

Utilitarian Cops: Jeremy Bentham and The Rise of Modern Policing

by

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Author's declaration

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

I understand that my thesis may be made electronically available to the public.

Abstract

It is widely accepted that modern policing first came into existence with a bill passed in 1829, establishing the Metropolitan London Police under British Home Secretary Sir Robert Peel. It is Peel after all, who has been labeled the founder of modern policing, an English institution that inspired North American police. I argue that it was Jeremy Bentham who developed an early model of modern policing and whose work on applying his utilitarian philosophy to institutional reform directly influenced Peel's innovation. I intend to show how Bentham and reformer Patrick Colquhoun established the first modern police department when they collaborated in drafting the Thames River Police Bill adopted by Parliament in 1800, almost thirty years before Peel's legislation. It is the Thames River Police created by Bentham and Colquhoun that is the world's oldest, not the Metropolitan London Police introduced by Peel. John Stuart Mill once wrote that Bentham was a great subversive. And as the great subversive whose years of work on improving police was often done in secret and whose efforts were largely ignored, it is Bentham not Peel, who should be considered the single most important figure in the development of modern policing.

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CH. 1 Introduction

1. Defining a Concept

This thesis is on the origins of modern policing, a foundational concept in criminology. It is a somewhat vague concept occasionally used in ambiguous ways to describe the transition from an older system of policing to a newer or more modern form of institution that occurred in the early nineteenth century, beginning in London, England. Modern policing is also a concept that is central to the Anglo-American history of police. It has a ‘thin’ definition, as I will call it, used to describe a professional police department, typically a branch of government with full-time employees for purposes of crime control. But there is a rich history missing from this simple concept of policing that goes beyond mere remuneration and more to do with the basic purpose, overall approach, and foundational structure. And as we will soon find, modern policing is not only a foundational concept of criminology but moreover, well rooted in philosophy.

Apart from a thin definition for modern policing there is a more complete or ‘thick’ definition, (as I would like to call it), that will be described here. This definition, that I will first explain before appealing to, goes beyond the notion involving mere full-time public employment. Modern policing according to this definition, also includes a measure of central control by government over a body of civilians, not a military, with a focus on crime prevention. And along with the term ‘modern policing’ comes the figure most closely associated with it, Robert Peel. Peel was Home Secretary for Britain from 1822-1830 and is often described as the founder of modern policing after he introduced the world’s first ‘modern’ police department to London in 1829 (Hurd, 390). However, while the focus of this thesis is to provide a more complete and accurate history about the origins of modern policing, this will primarily involve an exploration of the philosophy that was central in creating the institution.

The English political philosopher and founder of Utilitarianism, Jeremy Bentham, who lived from 1748-1832, was a leading social and political reformer who influenced the work of John Stuart Mill. His reputation as a criminal justice reformer seems to have been sullied over the past half century, due in large part to the popular works of his most vocal critic Michael Foucault. Writing in the 1970s, Foucault claimed it was Bentham who created the modern prison, a mechanism of discipline for improving the exercise of power with his late 18th century plans for a ‘panopticon’ penitentiary (Foucault, 209). And since this proposed prison had a central feature of surveillance, Foucault also insisted it was Bentham who ushered in the surveillance society, because close observation in confinement could also be used throughout society as a whole (Foucault, 209).

And while Bentham’s plans for prison reform with his panopticon scheme did not amount to much, as we will discover, his plan for the reform of police in England was a success. This ‘new’ approach to policing meant for addressing problems of high crime rates, including that of corrupt police, was part of a much larger political and social reform movement meant to replace a brutal and ineffective system of punishment. So this will be an account of modern policing with Bentham’s role clearly in focus against the backdrop of the historical conditions out of which the institution was developed. (Lawrence, in Knepper and Johansen, 20).

In philosophy over the last half century or so, in addition to early utilitarianism and the greatest happiness principle, Bentham is best known for the panopticon and the surveillance society, with little known of his central role in creating modern policing that has mistakenly been credited to Peel. I argue it is Bentham who should be considered the single most important figure in the development of modern policing. The changes that occurred over decades for the improvement of police emerged directly from Bentham’s broader utilitarian philosophy. In pursuit

of the greatest happiness for society, he led a reform movement in pursuit of justice with the intention of curing a wide range of social and political ills with meaningful change primarily through legislation.

This thesis has two aims. The first is to fill in a knowledge gap in both the history of philosophy and policing concerning Jeremy Bentham's work over fifty years that was instrumental in the development of 'modern policing'. The second aim is to use this information about Bentham's extensive police reforms to dispute a claim that Robert Peel is the 'founder' of modern policing. My thesis is that Peel did not create modern policing when he introduced the Metropolitan Police to London in 1829. This is because he only completed the very last part of a process by implementing a plan created over decades by Bentham. It was Bentham who provided all the foundational elements for modern police beginning with his influential writings in 1780, before later working on legislation that created a model for policing London in 1800. In addition, he influenced powerful politicians and other reformers to advance the cause of police reform for England.

In this introduction I begin by briefly examining a well-established claim that Peel created modern policing before discussing the significance of this achievement. This will provide a summary of the essential background information and overall context for examining Bentham's involvement. In discussing Peel's accomplishment in 1829, I will briefly look at the 'Peelian principles' which were a list of general guidelines for police that were created long afterward. We will then look back in time to briefly examine some of Bentham's work that directly led to Peel introducing modern police for London. This is intended to be no more than a brief discussion about the meaning and significance of 'modern policing' along with a few basic facts about Bentham and Peel in relation to this concept, followed by an outline on how I proceed through the rest of

this thesis. Let us turn our discussion to Peel to provide some historical context in the development of modern policing, before shifting our focus to Bentham's earlier works and the problems he found in relation to the 'old' police.

2. Robert Peel

After serving as British Home Secretary from 1822 until 1830, Peel served twice as Prime Minister. Despite these achievements, Peel is not known so much as a politician, because he is pre-eminently known as being the founder of modern policing (Gaunt, 1). As earlier noted, this title was given to Peel sometime after 1829, the year he introduced what is often claimed to be the world's first modern police department (Gaunt, 1). The London Metropolitan Police was considered 'modern' or 'new' because it was one of the first examples of a full-time professional body of civilians under the control of a central government, for purposes of crime prevention. And while there may have been earlier examples of this type of policing in Britain, they simply did not compare with the symbolic valence of the Metropolitan Police (Finnane, in Knepper and Johansen, 456).

This new system of police for London was later mandated by parliament for all of England before serving as a model that inspired the creation of police departments throughout much of the English-speaking world (Lee, intro, 10). This was due in large part to the "imperial transfer of ideas and institutions" (Finnane, in Knepper and Johansen, 457) to England's existing and former colonies. Policing in the early 19th century was considered a 'new science' and was viewed by reformers and most historians as a vast improvement on the old (Lee, 10).

It is this emphasis on improvement consistent with a 'Whiggish' historical account of criminal justice and policing that I will be exploring. This is because police were viewed by

reformers, politicians and most historians as an institution created by a modern and progressive state, with the people's consent for ensuring the wellbeing of society through a more effective and just approach to crime (Finnane, in Knepper and Johansen, 457). This more established Whig historical account of modern policing adopts the view that the changes to police occurring over time were part of far-sighted reforms and beneficial to society (Petrow, 20).

3. Two Different Historical Accounts of 'Modern Police'

Such changes to the old police were seen as improvements instituted by enlightened and reform minded politicians aiming to replace an antiquated and ineffective system. Modern police were said to have emerged in a consensual relationship by drawing their authority from the public (Finnane, in Knepper and Johansen, 435). Police were established for enhancing overall wellbeing by providing everyone with a measure of security, primarily through the prevention and detection of crime. In the last few decades however, this older narrative has shifted toward something more complex and contested.

The pushback against this optimistic view, comes from Marxist theory which emphasizes the role of the police in suppressing the working class, and writers such as Foucault, who view modern policing emerging more out of conflict than consensus. For Foucault, police are for purposes of social control and the exercise of power, rather than crime prevention and public welfare. According to this narrative, modern police were established to maintain class dominance in a capitalist system, by protecting the interests of property owners, merchants and the ruling class (Barrie, in Knepper and Johansen, 435). It is interesting to note that neither account, whether it be Foucault's or that of the Whig historian, alludes to Bentham's central role in creating the very institution that they so closely examined.

While the true origins of modern policing are somewhat murky, all contemporary scholarship seems to agree “any account of modern police that attributes its emergence to a single idea, person, or legislative enactment founders at once on the weight of empirical evidence that demonstrates continuity more than rupture” (Finnane, in Knepper and Johansen, 457). So while it may appear that Peel and his Metropolitan Police provided a model for police, it did not emerge as a single institution or idea but rather through a ‘proliferation of discourse’ related to the demands for security and order during a time of revolutionary change and rapid urban growth (Finnane, in Knepper and Johansen, 462).

Part of our problem in determining the original purpose of modern policing is that there are two competing accounts or historical interpretations where facts are either in dispute or have yet to be fully uncovered and thoroughly examined. And while the origins of policing may be in dispute, we can at least agree that it was not created by one person and in one particular year, but rather through the efforts of many over time. I argue that none is more important in this cast of characters who developed both the concept and actual institution of modern policing than Jeremy Bentham and his utilitarian philosophy. And it is this important fact that has been almost entirely overlooked, in the history of both philosophy and policing up until now.

4. The Metropolitan Police Act of 1829

Modern policing was not the product of a single piece of legislation in 1829. It evolved over time from a variety of sources. And while the Metropolitan Police Act “deserves its reputation as a landmark statute in police history”(Barrie, in Knepper and Johansen, 451), there are older pieces of legislation, some failed, and others successfully adopted by Parliament, that should be examined more closely. This will require broadening our lens back in time, so that other important steps in the creation of modern policing can also come into focus. This will hopefully provide us

with a clearer view and more contextualized look at this landmark legislation. Modern policing was anything but a seamless transition from old to new. As we shall see, accounts that credit Peel exclusively for the innovative legislation are oversimplified and, to that extent, inaccurate. (Barrie, in Knepper and Johansen, 451, 452).

And while it has been claimed police were an instrument of the ruling class (Barrie, in Kneppers and Johansen, 436), we will soon examine evidence that they were also of great benefit to the broader public welfare. Modern police were also instrumental in controlling crime, reigning in corruption, reducing the government's reliance on military force for purposes of law and order, and eliminating brutal forms of punishment. The era in which this institution emerged was also a time in which the services of police were extended outward from only those who could afford to pay to all others, financed entirely through public funds.

Modern policing arose as part of much broader legal and criminal justice reforms that took place in the late 18th and early 19th century, and there were many "social, demographic, intellectual, and civic influences behind the birth of modern policing" (Barrie, in Knepper and Johansen, 436). This thesis is primarily about the most significant intellectual influences on modern policing. It will also be an account that draws attention to the inaccuracies of the original whiggish story, for that account remains incomplete, not only in regard to modern policing's founder, but also in relation to its intended purposes and principles.

5. The 'Peelian Principles'

Perhaps the narrative that Peel created modern policing in 1829 is a convenient fiction, part of a simple explanation that is easy to understand. But it is not a very accurate story, because it only appeals to a small portion of the facts in regard to this topic under examination. And if this is

so, then what does it say about the principles named after Peel that form a central part of this story? The nine Peelian Principles of policing, said to be attributable to him but of unknown origin, has become for modern police, a mission statement of sorts (Loader, 427, 429).

The principles express both a purpose and overall approach for the profession. They amount to a brief and informal historical guide in the most general terms for police while instructing “cops and citizens what policing is for and how it is supposed to be conducted” (Loader, 427). But Peel himself is not the author of the so-called Peelian principles, which seem to have been written several decades after his death. Since that time the principles have become a cliché as part of a fictional narrative found in twentieth century policing textbooks (Loader, 429). While the principles may be inspired by the reforms Peel led there is no evidence that he was their author so perhaps it is best to describe them as an imaginative invention (Finnane, in Knepper and Johansen, 456).

Recent scholarship describes the Peelian Principles as reconstructions of earlier writings that were influentially adumbrated by police historian Charles Reith, before finding their way into popular accounts of American textbooks (Finnane, in Knepper and Johansen, 457). The principles have been interpreted in various ways, and whatever their origin, they describe the role of police in society, to prevent crime and maintain order using the least amount of force. We get a sense of what police reformers were up to from the very first principle. It tells us in the most general terms what police are for in civil society. “To prevent crime and disorder, as an alternative to their repression by military force and the severity of legal punishment” (Loader, 429).

The second principle basically tells police that their existence depends on public approval. Police should secure the willing cooperation of the public as the best way to attain the observance of laws, states a third. While I do not intend to cite all nine principles here, we can at least

appreciate the overall meaning of them in what has been described, in addition to one more. Principle four instructs police to avoid “the necessity of the use of force and compulsion for achieving police objectives” (Loader, 429), since avoiding the use of force is the best way to secure the cooperation of the public.

The Peelian principles are often cited in discussions involving attempts to describe what an ‘ethical police force’ is supposed to look like and how it should operate (capg.ca). They tell us that police should not act like a military with overly repressive tendencies, but rather should prevent crime and seek ways to avoid the use of force. However, as we have previously noted there is some ideological baggage attached to the history of policing. This interpretation arises at least in part from the mystique attached to Peel’s nine principles, but also perhaps from a more optimistic or whiggish account of police as an extension or expression of an enlightened and consensual form of self-governance (Finnane, in Knepper and Johansen, 462).

This is because Peel’s legislation in 1829, introducing modern policing to the world, was the culmination in a series of measures over decades tied to the incremental administrative and bureaucratic reforms of modern government. The older police histories present Peel’s legislation as a watershed moment in policing, whereas more contemporary accounts focus on the ideas of reformers in both Europe and Britain. Recent scholarship recognizes the vital role of this intellectual transfer throughout the evolution of modern police (Barrie, in Knepper and Johansen, 436). These more historically contextualized accounts of police reform connect them to much broader changes in the criminal justice system (Barrie, in Knepper and Johansen 436), inspired in large part by the ideas of the enlightenment. And this is where our story of Robert Peel and his principles, begins to transition toward Jeremy Bentham and his principles.

Having briefly discussed ‘modern policing’ and Robert Peel, the symbolic importance of the London Metropolitan Police and the Peelian principles, along with some recent scholarship weighing in on these topics, we realize that Peel is an important figure in this thesis. However, much of the discussion will be devoted to the works of Bentham. This will require us going back in time from Peel’s work in the 1820’s, so we can begin a discussion on crime and punishment in the late 18th Century, when Bentham began writing on the need to improve police.

I will now map out the remaining chapters of this thesis, in order to outline how I argue against Peel being considered the ‘founder’ of modern policing and for Bentham’s being given his proper due (chapters 2-5), before concluding in chapter six.

6. An Investigation into the Origins of Modern Policing

6.1 Chapter Two - The Problem

Chapter two begins by exploring the widespread political and social upheaval taking place during Bentham’s time. Such upheaval exacerbated existing problems related to inadequate policing and high levels of crime and their relation to widespread cruelty in punishment that became a central feature of England’s criminal justice system. So this chapter will be devoted to exposing such problems with the old system of police that became apparent to Bentham and other police reformers decades before Peel’s time in office. Reformers worked on improving laws pertaining to criminal justice for years and had come to realize that all the benefits from this approach “would be lost unless something was done about its enforcement” (Hurd, 78).

Bentham was a leading advocate of improving the police by imposing central control over their activities, rather than continuing with the centuries old custom of local ‘de-centralized’ control. This old approach to policing increasingly led to problems involving a lack of

coordination, minimal authority, little uniformity or predictability in the enforcement of laws, and high levels of corruption among police. From a lack of a preventative police came the need to maintain a cruel system of punishment that many in power mistakenly believed was best for maintaining order and deterring criminals. Utilitarian reformers worked over decades providing a template for an improved system of police with a focus on prevention to ameliorate the harm of England's bloody code.

In chapter two we also discuss another major problem with the old police. During times of public disturbances, which were fairly common in this time of social and political upheaval, police were ineffective at maintaining public order (Hurd, 16). With a new and improved police, not only could crimes be more effectively prevented, and punishment avoided, but the effects from riots and disturbances could be reduced or eliminated and military force would not need to be used against civilians. This is what happened in 1780, the year in which Bentham wrote one of his most famous works and the Gordon Riots produced one of the more deadly clashes of the time, when a military response left over two hundred people dead (Lee, 165).

For utilitarian reformers, police were meant to be part of a way for avoiding harsh punishments and for preventing crime and disorder, and they worked by way of sweeping institutional reform to remedy such problems (Lee, 204). But this was not just about correcting the failures of the old system of police as a necessary step toward improved criminal justice. It was also part of "long-term transformations of the local state and the changing social outlook and administrative philosophy that prioritized, among other things, preventative policing" (Knepper and Johansen, 451). And as we shall see, Bentham not only wrote about improving the structure and purpose for police, but also worked on improving their ways by emphasizing less coercive and more preventive techniques.

While chapter two focuses on the problems of the old police and their relation to high crime rates and cruel punishments, chapter three discusses how Bentham tried to provide a remedy using utilitarian ‘principles as devices’ for a new system of policing (Sen and Williams, 15).

6.2 Chapter Three - The Solution

Chapter three explores Bentham’s influential political treatise *An Introduction to the Principles of Morals and Legislation*, written in 1780. Bentham ‘seethed’ at the amount of senseless cruelty in England’s criminal justice system, long referred to as The Bloody Code (Crimmins, in Koritansky, 156). Bentham wrote about the need to reform both laws and legal practices while attempting to provide a moral foundation for both, based on his utilitarian principles. As part of this seminal work, Bentham also wrote that a government should have a branch of civilian, professional, preventive police to address crime and disorder, set apart from the military (Bentham, IPML, 198).

In addition to uncovering the original foundation or structure of modern policing involving the primacy of prevention over detection, I will also explain how Bentham’s essay *Indirect Legislation* provided various techniques and approaches for preventing crime. This chapter will also review some of his other early works related to the improvement of police and the avoidance of punishment. For Bentham, this project was like so many of his attempts at improving government, in that he focused on applying his utilitarian ideas to its structures, through a variety of legal, administrative and bureaucratic reforms (Hume, 12).

I will also review how Bentham ‘operationalized’ his utilitarian principles and applied them to government and legal reforms for the improvement of police. Chapter three concludes with a discussion of the ambitiousness of utilitarianism, in regard to reforms that were justified by

principles and rules for dealing with practical problems in society (Sen and Williams, 1). This discussion will enable me to explain how Bentham created the earliest model for a modern police department when he drafted legislation in 1800 that created a river police for London.

6.3 Chapter Four - The River Police of 1800.

According to the argument of Chapter three, it was Bentham who first wrote about establishing a new branch of central government for the prevention of crime, distinct from a military, as part of an effort to ameliorate the harm of a brutal and ineffective system of justice. Chapter four will build on these findings by examining some of the earliest bills on police reform that he drafted for London while at the same time corresponding with those in power as part of his advocacy for change. Bentham also helped write one of the earliest attempts at comprehensive police reform with the Reeves - MacDonald Bill of 1785, which failed to pass in Parliament.

However in 1800 Bentham and another utilitarian reformer named Patrick Colquhoun successfully drafted legislation creating the first modern police department for London along a stretch of the Thames river. In chapter four we also discuss a second bill drafted by Bentham at roughly the same time, legislation meant for creating modern police for all of London, that failed to pass in parliament. Fifteen years after attempting to advance a police reform for all of London in the Reeves-MacDonald Bill, Bentham made a second attempt in 1800, and had to settle for a preventative police along a small yet important stretch of the Thames River. But as we discover in chapter five, Bentham continued working to advance new policing for England and would finally get some vital assistance in the form of a powerful young politician who was sympathetic with his reforms.

6.4 Chapter Five - The London Metropolitan Police

After completing a small-scale model for modern policing in the Thames River Police, while at the same time providing detailed plans for expanding these activities to all of London, Bentham continued advocating for reform. He did this through a variety of works and by corresponding with influential politicians, some of whom occasionally turned to him for advice. One of these individuals as it turns out, was a young Home Secretary named Peel. In chapter five, we discuss Bentham's growing fame and influence on British politics and the sweeping social and legal reforms that he led at the start of the 19th century. We will also examine some of Bentham's written works over this time and their relevance to his ongoing effort at police reform.

6.5 Chapter Six - A Summary and Conclusion

In chapter six, I summarize the evidence in support of my thesis. In addition, I reply to an anticipated objection that policing was created as a form of repressive social control involving class dominance, and not for the prevention of crime and the overall well-being of society. By then, it should be clear that modern policing was not created by Robert Peel to control society but was instead an outcome of decades of utilitarian reforms led by Jeremy Bentham. If this is understood, any account of modern policing in which Bentham's central role is not fully considered will remain hopelessly incomplete.

CH 2. The Problems With England's Old Police

1. Introduction

What is the purpose of police? For the utilitarian reformers influenced by Bentham, the purpose of police was to provide public safety by preventing crime rather than by punishing, since this would involve less suffering and coercion. In their attempt at ameliorating the harm of what they considered was a brutal and antiquated system of criminal justice, reformers were not only interested in changing those laws police would be tasked to enforce. They also wanted to change the ways in which police applied or enforced the law, with an emphasis on prevention, uniform and impartial administration and increased professionalism, by overhauling an ancient police system (Campesi, 187).

