study prosecution associations is the theory of clubs (Buchanan, 1965). To the extent that associations conferred specific and excludible benefits on members, they fit the economic definition of a club. Clubs provide goods that are non-rival up to a certain point and excludible. Like other clubs, prosecution associations could be duplicated, and some regions

³⁹A scatterplot relating the density of local associations to prosecutions recorded at the Assizes and Quarter Sessions fails to pick up any relationship. This is unsurprising in itself as we might expect the number of prosecutions to be low in a region where there was a large number of associations that were successful in deterring crime. Similarly we might expect a large number of associations to be correlated with a high number of prosecutions if crime was particularly high in that region for other reasons.

⁴⁰It is more representative of English counties than of Welsh ones—with 34 out of 41 represented.

and towns supported several prosecution associations. However, prosecutions societies differed from standard economic clubs for two reasons. First, since the benefits of deterrence were not fully excludible, and did not accrue solely to members, prosecution associations were not pure clubs: they bundled a pure club good together with a public good. Second, prosecution associations did not suffer from congestion in the same way that swimming pools or other club goods do. Over a given geographical radius more members were better.⁴¹

Historians have recognised that the desire to pool resources and set up societies for the prosecution of felons was a response to the high costs of carrying a prosecution through to conclusion. What has not been fully appreciated is that associations for the prosecution of felons were also established quite consciously to internalise the external effects of private prosecutions: to bring the market level of prosecution and the socially optimal level of prosecutions closer together.⁴² As the Birmingham association for the prosecution of felons rule book, quoted at the beginning of the paper, stated ‘many Felonies are committed by persons who escape punishment, by reason of the great expences attending the apprehending and prosecuting them to conviction, and others are thereby encouraged to commit felonies (*Copy of a Deed of Association for the Prosecution of Felons*, 1799, 3).

3.2 Bundling private and public goods

Deterrence has ‘public’ properties but it can be produced privately. For this reason, the study of prosecution associations sheds light on the debate over whether or not public goods can be privately provided. The defining characteristics of a pure public good, according to Samuelson, are non-excludability and non-rivalry (Samuelson, 1954). Demsetz (1970) argued that this definition was misleading because the degree of excludability is, in many instances, not determined by the intrinsic character of the good, but is a product of the legal or social institutions of the society in question. He went on to argue that many supposed public goods were in fact at least potentially excludable and could be competitively provided.⁴³ Furthermore, he noted that in cases where excludability was impossible or highly costly,

the conclusion that collective goods cannot be produced in adequate quantities by private firms is too strong, for devices to further such production can be not only conceived, but actually have been used. In many instances it may be possible to tie in the consumption of a second product with consumption of the collective good, and private incentives may very

⁴¹Like religious organisations, prosecution associations were, at least up to a certain point, anticongestible clubs (Iannaccone, 1992).

⁴²The exceptions to this statement is Davies (2002) who does draw on the idea of club goods and Friedman (1995) who focuses the idea the membership of an association was a way to pre-commit oneself to prosecuting.

⁴³Other relevant contributions to this debate include Hirshleifer (1983) who showed that the severity of the free rider problem is determined by the character of the public good and Coase (1974), Klein (1990), and Benson (1994) who provide other historical examples of the private provision of public goods.

well exist for the production of the tied-in good because exclusion is possible (Demsetz, 1970, 306).

Desemtz's reasoning indicates that the services provided by prosecution associators can be divided into two categories: the *insurance* function and the *deterrence* function, which were bundled together. The former was largely a private good, a market response to the problem posed by the high cost of prosecutions, which internalized the externality of deterrence *among* members. The latter, however, was, at least partly, a public good according to the standard definition of a good that is non-rival and non-excludible and provided benefits to members and non-members alike.

Associations linked contributions to the private or excludible good with the provision of the collective good—deterrence. The argument of this paper is that, once this mechanism is understood, many features of prosecutions associations that were puzzling to, or were neglected by, historians can be justified as consistent with an attempt to provide deterrence, subject to the threat of free-riding and/or rent-seeking that besets the provision of public goods in general.

Some early associations for the prosecution of felons began as mutual insurance societies. There were several associations which explicitly focused on recovering goods rather than prosecuting (King, 1989, 204). The Steeple Claydon society for the mutual prosecution of property focused, as its name suggests, on reimbursing members for losses resulting from theft (*Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention*, 1839, 32).⁴⁴ The insurance provided by membership of a prosecution association was rival and excludible. Only members were covered and the funds of an association were limited so a payout made to one member reduced the amount available for other members. Insurance is a service that predominantly provides benefits to the insured.⁴⁵ If prosecution associations were *only* providers of insurance, then they can perhaps be viewed more as a phenomenon symptomatic of the failures of British criminal justice, and not as a substantive response capable of significantly overcoming these failures as the first quote at the beginning of this paper suggests. Or, as the Rev. Edward Price observed of two local associations when interviewed by the Constabulary Force Commissioners, they 'are proofs of the *prevalence* of unpunished crime, rather than means of preventing or repressing it' (quoted in *Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention*, 1839, 32).⁴⁶

⁴⁴The report to Parliament on the state of the rural constabularies further observed that among 'the rules of some of these associations, we find rules for mutual insurance by payment of a part of the loss sustained by depredation' (*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, 97).

⁴⁵The insurance function *did* provide positive externalities to the extent that they result in more prosecutions taking place. But societies that just focused on compensating members like the Steeple Claydon society did not necessarily result in more prosecutions taking place.

⁴⁶To the extent they confined themselves to providing insurance, associations resembled the friendly societies and mutual insurance societies that also flourished in the nineteenth century. A contemporary report by F. M. Eden estimated that there

This portrayal of prosecution associations as insurance agreements neglects, however, the main function of a prosecution association, which was to subsidise private prosecutions. Prosecution Associations could pay the difference between the court's allowance and the actual cost of bringing a prosecution. They were also able to pay for the cost of preparing a case: this 'involved taking the evidence; finding and subpoenaing the witnesses; travelling, if necessary, to find and identify stolen property; drawing up the brief; briefing counsel; paying all the necessary legal fees; transporting the prosecutor and his witnesses to the country town for the trial; and paying for the accommodation until the trial was over' (Philips, 1989, 168). Subsidising prosecutions was a natural extension of providing insurance against theft. The provision of deterrence was linked to the provision of insurance because to minimise "insurance claims" associations had to reduce crime. Even associations that focused solely on insurance had an incentive to deter crime. The value of subsidising insurance was only partly rival and partly excludible, even if associations only funded prosecutions on behalf of their members. A robber, who was successfully prosecuted and incarcerated or transported, would not be able to steal from others, including non-members. Furthermore, because the supply of potential felons was not infinitely elastic, an increase in the probability of being convicted would deter others from committing crime (see Friedman, 1995).

In this manner the prosecution association internalised the externalities generated by the private system of prosecutions. They moved q^m and q^* closer together. Associations for the prosecution of felons understood their actions as contributing 'greatly to the *Public Good*' (*Copy of a Deed of Association for the Prosecution of Felons*, 1799, 3). Associations also reduced the negative incentive associated with the practice of compounding. Members were committed to carry prosecutions through. Article XIII of the Tanworth association explicitly debarred members from make deals with defendants, demanding 'that any Member entering into any such Compromise be struck off the List of Subscribers' (*Articles of the Tanworth Association for the Apprehension and Prosecution of Felons*, 1784, 10).⁴⁷ The rules of the association go so far as to state what would happen if a member if he 'shall neglect or refuse to give proper Evidence against the Offender' as any member 'neglecting or refusing to give such Evidence, shall repay to the Treasurer all money that the said Treasurer may have paid or laid out on that account' (*Articles of the Tanworth Association for the Apprehension and Prosecution of Felons*, 1784, 7-8).⁴⁸

around 7,200 societies in 1801 (Gosden, 1973, 12).

⁴⁷Of course, in practice, this rule may have been difficult to enforce as deals with defendants are not necessarily observance. Nevertheless the fact that the rules of the several associations explicitly prohibited compounding indicates that prosecution association recognize this as a problem and attempt to mitigate it. This is evidence against Friedman's conjecture.

⁴⁸Friedman makes a similar point. He notes that '[b]y joining such an association, a potential victim committed himself to prosecute. The money had already been paid out' Friedman (1995, 485). This is broadly correct. However the details are somewhat different to the impression Friedman provides. Associations contributed to the cost of a prosecution but did not necessarily pay the full cost. What committed members were the rules of the association and the social pressure brought to bear by the members of the association at the committee meetings rather than the simple fact of prepayment.