In this chapter I argue that 'new' or 'modern' police were an improvement over the old. Much of the evidence for this claim will be found by exploring some of the most significant problems associated with the older type of policing, before modern policing was introduced to England in the early nineteenth century. One of the first problems with the old police was that the laws were being enforced and applied, in a haphazard manner by a mixture of volunteers and amateurs. There were relatively few professional police, and the inconsistent arrangements from this time were ineffective at preventing crime (Reynolds, 69).

A second problem with the old police was found in the payment and fee system, a mix of public and private funding which meant that victims often had to pay for their own prosecutions. This payment system for police was the result of an inadequate public funding arrangement that was augmented with private fees and rewards paid to officers for arresting criminals and recovering stolen property. Under the 'old' system of police, with its faulty compensation scheme, police specialized in detection, allowing corruption to thrive and street crime to increase (Sklansky,

1198). This was a system of criminal justice that did not give police an incentive to prevent crime, since their income depended directly on crimes being committed.

Part of the argument in this chapter hinges on a discussion of how these flaws with the old police and their inability to prevent crime, including episodes of mob violence, contributed to the maintenance of a brutal and ineffective punishment system. As discussed in the introduction, such flaws also led to an increased reliance on the use of military force against civilians to quell mob violence. For utilitarian reformers society was paying too high a price in a failed attempt to secure citizens from the effects of crime under the old locally controlled system of police. For police reformers such as Bentham and Patrick Colquhoun, who will be discussed in more detail in the next chapter, reducing these costs to society involved guarding against all sorts of mischief “at as cheap a rate as possible” (Bentham, IPML, 169). Bentham’s envisioned economy for policing was meant to reduce both the suffering and financial costs associated with both crime and punishment.

Part of the way to reduce these costs for society involved removing the arbitrariness and uncertainty involved in the administration of laws and punishment. For Bentham punishing in harsh and arbitrary ways was ineffective since it led to needless suffering and did little to deter. This lack of emphasis on prevention, combined with the lack of clarity and arbitrariness in the administration of justice was something that Bentham waged a lifelong battle against (Crimmins in Koritansky, 156). From Beccaria’s writings on crime and punishment in the mid-1760s, reformers such as Colquhoun and Bentham learned that a certain and more moderate punishment was better at preventing crime than something less certain and more severe (Reynolds, 69).

For Bentham, an improved police were supposed to play a vital role in pursuit of this goal. His idea was that making punishment more certain would not only allow it to become less harsh but would also contribute to the prevention of crime so the occasions for punishment could be

reduced. This is perhaps why Colquhoun claimed that the river police he was working on for London in the late 1790's was part of a 'great prevention system' that was "calculated to restrain than to punish" (Colquhoun, 72). For both reformers it seems, this was an attempt at designing a different model of social control, intended to be minimally coercive and less cruel.

I will now provide a brief account of the problems of crime and civil disorder during the last few decades prior to the development of modern police, with a focus on the political, economic, and social upheaval. After a brief discussion on crime and disorder, we will then explore some of the problems related to the old system of police in London under the control of local jurisdictions. A connection will then be made between the heavily flawed old system of policing that involved rampant corruption, with the problems related to high levels of crime, civil unrest, and the maintenance of England's 'bloody code' that reformers sought to eliminate.

2. Socio-Economic Pressures and Crime in London

Crime became so frequent in London and the surrounding area, that it routinely became a major theme of the King's yearly speeches in the 1750s (Reynolds, 49). It was during this time that secondhand shops and scrap metal dealers sprung up throughout London and provided a convenient way for criminals to make money in a seemingly effortless exchange of stolen goods. Colquhoun adopted the view that citizens, including children, were encouraged to become thieves and were especially prone to such behavior in times of hardship, as it was estimated there were three thousand receivers of stolen goods (Colquhoun 10).

Crimes such as theft and highway robbery increased over time while offenders were rarely brought to justice, often acting with impunity and in broad daylight. There was a rapid expansion of the roads around the London and other growing urban centers in what was described by

historians as ‘turn pike mania’ during the years 1750 and 1770 (Reynolds, 35). There was also evidence despite the lack of complete statistics, that property crime increased over time too. (Reynolds, 43) The police historian Clive Emsley wrote that the late 18th and early 19th century was considered to be the “golden age of gangsterdom in England with increasing menace of disorder” (Emsley, 4).

As Bentham had touched on in his *IPML* from 1780, and Colquhoun would write in his later work, fear and dread permeated society from increased criminality, especially with acts of violence and the threat of a draconian punishment by the state in response. All of the troubles in society stemming from crime, were viewed as interrelated ‘evils’ to Benthamite reformers (Bentham, *IPML*, 287). Others writing about the effects of crime in these closing years of the 18th century described approaching the capital after dark as a risky venture as robbery became increasingly common with the increased movement of people and goods. Colquhoun, who like Bentham, was against the severe punishment regime of the time, also wrote about how juries were less likely to convict when punishment was widely viewed as too severe. He claimed this would often lead to ‘overly merciful’ juries which acted to increase rates of recidivism and provided little deterrence to criminal behavior (Colquhoun, 2).

Matters were often made worse when circumstances led to drastic increases in crime in times of hardship such as during food shortages, or with sudden spikes unemployment caused by the discharge of sailors and soldiers onto the streets of London in between wars. Post-war crime waves were not uncommon during this time (Reynolds, 30). The urban population was exploding, municipal institutions were crumbling under the weight of increased pressure, and England was almost in a constant state of conflict, both at home and abroad (Hogue, 241). And there were still other problems that compounded these hardships.

Famine was also an issue, and on a number of occasions throughout the 1760s and 1770s, food that was already scarce became even more so due to a lack of supply and a steep increase in price. (Reynold, 30) Though statistics on crime were few and far between, it was determined that when England was at war and food prices were low, there were fewer indictments, and when England was at peace while experiencing higher food prices, there were more indictments (Reynolds, 20). Reformers were not blind to these early ‘environmental’ causes of crime most evident in the poorest parts of London.

So with little change to criminal laws, or improvement on how such laws were enforced, crime continued to increase. Criminal behavior was often fueled by mounting socio-economic pressures related to rapid urbanization, dramatic changes to industry and commerce, while compounded by a series of wars and the occasional famine. The problem of crime and its relation to the overly harsh and underperforming system of punishment, led increasingly to debates in the public and between government officials on how both crime and punishment could be reduced through the reform of laws, prisons and policing.

There is ample evidence that crime was an ongoing problem from print media sources, in letters of reformers and politicians, in a variety of books from this era, and among established and more recent historic accounts, (Reynolds, 30). And while this was a time when statistics on crime and punishment were selective or incomplete before they were more properly gathered and analyzed, the few that were collected seem to support this account of rising levels of crime combined with a widespread concern for individual safety and security (Hurd 105, 227). This was especially evident in relation to the increasingly crowded urban spaces springing up in towns and cities that were unaccustomed to such rapid growth .

3. Old Police Backed by Military Force

During the latter part of the 18th century and into the early part of the 19th century, a period of roughly sixty years, England had reached an almost continual state of war and colonial conflicts when not under the threat of invasion, revolution, or large-scale civil unrest. These were dangerous times both at home and abroad, in which social and political disturbances, including multi-day riots, became increasingly common. England was involved in the American Revolution, followed by the French revolutionary wars and the Napoleonic wars soon after. There was also the war of 1812, among other military conflicts and engagements.

In addition to the military conflicts abroad, there were internal conflicts at home. Violent protests and armed mobs airing their collective grievances, became a dangerous symptom during these times of hardship (Lee, 201). Without an effective police force, such incidents not only became more commonplace, but also more deadly, even though rioting may have increasingly become “a system of demands and responses between ruled and rulers” (Emsley, 5) It is also true that “political unrest in a country without a police force was a nightmare” (Hurd, 16). Throughout Europe, London had reached a point of infamy with its reputation for mob violence and riots in the decades before the introduction of modern policing (Hurd, 16). And until sweeping reforms were completed in 1829, the old police found themselves not only challenged by rising levels of crime, but also with preventing disorder and outright mayhem, which meant calling in the army.

Before modern policing came to London, authorities routinely called upon the military to quell disturbances among citizens, which often resulted in widespread death, injury and destruction. In 1780, sixty thousand people rampaged for three days in the anti-Catholic Gordon Riots, in which almost three hundred people were killed many of whom were killed by a heavy-handed military response. Twenty-five more individuals were sent to the gallows after peace had

been restored (Lee, 165). In addition to this, there were food riots in 1800, Luddite riots between the years 1811 and 1816, the Spafield riot of 1816, and the Peterloo massacre of 1819 (Lee, 201).

Local officials with the support of government maintained public order with military force because there were few if any other viable options. At least one thing was becoming clear from these series of violent occurrences that took place over several years. And that was the old police were incapable of preventing or quelling outbreaks of violence and disorder, which led to recurring catastrophic consequences (Emsley, 31). Before modern policing was developed, with its more limited use of force made possible by a properly trained and coordinated unarmed civilian body, power continued to be exercised through the “brute display of military force by a supreme authority” (Finnane, in Knepper and Johansen, 469). England it seems, was increasingly using the threat of military force to pacify an agitated civilian population whose overall suffering was becoming more palpable.

In the absence of a preventative and centrally controlled modern police, military barracks sprung up all over England in response to this national threat to public order and security. In 1792 there were only seventeen military barracks among the towns and cities of England however by 1805 there were a total of 168. During the first part of the 19th century there remained a general hostility and suspicion among the citizenry toward this increase in ‘military-style policing’ (Emsley, 45). Despite this, there continued to be a dramatic increase over these years in what has described by Emsley as the policing tasks of the army (Emsley, 45).

And the result of this increased militarized response to policing matters was an acceleration toward the increased use of state violence against citizens such as when the Yeomanry Cavalry Corps repeatedly appeared at riots which tended to exacerbate an already dangerous situation (Emsley, 47). Without a modern system of policing not only was crime difficult to prevent but so

too were riots (Hurd, 71). And since England prided itself as the ‘land of liberty’ where the “injured and oppressed seek protection without military power” (Emsley, 21), this approach by government became a case where the remedy to such problems was worse than the disease. In light of this, a regular system of *civilian* police, centrally controlled and better at preventing crime and disorder was increasingly viewed as less of a threat to English liberty than some had originally thought (Emsley, 32). Military barracks suddenly appearing everywhere seemed to have made people more receptive to police reform.

The new police that had been proposed for years by reformers, centrally controlled with a focus on prevention, was now being more seriously considered not just for crime prevention, but also for addressing the rising level of military occupation in England (Hurd, 38). This militarized approach to law and order was consistent with the approach of the old police because of their shared reactive response to problems of crime and disorder. Both did little in the form of prevention, causing governments to react in an overly harsh way *post factum*, typically after something occurred, which provided little security in society from either crime or mob violence.

Eventually, one of the goals of the new police, as a civilian branch of government set apart from the military, would be to manage and even tolerate some level of disturbances, rather than repress them with such brute military might (Hurd, 37). Few people had come up with the means of preventing or suppressing riots through the use of a civilian police force (Reynolds, 174). I will briefly note here, before moving on, that when Bentham began writing in *IPML* that a state should have a preventative police for dealing with all sorts of ‘mischief’ from ‘internal adversaries’ (Bentham, *IPML*, 198), this was meant to be a new civilian branch of government set apart from a military. The role of the military was supposed to be for dealing with threats from ‘external adversaries’ (Bentham, *IPML*, 200), and not for killing its own citizens. Until such a time

came to pass, the old police found themselves ill-equipped to stem the tide of crime, riots and the use of deadly military force, as local institutions began to show their age and overall inadequacy. Such problems involved the limitations and flaws that were made more apparent over time in regard to the old police, which we will now discuss in more detail.

4. The Problems of Old Police

4.1 A Mix of Amateurs and Professionals

Until the early 19th Century, policing in England had a long and proud history as one of the basic responsibilities of each local community, which relied on the voluntary support of local property owners. Before the full effects of the industrial revolution were felt, with the rapid growth in commerce and the sudden expansion of towns and cities, the ‘parochial’ parish-constable watch system, with its local contingent of amateur volunteers, seemed to be an adequate way of securing citizens from crime. Eventually, this tradition of kin-police, which was at the heart of the English style of policing, broke down and was deemed wholly inadequate in the face of the modern urban challenges unfolding during the late 18th and early 19th Century (Lee, 10).

In London and other larger towns there was a tradition of social control involving curfews, gates and walls where watchmen could bring criminals to wardens, police magistrates, or a mayor for punishment. The actions of those engaged in the execution of their office, including the act of punishing offenders, could be overly harsh and arbitrary, and justice was virtually unknown in cases where public officials abused their authority (Lee, 32, 33). The primary function of the watch authorities was a basic yet incomplete type of prevention in that they were simply tasked to “keep an eye out for trouble” (Sklansky, 1198), and then raise an alarm should any occur. In this

sense, such activities provided a simple and inadequate form of prevention providing little deterrence (Sklansky, 1198).

The old system of police, which depended on a patch work of amateur citizen-constables guided by established local custom and English common law, had survived in some form or another for over five hundred years. The localities ran themselves and were independent from one another, with the main units of governance during the 18th Century found in the parishes and counties. Before modern policing was introduced to England in the 19th Century, the policing functions for society, were rooted in such bodies (Emsley, 20). This was a time in which there was little oversight by the Crown over the daily activities of the local secular and church authorities (Hogue, 73).

The central authority of the Crown was more symbolic than actual. Such authority originally stemmed from an ancient writ system that had since been used to frame common law, some of which was turned into statutes (Hogue 76,211). These statutes were sporadically enforced by ‘royal sheriffs’ (Hogue, 137) whose reach was much more limited than that of local authorities. Common law and local custom, and oftentimes a confusing mix of the two, continued to prevail under the control of local authorities. However, as an agrarian centered society faded into the distance and was replaced with an economy of increased commerce and trade, merchants, artisans and other individuals previously duty bound to provide volunteer or stipendiary services, had little time for their role as citizen police.

The shortcomings of a locally controlled police were starting to become more evident as the English economy transitioned to industry, in which the rapid growth of towns and cities became a central feature. Some citizens with access to sufficient funds “hired deputies to serve in their place as ‘constables’ and ‘watchmen’” (Sklansky, 1198), deputies who typically could not find

any other employment (Sklansky, 1198). Outside London, the Sherriff of a county was an unpaid position from 1750 up until 1810, with the daily tasks of police taken up by the magistrates, with some constables and watchmen at their service.

With few exceptions all of these individuals were property owning ‘gentlemen’ (Emsley, 22). Not only were such ‘country-gentleman’ traditionally legislators, but they were also central in the administration of justice and represented the ‘old’ approach to law and order (Stephens, 20). Originally these offices came with much honor attached to them. However, at the end of the 18th century, much of the dignity associated with these public positions had been lost. What emerged over time has been described as a “motley collection of constables” (Emsley, 23,24), guided by the directives of local magistrates, all of whom were under compulsory appointments with little if any compensation (Emsley, 24).

While policing may have been amateur in principle, “the arrangements it produced were not necessarily unprofessional in their workings” (Kneppers and Johansen, 438). This is because certain parishes were able to pay some amount of money to their own local constables, increasingly turning some of them into semi-permanent positions. Such practices persisted from the mid-1700s until 1829, the period directly prior to the emergence of a unified and consolidated police system emerged for all of London (Reynolds, 270). And while the eighteenth and early nineteenth centuries were times of rapid growth in towns, manufacturing and commerce, such growth did not entail a corresponding growth of municipal institutions (Stephens, 65). So while England may have been undergoing a transformation, its local customs, including that of policing, remained in place with local elites protecting their own interests (Barrie, in Knepper and Johansen, 451).

This older and locally controlled system of police was better suited for earlier times when sparsely populated towns and parishes had a modest form of law enforcement with less demand to

control crime and few expectations from local inhabitants (Kneppers and Johansen, 443). However around the close of the eighteenth century, these municipal institutions in general, “were almost at their lowest point of decay” (Stephens, 99). For London, with a burgeoning population and increasing social upheaval, there was a lack of co-ordination among these outdated organizations resulting in a “hit and miss approach to policing in which much was left to hazard” (Emsley, 48). It is these problem involving a patchwork of local controlled and independent police bodies police with a lack of overall co-ordination to which I will now turn.

4.2 Arbitrary Enforcement, Limited Powers and Jurisdiction

In her book *Before The Bobbies*, Elaine Reynolds describes the debate over centralization and claims this was an attempt by government to provide more uniform services to all of London by eliminating many of the ‘regional differences’ associated with policing. Over time, variations arose among the constables, watchmen and magistrates, described as “legal peculiarities of varying jurisdictions” with little consistency in how laws were enforced (Reynolds, 29,37). The authority of watchmen descended from the local constable, who worked in concert with the local magistrate to secure their individual communities from crime. Throughout the late 1700s there were twenty-six wards in London (Emsley, 25), with no standard practices or procedures, among these disparate organizations (Reynolds, 163).

The frontiers, those boundaries and borders of the many London parishes and wards were in a confused state. Some frontiers rapidly expanded into new areas outside of traditional limits, and the watchmen did not aid one another or coordinate their activities outside of their jurisdictions. There were generally relatively few watchmen for larger or more populated areas, causing crime to increase over time (Reynolds, 17). For example, in Rutland County situated outside London, there were approximately seventy thousand inhabitants without a single

magistrate. In 1796, there were a total of 2656 magistrates in England, unequally distributed throughout the land (Emsley, 22).

In greater London, Westminster enjoyed a better system of policing, thanks in large part to the concentration of wealthy and powerful citizens who were able to pay small amounts for a night watch with unpaid constables acting as their supervisors. In the 1740s, other parishes that could afford such services, copied Westminster's night watch system (Reynolds, 6, 14). Yet there still remained parishes that were essentially unprotected. With a lack of accurate statistics from this time, it is difficult to estimate the levels of crime for various parts of London, yet it is equally difficult to believe that crime would not have migrated (Reynolds, 42) to those less protected neighborhoods (Lee, 182). And this meant the effects of criminal behavior were becoming more than just a local concern, as the problem of crime became 'increasingly complex' within the metropolis (Reynolds, 6). Eventually the old parishes were replaced with twelve wards established for the emerging metropolis of London, after decades of disorder and failure (Lee 99). By 1804, London had over two thousand parochial constables who were poorly organized, compensated and supervised working in a metropolis of approximately one million inhabitants (Lee, 186, 196).

Not only was there a lack of adequate public funds for policing, but in addition to this, there was a lack of overall direction with this older police system in London, which Emsley describes as the "patchiness of the watch and ward system" (Emsley, 60). Perhaps this is part of the reason that years later when he introduced the Metropolitan Police to London in 1829, Robert Peel commented on how the city had outgrown its police institutions. (Emsley, 60) Yet this was only part of the problem, as the old policing system depended in large part on a private fees and fines handed out by corrupt magistrates and constables whose financial interests were better served by detecting, not preventing crime.

So while police were increasingly viewed as professional, meaning they were being paid, it was only a relatively small amount of public funds that they were being paid with. Attached to this compensation scheme was a system of private fees that became the source of much corruption, and it is this problem that was prevalent among the old police that we will now explore.

4.3 Corrupt Cops and Private Fees (Detection over Prevention)

The Bow Street Runners was an early model of a professional and predominantly private police force. They established a reputation as the most capable and organized detectives for hire and were developed by the Fielding brothers, one of whom had been a playwright before later writing a popular treatise on policing. Beginning in the early 1750s, in a small part of London in which they operated, the Bow Street Runners showed how “crime could be reduced through quick and efficient detection” (Barrie, in Knepper and Johansen, 446). However this was only part of the overall solution to crime control since it was essentially an inadequate and partially funded public service supported by those who individuals could afford to pay. The Bow Street Runners were of limited service to the whole of London, and their detectives also proved how corruption thrived in a system of arrest for profit (Lee, 192) before more public funds were made available to employ police full time. And since the runners and other profiteers specialized in detection, they did little to prevent crime overall. In ten years between 1801 and 1811 in which they continued to operate, the population of London increased by 16 % while the rate of commitments to jails, prisons and hulks rose by 50% (Lee, 196).

From the mid-18th Century onward, the concept of preventative policing was being more widely discussed (Barrie, in Knepper and Johansen 450). However, the Bow Street Runners did not exemplify the type of crime control reformers sought. Because they specialized in detection, they did not engage in regular visible patrols for prevention. They limited their activities to the

investigation of crimes and the apprehension of offenders for a fee (Reynold, 46). Outside their own jurisdiction, crime continued to be a problem, and the Bow Street Runners had little effect overall on the prevention of crime for London (Lee, 196). This is because the primary function of the Bow Street Runners was reactive and not preventative in their approach to crime control, much like the constables and thief takers, a group of corrupt individuals we will get to shortly (Sklansky, 1200).

In the last half of the 18th Century, a more professional watch system began to develop supported by some increase in local tax rates (Reynold, 27). Reform of the system was viewed as necessary in response to rising crime rates on the streets of London, with regular patrols beginning to play a larger role in the shift toward a more narrowly defined and modern view of police (Reynolds, 29). However, before police came under the control of central government complete with more uniform and coordinated approaches to crime control, they continued to function under the disjointed control of independent localities. (Reynolds, 1).

Voluntary and duty-bound efforts continued to play a vital role in supporting law enforcement. However, this was a system increasingly inadequate in the prevention of crime, a circumstance that led to the gradual increase in the collection of taxes and fees, to pay for a more ‘professional’ type of watch. In 1776, the same year that transportation of prisoners to America ended and jails began to fill up as a result (Reynolds, 59), many London parishes continued to depend on “unpaid amateur officials or systems funded by voluntary subscription” (Reynolds, 43). Meanwhile, conditions inside English jails, prisons and hulks grew increasingly worse (Reynolds, 59).