Associations for prosecuting felons also addressed themselves to the additional burden borne by poor prosecutors. Provision was sometimes made to help fund the prosecution of a non-member i.e. of non-members too indigent to contribute to the society. Article 11 of Bolton Percy association's rulebook reads:

'That no person can receive the Benefit of this Association, unless he or she shall be (bonafide) a subscriber, at the time any Burglary, Felony, or Fraud, may be committed on him, or his effects; *excepting* he or she being a Labouring person, or not in a situation to pay the expense of a prosecution; this is to be decided upon by the Committee' (*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.*, 1825-1890, 7).⁴⁹

It seems unlikely that prosecution associations did this because they were philanthropic organizations.⁵⁰ It is much more likely that they did this because the externality—the gap between the marginal private prosecution and the marginal socially optimal prosecution—was greatest in the case of poor prosecutors. Moreover, the economic theory of club goods and the private provision of public goods suggests that the reason prosecution associations were able to do this was precisely because they provided a mixture of excludible, and non-excludible, rival and non-rival, goods to both members and non-members. Attempts to provide a pure public good based on voluntary subscriptions faced much greater difficulties as Section 4 demonstrates.⁵¹

Associations also internalised any incentive to displace prosecutions (at least onto other members). After a crime had been reported the committee of the association would call a meeting and decide what course of action to pursue.⁵² Malicious or needless prosecutions would not be pursued by associations. This does not entirely dispel the possibility that associations for the prosecution of felons could have displaced

⁴⁹Over twenty associations offered to pay for prosecutions on behalf of poor non-members but it is difficult to find evidence of this happening. Philips found a case where the North Elmham Association paid at total of £12. 13s. 2d for the prosecution of a felon who stole two donkeys from two men poor men of the parish (Philips, 1989, 140).

⁵⁰In fact some associations were quite explicit on this point (see *Meeting to Form A Society for the Purpose of Prosecuting Felons*, 1821).

⁵¹The offer to pay the costs of poor prosecutors was always discretionary. In this respect it was in keeping with Hay's thesis that the eighteenth century elite controlled their social inferiors through their discretionary control of the justice system (Hay, 1975a). This view is reinforced by article XXI of the Hemsworth association which promises that if 'the domestic servant or servant, of any member, shall be robbed, or other felony committed, on his, her, of their property, the offender or offenders, shall be prosecuted at the expence of this association, provided a prosecution, in such case, is recommended by his, her, or their master, or mistress, and has also the sanction of a majority of the committee' (*Rules, Orders and Regulations of the Hemsworth Associations for the Prosecution of Felons etc.*, 1821, 12).

⁵²In the account books of the associations I have examined not all crimes were not in fact prosecuted. That is to say, there are crimes recorded in which the only response of the association was to print handbills or place an advert and no prosecution was forthcoming. See *Rules and regulations* (1821) and *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.* (1825-1890). This could either be due to the fact that the offender was not apprehended or because the association decided against pursuing a prosecution.

crime onto non-members, an issue that we will take up in Section 4.⁵³

3.3 Internal Governance

Price discrimination

Private valuations of a public good like deterrence vary across individuals and a principal problem facing the provision of public good is to elicit the true value of these private preferences. Clubs respond to this problem through price discrimination and through what Olson (1965) called selective incentives. Prosecution associations employed such incentives and the evidence suggests that they became more sophisticated at doing so over time.

The first societies that we have records for were organized very simply. An eighteenth century Birmingham association just required a fee of £10 6d to join (*Copy of a Deed of Association for the Prosecution of Felons*, 1773). The subscription contributed to a fund managed by the treasurer of the association which would then be used to pay out expenses for prosecutions, rewards, advertisements, and to cover the costs of running the society.⁵⁴

Nineteenth century associations had more complex membership schemes. Table 1, taken from those associations whose published rule books survive, indicates that over time associations shifted away from charging fixed rates towards variable rates.⁵⁵ This substantiates Demsetz's observation that 'competitively produced public goods lend themselves to price discrimination whereas competitively produced private goods do not' (Demsetz, 1970). Since there was no residual profit claimant, members benefited from price discrimination. Uniform fees minimized administrative costs, but did not distinguish between potential subscribers whose demands for security might vary considerably. A uniform fee structure might deter smaller or poorer farmers from joining and meant that large landowners paid much less per acre of land protected than did smaller farmers.

The fee structure for the Chaddesley Corbett association was based on the county-rate each household

⁵³It also suggests that rural and urban prosecution association would have had very different profiles depending on whether the market produced too many or too prosecutions relative to the social optimum. This is a question for future research.

⁵⁴Some associations like the Burnham society initially raised a fund based on subscriptions without specifying how large or how frequent subscriptions would be in the future. The rules of the Burnham society stated that once the fund was reduced to £10 every member would have to subscribe again. This had the advantage of flexibility (*Rules and Regulations of the Burnham Association for the Protection of Persons and Property and the Prosecution of Felons*, 1833). In the event of a spate of crimes, this rule gave the society the ability to fund a large number of prosecutions. But it had the disadvantage that subscribers did not know how much they were liable to pay as members. Perhaps for this reason, annual dues were more common.

⁵⁵The published rule books for the Birmingham, Tanworth, Howden, Frankwell, Lanvrechva, Mansfield, Burnham, Chaddesley Corbett, Cawthorne, Eccelsfield and Cheddleton associations are held at the British Library. The handwritten rule book of the Clapham association is kept in the London Metropolitan Archives. The published rule book of the Cambridge association is held at Cambridge University Library. The rule books of the Worsbro, Hemsworth, and Bradfield associations are kept in the Sheffield archive.

paid, varying from £1 to 10 s. The association of Cawthorne in West Riding had a still more complex system which aimed at perfect price discrimination. Rule V demanded each member to provide ‘a full and correct description of the property occupied by him or her, in respect whereof he or she intends to have, or be entitled to the benefit of this Association, for the purpose of regulating and charging the amount of his or her subscription; and the Committee shall fix the sum which shall be then paid by each Member, as entrance-money to the Treasurer’ (*Rules of the Cawthorne Association for the prosecution of felons*, 1843, 6).⁵⁶ Price discrimination, not only enabled associations to increase the size of their membership, and therefore to maximize the funds they had available for subsidizing prosecutions, it also ensured that members with differing demands felt that their needs were catered to, a consideration that was not unimportant given that the association depended on members contributing time and effort as well as money.

⁵⁶The Hemsworth association charged a members with more than 100 acres of land ‘not less than £1 1s and members with less than that amount of land ‘not less than 10 s 6 d (*Rules, Orders and Regulations of the Hemsworth Associations for the Prosecution of Felons etc.*, 1821, 8). In the Worsbro’ association members paid per acre of land they wished to be included in the agreement and they paid extra if they had a shop or warehouse that was to be protected (*Rules and Regulations of the Worsbro’ Association for the Prosecution of Felons, Treaspassers, & etc.*, 1880).

Table 1: Rules of Selected Prosecution Associations

Date	Committee size	Fee on joining	Annual fee	Fix fee or sliding scale	Minimum membership	Absentee fee	n. of initial members
Birmingham	1773	3	10s 6 d		F		
Tanworth	1784	6	5s	5 or more	F	2s 6 d	
Howden	1814	5			F	2s 6 d	
Frankwell	1815	5	£1 1s		F	3s	35
Lanvrechva	1819	7	10 s	12s–5s	F	2 s 6 d	
Clapham	1819	12	£1		F		51
Mansfield	1825	9	15 s–5s		S		
Burnham	1833	5	£1 1s–7 s		S		
Bradfield	1834	5	2 6d	variable	S	2 s	72
Chaddesley Corbett	1837	9	£1 – 10 s		S	2 s 6 d	
Cambridge	1841	12	10s	10 s	F	2s 6d	173
Cawthorne	1843	9			S	2 s 6 d	41
Ecclesfield	1843	12	twice annual fee	variable	S		
Cheddleton	1858	8			S		

The Committee: preventing renting seeking

Clubs are vulnerable to rent-seeking behaviour as members may attempt to steer the policy of the club in a particular direction. Prosecution associations were governed by rules and constitutions (often published) in order to limit this. These rules governing committee membership take on additional significance when they are interpreted in light of the commonly held view that the old system of criminal justice was not only inefficient, but also run in the interests of a small rural elite. The system of voluntary magistracies and constables was widely perceived to be a source of patronage, a way in which the local aristocracy and the gentry could influence and control village life.⁵⁷ Richard Widdrington of Camberwell told the Select Committee of the Police of the Metropolis that the only opposition to a professional police force would come from ‘a few gentlemen in the different trusts that would lose the patronage of appointing the watchmen’ (*Report from the Select Committee of the Police of the Metropolis*, 1828, 190).⁵⁸ There was some undoubted truth to this. Local magistracies were used as patronage and local aristocrats sometimes offered rewards or subsidized prosecutions.⁵⁹ Rural magistrates retained the right to hand out summary justice when the Quarter sessions were not running and several cases of partial justice survive in the records.⁶⁰

Corruption or partiality of this kind was not a charge that could be levied against the associations for the prosecution of felons, however, even though many rural associations had members of the gentry or the aristocracy as their founding members.⁶¹ They were ruled by a committee in combination with a treasurer and a secretary. Each association was run by a committee of between 5 and 12, although a subset of the committee usually acted as a quorum to make decisions. The committee had a considerable amount of discretion to decide which cases to prosecute and how much to spend on solicitors fees, printing handbills

⁵⁷This thesis was made famous by Hay (1975a). For a critique see Langbein (1983).