Sheriffs, bailiffs and constables were the source of many complaints as a result of their poor behavior, and their slackness, and their offices increasingly fell into a state of disrepute.

Constables on patrol in the streets of London often profited from handing out fines, or not, enabling corruption to thrive. In this monetized system of justice, societies were formed to pool money meant for hiring watchmen and prosecutors before such services were considered a public good supported entirely through taxation (Reynolds, 71).

Until the introduction of modern policing, victims were generally responsible for the detection and prosecution of crimes (Reynolds, 71). While unpaid constables may have represented the old feudal way of policing communities, the Bow Street Runners and other ‘thief-takers’ who were paid to arrest suspects and recover stolen property, represented the market approach to criminal justice (Sklansky, 1199). This market approach to policing led to corruption with little time devoted to more substantial forms of prevention.

In this environment where money was exchanged in return for something only faintly resembling justice, corruption was commonplace, and ‘trading justices’ (as they became known), with magistrates and the police under their command, collected fees to provide much-needed services (Emsley, 25). With increases in crime, came a potential for increased profits. This is why the system of trading justices was deemed by reformers and others to be a prime source of inefficiency and corruption. And while there was an expansion of police for London under the parish watch system from 1792 onward with stipends introduced for magistrates, these measures did not seem to solve any problems as there continued to be an “alarming increase in crime” (Emsley, 48-50).

Magistrates and other local officials relied on patronage appointments for their jobs and in applying the laws of the land, including the poor laws, “they regulated such police as existed” (Stephens, 28). In these newly expanding and still locally controlled police offices corruption and profiteering remained a common feature in the last years before living wages were provided to

police for all of London. Before this time, low wages were paid to police and an authorized reward system developed while the act of framing or extorting citizens became an effective means of increasing one's pay (Emsley, 50). Constables, watchmen and private detectives were often dangerous to society, with practices such as 'blood money' in exchange for leniency becoming increasingly common practices (Lee, 211).

To make matters worse, "constables conspired with thieves and split rewards"(Emsley, 50) in exchange for recovering a victim's property, when not competing with other officers in a rivalry over the collection of private fees (Emsley, 50). Police historian Melville Lee wrote that "no part of government were as ignorant, corrupt and ineffective as the police". (Lee, 214) The old system of police created an environment for officers with no special aptitude, knowledge or experience. Without a formal hierarchy or structure, constables often neglected their oath of office and, without proper vetting or training, the moral character of personnel steadily declined (Lee, 113-115).

As a result of the private fee structure which evolved in support of policing efforts, we also see how a private-public funding scheme could become such a breeding ground for corrupt 'thief-takers'. On some occasions, they managed to capture criminals, but most often "they worked in unsavory coordination with the thieves they were supposed to 'take'" (Sklansky, 1199). So in an attempt to make police more professional by finding ways to compensate them more, these locally controlled bodies with a variety of funding systems also created an environment where corruption thrived among the old police of London.

This is why the Police Revenue Bill, which proposed a new police for all of London, contained provisions for a full-time salary and a minimum handling of money, with a hierarchy for supervision. This bill however, drafted by Bentham in 1800 with the help of Patrick Colquhoun, was rejected by parliament. Included in the proposed statute were limits set on the powers of police

in addition to a list of offences and disciplinary procedures (Reynolds, 149). These provisions for the prevention of crime by public officials, specifically related to policing, was part of Bentham's overall desire to prevent misrule or abuse of authority whenever possible (Reynolds, 97).

And while the Police Revenue bill failed, Colquhoun's and Bentham's more limited bill for policing the Thames River was successfully passed that same year in Parliament with similar anti-corruption measures to those contained in the much larger Police Revenue bill, such as a full-time salary, proper oversight, and strict limitations on the handling of money (Reynolds, 149). As we will see in more detail in chapter four, the river police were the first in England to be "financed entirely by public revenues" (Moore & Kelling, 52), essentially making them the first modern and centrally controlled police department for the prevention of crime. This was a small body whose activities were limited to a relatively small part of the metropolis while the rest of the city continued to rely on a fee structure that encouraged corruption and discouraged more effective crime prevention strategies.

Between 1816 and 1828, the select committees in parliament examining the state of law enforcement repeatedly recommended improving the pay for police. This was so police would be "above temptation and do nothing mean" (Radzinowicz, 2). In 1829, when establishing the London Metropolitan Police, Robert Peel proposed this same measure for improving the pay for his constables, taking a page out of Bentham and Colquhoun's playbook of 1800 it seems. Peel improved the pay for police, incorporated a code of discipline, restricted the financial arrangements, and established a clear chain of command for accountability all of which "he hoped would go some way toward reducing abuses and corruption" (Emsley, 60).

Meanwhile, the hulks, prisons, jails and ships that continued to transport prisoners to the colonies, remained filled to capacity. These problems, which were inherent in the old system of

policing due to a lack of central control and jurisdiction, arbitrary local law enforcement, and a lack of proper compensation which incentivized corruption resulted in a preference by government for harsh punishment. It is this relation between an inadequate and outdated system of policing and a perceived need to maintain England's bloody code that I will now discuss.

5. The Problems of Old Police and the Maintenance of a Bloody Code

In the eighteenth and early nineteenth century Government was extreme in the application of punishment in response to rising rates of crime, in large part due to the ineffective and inconsistent policing system that continue to operate under local control. Little value was placed on human life and the death penalty was unhesitatingly applied for relatively minor crimes, such as common theft, forgery or fraud. This 'bloody' or 'barbarous' code, as the criminal statutes became known, "vainly endeavored to supply the place of preventive police, by repressive measures that were expected to deter by virtue of their extreme severity" (Lee, 92). Reformers viewed the improvement of police as an important part of their plan to replace England's bloody code with milder punishment, because policing was deemed a "necessary corollary to such reforms" (Emsley, 59).

Before an effective civil power was established for preventing crime the level of insecurity to both persons and their property from criminal behavior was becoming more of a concern for citizens and authorities alike. To little effect, state and local governments responded to the problem of crime with more restrictive laws and brutal punishments. Under a mistaken belief that fear was required to deter (Reynolds, 69), came a threat of execution for a wide variety of common offenses and a justification for harsh punishment. And with this view came an expanded list of capital crimes offered up by legislators.

Many acts which would be considered low-level crimes in modern times, were not spared from a variety of brutal punishments meted out by local authorities tasked with policing their communities. Vagrants could be imprisoned under harsh conditions, whipped or branded and petty thieves, or could easily find themselves in the gallows. In 1760, there were twenty-nine death sentences handed down at Old Bailey, in London, and by 1770, the total for that year had grown to one hundred and fifty-one (Reynolds, 30). In addition to this, it was estimated that in the 1790s, there were an average of forty thousand arrests each year, half of which were for failing to pay one's debts (Colquhoun, 587).

The pioneering statistician and police reformer Patrick Colquhoun catalogued some of the 160 offences that could lead to a death sentence, a form of punishment viewed by reformers that defeated the purpose of any good law, which was to prevent crime (Colquhoun, 5,9). Colquhoun and other reformers believed that with such disproportional and ineffective punishments, "crimes and misdemeanors were ultimately attended with as much evil to the perpetrators as to the sufferers" (Colquhoun 14). Theft and other property crimes rose over time and so did the executions that accompanied such relatively minor crimes. And since death was so 'freely imposed' as a form of punishment, reformers such as Bentham and Colquhoun continued working on ways to reduce its use (Crimmins in Koritansky, 155), with the reform of police viewed as central to this cause.

Offenders found guilty of larceny above a certain amount could be sentenced to death and any family property confiscated from them. For larcenies involving lesser amounts, an individual could face whipping, harsh imprisonment conditions, or transportation to Botany Bay (Colquhoun, 14). Between the years 1805 and 1818, over two hundred prisoners were executed for forgery alone (Lee, 201). By 1822, just seven years before modern police was established for London,

England had a total of 223 capital offences compared with just six for France in that same year. It should be noted here that after Robert Peel became Home Secretary in 1822, he stated that a ‘vigorous’ preventative police was needed for addressing this problem of England’s bloody code (Emsley, 59,60).

Until the entire criminal justice system including police was reformed, jails remained filled, public executions were common, and transportation to the colonies continued unabated. Many convicts who may have been spared the gallows, spent years in the cramped and antiquated jails or in hulks - decommissioned Navy vessels moored along the Thames. The hulks were first viewed as a temporary solution to overcrowded jails and prisons. However, they eventually became a more permanent feature of the punishment landscape. Hulks were windowless and inhumane places without fresh air or natural light. Prisoners were cramped together, often forced to live for years in a bleak existence with minimal safety, food or water. There were no sewers, no bedding, and outbreaks of gaol fever and typhus were so common that more prisoners died each year while incarcerated in such places, than were killed by the gallows (Stephens, 106).

Men, women, and children were housed together with the mentally ill and the sick, regardless of whether they were being punished for theft, not paying a debt, or for committing crimes of violence (Stephens, 106). Most survived the experience and were released back into society. Between the years 1792 and 1799, it was estimated that over twenty-one thousand prisoners were released after serving time, all of whom were additionally disadvantaged after being removed from their friends, families and the labor pool (Colquhoun. 98). Stigmatized as convicts, they would likely have experience further difficulties acquiring employment and supporting themselves and their families. Many offenders returned to crime as a means of survival, undeterred by the threat of additional harsh treatment by the state or local authorities.

Many prisoners transported to the colonies died along the way from disease or struggled under the harsh conditions of servitude in a foreign land. Transportation was not an effective means of punishing because like so many other harsh forms of punishment, it did not work as a deterrent to crime (Colq. 210). Until transportation was abolished in the years after modern policing was established, a ‘frightful mortality’ continued to occur on the vessels taking prisoners to the colonies. Reformers such as Bentham opposed the established view of authorities that punishment such as transportation, hulks, and the gallows would deter criminals. Those reformers argued that this was nothing more than a fallacy, which over time proved to be an exceedingly cruel and futile pursuit in the name of security (Lee 207).

At the heart of the reformers’ criticism was the view that harsh punishment did not prevent crime and must be made more certain so that it could be made more moderate (Colquhoun, 23). Crimmins describes this system of punishment apart from the gallows as the “cesspits of existing jails and hulks and the horrific experiment at Botany Bay” (Crimmins in Koritansky, 162). Reformers advocated for a milder system of punishment in which the improvement of police was meant to play a vital role, so that when citizens were punished, they would only be deprived of their liberty, and not their life or health (Crimmins in Koritansky, 162). And if punishment was going to be made milder and more effective, an improved police were supposed to make it more certain, or likely.

6. Police Reform for a More Certain Punishment

Making punishment more likely for crimes which could not be prevented involved creating a vigilant and active police, one that would create an environment in which criminals believed they were “under surveillance and that their arrest is inevitable” (Reynold, 69). Under the old system of police, this was clearly not the case, as crimes continued to increase, and offenders were

right to believe their actions would likely go undetected or unpunished. As noted earlier in this chapter, along with improved criminal sanctions contained in law, reformers believed an improved system of police would increase the risk of detection, as part of a more complete and effective way to prevent crime. Through the improvement of police, a higher risk of being caught and punished could be established for offenders, so that any expected gains resulting from criminal behaviour could be reduced to its lowest level or perhaps eliminated altogether (Schofield, 49).

Part of this approach for making punishment more certain and predictable, involved better methods and an improved structure for police, all of which reformers thought might go a long way in preventing the escape of criminals after the commission of an offence. Ideally this approach to preventing escape would involve a proper force whose activities would include sharing information about known offenders and existing patterns of crime while coordinating their activities in response. The Fielding brothers had first attempted this with their Bow Street Runners with limited effect, because they said escape could not be prevented from the lack of a proper force (Emsley, 27). In addition, a Fielding proposal for the sharing of information on criminals in the 1770's was never fully implemented (Emsley, 28).

In the last remaining decades of the eighteenth century, the Fielding brothers also believed that robberies and other crimes were steadily increasing in large part because of the “separated and consequently weakened state of civil power and want of proper force to prevent escape” (Emsley, 27). This argument would continue to be used for police reform well into the next century. In the 1820s it was Benthamite police reformer Edwin Chadwick who insisted that a preventative police coordinate their activities to diminish the chance of escape which would then reduce the motive of potential criminals (Reynolds, 152). Until this time, harsh punishments were left in place instead of addressing the problems inherent in the old system of policing.

7. Conclusion

In this chapter I have argued that the development of modern policing was in response to the problems that became evident to reformers over time in regard to the old police. First and foremost among these problems was that they were ineffective at preventing crime and disorder during a period of rapid urbanization and social upheaval. Police reform was meant to reduce instances of crime and violent disturbances involving large crowds. It was also for reducing the state's reliance on military force against civilians and for avoiding "martial law by puritan zealots" (Lee, 31). In response to these problems came a call for different methods of social control and a new approach to policing.

Before modern policing was established, police were volunteers, mostly amateur and duty bound. Some were paid a small stipend in exchange for their services. As discussed, there were problems in regard to arbitrary enforcement, a lack of co-ordination and limited jurisdictions for the old locally controlled police. The old system of policing was bad at preventing escape, had little ability to deter criminals and did not provide a *wholly* public service in a uniform and impartial manner. Inadequate financing under the old police led to insurmountable problems courtesy of a highly flawed public and private funding scheme, that encouraged corrupt practices and worked in opposition to crime prevention.

We know that one of the central features in this old system of policing was detection for profit. So when crimes occurred money was made. If more crimes occurred more profits could be made, and this provided perverse incentives for police with little interest in reducing opportunities for crime. Early efforts to increase the pay of police were meant to eradicate blood money offered to both informants and corrupt officers and to replace private forms of justice for only those with

funds with a public form of justice. Meanwhile in the absence of police reform meant to address such problems, cruel punishments continued.

Reformers believed that with a new and improved police there would be no need for the barbarous code and security would ideally be provided to all in a more reasonable, preventive and predictable way. Colquhoun expressed these sentiments when he wrote that new police were meant to replace the “instruments of oppression in many instances” (Colquhoun, 108). The prevention of crime was envisioned as mitigating “the severity of criminal law” while preventing abuses by police “in the exercise of it” (Hurd, 74). The purpose of police as Bentham and Colquhoun saw it, was to prevent crime so that its effects on the lives of citizens would be minimized and the instances and demands for punishment could be reduced (Reynolds, 91).

But what was central about the role of police as envisioned by the reformers was that they were meant to be an integral part in a “system of precautions to prevent crimes” (Reynolds, 163) with less coercion, so as to effect a punishment made more certain, predictable and modest, by replacing the bloody code with something more humane. The purpose of police for reformers who highlighted the problems of the old system before enacting change, was to establish a more reasonable and effective way of securing citizens from the effects of crime and for avoiding punishment and the use of military force. The improvement of police was tied to a need to ameliorate the harm of an overly harsh system of criminal justice and was meant to be done in large part by establishing the primacy of prevention over detection.

For Bentham police reform meant developing a centrally controlled civilian body that he referred to as ‘preventative police’ meant to be set apart from a military. He began writing on this topic in 1780 and continued to form his ideas on policing in other early works, which becomes the focus of our next chapter

CH. 3 Bentham's Early Vision for Police

1. Introduction

In this chapter I examine some of Bentham's earliest works beginning in 1776 and continuing into the early 1780s, in order to set the context for police reform and the emergence of modern policing. By the end of this chapter, I intend to show that his police reforms were ultimately in service to the utilitarian greatest-happiness principle first set out in those early works. Bentham operationalized his utilitarianism, which entailed the practical application of principles from his theory. It was this process that helped to create modern policing in the decades just before he began working with Patrick Colquhoun on the river police for London; this work, will be the focus of the next chapter.

In the previous chapter we explored the problems of the old locally controlled police, including their lack of ability to prevent crime. For Bentham, working toward the improvement of police was part of a broader crime prevention strategy for reducing the harmful effects such as the pain and suffering from both crime and punishment. From the previous chapter, we learned that demands by reformers for the improvement of police occurred after years where too much suffering in society had resulted from crime and the institutional management thereof. Much of this suffering was avoidable, and was disproportionately felt as is often the case, by the poor who engaged in criminal activity as a means of subsistence and survival. With a humanist approach to these real-world problems, supported by evidence for validating their ethical positions and with a primary concern to alleviate suffering (Taylor in Sen and Williams, 129), utilitarians began transforming police from something old into something new. This chapter will be dedicated to revealing how Bentham planned to accomplish this goal. We will explore how he and others went about creating a plan for modern police using his utilitarian system of ethics as justification for sweeping changes. Bentham's system was also instrumental in providing specific ideas and overall

guidance for remedying many of the problems found in the old system of policing. We will begin as utilitarian reformers did, by starting with some basic principles at the heart of utilitarianism, as found in Bentham's earliest works. We will then seek out subordinate principles and rules used by him to guide police reformers over decades, in their attempt to improve an inadequate and ineffective institution.

In this chapter we discuss Bentham's impartial rational test and the ways he used it to measure and address failures of government, in terms of the overall disutility to society from the old system of police. He and his followers "conceived the revolutionary idea of judging existing social institutions by an impartial rational test, that of social utility, and did not hesitate to announce it in clear and unmistakable terms if they felt that many of these institutions had definitely failed to pass this test" (Harsanyi in Sen and Williams, 40). I argue that in attempting to remedy the old system of policing, Bentham became involved over decades in the operationalization of his utilitarian principle to improve England's police, after the old police failed to pass the social utility test he applied to existing institutions (Crimmins in Koritansky, 139).

Over time this became familiar ground for him, because "it was the operationalization of the utilitarian principle that absorbed most of Bentham's energies" (Crimmins in Koritansky, 139). And while we will return to discuss the operationalization of the greatest-happiness principle in more detail, we should first start by examining the utilitarian principle itself. This will involve an examination of Bentham's earliest works and see how they may have set the tone for his approach to police reform.

2. A Fragment on Government

In the personal copy of his first book, *A Fragment on Government*, Bentham inserted a handwritten note that read “this was the very first publication by which men at large were invited to break loose from the trammels of authority and ancestor-wisdom on the field of law” (Harrison in Bentham, 6). In the introductory notes of the Burns and Hart edition for *A Fragment on Government*, Ross Harrison writes this was “a critical book, surveying the established and uncongenial world and determined to show how it might do better” (Harrison in Bentham’s Fragment, 6). Following this line of thought, Bentham would soon be advocating for improvements to policing in this general context. He would also go on to draft specific legislation on policing to show politicians and police alike, how they could do something better toward the prevention of both crime and punishment.

For Bentham, correcting laws and improving the old system of policing meant “reasoning from first principles rather than adopting the pile of rubbish of ancient authority” (Harrison in Bentham’s Fragment, 7). Along these lines he proposed to eradicate once and for all the vindictive principle in the system of punishment and he also proposed that “prevention shall be the sole end and object of a penal legislation” (Everette, p. 190-191). For Bentham, vindictiveness in punishing was backward looking, did little to deter and was linked to avoidable forms of suffering. Prevention for Bentham was consistent with a more forward-looking approach to punishment, meant to effectively deter, remove opportunities for crime and avoid needless suffering. For him, a new and improved ‘preventative police’ were meant to be a key component in accomplishing this fundamental goal of penal legislation.

Bentham also declared in *A Fragment on Government*, that the proper basis for any law, should be founded on a ‘fundamental axiom’ of providing the “greatest happiness of the greatest number”(Bowring in Bentham’s Constitutional Code, 6). This was the earliest use of the phrase

by him, which we explore in more detail shortly. For now let us discuss in a little more detail, some of Bentham's thoughts on police contained in his earliest works. In doing so we begin to uncover a connection he made between the need to modernize police and his ultimate utilitarian maxim, the greatest happiness principle.

“As to the police” Bentham wrote in his *Principles of Penal Law*, “it is necessarily in an extreme degree debilitated by the corrupt state of the subordinate class of public functionaries”(Principles of Penal Legislation, 494). In response to the problems with the existing system of police, Bentham proposed various remedies for improving them. In 1780, he first wrote in *An Introduction to the Principles of Morals and Legislation*, about the need for a central state to establish a civilian body that would be entirely professional. Bentham referred to this new branch of government as ‘preventative police’ (*An Introduction to the Principles of Morals and Legislation* or IPML, 198).

3. The Greatest Happiness Principle

Before exploring how Bentham operationalized the greatest-happiness principle for the improvement of policing, we should first briefly discuss the principle itself in more detail. As we learned near the beginning of this chapter, in 1776 he first wrote in *A Fragment on Government*, that law should be founded on the ‘fundamental axiom’ of providing the “greatest happiness of the greatest number”(Constitutional Code, 6). Bentham eventually amended this principle because he became aware of a problem in the formulation, later removing “of the greatest number” so that it simply became the “greatest happiness principle” (Crimmins in Koritansky, 138).

Bentham explained that his principle of utility was essentially an ‘act of mind’ regarding a sentiment of right or wrong (IPML, 12). Both individual actions and those of government could

be judged right or wrong in relation to their tendency “to produce benefit, advantage, pleasure, good or happiness” (IPML, 12). It was also incumbent on each individual or government body as a whole, to “prevent the happening of mischief, pain, evil or unhappiness” (IPML, 12). Ethics for Bentham was the ‘art’ of directing individuals to produce the “the greatest possible quantity of happiness, on the part of those whose interest is in view” (IPML, 282). Bentham’s instructions to legislators in particular was that they were to do what was conducive for the “happiness of the whole community” (IPML, 293). While this principle seems relatively straightforward, there are complexities that often occur when attempting to follow these general guidelines in all situations. And in addition to these problems related to the everyday application of utilitarianism, there are difficulties that arise in regard to its interpretation.