⁵⁸Similarly Sir George Stephen wrote to Edwin Chadwick, the prominent proponent of police reform that he ‘could not aim a more offensive blow to the factitious importance of our magisterial country gentlemen than by this reform of their police, unless you were to offer a provision by statute for the extermination of the game. You must expect to have all their aristocratic influence enlisted against you’ (quoted in Philips and Storch, 1999, 111).

⁵⁹For example the Duke of Rutland offered a reward of £20 for the apprehension of two thieves in Belvior. The local prosecution association offered a reward of £10 10s (*Townhall*, 1835).

⁶⁰Davey provides an example of a man called Yorkshire Tom who was accused of a killing a hare on the estate of landlord who was summarily convicted in the house of the local magistrate, convicted, and sentenced to three months imprisonment because he could not pay the fine. However she notes that while this ‘case reflects the popular image of summary justice in the eighteenth century: poaching, squire dispensing justice in his own parlour and severe penalties . . . such cases seem to have been far fewer than we might expect (Davey, 1994, 71).

⁶¹Their membership typically did not include members of the aristocracy or large landowners who could typically maintain their own private watches from their own employee. Exceptions include the Widdrington Association which was founded by Lord Vernon and the Hagley, Pedmore, Lutley, Clent and Broom Association for the Prosecution of Felons whose members included Lord Lyttelton (see *Widdrington Association for the Prosecution of Felons*, 1846; *Berrow’s Worcester Journal*, 1831). The latter made a point of advertising the fact. Rather membership was drawn from the upper and middle tiers of rural society. The Cawthorne association was, for example, founded by a member of the local gentry John Spencer Stanhope, Esquire. But in general, the size of most of prosecution associations—the Bury association had 60 members and the Wheldrake association initially had 50 members—ensured that they represented a broad selection of rural property owners.

or taking out advertisements. In some associations the committee had the power to raise new rates on subscribers.⁶² It was necessary that the committee had this discretionary authority—since it was costly for all of the members of a society to assemble to make decisions of this sort—but this discretionary authority also had to be proscribed to prevent the chairman, treasurer, or solicitor from pursuing their own agenda.⁶³ Written constitutions and rule books as well as elections limited opportunism by committee members.⁶⁴ There were term limits and committee members were elected by subscribers.⁶⁵ The constitutions were, in turn, enforced by the fact that their members could vote with their feet; prosecution associations had to compete for subscriptions. There was nothing to stop members leaving one association and forming another one. Several towns supported multiple associations for the prosecution of felons. To attract and retain members they had to demonstrate that they would not be used as a means of patronage for the rural elite. Tiebout sorting ensured that prosecution associations satisfied the demands of local members.

The General Meeting: overcoming free-riding

Prosecution associations typically met once a year for a general meeting involving all members of the society—although smaller meetings of the committee were much more common. The meetings were occasions for sorting out the finances of the association, ensuring subscriptions were up-to-date, and for paying out rewards to informers and expenses to those members who had pursued a prosecution. The meetings were important because prosecution associations relied on cooperation between members. Information had to be rapidly disseminated. Members had to work together, and with local constables in tracking down criminals, and in sharing the burden of talking to witnesses and attending sessions of court. This was another respect in which prosecution associations differed from insurance pools—the good that they were providing to their members was one that required their active participation.

Associations overcome this problem in two ways: by fining members for nonattendance; and by bundling a private good together with the club good.⁶⁶ One of the private goods included in the membership package was the annual dinner which accompanied the general meeting. Several societies used subscriptions to

⁶²Article 8 of the Chaddesley Corbett association reads ‘That the committee shall have power, from time to time, to make a rate on the members of this society, in the proportion and manner already stated, either by way of anticipation or otherwise, by defraying all costs, charges, and expences, which may be incurred or considered necessary in promoting the objects of the association, and generally to do all things needful for conducting the affairs of the society’ (*Rules and regulation for the Government of the Chaddesley-Corbett Association for the Prosecution of Felons.*, 1837, 8).

⁶³Committee members were likely to be high demand users and hence would have an incentive to raise membership fees beyond those demanded by the membership at large (since they would benefit disproportionately from doing so).

⁶⁴A description of an election is provided in *York Society for the Prosecution of Felons* (1827). The elections were based on a show of hands.

⁶⁵The Mansfield association was run by a committee of 9 members, 3 of whom would step down at the end of each year for another 3 to be elected (*Rules of a society called the Equitable Association of the inhabitants of Mansfield and neighbours for the Apprehending and Prosecuting Felons and receivers of stolen goods and other offenders against the law*, 1842).

⁶⁶As Table 1 shows the standard fine was 2 s 6d.

partly cover the cost of the general meeting. These events were considered to be important and were often reported in local newspapers where much was made of the quality of the food and wine and the generosity of the host, partly, no doubt, in order to attract new members.⁶⁷

Insurance societies have to be sufficiently large and diversified in order to pool risk and they have to be able to screen members. The other services provided by prosecution associations required them to be closely knit, based around a relatively small geographical area, and focused on apprehending and deterring local criminals. This consideration meant that the membership of a prosecution association had to be much more geographically restricted than they would have been had their only function been supplying insurance. Insurance pools become more effective as they diversify: prosecution associations, which required members to cooperate and work together on cases, lost cohesion. Hence most associations limited their membership to those who lived within a radius of between 2 and 6 miles.

3.4 Providing Deterrence

Publicity

Associations for the prosecution of felons were made possible by the growth of a local newspaper industry in the eighteenth century. The idea of using newspapers to combat crime was an eighteenth century innovation. Alexis de Tocqueville argued that newspapers played a critical role making social co-operation possible in an open society:

‘When men are no longer bound among themselves in a solid and permanent manner, one cannot get many to act in common except by persuading each of them whose cooperation is necessary that his particular interest obliges him voluntarily to unite his efforts with the efforts of all the others That can be done habitually and conveniently only with the aid of a newspaper; only a newspaper can come to deposit that same thought in a thousand minds at the same moment’ (de Tocqueville, 2000, 493)⁶⁸

Prior to 1700 local newspapers did not exist. The main newspaper was the *London Gazette* and the, often out-of-date London-based news it reported was read by elites across the country. The failure to renew the

⁶⁷For example, we are told of ‘a most excellent dinner was provided for the occasion by the host and hostess, scarcely anything in season being lacking’ at the meeting of Stockwith and Trent-side Association (*Gainsbro’ and Trentside*, 1846). Elsewhere we read ‘[y]esterday the annual meeting of the Broadwell Association for the Prosecution of Felons was held at the Plough Inn, at Alwoscott, near this town. After the usual business had been transacted the members sat down to dinner ... The dinner was a capital one, and the wines were of that quality which are very seldom found at country inns, and altogether reflected much credit on the hospital landlord, Mr Hott’ (*Bampton*, November 30, 1843).

⁶⁸The quote continues: ‘[t]here exists, therefore, a necessary relation between associations and newspapers; newspapers make associations, and associations make newspapers; and if it was true to say that associations must be multiplied as conditions are equalized, it is no less certain that the number of newspapers must be increased as associations are multiplied’ (de Tocqueville, 2000, 494).

restrictive Printing Act in 1695 and the development of better postal roads led to a rapid growth of local papers in the early eighteenth century. By 1745 there were 41 provincial newspapers (Cranfield, 1962, 23).

Although the circulation of local newspapers remained small, the effect that they had was greatly amplified, as it is thought that at least twenty individuals read each paper printed, and the information published in the newspapers disseminated rapidly among communities via word of mouth. Newspapers adverts provided information and details of the crimes committed.⁶⁹ The standard cost of placing an advert in the eighteenth century was 2s 6d. Hence it was a relatively cost efficient way for an association to obtain information that could lead to a conviction. The sophistication of prosecution associations grew hand-in-hand with the market for local newspapers

Handbills, were made possible by better printing technology, they could be printed and distributed more rapidly than newspaper advert.⁷⁰ Styles notes that whether or not an association employed handbills or newspaper adverts depended on the type of crime that had been committed and where. Handbills were cheaper and circulated quickly even in areas where newspaper readership was limited but as they did not circulate widely as they had to be passed from hand-to-hand they were only suitable for bulkier goods that could not be moved quickly. Urban associations like the Colchester association tended to use handbills more frequently. On the other hand, newspaper adverts were a better place for advertising rewards for livestock, particularly horses that could be quickly taken to another county (Styles, 1989, 71-75).

The number of the associations placing advertisements increased rapidly after 1780. Associations used advertisements differently than did private advertisers, typically making payment conditional on conviction.⁷¹ One advertisement reads as follows:

⁶⁹For example:

TWO GUINEAS REWARD

Whereas WILLIAM COULSON, late Farming Man to Mr William Richmond of Starthy near Grimsby did under the name of WILLIAM TAYLOR obtain a SUIT of CLOTHS from Mr STEPHEN NODDALL, tailor and Draper, of Grimsby aforesaid, in the Month of September last.

The said William Coulson alias Taylor is 22 years of age (but appears older) about 5 feet 7 inches . . . and has lost the sight of one eye by the lash of a whip.