Throughout his letters and works, Bentham also used the term ‘aggregate’ in regard to this notion of greatest happiness. Aggregationism as R.M. Hare calls what Bentham may have meant by his principle in an essay titled *A Utilitarian Approach*, “implies that we should ignore the distribution of the welfare that we are bringing about, and simply maximize its total sum in aggregate” (Hare in Kuhse and Singer, 87). Hare explains further. “That is, if one outcome will produce more welfare, but distribute it unevenly, and another will produce less, but distribute it more equally, it is, according to aggregationism, the first outcome that we ought to choose” (Hare in Kuhse and Singer, 87).

But there are other issues with this account that should briefly be addressed before going further, because even after he realized the problem with the earlier versions of his principle and developed a modified version in the greatest happiness principle, Bentham continued to use “ the greatest happiness of the greatest number”(Harris in Fragment, 3), throughout his long life. And that could be, at least in part it seems, due to Bentham’s often ambiguous use of words and phrases

Hanna Fenichel Pitkin refers to this pattern in his work as ‘Benthamite ambiguity’ (Pitkin, 107,108). And this occasional yet problematic lack of clarity or exactness by Bentham, leads to the problem contained within the formulation of his most famous dictum. This problem is described by game theorists in the following terms: “his greatest happiness principle is inherently flawed and infinitely ambiguous because it constitutes a ‘pseudo-maximum problem’ attempting to maximize two or more functions at once. Such a principle, taken literally, is self-contradictory” (Pitkin, 107).

So while Bentham may have been troubled by the exact meaning of his fundamental axiom and tinkered with it over time, he did seem to imply that a wide distribution in the aggregate, “will create more happiness than a narrow one” (Pitkin, 109). Needless to say, much more could be said at this time on the problems related to the greatest-happiness principle, that we will have to forego. That is because our discussion will begin to transition from attempting to develop a more accurate read on the greatest happiness principle itself, to a more detailed account of how this abstract notion was put into practice to create modern policing.

In wielding the greatest-happiness principle both as both a starting point for his formulations and an end goal for his reforms, Bentham turned his focus to existing government institutions. He wanted to radically alter the existing landscape of government institutions, guided by his principle of utility. Bentham believed significant change “should come at the national level, because it was there that the effectiveness of the ‘greatest happiness principle’ would be most assured” (Terrill, 50). Bentham turned an eye toward cruel punishments, high rates of crime, and ineffective policing, and began to dwell on the lack of universal security in society (O’Sullivan and Fuller, 241). He wrote about all of this in his monumental treatise, *An Introduction to the Principles of Morals and Legislation*, which I will now discuss.

4. IPML and Bentham's Vision for Modern Police

To avert the evils of coercion, apprehension, punishment, and victimization involving 'internal adversaries' as Bentham referred to offenders, many expedients would be required, prior to the commission or discovery of criminal acts (IPML, 287). Such expedients were meant to be part of the design in a much broader system of prevention, that would also include an improved ability to take more effective action after a crime had occurred, a process in law enforcement called detection. Bentham described detection as something that occurred after knowledge of an 'obnoxious act' was obtained "by someone who is disposed to make an agent suffer for it" (IPML, 148). Long before the formal study of police science and criminology, Bentham was busy analyzing the role of law enforcement in society, closely examining what police did and how their actions were tied to prevention, detection and punishment. In many of his earliest writings, we see good evidence of Bentham's obsession on the improvement of social controls for the avoidance of suffering.

Bentham argued that an improved ability to detect crimes, leads to an enhanced ability to prevent them by decreasing the temptation of criminals (and potential criminals), who would fear being caught and punished (IPML, 138). For Bentham, government's response to a crime after it had occurred, a process involving detection, prosecution and punishment, became synonymous with justice. "The functions of justice, and those of the police, must be apt in many points to run into another: especially as the business would be very badly managed if the same persons, whose more particular duty it is to act as officers of the police, were not upon occasion to act in the capacity as officers of justice" (IPML, 198). Bentham was combining the two general roles for police, that of prevention and detection, and advocating that such efforts should be better controlled and coordinated under the direction of a single branch of government.

Policing for Bentham was primarily a vast exercise in prevention which included those operations and instruments of government for averting mischief, “such as may be applied before the discovery of any mischievous design in particular” (IPML, 198). For the first time in history, policing was being studied and judged for its overall utility. And in his early works, Bentham made it clear what the purpose for police was in a society, and ultimately, how they would operate. This was all part of an explanation involving such instruments of government - police, and “the way operations should be performed” (IPML, 197), that involved his philosophical approach to the problem of crime and punishment.

Bentham’s view was that policing should be either for averting mischief from a community, “or to make an additional sum of positive good” (IPML, 197), all of which should be “conformable to the Principle of Utility” (IPML, 197). For Bentham, a new and improved system of policing would be shaped by his utilitarian principle, and he was making it clear that it would be in service to the greatest happiness principle. While these were guidelines of the most general kind, there was much more detail to follow.

Such instruments and operations as part of government should include his proposed preventative branch of police, Bentham wrote. (IPML, 198) In advocating for legislators to establish this entirely new branch of government as vital for the prevention of crime, Bentham was also advancing a more specific purpose for police along with a specific structure of central control. With a general, yet more narrowly defined purpose for police, came a general yet more explicit type of structure for coordinating the efforts of police for purposes of promoting national felicity. This was in opposition to the old system of police, which had been traditionally used primarily in pursuit of local and business interests (Reynolds, 77) and not for adding to the overall sum of good in society.

Up until this point in time, the word police which is of Greek extraction and was introduced to Britain through its French usage, remained a vague notion “too multifarious to be susceptible of any single definition”, as Bentham wrote (IPML, 198). So in 1780 he began establishing a more precise definition of police based on its core function for the prevention of both crime and punishment. Bentham claimed that language often marked the progress of ideas, and that as long as anyone could remember, departments such as the military and justice had been given proper names. However, “the power which occupies itself in preventing mischief, not till lately, and that but a loose one, the police: for the power which takes for its object the introduction of a positive good, no particular name, however inadequate, seems yet to have been devised” (IPML, 198). The word police at this time, was not even in common usage, and the proper role of any organization deserving of the name had yet to be established.

So for Bentham, the object for police in the most general terms, was to establish and maintain a ‘positive good’ for society, primarily through the prevention of crime. In his treatise of 1780 Bentham recommended combining two general roles of police, that of preventing calamities and that of preventing crimes under one title, because the two purposes would often combine as he saw it. He wanted the head of police to be aligned in purpose with that of individual officers whose overall goal was in “promoting in a positive way the increase of the national felicity, or of that which employs itself in the management of the public wealth” (IPML, 198).

This new organization, primarily for reducing the overall mischief to society caused by internal adversaries was to be distinguished from the military, whose purpose would be for addressing threats from external adversaries (IPML, 198). Bentham’s ‘modern’ police then, were meant to be a branch of government comprised of civilians, completely separate from any military body. He wanted to avoid a more militarized-centrally controlled police, as was found in other

countries such as France around this time. “It is from abroad that those pernicious enterprises are most apt to originate, which come backed with a greater quantity of physical force than the persons who are in a more particular sense the officers of justice are wont to have at their command” (IPML, 199). So in summary, Bentham’s view was that police should be a civilian body of preventative professionals who would also be officers of justice using less coercive measures, primarily for purposes of increasing national felicity.

For Bentham, the military involved the use of too much force for domestic purposes and was meant be used against external adversaries, rather than internal adversaries such as criminals or unruly mobs. Since the military was reactive in nature responding to problems after they become apparent typically in a heavy-handed way, Bentham wanted an all-civilian body for purposes of law and order with improved methods. This would primarily involve police increasing their emphasis on preventing crimes and calamities but would also include more effective methods for the detection of criminals too.

At this early stage of modern policing, Bentham was developing an updated role for law enforcement in society and linking this to a variety of issues pertaining to penal law, including how a state could do more to address the interconnected problems of too much crime and severe punishment. He proposed “conferring on a particular class of persons, powers to be exercised for the good of society and prescribing duties” (IPML, 307). And while specific duties under the control of a central government had yet to be prescribed for police by Bentham or others, this general framework was visionary, nonetheless. This is because in 1780, Bentham was providing a plan with all the essential elements that would later come to define modern policing under Robert Peel in 1829.

But there was still a crucial part of this plan that was missing, the last basic building block that would be essential in the transformation from old to new police, and that was an adequate and wholly public funding scheme. This lack of public funds and the problems it created for policing was discussed in the previous chapter. Reformers believed that the problems of corruption and lack of skill and professionalism in policing, could be solved by transforming law enforcement into a *wholly* public service by providing sufficient government funding. This would also serve one of the other aims of justice in a utilitarian way, by providing a more equal provision or distribution of security in society. Without a method of paying for these proposed improvements, any advantages sought in a new approach to policing, such as increased efforts at prevention and improved coordination under central control, would be lost from inadequate government funding.

That is why Bentham wrote in *IPML* about the need for funding a ‘new’ system of police entirely (not just partially) through taxation, so that more equity could be attained in relation to the services they provided. The source of funds for these ‘instruments’ of government, “must be taken out of the whole number of persons that are in the community, that is, out of the total population of the state” (IPML, 199). So over several pages of his treatise, Bentham advanced the idea for a public police force set apart from any ‘public military force’, a new branch of state under the ‘head of police’ wholly funded by public taxation for the prevention of crime and the promotion of ‘national felicity’(IPML, 199). Not only did he provide the broad outlines for both the structure and purpose of modern police, but he also wrote at this early stage about a list of specific offenses against the preventive police (IPML, 200). This included provisions against impeding or misdirecting “the operations of that power which is employed in guarding against mischiefs” (IPML, 200).

However, Bentham was also attempting to strike a balance between precautions against fellow citizens, and precautions for the criminal behavior of ‘public functionaries’ with his ‘securities against misrule’. So in service to this goal of preventing all sorts of misrule by government, Bentham provided those directing the efforts of police with offenses for officials who might otherwise “impede or misapply, the operations of those powers that are employed” (IPML, 200) or when such powers are not used for augmenting the “stock of public happiness” (IPML, 201). This was Bentham’s early attempt at emphasizing that government power in whatever form it takes must be for improving the general welfare and not for limited special interests or corrupt purposes. This was a constant feature of his sweeping reforms and consistent with his utilitarian principles.

Bentham wrote these general statements on policing in just a few pages of an otherwise lengthy treatise on law and morality. But what little he wrote at this early stage, as we will soon discover in this chapter and others that follow, would be filled in with additional details in his subsequent works and in legislation he was involved with for the improvement of police. And while Bentham may have provided very little apart from a general outline for modern policing, along with a few vaguely worded offenses related to their abuse of power, this was only the first step in a more complete body of work on reform for making the old police into something more modern. The vision for an improved police was expressed in some of Bentham’s early works, with a variety of more detailed ways and means for attaining this goal that would soon follow.

Completed in 1780, Bentham would not publish *IPML* until 1789 (Terrill, 49), however he continued writing in more detail on crime prevention and on the improvement of police in other works during this time, which he also delayed in publishing. And while Bentham’s papers and manuscripts continued to accumulate, some of his work began circulating in fragments and in

manuscript form. His friends and associates were concerned that it would not be long “before others stole his best ideas”(Mack, 74). Yet Bentham was said to be that rare form of writer, “with little pride in authorship” (Mack, 169).

Despite this fact, Bentham continued working for the improvement of police through his written works, that he hoped would act to influence both legislators and other reformers, no matter how his ideas spread outside of his small circle of friends and associates. He provided anyone interested in police reform with some basic details from a utilitarian standpoint, on how to structure, fund, and provide purpose for a new institution. For the most part, these were broad strokes, a general framework or outline with few details. But this lack of detail in Bentham’s writings on police would not always be so evident as it was in *IPML*.

There were other works which were meant to augment what little he may have written on the topic of policing at this early stage. And it is one of these works from 1782, to which we will now turn to, one with an increased focus on prevention, and in the context of which Bentham provides much more detail for police about their role in society, complete with concrete examples and specific methods.

5. Bentham’s Principles of Penal Legislation and Indirect Legislation

With increased focus on crime prevention and the use of less coercion, Bentham began filling in some of the details for improving police. While the broad outline for modern policing was provided in just a few pages of *IPML*, in *Principles of Penal Law*, he expanded in more detail the role of law enforcement in a utilitarian society (Terrill, 50,51), which was primarily for purposes of crime control. Bentham also provided some detail in addition to these general views so that his overly vague notions could be filled in with more concrete ideas.

Bentham argued that there were two general approaches to crime control. One method involved a moderate punishment and the other was through effective prevention (Terrill, 50,51). Punishment, just like penal police according to Bentham, was an evil “whatever shape it may assume” (P of PL, 390). For utilitarians, punishment always involved the intentional imposition of suffering that was justified only if it tended to reduce overall suffering. Punishment and the penal police who were vital for its proper application, were both viewed by Bentham as evil, even if they were sometimes deemed necessary. With more prevention, perhaps there could be less punishment, and an improved police would be vital to this approach. Contained within Bentham’s work *Principles of Penal Law* was an essay called *Indirect Legislation*, which was intended to provide a manual for his preventative police (Hume, 97). Writing in *Indirect Legislation*, he informed the wise administrator that all penal police was a choice between evils, and that anyone overseeing punishment should keep this balance in mind.

So for the sake of overall felicity, the maximum happiness that utilitarians pursued for society, police were supposed to play a role in reducing both the occasions of, and demand for, punishment. Direct legislation referred to the laws police enforced that were inextricably linked with some form of punishment. The prevention of crime for Bentham was a method best pursued primarily through ‘indirect legislation’, ways of preventing crime without punishment or coercion. Direct Legislation involved the use of penalties, sanctions and coercion. Indirect legislation referred to other methods, used to guide or persuade individuals from committing offenses without the use of coercion, while employing tactics for removing opportunities for crime.

The methods ranged from education to public information campaigns about crime and criminals and could also include better communication between police. Protections against fraud or forgery and bars on windows to prevent theft would all be considered forms of indirect legislation. These

less coercive and non-punitive measures described by Bentham could at times be supported by the threat of direct legislation involving sanctions or punishment, if required.

For police, indirect legislation would provide them and their overseers with improved methods, all of which would be in service to avoiding punishment and for the prevention of crime. If punishment was to be applied, Bentham instructed legislators that it ought to be done in a way that was certain and impartial, to be effected with the help of a preventive, professional and impartial police. With uncertain punishment came uncertain effects he warned, “where there is a possibility of escape, escape will be hoped for” (Principles of Penal Law or P of PL, 516). Bentham then attempted to devise a strategy using what he called ‘indirect legislation’ for preventing crime, so that problems of impunity, preventing escape, and any associated punishment following the commission of an offense, could be reduced to their lowest possible levels. An effective police Bentham was telling legislators, would take full advantage of these methods.

In part III of *Principles of Penal Legislation*, titled *Of Indirect Means of Preventing Crimes* (P of PL, 533) or *Indirect Legislation*, Bentham began with a general claim, followed by a question he would spend much of his life attempting to answer. “Some actions are hurtful: what ought to be done to prevent them?” In response to this question Bentham anticipated the typical reply from a legislator would be “prohibit such actions; punish them” (P of PL, 533), by means of ‘direct legislation’. Yet Bentham wanted to point out that before considering this typical approach, another way of ‘combatting offenses’ was to prevent them from occurring, involving “what may be called the indirect legislation” (P of PL, 533).

And while punishment on occasion would be required for “the prevention of a greater evil” (P of PL, 534), it could be avoided by preventing crime, through means of indirect legislation that police, and others were encouraged to use for purposes of crime control. Bentham considered all

aspect of penal justice, including the activities of any ‘penal police’ to be “a train of evils” (P of PL, 534). For him penal justice involved “evils in the threats and constraint of the law – evils in the pursuit of the accused, before the innocent can be distinguished from the guilty...” (P of PL, 534). The methods found in indirect legislation which police could appeal to as part of their array of tactics would be “without the character of punishment” (P of PL, 534). This would involve the use of methods that could act “either physically or morally upon the man in order to dispose him to obey the laws” (P of PL, 534), and would aid in removing any possible temptation to crime.

In cases when direct legislative methods and punishment failed or could be avoided altogether, indirect methods as Bentham described them, could be used with increased efficacy because they had “great advantage in point of gentleness” (P of PL, 534). This method was also viewed as preferable over the more typical approaches to crime control because it did not involve “a distant punishment, from which each one may hope to escape” (P of PL, 534). Bentham then went through a number of examples, of how crimes could be prevented, for purposes of avoiding punishment and any other ‘mischief’ related to the commission of an offence. And while Bentham’s elaborations included concrete examples of crime prevention strategies, they also described improved bureaucratic processes for police in regard to record keeping and communicating information to the public.

However indirect legislation could also include ‘educating’ and instructing’ citizens for purposes of cultivating more benevolence and ‘honor’ for society (P of PL, 538). Much more could be done to prevent crimes through the ‘power of education’ wrote Bentham, education provided by government, “by means of the domestic magistrate” (P of PL, 569). In writing these instructions for magistrates, Bentham was fully aware that the activities of police, were most often under their control.

Bentham stated that there were ways in which the ‘power of injuring’ could be avoided by excluding “the instruments of the offense” (P of PL, 534.) Bentham then gave some concrete examples of the instruments he was referring to such as the ‘pocket pistol’ which could be easily concealed, in addition to such things as poisons, and gunpowder (P of PL, 534, 560). If government increased taxes on alcohol to make it more expensive there might be less inebriated people committing crimes under the influence (P of PL, 534). And while this advice was meant more for legislators than police, such actions were not meant to be viewed as independent measures because they were all connected to the overall goal of preventing crime through indirect means to avoid punishment.

Compound these suggestions with other measures both large and small overseen by government and the preventative police, and we begin to see the extent of Bentham’s vision, by way of his eye for detail on a whole wide range of topics related to crime and punishment. For instance, he recommended sending money cut in half through the mail in two separate envelopes, instead of one, making the interception of one envelope with half a note useless to criminals and the interception of both highly unlikely (P of PL, 536).

Mail carriers of the time were perceived as untrustworthy and ‘neglectful’ in regard to the mail in their possession, with theft a common occurrence, “until they had passengers to deliver too” (P. of PL, 556). So if potentially corrupt individuals were more closely watched Bentham seemed to suggest, the ‘mischief’ or harm stemming from their criminal behavior, including a need to punish them, could be reduced. While Bentham would later advocate for a free press as a means of overseeing the various activities of government in works such as *The Panopticon*, in this earlier work of his on indirect legislation and policing, Bentham advocated for the creation of “assemblies of citizens for government oversight” (P. of PL, 576). This was because Bentham was well aware

that mischief could be created by the actions of both private citizens and ‘public functionaries’ alike.

In establishing ways to reduce opportunities for crime by officials, contractors supplying government with services or materials would be unable to sit in parliament wrote Bentham (P. of PL, 536). Such preventative measures were devised so as to ensure that the “power of the tutelary motive should be made to exceed that of the seductive motive” (P. of PL, 538). There were also specific anti-corruption measures designed for keeping police on their best behavior. This was all part of what Bentham considered to be preventions against the ‘abuse of authority’, including police, who were given a certain “portion of their power” by government (P. of PL, 570). So indirect legislation could also be viewed he wrote, as ‘general precautions’ to prevent misconduct and abuse of authority, “of those who administer these offices either in chief or in subordination” (P. of PL, 570).

And such powers extending to police should not continue to be directed by local jurisdictions operating independently from one another in accordance with the customs of ‘ancient times’ but rather under one ‘head’ or ‘authority’ to exclude the arbitrary exercise of power. This would also be done through formal procedures for providing uniform and impartial service by police as part of an improved way to “direct the exercise of power by rules and forms”(P. of PL, 576). The head of police and any subordinate offices Bentham wrote, should “limit the causes with regard to which they are permitted to exercise certain powers” (P. of PL, 576) and determine “the formalities which with they shall exercise them” (P. of PL, 576).

Bentham also believed crime would decrease, the more the criminals and their behavior were known. “Everything which increases the facility of recognizing and finding individuals, adds to the general security” (P of PL, 557) he wrote. According to him, keeping records on crime and

offenders among the population “are the first materials of a good police” (P of PL, 557). This could improve their ability to identify and ‘detect’ criminal behavior and would also be for improving the “communication of intelligence with rapidity” (P of PL, 558). Offenses could be ‘arrested’ Bentham wrote, by simply publishing information on them. However he also cautioned government and any police employed by them against going too far in their attempt at preventing crime. “The police ought not be so minute or vexatious as to expose the subjects to find themselves in fault or vexed by numerous and difficult regulations” (P of PL, 557). And while temporary measures may at time be required in the fight against crime, Bentham warned that such ‘precautions’ employed in times of ‘danger and trouble’ “ought not to be continued in a period of quietness; as the regimen suited to disease ought not to be followed in a state of health” (P of PL, 557). He warned magistrates and the police serving under them “not to trespass on the liberty of individuals, so as to expose innocence to danger by his precipitate conclusions” (P of PL, 561).