Had on, when he absconded, a blue slop frock, an old velveteen jacket, a scarlet and black striped waist coat, and (unreadable) shirt, and old cord breeches.

Took with him a new bottle green coat, a yellow striped waistcoat, a new olive-coloured coat, a scarlet kerseymere waistcoat, bound with black . . . Whoever will apprehend the Offender, and lodge him in any of his Majesty's Gaols (sic.), shall receive the above Reward and all reasonable Expenses by applying to Mr Edward Shelton, Treasurer to the said Association (*Lincolnshire*, 1816).

⁷⁰Styles observes the innovative use of adverts and handbills 'did not emerge from a self-conscious process of reform,' it was the emergent outcome of the 'ways in which individual Englishmen and women took advantage of the market in information created by the spread of commercial printing' (Styles, 1989, 57).

⁷¹Styles found that in the *Norfolk Chronicle* 89 % of adverts placed made the advert conditional on a conviction being obtained (Styles, 1989, 65).

WHEREAS, early in the night of Friday, the 10th day of August , a valuable WAGGON HORSE, answering the description given below, the property of Mr THOMAS HALL, of Stoke Golding, was feloniously stolen . . . in the parish of Stoke Golding.

Notice is hereby given

That a Reward of Five Guineas will be paid by the said Mr. Hall, in addition to a further Reward of Five Guineas, which will be paid by the Treasurer of the before named Association, to any Person or Persons who will give such evidence as shall cause the apprehension and conviction of the Offender or Offenders

This was intended to induce the criminals themselves to volunteer information. It continues ‘if two or more Persons were concerned in the above named Felony, and any one of them will impeach his Accomplice or Accomplices therein to conviction, he is hereby promised both the Rewards, and that the proper means shall be used to obtain for him a free pardon’ (*Multiple Advertisements and Notices*, August 25, 1832). Information about successful prosecutions made by the society was widely publicized in the print media. As John Wade put it newspapers ‘are the proper *hue and cry* of delinquency, and, by circulating in victualling-houses, taverns, and private-houses, everywhere make known frauds and robberies—the way in which they have been perpetrated and put society on the alert against the practices of swindlers and thieves.’ (Wade, 1829, 356).

Prosecution associations also used newspapers to promote themselves, attract new members, and to deter criminals from attacking the property of their subscribers. They attracted members by advertising the ancillary social benefits of membership. This is a practice that developed over time. In the eighteenth century prosecution associations were sometimes mentioned in newspapers and journals but newspapers were not used to actively advertisement membership.⁷² This had changed in the 1790s and by the early nineteenth century it became common practice for associations to advertise membership lists and the dates of general meetings.⁷³ A successful association developed a reputation for prosecuting offenses against its members and, as such, through this reputation, deterred further criminal activity.⁷⁴ In theory, and in the view of many members of associations, this could ensure that few prosecutions actually had to be undertaken in total. Contemporaries believed that advertisements ensured ‘deterrence through a sort

⁷²See for example *Gazetteer and New Daily Advertiser* (1791).

⁷³For example the Beverley and Nottinghamshire associations began to advertise their names in 1790s (Styles, 1989, 64). The Mansfield association was published in the Nottingham Journal and Review (*Rules of a society called the Equitable Association of the inhabitants of Mansfield and neighbours for the Apprehending and Prosecuting Felons and receivers of stolen goods and other offenders against the law*, 1842, 8). The Rickinghall and Botesdale Association published their membership list in the *The Bury and Norwich Post, and East Anglian* (*Rickinghall and Botesdale Association for Prosecuting Felons and Others*, April 20, 1842).

⁷⁴A somewhat macabre advert placed by the Staffordshire association noted that in the four years they had been in existence the had spent £230 on prosecutions and had secured 6 convictions, 4 of which had resulted in hangings and 2 in transportations (*August 23rd*, 1790).

of notional patrolling' (Hay and Snyder, 1989, 20).

In this respect, private prosecution associations were on the frontier of policing tactics between 1750 and 1840. The advocates of police reform were inspired by innovations introduced by private organisations. The police reformer Edwin Chadwick in his essay, *Preventive Police* observed that '[t]he first great practical defect of our present police establishment is, that they do not obtain this complete and speedy information respecting depreciations; the second, that they do not communicate it in the requisite degree among the public at large' (Chadwick, 1829, 276).⁷⁵ Police reform according to Chadwick should ensure 'a speedy and complete collection and publication of information concerning all sorts of delinquency committed, more would be done in reducing crime, and at a cheaper rate, than by any other possible alteration in the present system of police' (Chadwick, 1829, 278). Chadwick was an advocate of a professional police force. But, the evidence provided here suggests that Chadwick's proposals had already been integrated into the practice of many prosecution associations across the country, and that, in this respect, prosecution associations were much more advanced than local constables or town watches. The majority of prosecution associations stipulated, as an article or rule of the association, the requirement to share all information pertaining to any crimes that they knew about.⁷⁶

3.5 Rewards

Many associations published reward schedules in order to get witnesses to come forward and volunteer information.⁷⁷ A small but representative selection of such schedules are summarized in Table 2. They demonstrate that prosecution associations were predominantly concerned with crimes against property.⁷⁸

⁷⁵ Chadwick's own proposals are analyzed from an economic point of view by Ekelund and Dorton (2003)

⁷⁶ The association for the prosecution of felons in Lanvrechva Lower and Upper, Panteague, Lantarnam and Lanthewy even threatened to fine members £1 if they did not share such information within seven days (*Rules and Regulations of an Association for the Prosecution of Felons and other Offenders, adopted at a meeting of the several inhabitants of the parishes of Lanvrechva Lower and Upper, Panteague, Lantarnam and Lanthewy*, 1819).

⁷⁷ The committee had some discretion and could grant additional rewards in special cases. The Eckington Association provided a Mr Tasker with a reward of 50s rather than the guinea (21s) reward specified in the 17th article of their constitution because he had gone to extraordinary lengths in hunting down the criminals responsible for stealing and damaging a large quantity of vegetables of a member of the society. This extra reward was publicized by the association in the *The Sheffield Rotherham Independent (Eckington Association for the Prosecution of Felons, Saturday, October 21, 1854)*.

⁷⁸ The majority of societies did not offer rewards for information leading to murder convictions. When they did so the amount offered in return for information leading to murder conviction was usually the same as that paid for robbery. This does not mean that murder was viewed as equivalent or less important than horse-stealing; rather it reflects the fact that such cases were typically outside of their purview. Murder cases were likely to generate public outrage and the effort of apprehending and prosecuting a murder suspect would not depend decisively on support of an association. Prosecution associations tended to reserve their resources for cases where they could make a decisive difference between securing a conviction and letting a crime go unpunished. The only exception that I have found to this general rule is the Lemmington Association which offered a reward of £30 for murder and £10 10 s for robbery (*The Leamington Priors Association for the Prosecution of Felons: 150th Annual Meeting and Dinner*, 1983, 2). This is consistent with the fact that David Phillips could only find two mentions of prosecutions for murder (Philips, 1989, 145). I found an instance of attempted murder that was prosecuted by in Bradfield association 1846 (*Minute Book of the Bradfield Association for the Prosecution of Felons, 1838-1886*).

It was standard for associations for the prosecution of felons to supplement the rewards offered by the victims of a particular crime.⁷⁹ In this respect, prosecution associations *did* resemble insurance companies. If the prosecution society paid the whole reward or was excessively generous in the rewards that it offered this would not only bankrupt the society and its subscribers but it also might induce moral hazard. Property owners and members could become careless if they were completely insured.

Associations allocated their scarce resources to where they would have the greatest impact.⁸⁰ Arson attracted a particularly high reward because farms—particularly in harvest time—were vulnerable to fires and because arson was a endemic problem in rural England—‘the most common form of malicious damage in the Victorian countryside’ during the first half of the nineteenth century (Jones, 1982, 33). Arson was committed by disgruntled employees or former employees or as a form of insurance fraud. It was common in rural East Anglia where wages for agricultural workers remained low and class tensions ran high throughout this period. There were 70 convictions a year for arson in East Anglia in the 1830s and this figure rose to 123 a year in the 1840s before declining. One newspaper reports a particularly devastating fire which caused between £1700 and £2000 damage. The Yorkshire Insurance Company and the Rudston Association for the Prosecution of Felons put together a combined reward of £150 for information leading to the conviction of the arsonist (*Incendiarism in England*, 1843).⁸¹

The rewards specify a wide range of different types of petty theft. The Tanworth association listed separately the crimes of stealing corn or threshed or unthreshed grain, stealing wick yarn or cloth, stealing straw, haw, fodder, stealing coal, stealing wood, stealing lead or iron, and damaging fences, doors, or other pieces of property (*Articles of the Tanworth Association for the Apprehension and Prosecution of Felons*, 1784). This level of detail suggests that these small-scale ‘depredations’ were a common occurrence for farmers in the area of Tanworth as they were elsewhere. Prosecution associations punished small crimes in part because it was believed that a number of small depredations encouraged others, a view that resembles the modern broken windows thesis. But they did not punish moral crimes or cases of disorderly behaviour, gambling or prostitution.⁸² Nor did they target working class lifestyles in the way the police would try to do in the 1830s and 1840s (for more on this see Storch, 1975, 1976).