The means of prevention were plentiful for government if it decided to incorporate such an approach to crime control and police would be central in this effort as Bentham saw it. This would include police diverting dangerous desires by encouraging more innocent amusements than cockfighting, for example, in the endeavor to reduce cruel desires more generally. Police would be more focused on “avoiding furnishing encouragements to crime” (P of PL, 539), such as could be done by patrolling and lighting dark alleys to dissuade robbers or locking doors to prevent theft. Police would also be more focused on facilitating knowledge of crimes and criminals to other officers and members of the public. This was part of establishing a more effective way for “recognizing and finding individuals” (P of PL, 539), for increasing “the difficulty of escape and delinquency” (P of PL, 539), and to “diminish the uncertainty of procedure and punishments” (P

of PL, 539). In addition, Bentham wanted more people, in the community, not just the police, to realize they had an ‘immediate interest’ in crime prevention (P of PL, 539).

He advocated anti-forgery measures and methods to combat fraud to make such crimes more difficult by making detection of the offense more likely (P of PL, 552, 560). Bentham also wanted rules to prevent price gauging and regulations of ‘weights and measures’ for merchants who sold goods to consumers, creating an environment in which a more honest exchange could take place (P of PL, 554,555). Police would be tasked with overseeing such operations and to ensure such rules and regulations were followed through a process of regular ‘inspection’.

Bentham discussed cruelty to animals as “the road to cruelty toward men” (P of PL, 560). He wrote that ‘cock fights’ should be banned and while killing certain animals was lawful, ‘tormenting them’ should not be allowed (P of PL, 562). He wanted police to be involved in guiding people away from such cruel activities toward more ‘innocent amusements’. These were not small matters to be trifled with by Bentham’s estimation. They were part of a much broader and more important theme that ran throughout his works. “The legislator ought to interdict everything which may serve to lead to cruelty”(P of PL, 562), he wrote before adding “the methods of accomplishing this deserves to be studied and made an object of the police” (P of PL, 562).

Criminal offenses for Bentham were “diseases in the body politic” (P of PL, 367) and his preventive approach, revealed most fully in his essay *Indirect legislation*, was the first remedy that he believed government should apply (P of PL, 367). These recommendations were meant to become practices ideally formalized in policy and rules, meant to guide both police and legislators toward a more preventative approach to the problems created by crime. Preventative police that would become a new branch of state, was supposed to play a central role in this overall effort. Regarding this new system of police ‘certain political writers’ Bentham complained, “who have

caught a glimpse of one or other of these methods, have flattered themselves that they have established a new science of which they have not even drawn the outline” (P of PL, 570). Bentham not only provided a basic outline for the improvement of police in *IPML*, but also added much more detail two years later in his work *Principles of Penal Legislation* and in his essay *Indirect Legislation*. He then seemed to admonish the English government for not doing better in regard to policing and for the prevention of crime, connecting these flaws to the maintenance of a cruel and ineffective system of punishment. “How noble an object of emulation for these tardy governments which have not yet attained this degree of police and among whom the sword of justice has not yet vanquished the stilettos of revenge” (P of PL, 578). This was part of a lifelong obsession for the founder of Utilitarianism, in what has been described as “Bentham’s major preoccupation, which is not discussed in *IPML*, the prevention of crime through a variety of practices and law” (Burns in *IPML*, intro, 1xviii).

So it appears that with the *Principles of Penal Law* and his essay *Indirect Legislation*, both written shortly after *IPML*, Bentham’s ‘major preoccupation’ of crime prevention, much of it by way of an improved system of policing, began to take hold. He seemed hopeful that his approach to police reform with its increased emphasis on prevention would work and he struck an optimistic tone when writing in 1782, that “The general result of the principles which have been laid down in relation to penal legislation, present a happy prospect and well-founded hopes of reducing the number of crimes and mitigating punishments” (P of PL, 578).

After concluding the aforementioned works, Bentham spent the next several decades continuing to write and advocate for the improvement of police before drafting legislation for effecting such change. He had proposed what he believed was an improved structure, overall purpose and specific methods for a ‘new’ system of police for England, tied to crime prevention

as part of an effective approach to ‘universal security’, something that we will discuss in the next section. For purposes of reducing corruption and for more equal distribution of security for citizens, Bentham included provisions for financing his preventative police, which was meant to be entirely funded through public taxes.

This would be done in part by operationalizing the greatest-happiness principle into what would eventually become a system of modern policing for England. And it is this process of operationalization that we will now explore, beginning with some added detail on the greatest-happiness principle, Bentham’s ultimate guide and natural starting point, for his many reforms. Or as Crimmins more succinctly puts it, with the ‘end views’ , came a “storehouse of means to that end” (Crimmins in Koritansky, 139) for Bentham, for utilitarian reformers more broadly and for reform-minded politicians alike.

6.The role of Security in service to the GHP

The importance Bentham placed on security, and the measures he took incorporate it so thoroughly into his utilitarian system have often been overlooked (IPML, intro.). For Bentham security was necessary for liberty - the kind of liberty secured through law, not the type of limitless liberty associated with anarchy (IPML, intro.). And while security was also a prerequisite for other things, such as civil liberties tied to concepts of freedom and equality, it was also necessary for securing, as far as possible, one’s prospects in life. Security for Bentham also included ‘security liberty’ to prevent people, including police and other ‘public functionaries’ from acting as they wish, while “interfering in the lives and liberties of others” (IPML, intro.).

For Bentham, the main aim of legislation was for purposes of security, subsistence, abundance and equality (IPML, intro.). Security in the broadest sense of the term, was for Bentham

“a means to the end of happiness and a necessary condition for its maximization” (IPML, intro.). So having briefly established a basic connection between security for society and overall happiness, we now attempt to establish a connection between security and crime prevention, specifically related to the type of ‘preventive police’ that Bentham was writing about. Now that we have touched on the greatest happiness that Bentham was seeking for society and its relation to security, we will now briefly look at the connection between security and crime prevention, before turning to the operationalization of the greatest happiness principle.

7. The Role of Prevention and Police in Service to Security

For Bentham, the central purpose for averting mischief was for the benefit of security (IPML, 148). And ‘mischief’ according to Bentham, came from two sources, ‘internal’ or ‘external’ adversaries. So I will briefly discuss that type of security specifically meant for guarding against any harms associated with ‘internal adversaries’ and related to this, limiting the harm of punishment and the effects of crime on victims. Preventing crime in order to reduce all kinds of suffering was an initiative that Bentham worked on through most of his life. His efforts were aimed at providing an adequate level of security to society from the effects of internal adversaries.

A new and improved ‘preventative police’ would be key to providing this type of security. This was especially important for legislators to know, when they addressed new areas (Crimmins in Koritansky, 138), such as policing was considered to be at the time. Utilitarians such as Bentham could create rules of ‘general utility’ in service of the ‘aggregate of utilities’ meant for approximating some form of fair or equal distribution, of the “basic requirements of happiness” (Crimmins in Koritansky, 138). And security, for Bentham, including security for a society from the effects of crime and punishment, was necessary for happiness.

For Bentham, utilitarianism was meant to be used as an approximate guide, an ‘instrument of direction’ for all types of public officials including legislators, who hoped to benefit others, as a means of providing the greatest happiness overall (Crimmins in Koritansky, 139). “The ‘operationalization’ of the utilitarian principle, then, took for granted that the end of government is the greatest happiness” (Crimmins in Koritansky, 139). For Bentham this would first entail a complete ‘codification’ of laws, such as penal, civil, and constitutional, where the utilitarian principles could be ‘translated’ and arranged into an array of formal subordinate ends, secondary principles, maxims, and rules for applying in a variety of circumstances (Crimmins in Koritansky, 139).

Police were to be formed under constitutional law. Their role was to be those of enforcing the penal code and ensuring that civil laws meant for securing individual rights were upheld. They were envisioned as a new branch of government and part of the constitution of a nation-state. So from the starting point of an abstract philosophical theory aiming at the greatest happiness, Bentham was developing a set of rules, axioms and subordinate principles for applying his theory for great practical benefit, in this case, for the improvement of policing.

The purpose for property law, for instance, was ultimately to minimize pain in particular, the pain that comes with the loss of one’s legal possessions from theft, fraud or other criminal activities. (Crimmins in Koritansky, 140). It would then be reasonable to expect that there would be ‘public functionaries’ to effectively enforce such laws, in keeping with the purpose of minimizing pain. In Bentham’s essay *Pannomial Fragments*, we are able to connect the dots, meaning we are now able to follow those specific principles, axioms and rules, meant for operationalizing the greatest -happiness principle into modern policing.

8. Operationalization of the GHP and the Pannomial Fragments

Let us first begin by briefly recalling what Bentham meant when he used the word ‘police’ in his writings. Police for him, involved a government instituted “system of precaution, either for the prevention of crimes or for the prevention of calamities” (Complete Code of Laws, Vol. 3, 169), such as fires or natural disasters would be considered. Bentham viewed police as ‘public functionaries’ along with other classes of individuals employed by government for a variety of tasks. Police were also referred to at times as part of an array of ‘government arrangements’ in the days before they became a new and more narrowly defined branch of government under the heading ‘preventative police’ (IPML, 198).

In his essay ‘*Pannomial Fragments*’, Bentham maps out his operationalization of the greatest-happiness principle through a variety of sub-ordinate principles and axioms meant for creating those government arrangements with a class of public functionaries for addressing problems related to internal adversaries, or criminals (Pannomial Fragments, 213). Bentham begins, like he does in many other works, by discussing the ‘ends’ that are “immediately subordinate to the greatest-happiness principle” (Pannomial Fragments, 213) by which he means the ends of security, subsistence, abundance and equality. He then links these subordinate ends with three classes of laws, constitutional, penal for punishment and civil meant for attending to individual rights (Pannomial Fragments, 213).

Within constitutional law, can be found “the axioms and principles applying to equality” (Pannomial Fragments, 211). With penal law comes “the axioms and principles applying to security” (Pannomial, 211), which are specifically related to the safety of the individual from the harm caused by others. The principle of the penal code most directly concerned with arresting or applying remedies for offences that produce suffering to one party (Pannomial Fragments, 212) is what Bentham calls “the positive-pain-preventing principle” (Pannomial Fragments, 212). For the

“axioms relating to security as to property” (Pannomial Fragments, 212), one would look to civil law and its “sole principle – the disappointment-preventing principle” (Pannomial, 212). Bentham refers to this last principle, as a “modification of the security-providing principle” related to all property. Yet the objects he adds, of any security-providing principle more generally, are a person’s body and mind, reputation and personal property or wealth (Pannomial Fragments, 212).

The security that Bentham is concerned about here has to do with the adverse effects from the activities of internal adversaries which for him not only includes fellow citizens or non-functionaries but also government functionaries (Pannomial Fragments, 213). Bentham approached the final step in this process of operationalization when he wrote that government should establish public functionaries for public offences. “The several classes of persons” he said of the police and other functionaries, “to whom by the several arrangements employed, the security is endeavored to be afforded” (Pannomial Fragments, 213). So the greatest-happiness principle, had a subordinate end of security, under which principles for the prevention of crime could be found including. This included a new class of public functionaries such as the police, in service to crime prevention. This process included two awkwardly worded principles, ‘positive-pain-preventing’, and ‘disappointment-preventing’, tied to the ‘security providing principle’. They were meant to prevent suffering by individuals or the ‘disappointment’ of being deprived their property or denied their legal rights. (Pannomial Fragments, 213). Bentham’s preventative police were meant for addressing these concerns.

We should think of these two principles as only one and simply refer to it as the ‘prevention principle’ (if Bentham has not already done so among his multitude of written works), for securing society from all the adverse effects of ‘internal adversaries’. By renaming these two awkwardly phrased principles for the prevention of ‘mischief’ related to persons and property, we would have

a simplified (or more simply worded) connection in the operationalization process of the greatest happiness principle, without any loss in meaning.

So in summary, this ultimate maxim of utility or greatest happiness was tied to a need for security, much of which was attainable through crime prevention. This increase focus on prevention underlay Bentham's belief in the need for a new and more effective preventative police, for purposes of crime prevention, in service to security, and ultimately in service to the greatest-happiness principle itself.

9. Conclusion

Bentham was interested in police reform from very early on. He believed the subordinate ends of the greatest-happiness principle, having to do with security, subsistence, abundance and equality, should involve improved arrangements of government. For him this included a new 'system of police' or public functionaries, in service to these aims. Police would primarily involve themselves in safety and security related to the prevention of calamities and crime, in support of these broader utilitarian goals. Bentham's theory was well crafted on paper. However, it would take almost two decades before he was in a position to successfully implement his plan.

The first concrete step in the development of modern police occurred when Bentham and Colquhoun met at the close of the 18th Century, before establishing the first model for London in 1800. This involves a discussion about the river police along the Thames, which is the focus of our next chapter.

CH. 4 Bentham's Middle Period of Police Reform

1. Introduction.

In this chapter I discuss how in 1800, almost twenty years after he first argued that a state should have a preventative and professional police under central control set apart from a military, Bentham finally implemented his idea through legislation. With the successful passage of his bill, modern police appeared in London for the first time along the Thames River. For Bentham, police reform was part of a broad-based attempt to end the bloody code, which referred to the brutal criminal justice system of the time. I will show how Bentham and other reformers, such as Patrick Colquhoun, were interested in finding ways to prevent punishment, in which a new and improved system of policing was meant to play a vital role (Emsley, 51). Bentham 'seethed with outrage' at the arbitrariness and inefficiencies tied to criminal justice, specifically the variety of ways in which laws were administered and worked throughout most of his life to address these problems (Crimmins in Koritansky, 156). In this chapter we discover that much of this work first came to fruition with the river police along the Thames.

We know reformers were convinced that improving police would result in a more effective way of controlling crime while reducing the overall need for punishment. Bentham was heavily influenced by the works of Beccaria, who decades earlier had advocated for the replacement of inhumane punishments with more moderate and predictable forms of punishment (Crimmins in Koritansky, 577). And while this effort involved a number of prominent individuals working toward this goal, "the most powerful intellect among these reformers was Jeremy Bentham, who also argued the need for a strong police both to prevent crime and ensure the certainty of punishment should crime be committed" (Emsley, 51). And it was at this time, during the last few years of the eighteenth century, that Bentham became acquainted with the police reforms of Patrick Colquhoun.

After publishing his *Treatise of The Police of the Metropolis* in 1796, fellow reformer and former police magistrate Patrick Colquhoun, became “the most influential publicist” (Emsley, 51) in creating a new police for England. And while he may have sold many books, until he began working with Bentham, Colquhoun had been unsuccessful in turning some of his proposals for improving police in London into legislation. So in 1798, the most powerful intellect advocating for the reform of policing, Jeremy Bentham, became acquainted with the most powerful promoter for this cause, Patrick Colquhoun. It was said of Colquhoun that he “combined a Benthamite view of the criminal justice system with the wartime zeal of a counter-revolutionary” (Reynolds, 90,91). It would appear then, that both police reformers were well suited for the challenges that lay ahead.

A collaboration between the two soon followed. Bentham’s method of considering the utility of any government organization helped to provide “the practical arguments for establishing the police force demanded by Colquhoun and show the disadvantages of the old constables and watchmen” (Stephens, 270). Bentham was poised to publish an essay on preventive policing called *Indirect legislation*, and he soon realized the two shared a similar approach for the improvement of police, with less coercive and more efficient methods (Hume, 114). Bentham and Colquhoun shared an interest in identifying environments in which criminal behavior seemed to thrive. The two placed an emphasis on finding more effective ways to deter people from crime by creating less opportunities for it to occur. They also wanted to improve the methods of police to make detection more certain.

Bentham and Colquhoun also shared a desire to end the brutal punitive measures that were being practiced at the time under the mistaken belief in their ability to deter crime. The two aimed at replacing the perceived need for the continued use of such physical force with less coercive methods that would more effectively reduce criminal behavior. In this respect, Colquhoun’s ideas

on crime in his *Treatise* were much like Bentham's ideas on *Indirect Legislation* in that the two works provided a manual of sorts for preventive police. This was part of their overall plan to avoid creating conditions that might encourage criminal behavior while using minimal direct prohibitions or punishments to accomplish this goal. Part of Colquhoun's focus in this regard was to concentrate on the receivers of stolen goods and to better secure the docks and warehouses along the Thames River from organized groups of thieves, rather than target individual offenders (Hume, 114).

2. Colquhoun's Approach to Policing.

Colquhoun's early treatise on crime in the Metropolis "could be summed up as a wide-ranging exercise in indirect legislation, in the sense in which Bentham defined and understood that term" (Emsley, 114). While it has been said that Colquhoun was responsible for guiding Bentham's thoughts toward preventive policing (Emsley, 114), this is not entirely accurate since we know he had written about the need for a branch of preventative police as early as 1780. In addition, the idea of preventative policing was not a new concept. Since the mid-eighteenth century, it had become much more common in discussions of the improvement of police. Part of the reason for this may have been because "the first significant work on preventative police" (Barrie in Knepper and Johansen, 450) was published in 1751, by London magistrate Henry Fielding, who established the 'Bow Street Runners', a private agency that specialized in the detection of criminals.

So it appears Colquhoun provided much of the necessary detail required for a preventative police force, but he may have ultimately been guided in that direction by Bentham. This is because Colquhoun "did not conceive of police as primarily a preventative agency" (Lyman, 144), at first. In his *Treatise*, he advanced the idea that local control of police should be ceded to a centralized

police force for purposes of prevention and detection (Barrie in Knepper and Johansen, 450). Both Colquhoun and Fielding envisioned a new and improved police that would be instrumental for attaining “the common good and the better ordering of society (Barrie in Knepper and Johansen, 450). And while there was much work to be done and more detail to be provided, this seems to have been a general concept of policing that Bentham could support in furtherance of his utilitarian goals for society. However, if this were to be made possible, something would first have to be done about the very structure of government. Because around this time as Bentham was well aware, “the bureaucracy associated with contemporary crime control did not yet exist” (Kneppers and Johansen, 462), and it became clear something would have to be done about this.

3. Modern Police, Crime Prevention and Surveillance

In 1798, Bentham began corresponding with Colquhoun and the two reformers started developing their plans for improving police (Stephens, 200). In doing so, Bentham took the first steps toward establishing a bureaucracy dedicated to preventing crime and was finally being able to practically implement improvements to police by operationalizing his greatest happiness principle. This is perhaps why he became known as the first to “legitimizing preventive police as an activity of government” (Hume, 77). While incorporating some of Colquhoun’s specific measures into his own general framework for police, Bentham converted these ideas into an acceptable legal form in preparation for drafting legislation (Hume 114).

Colquhoun “drew and built upon the ideas and works of others” (Barrie, 2), and his writings reflected a range of inspirations from the Bow Street Runners to Bentham’s earlier writings on penal reforms (Barrie, 2). Colquhoun had publicly endorsed Bentham’s plans for the improvement of prisons with his panopticon scheme, and for expanding government funding to hire more full-time public prosecutors and police (Stephens, 104 and Lee, 223). This is because modern police

was meant to be a *wholly* public police, not just a mechanism for securing a particular location or interest (Finnane in Knepper and Johansen, 463), as it had been under the old system. This new approach to policing centered on increased funding and was central to Bentham's overall plan that government should provide citizens with universal security of property and universally accessible justice (Letters Vol. 12, 271).

Yet even the early works of Fielding and Colquhoun did not envision preventative police conducting routine patrols as a way to reduce opportunities for crime, although the idea of surveillance was an important part of Colquhoun's book (Barrie in Knepper and Johansen, 450). Colquhoun was aware of Bentham's prison reforms, and in his written works on policing, he endorsed Bentham's idea that the kind of constant vigilance and central inspection described in his writings on the panopticon could be adapted by police (Reynold, 99). Such changes to policing during this time answered to a perceived need to create more organized bodies of full-time professional police, a need for "extending the surveillance capacity of the local state over populations and specified territories" (Barrie in Kneppers and Johansen, 453).

After completing his work on the panopticon with its surveillance feature, it seems Bentham was well positioned to begin this new work on the improvement of police. For years he simply believed in a considered view that if people are watched, they behave better. For Bentham, increased surveillance for Bentham meant an increased ability to deter and influence the behavior of citizens in less interfering ways. And for offenses that did occur, increased surveillance could perhaps assist police in detecting and solving crimes. And with such improvements Bentham thought punishment could be made more certain. This was part of his forward-looking approach to law enforcement and punishment, which was to be predicated upon an improved ability to prevent or deter future criminal activity with less interference and coercion, including outright

physical force. But perhaps this is an overly optimistic interpretation concerning Bentham's central role in the development of modern policing.

4. Two Bills on Police Reform for London

In 1798 Bentham and Colquhoun combined their efforts and began the long process of drafting two bills to reform police. One of them, the failed Police Revenue Bill of 1800, was an ambitious proposal for developing a preventative, professional and centrally controlled police for all of London. If approved by parliament, it would have made Peel's 1829 efforts entirely unnecessary. This was not the first attempt by Bentham at drafting legislation meant to create a new police for all of metropolitan London. Fifteen years earlier in 1785, he had been involved in drafting another failed piece of legislation known as the Reeve and MacDonald Police Bill (UCL online archives). This bill, similar to the legislation he worked on with Colquhoun, was for establishing a preventative police for the entire metropolis, uniting three districts, the City of London, Westminster and Southwark (UCL online archives).