⁷⁹See for instance the following advertisements *Seven Guineas Reward* (1812); *The York Herald, County and General Advertiser* (1813); *The Leeds Mercury* (1818).

⁸⁰Nighttime crimes were harder to deter and demanded greater vigilance from property owners and this was recognized in the reward structure of several associations. The Duffield Association and Belper Association both differentiated between daytime and nighttime robberies. The former proclaimed that information leading to the successful prosecution of ‘any Dwelling house, shop, Warehouse, or Out-house, Waggon or cart’ was rewarded at the rate £1 1s if committed in the day and 2 2s if committed at night (*Duffield, Makeney, Holbrook and Little Eaton Association for the Prosecution of Felons*, 1791–1794).

⁸¹Also see *Incendiary* (1844) which describes how in response to a fire in Peckleton, Leicestershire a combined reward of £100 pounds was offered for information leading to a conviction: £50 from the government, £20 from the owner of the premises and £30 from the local association for the prosecution of felons.

⁸²There were, however, separate societies for the suppression of vice that prosecuted writers, publishers, and printers who violated obscenity laws. A William Benbow was prosecuted in 1823 for publishing a work entitled *The Chevalier Faublas* by The Society for the Suppression of Vice (*The King V. William Benbow*, 1823).

Table 2: Reward Structures of Selected Prosecution Associations

	Murder	Robbery	Arson	Stealing livestock	Stealing poultry	Stealing corn or grain	Damaging fences or doors	Information
Tanworth	10 10s	5 5s	£10 10s	£5 5s	£2 2s	£2 2s	£1 1s	£5
Lanvrechva		£5 5s	£5 5s	£5 5s	£1 1s	£1 1s	£2 s	
Burnham	£5	£10	£5	£2	£5	£1		
Chaddesley Corbett		£10	£20	£30 –£5	£5	£3 – £2	£2	£2
Cawthorne		£10	£10	£10		10 s	10 s	
Cheddleton		£7	£7	£7	£3	£3	£2	
Stapenhill		£5 5s		£3 3 s	£1 1s	5s		
Mugginton	£10 10s	£10 10s		£10 10 s	£2 2s	£1 1 s		
Derby	£5 5s	£5 5s		£3 3 s	£1 1s	£2 2 s – 5s	10s 6d	
Egginton	£10	£10		£5	£10	£2	£2	
Ripley	£5 5s	£5 5 s		£3 3s	£1 2s	£1 1s	£1 1 s	
Norbury & Roston	£5 5s	£5 5 s		£5 5s	£1 1s	£1 1s	£1 1 s	
	A Capital Offence			Offence resulting in Transportation		Felonies		
Birmingham	£10					Determined by committee		
Howden	£10			£5		£2		

3.6 The Economy of Esteem

Why did associations for the prosecution of felons provide the public good of deterrence? One reason was that the benefits non-members enjoyed were a by-product of the services produced by the associations for members. This, however, is only part of the explanation. The other part of the resolution of the problem of voluntary public good provision can be found in the ‘economy of esteem’ (Brennan and Pettit, 1993, 2000). The argument that a major reason why individuals voluntarily contribute to the financing of public goods is to acquire the esteem of others goes back to Adam Smith’s *Theory of Moral Sentiments* (Smith, 2002, 1759). Following Smith, Brennan and Pettit (1993, 2000) observe that we spontaneously form judgements about the actions of others, we esteem or disapprove of them, and that these involuntary judgements are valued, and can motivate individuals to take certain actions, such as contributing voluntarily to the provision of a public good.⁸³

Individuals formed and joined associations for the prosecution of felons for a variety of reasons. They joined partly because they were concerned with crime and law and order and partly because they wanted to be seen to be concerned with crime and order and because they desired the good opinion of their friends and neighbours. Among those reasons, the importance of the desire to earn the esteem of their fellows cannot be discounted. In this they resembled the turnpike trusts studied by Klein (1990).⁸⁴ Like other friendly societies, and voluntary subscriptions associations, associations for the prosecution of felons were fundamentally social institutions; they were ‘an expression of the ‘clubbability’ of Englishmen so noted by foreigners: voluntary associations that combined social contracts by men of the same class with strong practical purposes of mind’ (Hay and Snyder, 1989, 27). The clubbability and sociability of English society was doubly important because prosecution associations required close cooperation between members if they were to function.

Prosecution associations themselves reflected a relatively new set of values. Social norms and cultural values changed quite dramatically in England in the century prior to the industrial revolution (see Mokyr, 2009; McCloskey, 2010). Associations were made possible because of a change of attitudes towards crime in the eighteenth century. Taylor notes that during this period: ‘perceptions of and attitudes towards crime appear to have shifted significantly . . . an older view, that crime was an inevitable but relatively marginal and unthreatening part of the natural order, was replaced by a newer view in which crime was a central (if soluble) problem of society’ (Taylor, 2002, 6). Responsible citizens were seen as citizens who were concerned with law and order. The new attitude towards crime manifest itself in the associations

⁸³Economists have often argued that resolving free-rider problems by appealing to social norms only pushes the question back a stage for, if individuals have no incentive to contribute to a public good, then why will they be prepared to sacrifice resources to punish those who violate a social norm that demands that they contribute to a public good. Brennan and Pettit (1993) argue that this is a misleading way of framing the issue as esteem is conferred involuntarily.

⁸⁴They fall into Klein’s ‘use-and-esteem’ category (Klein and Majewski, 1992).

for prosecuting felons; it was this that advertisements, notices, and in newspapers appealed to. While some historians have suggested that membership lists were published in order to deter thieves from targeting members, this is highly unlikely to have been the main reason as it supposes that not only did thieves know the owners of the properties or goods they targeted by name, but also that they read the local newspaper on regular basis. It seems much more likely that the intended audience for these advertisements were those individuals in the community who were not yet members. By advertising the fact that they were subscribing to an association, members hoped to shame non-members into joining.

In this respect, as in many others, prosecution associations presupposed the prior existence of a culture of volunteering, of ‘competitive cooperation,’ and of neighbourliness. Their success was linked to broader habits of association and this may explain why associations for the prosecution of felons did not evolve into vigilante squads or protection rackets. Mokyr observes: ‘[t]he enforcement of property rights through private-order institutions reflects something deep and supremely important about British institutions in the eighteenth century. The culture of respectability and gentility helped solve the standard collective action problems that bedevil the production of public goods. The emergence of a plethora of networks, clubs, friendly societies, academies, and associations created a civil society, in which the private provision of public goods became a reality and created what might be called a *civil economy*’ (Mokyr, 2009, 381). The evidence surveyed here substantiates this view, and suggests that private prosecutions associations not only drew upon, but, in their turn, cultivated, a form of social capital that made the private provision of some forms of public goods feasible.

4 An Assessment

4.1 Decentralisation, Polycentricity Tiebout Sorting

The traditional system came under increasing attack in the first decades of the nineteenth century from advocates of a centralised system (see Philips and Storch, 1999). The debate between Benthamite social reformers and Whig politicians, on the one hand, and traditionalists and advocates of localism, on the other, resembles recent arguments concerning the scale at which public good provision occurs and, as such, can be analysed within the framework developed by Tiebout (1956) and Ostrom et al. (1961).

Ostrom et al. (1961) observed that the technical efficiency criterion for the optimal scale of public good production might not necessarily coincide with the politically feasible scale of public good production. Thus large and centralised public organizations set up to realise economies of scale may fail because they are unable to respond to local demands or make use of local information. Such centralized system of public organization can be contrasted with decentralised or polycentric forms of organization. The

advantage of polycentricity is that it allows competition and variety, and thus provides opportunities and incentives for dynamic improvements in performance and delivery.

Associations for the prosecution of felons formed part of a polycentric system of law enforcement. The size and scale of any given association depended on the preferences of local members, as did the scope and ambition of the association. Consistent with Tiebout (1956), private prosecution associations developed differently in different parts of the country. Since they were voluntary societies that had to maintain membership in order to survive, they adapted to the demands of their members. Prosecution associations experimented in offering different levels of protection to their members and, as we have seen, they tried out a variety of different membership structures. In the London area there were dozens of overlapping associations by the 1820s.⁸⁵

Rural and urban associations had different membership profiles and offered different services. The majority of countryside associations consisted of farmers—the main group in rural society who had property to be defended.⁸⁶ Prosecution associations also sprung up in towns like Bishop Auckland, Cambridge, Colchester, Derby, Grantham, Kidderminster, Sheffield, and Worksop, where their membership profile was quite different. The full list of Cambridge members (Table 3) demonstrates that the membership of urban associations included the lower-middle and upper-working classes: grocers, drapers, wheel-wrights, butchers, bakers, carpenters, and iron mongers in addition to the gentlemen, lawyers and merchants who might be expected to form an association to defend private property.