Contained within the Police Revenue Bill were provisions for appointing constables to prevent crime and apprehend offenders, a new public police for all of London who would no longer collect private rewards or fees for solving crimes (UCL online archives). Bentham drafted a second, much less ambitious bill along with the Police Revenue Bill. It was narrowly tailored to establish the same type of police intended for all of London, but for more limited use along the Thames River (Hume, 114). As previously noted, this is where most of the government docks and large warehouses of private industry were located, which for years had been the source of stolen goods finding their way through the streets of London. Goods taken from these locations along the river, were often bought and sold by the numerous receivers of stolen merchandise situated throughout the city. For Bentham, taking action to address this particular problem, the source of

so much theft in London, also meant addressing the problem involved in punishing so many individual thieves.

Along with the two bills he drafted in 1800, Bentham provided additional material on policing, including over two hundred pages of further explanations and notes (Hume, 115). And while the Police Revenue Bill failed to pass, the Thames River Bill was adopted by Parliament creating one of the world's first modern police departments (Hume, 115). Bentham was pleased by this accomplishment and expressed his delight in a letter to his brother shortly after the bill's passage, in which he pointed out that not only was the work adopted by Parliament, but that it was adopted without alteration (Letters Vol. 6, 158).

An early precedent and model of modern policing was thus created, in the form of a successful piece of legislation consistent with Bentham's overall vision and purpose (UCL online archives). This new branch of police would decades later be expanded to include all of London and much of England under the leadership of Peel (Campesi, 200). But the Thames River Police was not Peel's idea nor was it his vision. That honour should go to Bentham and Colquhoun, whose collaboration led to the world's first wholly professional civilian police department under central control for the prevention of crime. In drafting and lobbying for their bill, Bentham and Colquhoun felt it was time the government took a more active role in effective crime control through prevention. This was not only for the protection of property but also as a way to avoid the increasing human toll and financial costs involved in punishing (Colquhoun, 475,480).

The river police was an innovation and an early example of successful police reform which essentially brought some of the first professionals under central control, instead of being directed by local authorities or private bodies. Almost thirty years before modern policing was said to have been introduced by Peel, Bentham and Colquhoun had already accomplished this task, albeit on a

smaller scale. But this was not from a lack of effort or vision in attempting to accomplish something greater. They had advocated for this new institution to cover all of London by drafting a bill explicitly for this purpose but were ultimately turned down by parliament who preferred the scaled down bill for creating a new police along the Thames river. This is what makes the claim that Peel created modern policing for London so contentious. All the essential leg work had already been completed by Bentham and Colquhoun long before the Home Secretary's time in office.

5. A Utilitarian Approach to Police Reform

The ideas animating the river police were not, on their own, original ideas of Bentham and Colquhoun. They were more a combination of previous ideas that were brought together for the first time after being methodically analyzed. This analysis was an attempt to discard practices or arrangements of the 'old' police that no longer worked while improving upon those that did. Bentham's utilitarian approach also involved casting a censorial eye on existing practices and rules to determine if they were consistent with promoting happiness or avoiding pain. If anything was found wanting, such practices would be targeted for change. (Crimmins in Koritansky, 140)

This was a slow, decades long infiltration of the old system with reformers advancing new ideas for creating more effective ways of preventing the harms caused by a cruel and antiquated criminal justice system. The transition from the 'old' model of policing to the 'new' took place over time and was anything but seamless (Oxford, 452). In the origins of modern policing, we also see the practical application of Bentham's utilitarian theory, in the use of preventive principles and 'devices' for reducing theft in the city, and for minimizing the suffering of convicted thieves (Reynolds, 76,77).

With a more exact definition and purpose, backed by the authority of a central government, preventative policing took on an improved, more professional character. As Bentham wrote twenty years before creating a branch of government dedicated to this effort, “(l)et the opportunity to commit a crime become less favorable... the temptation will be so much weaker” (Bentham, IPML, 67). And with a more coordinated, professional and efficient police in place along the Thames River, it was felt this was a significant move in establishing a less favorable environment in which crime could occur (Reynolds, 77).

Rather than continuing to impose more punishment with a force of detectives or private police that reacted to crime after it occurred but did little to prevent it, Bentham and Colquhoun’s police sought to address the environment in which criminals went about their business undeterred. Much of this was accomplished with routine patrols for the most vulnerable areas, and by addressing the source of criminal activity along the Thames River. The two also shared an interest in sparing citizens much suffering from punishment, especially as so many impoverished citizens could only support themselves through illegal means during hard times, of which there were many throughout this era. Both Bentham and Colquhoun were well aware of the connection between poverty, opportunity and crime (Geis, 164).

6. Details of the Bills and the Impact on Policing

Bentham’s work on these two bills represented a previously unseen depth and scope in the analysis of a preventive police that he and Colquhoun included as part of the legislation (Hume 133). It naturally flowed from his previous works *Indirect Legislation* for preventing offences and *On Laws in General*, said to be a “manual of preventive police for inexperienced or ill-informed governments” (Hume 97). The Bill contained fifty-five sections that included regulations on licensing and supervising a variety of traders and merchants who dealt in secondhand goods, such

as pawn brokers and scrap metal dealers. For the first time, search, seizure and arrest provisions were laid out in detail and were at long last separated from the personal economic motives of both justices and police whose income would no longer depend on private fees, rewards and compromised positions (Hume 133, 134).

Since police around this time were notoriously corrupt, Bentham's methods of crime prevention were not just limited to members of the public. The Police Revenue Bill created a class of offences for those in law enforcement, and one of its more important achievements was setting clear boundaries for the use of police powers (Hume 148,149). Penalties ranging from reprimands and fines to dismissals and imprisonment were established for police officers, and for the first time ever, a formal dividing line "between legitimate act and offence on the part of the officer was thus clearly marked" (Hume, 149). Bentham also established measures for conveying messages and instructions for police, and for the collection, co-ordination, and dissemination of information related to crimes and suspects.

Books and records were kept for a variety of purposes related to the enforcement of laws and the regulation of activities (Hume, 154), along with new policies and various 'legislative-aiding functions' based on the development of ideas that Bentham had held for many years (Hume, 221). And while much of his theory and plans for their application, at least early on, were learned from others, he added much of his own in terms of clarity, detail and method that allowed for such disparate ideas to coalesce for the first time through these combined efforts with Colquhoun (Hume, 238).

Bentham and Colquhoun both worked to identify better methods for protecting against 'calamities' and 'depredations', including that of corrupt officials and police. Together they developed a form of organized surveillance for monitoring and inspecting locations that tended to

be sources for crime and to identify patterns of criminal behavior (Hume, 150). Bentham structured one of his bills with the Crown overseeing all matters, complete central control for the first time, related to both the operations and the composition of the new police.

The two recommended a total of thirteen classes of traders whose activities would be licensed and supervised by police. As previously noted, this was an attempt to regulate the proliferation of secondhand dealers, pawn brokers and scrap metal buyers who had created a thriving market for stolen goods in London, much of which originated from locations along the river where a public police for the first time, would begin their work in 1800 (Hume, 133).

In advocating measures for regulating certain trades associated with encouraging theft and by helping to establish the first police in Britain under central control, Bentham and Colquhoun built upon the standard explanations for crime rooted in poverty, unemployment, and public houses. Poor policing would exacerbate poor social conditions they seemed to suggest. Their explanation for crime was in large part a realization that favorable conditions had been created for criminals by inadequate watchmen, who were primarily amateur, underpaid, and inattentive when not altogether absent. It was this problem combined with too many receivers of stolen goods that Bentham and Colquhoun mainly focused on (Reynolds, 49).

It was hoped, that with minimal intrusion to the public, and with less punishment meted out to thieves, merchants, organized criminals, or corrupt officials, the enforcement of laws could be improved with a properly trained, coordinated and supervised branch of police. Such regularity and clarity in all aspects of law, including in its application, was something Bentham had worked on for years up until this point in time. He had also been working on toward riding England of the bloody code. So it seems, “the new ideology of rational administration coalesced with the changing

attitude toward punishment” (Emsley, 162), as Bentham and Colquhoun worked on providing “the framework within which police forces could be developed” (Emsley, 162).

The police bills drafted in 1800, established practical policies such as those related to search and seizure and the handling of money by police related to fines and rewards; these policies aimed to remove traditional sources of corruption. Bentham and Colquhoun both realized that “it must prevail also among the state’s servants and that they must be ordered and disciplined through the same processes and devices of legal rationalism as were to be employed in the community as a whole” (Hume, 257). In addition, there were measures included in the bills for the collection and sharing of information by police, and for conveying instructions through the hierarchy to coordinate their efforts at prevention while at the same time improving their ability to detect.

7. Presenting the Bills in Parliament

Before drafting the bills in their entirety, Bentham gave a summary of his proposal to his brother-in-law Charles Abbott for circulation through parliament, but Abbot had yet to hear anything back from those in power (Vol. 6 letters, 163). In May 1800, Colquhoun wrote to Bentham telling him that “Mr. Pitt has perused your abstract and told Mr. Dundas that from it he had a perfect conception of the measure” (Vol. 6, letter, 298). Despite this, Bentham wrote to his brother complaining about the delay in the marine police bill, indicating that the Attorney and Solicitor Generals did not have any objections, “but having neither profit nor honor to expect from it, are of course indifferent about it” (Vol. 6, letters, 302). As it turns out, Bentham’s skepticism in this instance was not well placed, as the bill creating the first modern police department, was passed by parliament a few months later.

A private marine or river police it must be noted, had been established two years prior by the West India merchants, a privately controlled organization for the protection of their property along the Thames. This first incarnation of the river police was also described as an ‘experiment’ by insurer companies in an effort to reduce their losses (Moore & Kelling, 52). So while this early version of police was meant to be preventative and professional, it was not yet a public service. What Bentham and Colquhoun managed to accomplish then, involved a ‘fundamental re-evaluation’ of policing, in that for the first time in the history of England, police would be “financed entirely by public revenues” (Moore & Kelling, 52). Eventually, such publicly supported policing would be mandated for the rest of London, before extending outward to the rest of England.

In one of his letters to Bentham, Colquhoun had described their work as methodizing a new institution (Vol. 6, letters, 96). Other writers, such as police historian Melville Lee stated that Colquhoun’s efforts during this time beginning with his treatise of 1796, involved ‘formulating the details’ for modern policing and giving it a ‘practical shape’ (Lee, 219). In doing this work Colquhoun was sympathetic to Bentham’s overall efforts and many of his methods of criminal justice reform (Reynolds, 84). And so, the two collaborators on police reform proposed a type of public preventative police department, as Bentham had first described in 1780, before drafting legislation to this effect (Moore & Kelling, 52).

Perhaps this is why Colquhoun was considered to be “a good Benthamite advocating central policing” (Reynolds, 90). He has also been described as the ‘architect’ of modern police, who essentially created a blueprint that Peel followed when he established the Metropolitan Police in 1829 (Lee, 219). The only difference between the river police and the Metropolitan police introduced by Peel was primarily one of scale, because it required a much larger patrol force to be

deployed throughout the city, not just along the Thames River. Another difference between the two organizations is that it would involve not just one, but rather multiple ‘chains of command’ to oversee an increasing variety of operations. (Moore & Kelling, 52)

8. Bentham’s Vision

Police reform during these early years not only involved a different approach but also a changed structure. It involved a shift from local to central control while establishing the primacy of prevention over detection, which suggests a “re-evaluation of the Benthamite character of policing in London and the creation of the Metropolitan London Police specifically.” (Reynolds, 163) And while it is true that years later Robert Peel would be credited as being the founder of modern policing, by the time that day arrived, Bentham had been working on police reform intermittently for almost fifty years.

And while this seminal moment in the history of policing that occurred in 1829 was still a long way off, when it happened, the accomplishment was touted as Peel’s alone. This becomes an increasingly untenable claim however, after realizing that the ‘new’ police introduced by Peel, “was administratively a Benthamite reform in that it standardized disparate organizations, applied uniform practices across the metropolis and centralized police authority in the hands of Commissioners directly to the Home Secretary” (Reynolds, 163). So it appears not only did Bentham and Colquhoun’s river police provide an early model and the inspiration for modern policing under Peel, but in addition became part of its actual constitution.

The Thames River police had a long and successful run as a new branch of government, just under three decades, and was eventually incorporated into Peel’s much larger Metropolitan London police of 1829. In drafting a successful piece of legislation for the Thames River Police,

it is said the constructive side of Bentham emerged concerned with the practical expression and implementation of utilitarian principles (Hume, 115). This was central to his overall political philosophy that a society should be governed in such a way “so that with a little coercion as possible self-interest and general interest coincide”(Crimmins in Koritansky, 142). However it could also be argued that perhaps Colquhoun, the former police magistrate who did much of the detailed work, and who wrote a popular treatise on police deserves all the credit for the river police.

Such a claim would involve downplaying Bentham’s active engagement in this issue of policing, and the many ideas that he worked to introduce by writing important pieces of legislation on the subject. The early model of policing that Colquhoun worked on was in essence the “systemization and formalization of the proposals” of Bentham and others from previous decades (Campesi, 200). Yet those objecting to Bentham being given credit for this new institution and insisting that it should be given to Colquhoun could find strong support for this argument in Bentham’s own words it seems.

9. Colquhoun; The Sole Architect of Modern Policing?

In a letter from June 1799 that he wrote to Abbott who was a member of parliament, Bentham claimed that Colquhoun deserved all the credit for establishing the river police. Bentham clearly stated that Colquhoun proposed and planned the river police and was, “in point of fact, the creator, and the sole creator of everything that has been done” (Letters Vol. 6, 156). But from all that we know about Bentham’s involvement in this endeavor, this does not seem to be the case. It was more of a combined effort on the part of both parties. So here we should pose some questions in relation to Bentham’s own words, as stated in his letters, concerning who should be credited with establishing the river police. Perhaps Bentham was not telling the truth for good reason. Or

perhaps this was simply an instance of false modesty given all that we know about his work on police reform.

Since context is important, we hope to gain some additional insight into what Bentham may have meant by these remarks about Colquhoun by examining more of his letters in search of an explanation. Bentham goes on to explain, in the letter to Abbott, that it was important to gain public support for the new police, and that it would be advantageous to use Colquhoun's 'character and celebrity', for this explicit purpose (Vol 6. Letters, 156). Here, Bentham appears to make a case for Colquhoun becoming the public face for the Thames River Police, so that he might continue working on their bill in private.

In May 1798, the two began exchanging 'papers' concerning Colquhoun's examination by a parliamentary finance committee looking into police reform. In their correspondence Bentham complained to Colquhoun of being treated as a 'stranger' by the politicians. He added that the chairman of the committee would probably not trust him with the government papers Colquhoun had provided him with (Letters Vol. 6, 33). After a third examination by the finance committee, Colquhoun brought additional documents for Bentham to review, and shortly after, it was Colquhoun's turn to complain.

He informed Bentham by letter that he had become over his 'head and ears' with the 'marine police business' and that such efforts to methodize a new institution were not easy. In October that same year, Colquhoun struck a more upbeat tone, informing his collaborator that while there was still much work to do on the bill, that together, they would 'allay' all opposition to it (Letters, Vol. 6). So from Colquhoun's perspective it seems, he and Bentham were fighting together, in their attempt at creating a viable plan for introducing 'modern' or 'new' policing to London.

10. Bentham's Need for Secrecy

Yet there are additional details we should first consider before assessing the truth of Bentham's earlier claim that the sole credit for establishing the river police belonged to Colquhoun. And this explanation appeals to how Bentham felt a need to downplay, to the point of secrecy, his own involvement in legislation, so that any bill he worked on, would have a better chance of being adopted by Parliament. In the fall of 1800, after the bill had been adopted by parliament, we find other evidence of this perceived need for secrecy by Bentham while working with others on important pieces of legislation. However this time, in a letter to his brother Samuel, he seemed to complain that Colquhoun had received all the credit for creating a branch of government they had worked on together (Letters Vol. 6, 354). Bentham wrote; "you see that Colquhoun has got a 500 lb. plate voted for him for the bill I drew – I no longer make a secret of it now that the bill has passed: besides that, he did not keep it a secret from the powers above, as I made him promise, for the bill's own sake" (Letters Vol. 6, 354).

This desire for secrecy in relation to much of his work with government is something that Bentham seemed to have displayed through most of his life. It is interesting to note that decades later in a letter he wrote to Simon Bolivar in 1825, Bentham complained along these same lines after working on important pieces of legislation without receiving proper credit for his work. Parliament had recently adopted Bentham's bills, two considerable measures on taxation and usury, yet he wrote to Bolivar that "they seldom speak of these measures as being mine" (Letters Vol. 12, 148). This was a pattern that would follow Bentham throughout his life, that of others in more public or powerful positions, taking credit for his work. And it is unsurprising given that he did not actively seek credit, to the point where he would occasionally deny his own involvement

on certain government ‘measures’ while working in ‘secret’. It was only later it seems, that he would then complain to others of not being given proper credit for all that he did.

Bentham had to have known that parliamentarians and others were quick to take credit for some of his ideas and works. One of the main reasons this occurred, can be found in Bentham’s own words. While conducting his work in private, Bentham seemed to encourage others to take credit for his efforts, because he felt this would be the best approach for turning his proposals into law. It was only after the successful passage of a bill in Parliament, that Bentham would then open up to others about his direct involvement on pieces of legislation.

When writing to Peel who was the Home Secretary in April 1826, about legislation he had worked on in relation to medical science, Bentham advised him that “if the design meets your approbation, the simplest course is for you to take it up as of yourself without my appearing in it” (Letters Vol. 12, 208). With Peel, as was the case with Colquhoun and others, Bentham had given individuals with more public personas, and more importantly, those who enjoyed a better relationship with parliament, permission to adopt some of his work as their own. Perhaps he felt this was a small price to pay, in overall service to the successful passage of bills which contained many of his ideas on legal and institutional reform. Yet there are still other reasons that Bentham may have felt a need to stay far from the limelight that was occasionally enjoyed by others. Once again, we gain some insight, by examining some of the letters he wrote.

In June 1799 Abbott was advocating for passage of the river police bill with the Home Secretary (Hume 115). He wrote to Bentham saying, “I quite grieve at the treatment you have received – it is barbarous- and yet I know not what can be done” (Letters Vol. 6, 160). This was around the same time that Bentham had a bad experience with government after his panopticon plan had been rejected and he had become very bitter and cynical for some time after this dispute

with parliament. The Panopticon was by all accounts for Bentham, “a prolonged case study in extraordinary frustration” (Geis, 169). Shortly after this occurred, he began conducting his work with Colquhoun and Abbott in secret, in large part because he did not want this recent dispute with government over his model prison to hinder any of his other designs.

Relations between Bentham and many in parliament had fractured to the point where “he feared that the association of his name with Colquhoun’s plans would discredit them in the eyes of the Home Office” (Hume, 115 and Geis, 160). Some in parliament considered Bentham a Jacobin, because of his early support for the French revolution before modifying his views years later, and such royalist factions would not have been impressed by his continued anti-monarchist views. So there was more than one reason from Bentham’s standpoint to believe that any bill might suffer the same fate of the panopticon, unless it was credited to others he was working with and not in any way to himself.

11. Conclusion

We now realize that Bentham worked tirelessly for years behind the scenes on improving the police of England at the close of the eighteenth Century. By the beginning of the nineteenth century, he had amassed an enormous amount of information for the improvement of police, and many of the measures proposed in these bills “had been foreshadowed in Bentham’s earlier writings on preventive policing” (Hume, 115,127). This was evident in the idea that the Crown would establish and oversee the operations of a ‘central police authority’ to include a ‘particular class of persons’ for more effective crime prevention (Hume, 122).

However, because of his involvement in the changes to policing that took place around this time, Colquhoun is given credit with being the “father of police science” (Barrie, 1). Yet we

also know working alongside him was another architect working on this original design for modern policing, often in secret. Bentham and Colquhoun informed and influenced the other, while combining their ideas and adopting similar approaches in the reform of police. And what is also true about this plan for the improvement of police is that it did not involve the work of a single innovator but rather, several. This chapter has been a detailed account involving two of those reformers. One was a good Benthamite in Colquhoun (Reynolds, 90), while the other was Bentham himself.

Bentham pointed the way in which Colquhoun then worked filling in many of the details in a general framework previously laid out for policing in *Introduction to the Principles of Morals and Legislation*, in 1780. In Colquhoun's treatise of 1796 which came long after some of Bentham's own works, he wrote about how he was "aided by the lights of philosophy" in regard to "opposite attractions of pleasure and pain" when devising a "correct system of police which the most enlightened legislator can form" (Colquhoun, 72). In 1800 when Peel was just a boy, Bentham and Colquhoun had not only completed the plans for the first modern police along the Thames, but also for all of London. The plans for modern policing were established by the start of the nineteenth century, for any future enlightened legislator to follow.

So we come to realize that it was a collaboration between these two architects of modern police, Bentham and Colquhoun, that created an early example which Peel later updated and expanded during this time known as the "genesis of modern policing" (Lee, 218). The first monumental step was in creating a publicly funded police department along the Thames River after failing to convince parliament to do this for all of London. The second step, more memorable and arguably more impactful, was in achieving this goal for all of London almost thirty years later in 1829 through Peel. And while Patrick Colquhoun had passed away by that time, before

witnessing the sweeping changes he had advocated, Jeremy Bentham was still busy working to advance their cause. He continued to influence modern policing even as he approached his eightieth year and was in failing health. This was around the same time that Peel was nearing the height of his political power.

CH. 5 Later Years: Bentham and Peel

1. Introduction

In this chapter I argue that Jeremy Bentham's growing influence in the first decades of the 19th Century, shaped the way in which modern policing developed, specifically in relation to Robert Peel's London Metropolitan Police introduced in 1829. As we will see, not only had Bentham and Colquhoun created an early model and drafted legislation for policing all of London, but as Bentham's reputation continued to grow, he would use it to influence legislators for the reform of laws and government institutions to ameliorate the harm associated with punishment. Bentham developed a following of associates both within and outside of Parliament, many of whom advocated for social change along similar lines guided by his utilitarian principles, which included the reform of police.

In addition, during this time Bentham completed what is arguably his greatest work, *Constitutional Code* (Doane in CC intro, 7), which advocates for a national preventative police, just as he had done in *IPML* almost fifty years prior. Bentham also corresponded with Peel, who as Home Secretary, we will learn, was guided by Bentham in many of his legislative reforms for criminal justice. And as was his habit, first seen working with Colquhoun on legislation, we will again see how Bentham wanted his work with Peel on criminal justice reforms to be kept secret. It is little wonder then, that Bentham's efforts on vital pieces of legislation for the reform of England's Laws and vital institutions including police, may have been overlooked.

2. The Early 1800s and the Rise of Utilitarianism

After the successful completion of his work on the Thames River Police Bill of 1800, Bentham continued drafting legislation for the reform of laws and institutions, primarily related to

criminal justice. Bentham also continued writing each day for seven to eight hours creating works on issues related to a variety of reforms that he felt were required to advance much needed changes to government. During the first few decades of the nineteenth Century, including Robert Peel's time as Home Secretary beginning in 1822, these efforts by Bentham began to develop a "conspicuous influence upon English thought and political action" (Stephens, 1). This was a period in which Bentham and others continued advancing new ideas for the reform of police, attempting to expand on that new branch of central government now permanently in place along the Thames River. These new ideas combined for the first time to create a new structure and approach to law enforcement, for a small portion of the city, while continuing to 'infiltrate' the old system of police that remained in place for the rest of London (Stephens, 6).

While the Thames River police for the first time established a small footing for the permanent reform of police not just for London, but for all of England, this was still years away and there was much ground to prepare in advance. These were early years in the overhaul of this institution to create a non-militarized response to law and order, a more effective form of prevention with the use of less coercion. Bentham and Colquhoun hoped that this would be accomplished through a uniform and coordinated civilian body of police officers created by legislation passed in parliament (Crimmins in Koritansky, 142). The creation of such an institution relied heavily on measures, as we have discussed in previous chapters, that were "foreshadowed in Bentham's earlier writings on preventative police" (Hume, 127), long before he reached the height of his fame.

3. Bentham's Reputation

During the first years after completing his work with Colquhoun in 1800, Bentham's reputation continued to be rather obscure, partly because he did not seek out attention and tended

to avoid people in general. It was said that many of those in positions of power and influence “were not impressed by the shy philosopher” (Stephens, 188). This may have been because Bentham lived a somewhat reclusive lifestyle, even being referred to as “the hermit of Queen Square Place” (Everette, 19). Yet after decades of incubation, his ideas for legal reform on a number of fronts, began to spread through parliament as he slowly became more famous in England while establishing a strong international reputation (Everette, 14).

Throughout the 1820s foreign statesmen leading figures from emerging republics sought his advice on political and legal reforms of their own. This was a period of decline for both colonial and royal power, with new political arrangements made possible in established nations and emerging independent states. Bentham began focusing more of his efforts on constitutional law, becoming a “declared advocate of a republican form of government” (Doane in CC, 6). He was interested in the changing political fortunes of Portugal and Spain in this regard and wrote a tract on the ‘uselessness’ and ‘mischievousness’ of a House of Lords for either country (Doane in CC, 6).

Bentham also proposed changes to the Spanish Penal Code and Constitution, while crafting a complete code of laws for Portugal in 1821 (Doane in CC, 6,7). In 1828, he even drafted a petition in which he wrote that “Canadians were to ask Parliament for complete separation” (Hollond, 27). While Bentham’s reputation and influence in relation to legal and constitutional reforms increased abroad, ‘Benthamism’ started to take on the force of a more active agency for change closer to home (Stephens, 208).

Lord Lansdown, a prominent British statesman and Home Secretary was a friend and patron of Bentham, and the ‘shy philosopher’ also enjoyed the support of other powerful politicians and influential legal minds. This included among others, William Pitt, Dundas and Blackstone,

who were said to seek his advice and treated it with great respect (Stephens, 206). In addition to this, Pitt, Samuel Romilly, Sir Francis Burdett and Lord Shelburne all advocated for some of Bentham's ideas in Parliament (Terrill, 50). Romilly and James Mill, father of John Stuart, were part of Bentham's innermost council. So even if Bentham was not very good at promoting his own ideas, others seem to have been more than willing to do so on his behalf.

These men were called 'Benthamites' and they found ways to spread the philosopher's message to others, so that changes to government they viewed as essential to legal and social reform, could be made more possible (Stephens, 215). And while many of these ideas originated from Bentham's utilitarian philosophy, much of the practical reforms that he advocated for, "were the immediate achievements of his disciples and friends" (Lee, 218). And as we have seen in his letters, while Bentham may have complained that he was not receiving proper credit for his achievements, he was also pleased that much of this work was being advanced by others.

We also know from the previous chapter that on more than one occasion, Bentham thought that foregoing authorship on his work was at time good strategy, so that bills containing his ideas, would stand a better chance of being adopted. These efforts by Bentham and others involved publishing their ideas in books, pamphlets, and a quarterly magazine. Drafting bills and lobbying for them, began to pay off over time. One of the slow yet steady changes that began to occur after government implemented a professional and preventative police along the Thames river was the 'widespread acceptance' of this style of policing for all of London (Reynolds, 123). Between the years 1815 and 1828, changes to police that were slowly being advanced in a variety of ways, "continued to reflect the ideas of reformers like Bentham and Colquhoun" (Reynolds, 124). So for decades following the establishment of the river police in 1800, incremental change to adopt a similar system more broadly for England, continued unabated.

4. Bentham's Constitutional Code with National Preventative Police

Around the year 1818, Bentham's influence on public affairs was becoming important for the first time in his life (Stephens, 215). In 1824, Bentham and James Mill, father of John Stuart Mill, began publishing the quarterly *Westminster Review*, as a way to advance legal reform in parliament, influence public opinion, and to enter "the field of politics as a distinct body" (Stephens, 224). By 1825, the year before Bentham began corresponding with Peel, legal reform was being discussed more frequently throughout English society, while becoming more 'respectable' in the House of Commons (Stephens, 229). From 1822 until his death ten years later, Bentham was said to be delighted with these 'symptoms' from the "triumph of his creed" (Stephens, 229).

At the dawn of modern policing in London, the utilitarian idea for a centrally controlled, preventative and professional police, comprising a civil branch of government set apart from the military, was becoming more likely. But as alluded to earlier, there was still much work to do, which involved attempting to reform government, in order to make this more possible. Around this time, Bentham was busy writing one of his last works *Constitutional Code*, or '*pannomion*'. It was meant to provide a "clear and comprehensive idea of a complete body of law" for "all nations professing liberal opinions" (*Constitutional Code*, 7)

The *Constitutional Code* provided an account of the three branches of law, - penal, civil, and constitutional, - and their relation to one another. Bentham explained that penal law was for the repression of 'wrongs' in society, civil law meant for conferring rights, and that both were subordinate to constitutional law of which they were a part (*Constitutional Code*, 56). And while *Constitutional Code* was primarily meant to serve as a guide for emerging republican forms of government, it also became 'highly instructive' to other states, as it also highlighted the flaws and

abuses of England's government, such as many of those related to criminal justice (Constitutional Code, 10).

During the second decade of the 19th Century Bentham had begun to focus more of his efforts on the 'science of government' while advocating that republicanism was something capable of providing a greater amount of good to its citizens than any monarchy ever could (Constitutional Code, 10). As for England during this time of increased autonomy in Parliament from the Crown, Bentham thought his code might be useful in giving direction to those interested in gradual changes toward a more republican style of governance (Constitutional Code, 10). Bentham predicted that in whatever 'political community' his code was considered, the new 'arrangements' of a central government would likely result in "the abolition of the existing institutions" (Constitutional Code, 8). For him this meant abolishing the old local institutions devoted to the control of crime and replacing them with a modernized centrally controlled police.

He spoke out against ancient institutions that were 'mischievous' and produced far too much avoidable human misery (Constitutional Code, 8). Such institutions with their outdated and ineffective methods should be done away with, as they were creatures of habit in their service to local and special interests more than the interests of the general public (Engelman, 4). As we discussed in previous chapters, law enforcement had been entirely controlled by the propertied class including the church, typically serving their own interests without proper consideration for the common good on a much broader scale. Bentham wrote that the English government with its outdated institutions operated in a way that was in opposition to the overall felicity of the population at large. He claimed that the oppression of his fellow citizens was made possible in large part by particular sinister ruling class interests in addition to the lawyer tribe (Constitutional Code, 11).

Writing to the Duke of Wellington when he was eighty years of age, Bentham admitted that for sixty years he had been waging a ‘guerilla war’ against an ‘army of lawyers’ (Engelman, 4). As part of this battle, Bentham had attempted to create a comprehensive and consistent set of principles rooted in clearly stated and reasonable laws founded in certain beliefs first expressed in *A Fragment of Government* in 1776 (Constitutional Code, intro, 6). His sweeping legal and institutional reforms continued to be rooted in the belief that the proper basis for all laws was built on the greatest happiness principle (Constitutional Code, 6). And from this general approach to social reform, came specific actions and applications in support of this overall goal.

5. Law and its relation to Liberty, Security and Punishment

The civil branch of law was said by Bentham to confer rights to all people and was for their general felicity. He also made it clear that the first benefit to citizens from civil law was security afforded to all by government, a type of comprehensive security on which everyone’s liberty depended (Constitutional Code, 29). The individual rights of citizens would be upheld by government and made secure against the improper conduct of judges, police or any other government functionary. Additional security would be provided through transparency, provided by the utmost publicity that should be given to judicial proceedings (Constitutional Code, 60). While Bentham admitted that not every instance of corruption by a government official could be avoided, it was at least possible to prevent it from becoming “perceptible on a national scale” (Constitutional Code, 132).

Human beings said Bentham, “are the only real entities considered as being secured” (Constitutional Code, 29). This was contrasted with the myriad of practical applications involving the use of the word security associated with fictitious entities such as property, reputation, and condition in life. Security in the broadest sense of the word, was for the happiness of the people

with every security ultimately reducible for Bentham in service to the sovereignty of the people (Constitutional Code, 237).

Before explaining the relation between civil and penal law, he wrote how there were many instruments of government that could be employed for security against offenses to protect individuals and the state itself from the effects of crime (Constitutional Code, 30). For Utilitarian reformers police were essential for security and could be used to reduce the effects of crime, in addition to reducing the need for punishment in response. When Bentham devised his operational schemes, he considered all aspects together, so that crime, punishment, and policing were viewed as a problem that should be addressed as an integrated whole and not set apart from one another (Hume, 242).

The benefits of punishment are always accompanied by burdens (Constitutional Code, 50). So in his approach to punishment, Bentham insisted that the benefits or profit, be as great as possible while the burden as light as possible (Constitutional Code, 50). Police were supposed to be involved in the prevention of punishment, in addition to the threat of it. They were also a central part in the application of punishment. So Bentham viewed the activities of police as inseparable from this goal of providing maximum benefit with minimal pain in regard to punishment. A community, said Bentham, is the body politic and “misdeeds are its disorders” (Constitutional Code, 50). For Bentham, it was such disorders the penal branch of law was intended to address.

Writing about the role of legislators in this regard, Bentham compares their job to that of surgeons, where the cure to an ailment is the benefit, and the pain experienced by a patient is the burden. The job of a surgeon is to render a cure “as prompt and as complete as possible, at the expense of as little pain as possible” (Constitutional Code, 50). With the enlightened spirit of the times contributing to the increasing pressure for criminal justice reform, politicians from all parties

were beginning to take notice of the need to make punishment less cruel and replacing it with something more moderate (Hurd, 137, 277).

Preventing crime for the security of all using instruments of government would have been part of this approach toward lightening the burden of punishment on society. This was consistent with Bentham's lifelong goal of finding ways, including through the reform of police, to minimize the need for punishment in response to the 'misdeeds' of individuals. The interests of everyone wrote Bentham, would best be served by creating conditions so "that no punishment at all be inflicted: or if any, none beyond the least possible" (Constitutional Code, 263). Part of this approach involved judicial functionaries who he claimed, "are the only instruments, by which execution can be given to the law, and security or redress to the citizen, against injury in any shape at the hands of internal adversaries" (Constitutional Code, 387). Such government functionaries, including the police, would be central to replacing the 'ancient' institutions and traditions. This was at the very heart of Bentham's plans for criminal justice reform in addition to changing the structure of government. Justice, as commonly conceived wrote Bentham, seemed to match the word 'deserved' and centered on punishment (Constitutional Code, 76). Security was a word for him that included "body, mind, reputation, pecuniary power, condition in life: it is against injury at the hands of evil doers, internal evil-doers not being functionaries, and internal evil doers being functionaries" (Constitutional Code, 262). Bentham was making it clear that under his reforms, security from the effects of criminals would be improved. It did not matter to him whether or not a crime was perpetrated by a person on the street or by a corrupt government official in the form of a police officer.

In service to a more consistent and equal application of the law, Bentham recommended that any central styled government expressing liberal opinions (Constitutional Code, 7) establish a

Minister of Preventive Service directly under a Prime Minister. In Constitutional Code, as in his previous works, Bentham was once again advocating that a branch of government be established comprised of police for the prevention of delinquency and calamity (Constitutional Code, 414). Such a branch would become one of thirteen ministries for any liberal and progressive minded government, along with ministries of health, education, army, trade, finance, and foreign relations, among others (Constitutional Code, 414).

For Bentham, police would provide internal security primarily through the prevention of crime and for the avoidance of punishment which would then become a national priority forming part of how a liberal government was supposed to be constituted. And for the preventative police of any state, the end in view would be the same as any other Ministry that made up the ‘official establishment’ or central government (Constitutional Code, 413). And that end was, “1, maximization of appropriate good: 2, minimization of correspondent evil. Under these two heads may, on this occasion, be comprised the two all comprehensive branches of the main universal end - the greatest happiness of the greatest number” (Constitutional Code, 413). Bentham maintained on paper that a branch of police formed along these lines should become a national priority. And after corresponding with Bentham and having him draft legislation for the reform of laws and the amelioration of punishment, Robert Peel made this a national priority for England after he became Home Secretary.

6. Robert Peel, British Home Secretary

Bentham’s utilitarian principles became a treasure-trove of ideas for reformers, statesmen, publicists and those tasked with the administration of justice such as Robert Peel (Everette, 14). Eventually, Peel would tackle many of the same issues pertaining to criminal justice that Bentham and others had been working on for decades. Years later, *The Westminster Review* would go on to

praised Peel for his legal reforms aimed at the melioration of the “evils of our laws” (Westminster Review, Vol. 14, p.135). Higher praise, it declared, should be reserved for those who had opposed such outdated laws for years, worked to reform them, all the while “creating a general demand for its melioration”(Westminster Review, Vol. 14, p. 135) which placed additional pressure on government to change their course. “Take away the share of merit due to Mr. Bentham, Sir Samuel Romilly, and Mr. Peel, and what will be left as the portion of his majesty?”(Westminster Review, Vol. 14, p. 135) asked *The Westminster Review* in 1830, the year after Peel had introduced modern police to London.

In 1822, the man who would later be described as a great social reformer Robert Peel, the young MP representing Oxford, was appointed to the position of Home Secretary overseeing security and criminal justice for England. And just like Bentham, Peel quickly became ‘pre-occupied’ with social reform and with lessening the ‘evil’ involved in the punishment of criminals (Gaunt, 49, 59). Peel’s mind was “full of the public interest” (Gaunt, 14) and while his political actions were often shrouded in secrecy(Gaunt, 3), he was also known to focus on the beneficial consequences of any proposed reforms before attempting to implement them (Gaunt, 27).

After becoming Home Secretary, Peel began to take up the work on a variety of legal reforms that people such as Bentham, Colquhoun and Romilly had been involved with for decades (Journal 3, 149). Within a few years of taking office, Peel began corresponding with Bentham. It is interesting to note that John Stuart Mill once wrote “the father of English innovation, both in doctrine and in institutions, is Bentham... he is the great subversive” (Everette, 17). So Bentham the ‘great subversive’ with a reputation for giving away ideas to others in order to further advance them, began writing to a Home Secretary with a reputation, as we will discover, for taking the

ideas of others and making them his own (Reynolds, 163). Apart from this, the two seemed to share a lot in common.

Peel graduated in 1808, with a double degree in Mathematics and Classics from Oxford, the same university Bentham had attended decades previously. And just like Bentham had done, Peel went on to study law at Lincoln's Inn. While they never seemed to have met one another, both had common associates in Parliament and were aware of each other's reputation. Both reformers were scornful of religious dogma (Hurd, 390) while embracing the intellectual process of marshalling facts on a variety of practical matters set against a background of ideas, much of which related to criminal justice. In identifying and addressing political and social ills, their arguments were well rooted in empirical facts and figures (Hurd, 226,243).

Bentham and Peel shared a similar approach to the reform of laws in that both were 'simplifiers' and attempted to sweep away many of the 'cobwebs' found in the confusing language and contradictions in criminal statutes. In a letter Bentham wrote to Peel in 1826, he spoke out against the "impenetrable legal formularies in which lawyers worked" (Gaunt, 64) and "the closed, self-governing professional oligarchies"(Gaunt, 64) maintaining a criminal justice system of "gross and capricious terror" (Gaunt, 64).

At times Bentham and Peel seemed to operate in concert. They had shared concerns on a variety of social problems, many of which they concluded were corrosive to the public good. Much like Bentham, Peel became 'indignant' toward anyone who either ignored or did not take seriously, the suffering of others (Hurd, 351). There had been much suffering in those years before Peel's time in office, a time in which Bentham insisted that government should be more about improving the general welfare of its citizens. Between 1815 and 1822, England was experiencing a

depression, starvation was a threat to the poor, and approximately twenty-five percent of the population relied on parish relief (Lyman, 146, 147).

This was a harsh time in which a “philosophy of government intervention” (Lyman, 146) and the ‘welfare state’ were practically unknown, and Bentham and others around him were intent on changing that. While Bentham and Peel seemed to be in general agreement on most issues, there were occasions such as when Peel rejected Bentham’s proposal on reforming the Jury Act, that the two went in slightly different directions. Bentham at times complained that some of Peel’s reforms in the 1820s, did not go far enough (Hurd, 74). Another difference in their approach was that Bentham supported the codification of criminal law for England while Peel favored consolidation. Both wanted to simplify and clarify the code, however Peel favored working with the existing framework of English law, whereas Bentham’s envisioned more substantial change.

Yet it became increasingly clear to both Bentham and Peel, that while at times their tactics and preferred paces of change may have been different, they shared an overall goal in the moderation of punishment and in providing security to society through the use of less coercion. Bentham and Peel were also of the same mind that many of the advantages pursued through the reform of laws, would be almost entirely lost “unless something was done about its enforcement” (Hurd, 78). And this is precisely why the reform of police for England was so important to both of them.

During Peel’s time in office as Home Secretary, legal reform would also include the reform of the police beginning in London, though much of this work had been previously done by Bentham and Colquhoun (Lyman, 149). And it was along these lines, that Peel went to work on the improvement of London’s police. The legislative sovereignty that emerged for Parliament in the eighteenth Century, combined with demands for reform growing louder, led to a ‘flood’ of

legislation in response during the nineteenth Century in which Peel played a vital role (Hogue, 243). Yet there was also “political opportunism in Peel’s strategy” (Gaunt, 65), said to be in part a response to the ‘formidable intellectual assault’ in support of reform (Gaunt, 65).

By the time Peel came to office, a small majority in Parliament were finally in favor of changes to the criminal justice system, “as a result of the long years of argument by the reformers” (Hurd, 73). There was much concern expressed for years by Benthamites and liberal minded ‘Tory Ministers’ over the wide-spread corruption and unfairness at the heart of the criminal justice system (Hurd, 66). Peel took up the work once the public and a majority of politicians demanded that it be done (Gaunt, 66). It was this ‘ripening’ of public opinion, that provided added incentive for Peel to advance legislation for the purpose of reforming both laws and institutions (Lee, 219,220).

During this time of profound social change, the population was paying more attention to politics, and agitating for reform of all aspects of government in response to increased economic hardships and perceived unjust treatment more generally (Lyman, 146). As we discussed in chapter two when exploring some of the social problems before London adopted a new system of police, there was widespread suffering throughout society due to wars, poor harvests and economic difficulties. This caused widespread protests which often turned violent in response. In the decade or so before Peel’s time in office there was widespread unemployment and hunger due to the increased use of machinery that replaced manual labourers contributing to the Luddite riots of 1811 (Lyman, 145).

That same year England experienced an especially hard winter followed by a poor harvest in 1812, making it increasingly difficult for people to find adequate food and shelter. There was a depression from 1815 until 1822, and starvation become a constant threat to the poor (Lyman,

145,146). People became increasingly desperate and some resorted to crime just to survive. As previously noted, it was estimated that twenty-five percent of the national population depended on the charity of the parish relief system. As the lower classes in particular began to realize the injustice of their situation, they advocated for more for sweeping changes to the role of government in the face of such hardships, including improvements to criminal justice. All of this combined to provide much needed fuel to the various causes of political and social reformers such as Bentham and Peel. (Lyman, 147).