⁸⁵When asked by the Parliamentary commissioners in 1828 either were any local association, the constable of Newington, William Garland responded: ‘almost all parts of the East Hundred of Brixton have these associations formed for the purpose of prosecuting or offering rewards to officers for doing their duty’ (*Report from the Select Committee of the Police of the Metropolis*, 1828, 253).

⁸⁶Naturally, therefore prosecution associations could easily appear to be associations of the rich against the poor, the landed against the landless. This seems to have been a concern that some contemporaries had about at least some prosecution associations, at least during the “lean” years of the 1790s and 1800s. The *Observer* reports that a defendant was prosecuted for violating the game laws by a Preston association who are described in the newspaper as a set of rich gentlemen, who were determined that nobody should eat any hares but themselves’ (*Lancaster Assizes: Game Laws*, 1815). Many rural associations had members of the minor gentry as their founding members but their membership typically did not include members of the aristocracy or large landowners who could typically maintain their own private watches from their own employees. Exceptions include the Widdrington Association which was founded by Lord Vernon and the Hagley, Pedmore, Luttley, Clent and Broom Association for the Prosecution of Felons whose members included Lord Lyttelton (see *Widdrington Association for the Prosecution of Felons*, 1846; *Berrow’s Worcester Journal*, 1831). Rather membership was drawn from the upper and middle tiers of rural society. The Cawthorne association was, for example, founded by a member of the local gentry John Spencer Stanhope, Esquire. But in general, the size of most of prosecution associations—the Bury association had 60 members and the Wheldrake association initially had 50 members—ensured that they represented a broad selection of rural property owners.

Table 3: Membership of the Cambridge Association

Merchant and Bankers	Gentleman	Professional Workers	Retailers	Textile Workers	Skilled Workers	Unskilled Workers
28 18 %	9 6 %	9 6 %	36 23 %	42 27 %	26 16 %	8 5%

Source: (*Rules of the Town of Cambridge Association for the Prosecution of Felons, 1841*, 1841, 8–15). In addition to the above list of occupations there was one farmer and two booksellers who I did not categorize. There were two female members whose occupation is not mentioned. Percentages sum to 101 due to rounding.

Rural associations focused on the theft of horses, cattle, sheep and poultry or even farmyard supplies.⁸⁷ London based associations were less concerned with the theft of livestock and more concerned with burglaries and with street crime.⁸⁸ The Hammersmith association paid a reward of 10s for the apprehension of ‘vagrants, common beggars and disorderly persons’ (*Accountbook of the Hammersmith Association for the Prosecuting Thieves and Felons*, 1818a). The Clapham association paid 5 guineas to a Mendicant society in order to reduce the problems posed by beggars (*Minute book of the committees of Vestry, 1809-1840*, 116).

The growth of larger commercial centres permitted a further specialized institution: associations which focused on prosecuting fraud and commercial crimes. In cities like London and Manchester, associations for the prevention of fraud comprising merchants, shopkeepers, and traders focused on identifying and prosecuting fraudsters. They were organized in the same way as prosecution societies, supported by entrance fees or annual subscriptions and run by small committees.⁸⁹ The Beverley society ‘for the protection of trade’ had its own solicitor to prosecute ‘swindlers or other impostors’ (*Rules of the Beverley Guardian Society for the Protection of Trade*, 1834). This proliferation of different kinds of prosecution associations was one of the advantages of a polycentric criminal justice system.

⁸⁷In 1825 the Wheldrake association paid George Rotsey 3s and 6d ‘for going to Riccall to a magistrate with three women that had been stealing Chips’ (*The Accounts of the Wheldrake and Langwith Association for the Prosecution of Felons and Cheats & etc.*, 1816-1864).

⁸⁸The Society for Prosecuting Felons, Forgers, Cheats etc. advertised that they had ‘in the course of the last Year, as well as in preceding Years, brought to conviction a number of Offenders, particularly SHOP-LIFTERS, who are the greatest pest to the Trading part of the community’ (*Classified ads.*, 1799).

⁸⁹The rules of one London based association were as follows:

‘That the Committee may adjudge to any one giving notice of any fraud committed on a Member of this Society, or beneficially assisting in the discovery of, or bringing to justice, any person defrauding a Member, a reward, not exceeding the sum of ten guineas, and, if occasion requires, may advertise in the public papers, or otherwise, such reward, not exceeding ten guineas to be paid on conviction’ (*The Guardians or Society for the Protection of Trade Against Swindlers and Sharpers*, 1816, 18).

4.2 The limits of public good provision

Most associations provided a limited form of deterrence. However, prosecution associations could, under certain circumstances, maintain patrols and preventative police forces. These were public goods that deterred crime in general in the area where the patrol operated. The most famous subscription-based police force—the Barnet Association—grew out of an association for the prosecution of felons. It began by advertising its intention to offer rewards and prosecute any future crimes on the North Road out of London. A form of preventive advertising that protected members and non-members alike (*Highway and Footpad Robbery*, 1798). By the 1820s Barnet Association kept a watch which patrolled a circuit of 8-9 miles around Barnet. The patrol deterred criminals from being active within this area, conferring benefits on non-members. Despite the incentive to free-ride, the secretary of the association Thomas Dimsdale reported that only a few proportion of people who lived near Barnet were non-subscribers. In the first year of operations they prosecuted 22 cases but by 1828 this number was down to 2 and this was viewed as a measure of their success in providing deterrence (*Report from the Select Committee of the Police of the Metropolis*, 1828, 212).⁹⁰

What problems there were stemmed from the different demands that members placed on the society; '[a] few persons there are, of that sort, who when any little expense is incurred, run to us very readily for their expenses. It is a painful task, on my part, to cut them down by saying, "We cannot give all our attention to you. If you are going to keep a private watchman, you know your expenses; but a private watchman we cannot give you." "Oh! then," they say, "the association does no good to me; I must resign, take my name off"'. This, however, they rarely do' (*Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention*, 1839, 63).⁹¹ The problem of heterogeneous preferences is a problem for the provision of all collective goods regardless of whether or not they are provided privately or publicly. It does appear, however, that those associations that attempted to provide a preventive form of policing faced greater problems than did those associations that limited themselves to printing advertisements and conducting prosecutions.⁹²

⁹⁰Other subscription forces included the Uxbridge establishment. There were paid watches in many parts of London area including Acton, Chelsea, Croydon, Kingston, Richmond, and Edgeware. The latter was less successful because the population was predominantly poor and hence less willing to pay for watchmen (*Report from the Select Committee of the Police of the Metropolis*, 1828, 213-240).

⁹¹'There is a man, one of our subscribers; we do not turn him out; but he would have a man almost entirely watching him. I dare say, since he has been with us, we have generally lost money by his insurance every year. I cannot say what the reason is, whether it is that his temper is bad, or that he is disliked in some way; but it is the case that the lowest persons steal his ducks out of his pond even in the daytime. They make a point of annoying him' (*Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention*, 1839, 63). Free-rider problems did however limit the expansion of the society. Another nearby parish applied to join the Barnet Association but could not because an intervening parish, Little Berkhamstead refused to join. 'Little Berkhamstead would have had the advantage of the Barnet police without contributing to the expense, if we had been admitted' (*Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention*, 1839, 79).

⁹²For instance we told that one attempt by an association to provide a watch 'satisfied two or three persons; the others

Whereas the Barnet Association demonstrated that it was possible to provide a police patrol on the basis of subscriptions—not withstanding the problem posed by free-riders, the Hammersmith Association struggled to provide security to its members and struggled to maintain an active night watch.⁹³ The minutes of a meeting in 1811 observe that

‘Depredations of various descriptions having been committed almost nightly upon the Persons and Property of the inhabitants of the hamlet of Hammersmith, more particularly, upon those of many of the members of this association and which appears to this meeting to have arrived at any alarming extent of notwithstanding bills that have been printed [unreadable] offering rewards for the apprehending or giving information of the offenders and none of which have had the desired effect together with the maintainance of an extra watchman having been placed in different parts of the town further security - and which also has been of little or no avail’ (*Accountbook of the Hammersmith Association for the Prosecuting Thieves and Felons*, 1811)

The solution the Hammersmith association suggested was to form a force of 15 special constables—mostly unemployed labourers sworn in by a magistrate. However this solution was extremely expensive. The Hammersmith association was a large one with 183 members, but although the association raised an impressive amount of money in its initial subscription (£98 19s 6d), thereafter it struggled to get its members to pay regularly. By 1815 the size of the watch was reduced to 8 men. The initial enthusiasm for maintaining a watch was not sufficiently strong to carry the society through once the number of robberies fell. In 1818 the association was dissolved and a new association was formed, with 188 members. This only lasted a year, however, as the cost of the watch alone was £35 7s 36d per year.⁹⁴ A subsequent attempt to reform the prosecution association without the additional expense of a patrol in 1824 also failed. This example demonstrates there were definite limits to the private provision of public goods but it is not necessarily a mark against the old system of prosecutions. Any decentralized or polycentric order must permit successes and failures and it is not clear how the police system in Hammersmith would have evolved in the 1830s had the Metropolitan police not arrived in 1829.

saw that it was entirely inefficient and useless; and the farmers disapproved of the men being withdrawn from the public road into the private grounds of a few large subscribers, thus leaving the property of those who could not demand that privilege, unprotected’ (*Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention*, 1839, 87).

⁹³The records of the Hammersmith association are held in the London Metropolitan Archives.

⁹⁴The association recognized that the nature of the problem. The minutes of the November 1822 meeting note that ‘that in consequence of the deficient state of the monthly collection that a fresh canvas of the hamlet be commenced particularl of those districts where the subscriptions are smallest’ (*Accountbook of the Hammersmith Association for the Prosecuting Thieves and Felons*, 1818b).

4.3 Displacing crime?

One concern Parliamentary commissioners had about the Barnet Association was that it might displace crime on to neighbouring areas. This was one of the questions they put to Thomas Dimsdale: '[i]s it the effect of your police, to drive the thieves out of your circuit, and drive them into the adjoining parishes?' (*Report from the Select Committee of the Police of the Metropolis*, 1828, 212). The fear that prosecution associations displaced crime onto non-members parallels the modern debate on the effects of 'target hardening' (see for example Marceau, 1997). If this displacement effect was significant then the net effect of associations on non-members would have been ambiguous. However, the problem of displacing crime was only raised in the context of the few associations that, like the Barnet Association, maintained their own patrols. The areas patrolled by these associations were well-known and could be avoided by criminals. There are no instances of non-members claiming that the existence of a nearby association increased their own exposure to crime. Rather, the evidence is that this was seen as a problem specific to patrolling and one that affected publicly provided police forces as much as it did private associations.⁹⁵

In the absence of any contemporary testimony suggesting that the existence of an association for the prosecution of felons displaced crime onto non-members we should consider the theoretical arguments for why this was unlikely to have occurred. The formation of an prosecution association had two effects: (1) it reduced the net payoffs to criminal activity. So long as the supply of potential criminals is not infinitely elastic this would have the effect of reducing the total number of crimes. And (2) the formation of an association might also displace crime onto non-members. However, to the extent that this occurred, it increased the incentive for non-members to join. In other words, the negative externality generated by the formation of an association could easily be internalised by the association simply taking on additional members. Those individuals who did not join were those for whom the costs outweighed the benefit (inclusion of a negative displacement effect); these individuals were likely to be either the very rich or those too poor to have property worth protecting or stealing. This suggests that the displacement effect is unlikely to have been significant, although it does also raise the issue of equal access to justice.

4.4 Assess to Justice?

The successes and failures of prosecution associations have to be compared on an equal basis to the problems encountered by the first generation of professional police officers.⁹⁶ For example, prosecution

⁹⁵The 'migration thesis' which held that improvements in policing in one area caused criminals to migrate to where pickings were easier was held by contemporaries as an article of faith (Hart, 1956, 411-412).

⁹⁶A full account of the rise of professional police forces first in London and then in the rest of the country is beyond the scope of this paper. See Reith (1936, 1956); Radinowicz (1957); Critchley (1967); Tobias (1979) for the traditional account and Davies (2002); Emsley (1996); King (1989); Philips (1977, 1989, 1993); Philips and Storch (1999); Storch (1975, 1976, 1989) for more recent revisionist histories.

associations struggled to hire reliable watchmen to guard property or maintain patrols.⁹⁷ This limited private associations ability to provide patrols and other forms of preventive policing. However, it is not necessarily an argument in favour of reform as the first police forces faced exactly the same problem and there are countless contemporary reports of drunk, incompetent or corrupt policemen.

Prosecution associations provided a partial response to the problem of crime. A Mr Willis noted that 'in order to prevent crimes, they must first investigate the causes of them' which was 'the great and increasing distress of the lower orders'. He concluded that instead of a prosecution association a fund should be set up to alleviate the condition of the poor (*Meeting to Form A Society for the Purpose of Prosecuting Felons*, 1821). From this point of view, associations for the prosecutions of felons were only addressing a symptom of a wider social problem. This, however, is a critique of policing in general and not specific to the private associations for prosecuting criminals. Prosecution associations and societies for easing or improving the conditions of the poor were not substitutes but complements and individuals often subscribed to numerous societies.

Consider the question of equal access to justice. Class boundaries hardened during the early nineteenth century. Crime increasingly became associated with a 'crime class' and the reforms located the causes of crime in lifestyles of the working classes (Emsley, 1996, 56-91). In this context prosecution associations could easily appear to be associations of the rich against the poor, the landed against the landless.⁹⁸ Prosecution associations may have paid for prosecutions made on behalf of the poor, but they only did so in a discretionary way and, hence, provided those unable to afford the membership fee little certainty that they would be protected. To some extent this was inevitable. Those with property had the strongest incentive to join them so, by their very nature, prosecution associations can be portrayed as divisive.

This neglects the fact that the main victims of crime in nineteenth century England were not the rich but 'middling people'.⁹⁹ Moreover, similar charges of class bias can be levied at the new police. After all, as Philips and Storch observed, '[r]ural police reform depended ultimately on the landed class's assessment of the adequacy of the old constabulary ... any government plan of rural policing was subject to a veto of the landed gentry' (Philips and Storch, 1999, 37). The claim made by traditional historians of the police that reform benefited the poor is no longer seen as credible (see Reiner, 1992).¹⁰⁰ In fact, the

⁹⁷ See the comments of Nathaniel Blake (*Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention*, 1839, 46).

⁹⁸ Adam Smith himself noted that civil government originated this way 'for the defense of the rich against the poor, or of those who have some property against those who have none at all' (Smith, 1776, Bk V. Ch. 1. part 1).

⁹⁹ They were 'the farmers too fearful to prosecute for the theft of their sheep, too feaful even to go out at night; the servants deluded by thieves disguised as travelling fortune-tellers; the shopkeepers in the towns; the artisan with his week's wages in his pocket and walking home at dusk' (Gatrell, 1980, 269).

¹⁰⁰ See White (1838) for a contemporary critique of the Metropolitan police. There is a large revisionist literature challenging traditional account of the rise of the police (see Silver, 1967; Storch, 1975, 1976). This literature suggests that a major motivation for the introduction of a professional police force was labour unrest and Chartism.

evidence is that the poor were the especial targets of the new police. Hay 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’ (Hay, 1980, 58). While the old constables and local prosecution associations protected the property of the middle and upper classes from the depredations of the poor, the new police were employed to reform the manners and behavior of the working classes.¹⁰¹ As Tabarrok (2002) observes the shift from private to public provision of criminal justice changed the nature of the good that was produced.¹⁰² They punished crimes that previously had gone unpunished under the decentralized traditional system.

5 The Decline of Prosecution Associations

Having seen how prosecution associations functioned, we can approach the question why most gradually disappeared during the second half of the nineteenth century by looking at the minute books of a select number of associations. There were two reasons why a prosecution society might dissolve: (1) a lack of members and interest; and (2) a lack of funds. The first case was—at least in the period prior to the introduction of professional police forces that began to crowd-out some of the activities of the prosecution associations—a sign of the success of the association because it indicated that the level of crime had been reduced to tolerable levels. For example, at the general meeting of the Sutton Association in 1843, the chairman ‘delivered a very favourable statement of the funds of the Association and what must be equally gratifying it appeared that there had not been a single prosecution at the instance of the Association during the past year, an evident proof of its protective influence over the property of its members’ (*Sutton Association*, 1843).¹⁰³

Such societies might be victims of their own success. Societies often formed in response to specific threats and once those threats were overcome they might subsequently disappear. Charles Bathurst of Gloucester in answering to the Constabulary Force Commissioners describes a successful association

¹⁰¹This is evident in the interviews recorded by the Parliamentary commissioners. William Henry Newham Esq. wanted the police to be used to remove paupers, and notes that, while serious offenses such as murder or robbery were almost unknown, 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 Commissioners: state of the rural districts as to crime and the means of its prevention*, 1839, 17).

¹⁰²‘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).

¹⁰³A different newspaper reported of the Stockton society: ‘it was a good thing to say in behalf of the Association that though it had between 70 and 80 members, there were no serious complaints, showing very conclusively how lawbreakers feared the Association’ (*Stockton Association for the Prosecution of Felons*, 1874).

at Cheapstow which he suggests had formed to break up a sheep-stealing gang and was now inactive (*Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention*, 1839, 39).¹⁰⁴

The second reason for dissolution was more portentous because it indicated that the association was unable to support itself from the dues of its members. In the standard theory of club goods this would most likely occur if an association was unable to prevent free-riding. This was the case with the various Hammersmith prosecution associations that attempted to establish local watches during the first half of the nineteenth century. Associations that were too small or underfunded struggled to pay for prosecutions.¹⁰⁵ However, most associations seems to have flourished between 1800 and 1840. They began to decline once local authorities raised their own police forces.

The crowding out of London Associations

The example of the Hammersmith association shows how ambitious attempts to provide local watches could struggle in the prior to the introduction of a professional police force. However other attempts were more successful. The Association of Clapham and its vicinity for preventing burglars, robberies and felonies and prosecuting offenders was founded in 1819. The association established a watch ‘to look after the backs of the houses of the inhabitants during the night and to patrol the District in the day time in order that suspicious persons may be looked after and apprehended’ (*Minute book of the committees of Vestry*, 1809-1840, 101). This continued to operate and appears to have flourishing until the introduction of the Metropolitan police to Clapham in 1839.¹⁰⁶

The association mainly functioned by using subscriptions to pay rewards to watchmen and the local constable, a man called Thomas Reed, with whom the association seems to have cultivated a close relationship. By 1822 it had 67 paying members and had raised a fund of £70 7s. Urban associations were more dependent on watchmen and active constables than were rural association where it might still be possible to identify criminals by their face.

¹⁰⁴Similarly 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”’ (Magistrate, 1839, 26).

¹⁰⁵This 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. What was the effect while it did last? — The prosecutions came so heavy. In one instance a man stole two or three fowls; the prosecution came to £30 or £40 (*Report from the Select Committee of the Police of the Metropolis*, 1828, 240).

¹⁰⁶In one of the first meeting in 1822 the committee declared that ‘notwithstanding the numerous depredations which had been committed in their neighbourhood during the past year, not one of the Members of this association has suffered any theft, damages, or depredations whatever since joining this society’ (*Minute book of the committees of Vestry*, 1809-1840, 115).

In 1839 a proposed expansion of the Metropolitan police brought Clapham within the jurisdiction of the London police. This was strongly opposed by the Association both because it deprived the council magistrates of their authority and because it represented an unwarranted expansion of the power of government.¹⁰⁷ The coming of the Met meant the end of the Clapham Association which like other associations in the London area disappear from the historical record after 1840.

Crowding-out occurred outside of London too. The Doncaster Association was dissolved abruptly in 1838 two years after the Watch Committee established a local police force paid for out of the County Rates (*Book of Proceedings of the Doncaster Boro' Stoke Association for the Prosecution of Felons*, 1821-1838; *Regulations and Instructions for the Doncaster Police*, 1838). Elsewhere the expansion of the police was more gradual and in many cases prosecution associations were happy to work with the new police.¹⁰⁸ Many prosecution 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 principle 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. Some societies still continue on this basis. The 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' (*The Darlington Association for the Prosecution of Felons*, 1875).

5.1 The decline of rural associations

Since many smaller, rural prosecution associations did not advertise in major local newspapers, their existence is not recorded in published sources. The records of several small prosecution societies have survived, scattered in county records office across England. The Weldrake and Bolton Percy associations for the prosecution of felons are representative of these smaller, rural, associations.¹⁰⁹

The Weldrake association was a small society for property owners and farmers in the Weldrake parish.

¹⁰⁷Specifically they feared that it would 'increase the patronage of the Government' (*Minute book of the committees of Vestry*, 1809-1840, unnumbered).

¹⁰⁸The Stockton association raised a cheer to 'The 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 for the Prosecution of Felons*, 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.

¹⁰⁹The Weldrake association was in existence from 1816–1863. The Bolton Percy association operated from 1825–1890. The account books of both associations are kept at the Borthwick Institute for Archives.

Membership was restricted to residents of the parish and only land held within the Parish of Weldrake was protected. Compared to other associations, the Weldrake association charged very low fees—only 1s per year (*The Wheldrake Association for the Prosecution of Felons: Rule Book*, 1816-1864). The account book allows us to trace how the membership of the society evolved and to see what expenses the society incurred. The biggest expenses were incurred in the first few years of the associations existence.¹¹⁰ Between 1848 and 1864 there was only one meeting at which a reward was paid. The number of members declined from less than 30 by the 1850s. Funds were withdrawn from the association in 1837, 1842, 1847, 1850, 1855, 1857, 1859, and 1862. The Association closed in 1864.

The Bolton Percy Association was active for about two decades in the 1820s and 1830s before it gradually declined. Although it was a smaller association than the Weldrake association, it was more heavily capitalized and it was a more encompassing association, as it practiced price discrimination charging members different fees based on their ability to pay and how much they stood to gain from membership.¹¹¹ Both rural associations only experienced minor crimes. All the crimes mentioned in the Bolton Percy account book are acts of theft or vandalism: pigs or poultry being stolen, gates being destroyed etc.

The Bolton association became much less active after 1840 and no further prosecutions made by the association were recorded after 1841. The association continued to pay for handbills to be printed and paid 10s so that a summonses at Wakefield could be attended. The last occasion on which the association prints handbills is in 1871. No records or accounts were kept between 1871 and 1889 but other sources suggest the the association lost a large proportion of its funds in a banking crisis in 1878 (Baker and Collins, 2002, 174). By 1889 there were only 9 members. The society was finally dissolved in 1890 and in 1893 a meeting of the Charity Commission was called but was unable to decide whether or not the remaining funds should be used to improve the school building, help build a library or to contribute to either the poor or the police rate. Associations for the prosecution of felons were, the Charity Commissioners noted, ‘out of date at the present day’ (quoted in Baker and Collins, 2002, 174).

¹¹⁰In 1819, they paid 7s 6d to advertise in the newspaper (*The Accounts of the Wheldrake and Langwith Association for the Prosecution of Felons and Cheats & etc.*, 1816-1864). In 1829, the association paid Mr Carroll 4s 6d for 100 handbills; Mr Bradley was paid 2s 6d when his poultry was stolen as expenses towards the cost of a prosecution. In 1833 it paid a reward at its annual meeting of £2 for information that led to the conviction of three men who stole Isaac Brown’s poultry. The Association became less active in the 1830s.

¹¹¹Mr Milners and Rev. Rackham paid £5 5s to join but other members paid just 1s (*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.*, 1825-1890) The association was initially ambitious raising a considerable amount from entrance fees of capital that grew from £45, 10s, 4d. in 1830 to £57, 7s.—more than enough to cover its expenses—and the plan to charge an annual membership fee of £5 5s was abandoned in the 1820s.

5.2 Concluding Remarks

The analysis provided in this paper offers a number of conclusions. First, prosecutions associations can be seen as a ‘bottom-up’ response to the problems of private prosecutions in eighteenth and early nineteenth century England: they increased the number of prosecutions closer to what would have been the socially optimal level. Moreover, members understood this trade-off and they justified their actions in terms that economists would recognize as the language of ‘constrained optimality’. J.J. Lcokhart Esq. M.P for Oxford argued that crime, particularly organized crime had reached a point where it ‘not only endangered property, but menaced personal security’ but that the obvious solution to this problem ‘a military police . . . would be an evil of different description, dangerous to the public liberty’. Hence the only course of action permissible was for the citizens to come forward ‘not only to associate and assist the police, but to enforce more effectually the existing law of the country’ (*Meeting to Form A Society for the Purpose of Prosecuting Felons*, 1821).

Private prosecution associations did not necessarily provide the globally optimal or efficient level of security or deterrence. There is no reason to expect them to have done so. Demsetz (1970) argued that bundling meant that private firms or clubs could supply a positive level of public goods but did not claim that this mechanism would necessarily ensure that an efficient level of provision would ensue. Different individuals have different demands for security and, because of the public nature of deterrence as a good, it is inevitable that not all members would be satisfied. But, in the view of their members, prosecution associations did a good job given the political economy of early nineteenth century England. Of course, in some areas associations dissolved or could not get started due to free-rider problems or lack of leadership. The main complaint we find in the reports made to Parliament are of the absence of associations for the prosecution of felons in particular areas, rather than of their inadequacy.¹¹²

Second, associations for the prosecution of felons used a wide range of material and non-material incentives to encourage membership. In particular, they employed price discrimination to try to maximize effective membership size. They became more sophisticated over time in how they used advertisements and in what side-benefits they offered their members. Associations demonstrated the institutional inventiveness of a decentralized system of public goods provision. Prosecution associations were only a partial response to the problem of crime in industrial revolution England, but this study of them should, nevertheless, led scholars to revise upwards their evaluation of the possibility of the private provision of deterrence.

¹¹²See *Report from the Select Committee of the Police of the Metropolis* (1828, 217), *Report from the Select Committee of the Police of the Metropolis* (1828, 249), *Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention* (1839, 39–48) and *Evidence Taken by the Constabulary Force Commissioners: state of the rural districts as to crime and the means of its prevention* (1839, 79).

Finally, the example of eighteenth and nineteenth century prosecution associations suggests that the success or failure of private law enforcement is, to a large extent, context specific. Twentieth or twentieth-first century claims that private enforcement is either impossible or universally undesirable reflect an ignorance of pre-modern forms of law enforcement. However, the converse conclusion may also be misleading, at least to the extent that English prosecution associations depended on social norms that encouraged community participation and cooperation. In, admittedly, quite different circumstances, disorder and crime in the South of Italy in the nineteenth century produced protection rackets and the mafia.¹¹³ It is a question for future research to explore the circumstances under which private forms of law enforcement evolve in a socially benign or malicious direction.

¹¹³See Gambetta (1996) and Bandiera (2003) for informative accounts of the emergence of the mafia.

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