7. Bentham and Peel

In a speech given in 1827, Peel sounded like a Benthamite when he said that all laws associated with his name were essentially about mitigating the severity of English criminal law, preventing the abuse in its application and for securing its impartial administration (Gaunt, 59). And just like Bentham had done years before him, Peel fixated not only on legal reform in general, but specifically on those aspects of law having to do with prisons, police, judges and courts. While it has been said of Peel that he concealed many of his opinions, he was also known to derive his judgement on practical matters from legal theory (Gaunt, 30, 45). For each decision of any consequence, he looked for a “valid moral and intellectual shield” (Hurd, 52). Peel having now attained, what up until that point in time was the height of his political power, would be operating in an environment in which Bentham had become the pre-eminent political philosopher.

With a reputation as one of the most liberal and reform minded members of the administration, Peel was receptive to many of Bentham’s ideas. He was also good at executing the ideas of others and was open to liberal arguments such as Bentham and other were advocating for (Hurd, 126). And while Bentham may have been a man of vision, Peel seemed to be a man of action (Gaunt, 153). While Benthamites were known to have worked for years on a variety of

bureaucratic schemes tied to criminal justice reform, Peel possessed the power they lacked to fully implement them (Hurd, 351). Peel was of the view that if changes to the criminal justice system were inevitable, then he was in a perfect position to help bring them about, and perhaps take credit for them as well (Gaunt, 138).

Peel's efforts as Home secretary led to several firsts for the Conservative party in power. They included sponsoring measures for ameliorating the harm of the criminal justice system through changes to prisons, courts, and police (Reynolds, 128). This list of priorities was nicely aligned with Bentham's aims, some of which had yet to be achieved despite four decades of working on the same reforms that Peel now embraced before implementing them. Peel's ideas were not original, his strength was primarily from the ability to "analyze facts and views put to him by others, and then for acting on that analysis" (Hurd, 338). He was also a prominent public figure, persuasive and a strong debater according to one biographer (Hurd, 78, 126), said to be a 'master orator' whose argument was key to his political success according to another (Gaunt, 11).

In letters to friends shortly after Peel took office, and after corresponding with him directly, Bentham's praise of the Home Secretary in regard to his criminal justice reforms was somewhat reserved, stating that "he has given a slight impulse to the law improvement in the right direction" (Hurd, 72). However Peel's ability to advance liberal reforms in government on matters of criminal justice meant his stock would continue to rise in the eyes of Bentham (Gaunt, 68). This is because Peel is considered to be "the great reformer of the nineteenth century" (Hurd, 13). Such reformers, as the Home Secretary had become by the mid-1820s, were strongly influenced by Bentham (Hurd, 13). And while Peel was one of the founding members of the Tory party and not considered a liberal by temperament, he was certainly receptive to liberal arguments, especially when someone like Bentham gave them more force (Hurd, 126).

8. Bentham's Letters to Peel

One of Peel's critics at this time was the Duke of Wellington who complained that the home secretary advanced "the most liberal measures in order to please our enemies" (Hurd, 131). Republicans such as Bentham, with their anti-monarchist stance, would have been counted among the enemies that the Duke would have been referring to. As was previously discussed, Bentham was an advocate of Republican government both at home and abroad and had developed a discourse with politicians and leaders, both foreign and domestic. It was during this time he was corresponding with Simon Bolivar, the South American revolutionary who led a successful rebellion against Spain and sought out Bentham's advice on a constitution for his emerging Republic.

In a letter from 1825, Bentham complained to Bolivar that "being as I am an avowed republican, on all these occasions as little is taken from me, and as little is said of me, as possible" (Letters, Vol. 12, 148, 149). But that was not entirely true. This is because Bentham also told Bolivar rather proudly about 'considerable measures' in the form of his bills being adopted in parliament "though they seldom speak of these measures as being mine" (Letters Vol. 12, 148, 149). So while it continued to be true little was said of Bentham in Parliament, plenty had, and would continue to be taken from him by those in power.

In two biographies on Peel he is described as an independent minded politician, not strictly guided by any party or particular group in Parliament, even though he was a lifelong Tory. His 'natural home' was said to be among liberal Tories (Gaunt, 26) and he is referred to as the 'architect' of Victorian liberalism (Gaunt, 2). Peel has also been described as more of a Whig than a Tory, largely due to reforms that he instituted both as Home Secretary and Prime Minister (Hurd, 327). So in addition to being non-dogmatic in regard to religion, Peel appeared to be non-dogmatic

in regard to politics, where he preferred exploring the foundational ideas situated underneath the apparent political surface (Hurd, 141). One of these foundational ideas seems to have been the utilitarianism of Bentham, and Peel was a receptive vessel. Bentham wrote to Peel in the spring of 1826, stating “the greatest happiness of the greatest number” was “the only defensible end of government” (Letters, Vol 12, 206). It seems the philosopher was once again attempting to guide a legislator using utilitarian principles for purposes of sweeping legal and institutional change.

It was now the mid-1820s, more than twenty-five years after Bentham insisted on working in secret with Colquhoun when he successfully drafted legislation on police reform in 1800. Despite the passage in time, Bentham still felt the need to work in the shadows, thinking that maintaining a low profile might once again provide the best chance of having his bills adopted in the House of Commons, especially if such legislation was known to be being drafted by an ‘avowed republican’ (Letter, Vol. 12, 140). Bentham now in his seventies, continued to cast a cynical eye toward English politics in general but was hardly undaunted.

He wrote to Peel in 1826, “Sir, by the liberty taken in this address, I regard myself as ministering to your beneficent designs” (Letters Vol. 12, 239), before adding “universal security of property cannot take place of the present universal insecurity” (Letters Vol. 12, letters, p. 241). Bentham was referring here to the high rate of crime in and around London. He also advised Peel of the need to distinguish between the interests of the few as in specific groups with power and influence, and the interest of the ‘subject, many’ as in the general welfare of all citizens (Letters Vol. 12, 242).

Bentham advocated establishing a universal security plan a system with procedures and a proper judiciary establishment. He also informed Peel about the universal and intelligible rule of action that he and others had been aiming at for so long, for a professional order similar to a class

of law practitioners as if attempting to describe his previous efforts for the reform of police and prosecutors (Letters Vol. 12, 242). Bentham noted to Peel his own intention that “taking always a mere auxiliary part” (Letters Vol. 12, 244) before adding that the Home Secretary’s plans for criminal justice reform should take “whatever shape you think right to give to it” (Letters Vol. 12, 245).

In addition to offering his assistance, Bentham also warned Peel that “yours is the option whether to continue to be what, in appearance at any rate, you have begun to be, a friend to mankind, or a member of the un-holy alliance, of oppressionists and depredationists” (Letters Vol. 12, 243). Bentham had declared himself a strong supporter of a Republican form of government (Bowring in Constitutional Code, 6) and had stated in his Constitutional Code published in 1823, that the English government and Monarchy were not about the felicity of the people but rather a force for the oppression of the people (Constitutional Code, 11). The oppression of the people was made possible in part, “from the sinister interest and particular situation of the lawyer tribe” (Constitutional Code, 11), for which he offered his remedy of consistent principles.

Punishment, Bentham wrote in Constitutional Code, was not for a *wrathful* Monarch and “the confederate partner and instrument of tyranny, of lawyer craft in its most rapacious character” (CC, 51). It was the interests of all classes, with increased focus on the needs of the lower and middle classes as against those of the privileged and powerful of which they were both apart, that Bentham wanted Peel to prioritize in his legal reforms. So it was the existing arrangement of government, shored up by an army of lawyers, closely aligned with the Crown and its supporters in Parliament, that Bentham had in mind when cautioning Peel about ‘oppressionists’ and depredationists’.

Peel wrote back to Bentham a few weeks later saying that he had “attempted to avoid the evil to which you refer in your letter”(Letters Vol. 12, 249). In another correspondence from August 1826 to Peel, Bentham claimed that many in positions of power had for years expressed an interest in learning his views on such ‘public matters’ in order to help form their own (Letters Vol. 12, 214). In their letters, the two also discussed the potential for harm from the often-confusing language found in the penal code, with vague and undefined laws that were often altered in practice, “at the discretion of those who have to administer it” (Letters Vol. 12, 249). This would have included the role of police, part of the reform of the broader ‘judicial establishment’ that Bentham complimented Peel on for his ‘beneficent designs’ (Letters Vol. 12, 210).

Returning to an old theme of his perceived unpopularity among those in power, Bentham also added that “many a man who has long been seconding my designs, would no more dare to mention my name with any mark of approbation, that at Paris to exhibit a bust of Bonaparte” (Letters Vol. 12, 245). In a sense then, Peel was being told by Bentham that he could take credit for any of the ideas being offered to him, by England’s pre-eminent political philosopher (Stephens, 210,125). And since Peel viewed the law much as Bentham did, as a science, he sought to simplify and consolidate the legal code. Bentham advocated for a ‘constitutional code’ a codification of law with an even greater sense of scientific certainty. The two shared a similar goal of replacing the uncertainties they felt was a source of the corruption in the existing system.(Gaunt, 63,64,67).

In January of 1827, as Bentham’s health was in a slow decline nearing his eightieth year, he wrote to Peel about matters related to policing, including the proposed salaries for police magistrates, as part of the increased need for a professionalization of such positions that was taking place. This was part of a plan, Bentham declared to Peel, of making justice accessible “to the great

majority of the people” (Letters Vol. 12, 270,271). Peel had recently sent Bills to Bentham related to the reform of property crimes in addition to proposed legislation on other matters related to criminal justice (Letters Vol. 12, 249). One of Peel’s biographers wrote that he was not an original intellect, but that it provided Peel with a “powerful tool for analyzing facts and views put to him by others, and then for acting on that analysis” (Hurd, 338). Bentham was one of the more influential persons who would have been placing some of those views right in front of Peel for his consideration. And Peel would have been perfectly poised to act on Bentham’s recommendations.

In a letter to Manuel Arce around this time, Bentham wrote that he was in regular correspondence “with two principal members of the government – Canning Secretary for Foreign Affairs, Peel Secretary for Home affairs – one of whom, Peel, I learn from various and unquestionable authority, makes no secret, either among his most confidential friends or in mixt companies, of his regarding me as the only individual by whom any correct or comprehensive conception is embraced in the business of legislation” (Letters, Vol. 12, 259). So as a Home Secretary pursuing sweeping legal reform, Peel was not only well positioned to act, but also being well advised by Bentham.

In those years directly preceding the creation of London Metropolitan Police, Bentham seemed to have had a profound influence on Peel’s actions. In his letters to Peel, Bentham lavished praise on the Home Secretary’s ministry as one in which “more beneficial intentions have been manifested, than by any that ever preceded it” (Letters Vol. 12, 215-216), adding in another letter, “my eyes were fixed upon the subject long before yours were in existence” (Letters Vol. 12, 243) Peel’s life, Hurd wrote, was said to be a great appropriation clause because he acted like a burglar of the intellect of others. No statesman, he said of Peel, had committed “political petty larceny on so great a scale” (Hurd, 361).

In 1827, after an internal governing party struggle Robert Peel announced his resignation as British Home Secretary. The following year he returned to his former position and began the monumental work of extending modern policing to the rest of London, from where it had first taken hold along the Thames River in 1800. Debates in Parliament over police reform had steadily increased with the pressure to improve the old system, now that its flaws were becoming apparent to the general public and politicians through the work of reformers (Emsley, 52,53).

When he had first become Home Secretary, Peel was more resistant to reform. However, seven years later, after being encouraged by influential politicians such as Sir Samuel Romilly and others, he had changed his approach. Romilly, who like Bentham was a lawyer by trade, focused on ameliorating the harm of the criminal justice system, just as Peel was beginning to do. From a prominent position in the House of Commons and with his views aligned with Bentham's, Romilly worked to convince the Home Secretary to embrace the idea of a new 'vigilant and enlightened' police (Lee, 206). Romilly, who was instrumental in persuading Peel to change his position toward police reform, also advised Bentham on more practical political issues while at the same time becoming the "chief expounder of Bentham's theories in Parliament" (Stephens, 187).

In addition, Benthamite Edwin Chadwick who had previously worked on disease prevention, prepared a report on preventative police in 1828, for Peel's select parliamentary committee looking into the matter. The reforms implemented by the Home Secretary at the close of the 1820s were the result of decades of work for the improvement of police in England. The sweeping changes to London's police that were about to unfold, would finally give effect to the years of neglected parliamentary recommendations (Lee, 223).

Peel would have come across many of these recommendations in Bentham's previous work on police for the Thames river. But more importantly, Peel would have come across a wealth of

knowledge from Bentham's other bills that were rejected by parliament recommending new police for all of London. Likely sources of this information would have been a variety of committees gathering information on the subject over this time, including Peel's own committee of 1828, looking into previous attempts at police reform, and perhaps from his writings in *IPML* and *Constitutional Code*, that proposed a centrally controlled preventative police on a national scale.

9. The Metropolitan Police Act of 1829

For Peel, as was the case with Bentham, police reform was intricately connected to legal reform (Lyman, 149). So in 1829, at the behest of Britain's Home Secretary, the London Metropolitan Police was created, complete with a Benthamite character (Reynolds, 163). This is because the new police for London was to be centrally controlled so as to make it more efficient and for extending its reach past individual districts and parishes, and more able to provide a consistent and coordinated approach to policing society. And while police had become increasingly professional over this timeframe, it was centralized policing that utilitarian reformers pursued with vigor (Reynolds, 124).

A modern police was a public, not a private enterprise, with full time salaried government officials or functionaries for the security of all, not just for a specific location or in service to special interests. Modern police also took on a Benthamite character because it was "an assemblage of techniques" (Finnane in Knepper and Johansen, 465), using various instruments of government, part of the emerging administrative functions of a central state related to crime control. The characteristic mode of modern police was found in its bureaucracy, which enabled it to perform a wide array of functions and to be more accountable, since it was controlled by a single department with a single head (Finnane in Knepper and Johansen, 462). But there was much more to it than just a complete change in structure.

As we have already discovered, the London Metropolitan Police was not the first urban police force, yet no other can compare to its symbolic importance. (Finnane in Knepper and Johansen, 456). Peel's legislation introduced a centralized, preventative, and unified system for "improving the police in/near the Metropolis" (Lyman, 150). The new law effectively replaced an old parochial watch system augmented with private detectives and backed by the military, with a new more efficient police. Contained within the bill were details related to public financing, rules spelling out the various duties and for exercising authority, in addition to a code of discipline (Lyman, 150,151). One thousand unarmed constables appeared on the streets of London in September 1829, all of whom were unarmed and wore blue civilian clothing, to distinguish them from the red uniform of the British Army.

This move was lauded as a revolution in law enforcement with London becoming a model for police reform on a national scale and an example for police forces throughout most of the English-speaking world (Lyman, 141). The seed for a new system of police first planted in 1800, had finally grown to encompass all of London by 1829, before being mandated for the rest of England. During this period of time when modern policing was said to have evolved, it seems Jeremy Bentham was busy toiling behind the scenes, attempting to influencing the outcome when it mattered most.

What distinguished modern police as Bentham envisioned it, more than anything else, was its important role to be played in regard to his lifelong obsession with preventing crime. This was so that an acceptable level of security and deterrence might be achieved for all of society, while attempting to avoid as much punishment and coercion as possible, in pursuit of this lofty goal. Consistent with this approach, Bentham helped develop a new way for government to exercise their authority at home for this general purpose with professionally trained civilians, who did not

have to rely on military force to back them up (Finnane in Knepper and Johansen, 463). Just one year before the creation of modern police for London, the city relied on a heavy-handed military response, as was the practice of the time, in order to adequately secure life, property and for maintaining order (Lyman, 149).

“What is striking about the creation of modern police is the desire to make the power more effective by limiting the need for its exercise” (Finnane Knepper and Johansen, 470). It was reason and not force, that was central to this improved method for the control of crime (Stephens, 270). This would be attempted largely by employing well-regulated patrols, a form of inspection and constant monitoring and a new type of hierarchized surveillance for London, just as Bentham and others had long ago envisioned (Reynolds, 99). The Duke of Wellington who along with Peel, presented the bill in Parliament, emphasized the preventative nature of the new police. Both advocates highlighted that the legislation was intended primarily for the prevention of crime and for the avoidance of punishment (Lyman, 151).

10. Conclusion

H.L.A. Hart once wrote that the tenor of statutory reforms enacted by parliament from 1827 onward, “was fully in accordance with the principles and purposes of punishment proclaimed in IPML” (Hart in IPML introduction, 61). Peel’s Metropolitan Police Act of 1829 would seem to be a perfect example of this type of statutory reform. And as earlier noted, on the list of thirteen basic ministries for any liberal, modern government Bentham wrote in *Constitutional Code*, was a Ministry of Preventive Police. In making this list of priorities for any liberal and centrally controlled government, Bentham’s approach “anticipated the development of the modern state more than it reflected existing constitutions” (Burns, in IPML preface).

Criminologist Ian Loader thinks the Peelian principles, with their contested and somewhat mysterious origins discussed earlier, are central to understanding Anglo-American policing, and that they were produced as a result of modern state building (Loader, 427). Yet not only are these principles a product of the modern state, but so too is the institution they are associated with, the London Metropolitan Police, and both of these were based in large part on Bentham's plans for policing. This was central to his lifelong pursuit of preventing crime and the punishment that often followed. This would be done, as Bentham had written since at least 1780, through the reform of laws, government institutions, and practices.

For a man who at times seemed to busy himself addressing every ailment in English society, there remained a "major preoccupation which is not discussed in *IPML*, the prevention of crime through a variety of practices and law" (Burns in *IPML* introduction, 18). And it would appear, from all that we have uncovered, that improving the practices of police, became a large part of this preoccupation of crime prevention for Bentham.

The very first of nine Peelian principles, that we discussed in chapter one, does a very good job of expressing the rough outline for modern police found in a lifetime of work by Bentham. As a reminder, it goes as follows: "To prevent crime and disorder, as an alternative to their repression by military force and severity of legal punishment" (Loader, 429). Perhaps in his essay on recasting the Peelian principles Loader should have re-named them as well, so as to better reflect their utilitarian origins and Bentham's approach to police reform. After all it was he, who just like the nine principles, tried to "tell cops and citizens what policing is for and how it is supposed to be conducted" (Loader, 427). What Bentham wrote on policing for years, Peel implemented when the time was right.

And perhaps this is part of why Everette writes that the history of legal reform in the 19th Century in which Peel played such a major part was “the story of the shadow cast by one man, Bentham” (Everette, 197). Writing to the Marquis of Lansdowne in January of 1828, Bentham discussed his correspondences with Peel from the previous year as something he had kept secret, consistent with the approach he had adopted working with Colquhoun decades earlier. These discussions on criminal justice reform “I kept secret as if it had been treason: lest my name should operate as an obstruction to any little good he might be able and willing to do” (Vol. 12, letters, 434), Bentham stated. It is not surprising then, given the tone of these letters, that so little was known almost two hundred years ago, or since then, of Bentham’s central role in shaping modern police.

The type of policing that emerged in the first few decades of the nineteenth century was the direct result of the reforms by Bentham, Colquhoun, and Romilly, who appear to have done the “necessary thinking and sowed the seed in the public conscience” (Lee, 220) Meanwhile others such as Peel monitored “the gradual ripening of public opinion and provided the necessary legislation as soon as the people were ready for it.” (Lee, 220) The plans for a new police had already been drawn up, a model had been implemented, and further ground was being prepared in the public mind and in parliament, just as Peel arrived on the scene to complete this task. What ultimately resulted from this effort, was a monumental shift in the way English speaking societies were to police their communities, made possible in large part by Jeremy Bentham.

Ch. 6 Conclusion

1. An Argument for the Utilitarian Foundations of Policing

In this thesis I have argued that Robert Peel should not be considered the ‘founder’ of modern policing. The development of modern policing was a long process, and English philosopher Jeremy Bentham was much more involved in creating this institution, well before Peel took an interest in it. In fact, Bentham’s work – both philosophical and practical -, guided other police reformers such as Peel. Our account of this began in chapter two, where we examined in some detail the problems with the old system of police, and its relation to crime and punishment. We saw that the old police were under local control and inadequately paid through a flawed public-private funding scheme, that reformers believed contributed to the maintenance of a cruel system of punishment. As we know, the old system of punishment was a source of disutility in society in that it was arbitrary, fragmented, unequal, ineffective and overly cruel. There were few aspects of the law and government institutions that escaped Bentham’s attention, and the way in which society was policed was no exception.

Utilitarian reformers were guided by Bentham and came to realize just as he did, that “the law was a mess” (Hurd, 62). In addition to this, reformers believed that most government institutions were similarly flawed. So while lessening the severity of penal law was vitally important, we also now realize that reformers believed that any advantages made possible through the reform of laws, “would be lost if nothing was done to prevent the abuse in the exercise of them”(Hurd, 78). After discussing these serious issues with the old police in relation to high levels of crime, corruption, and the maintenance of a brutal system of punishment, chapter three explained the ways that Bentham aimed to solve those problems. Bentham attempted to solve these problems for society by first writing on ways of improving England’s police through better structure, purpose and funding from 1780, beginning with *IPML*, followed by specific details on

preventing crimes in later works. This was a lengthy process involving Bentham ‘operationalizing’ his greatest happiness principle, into subordinate principles followed by rules and procedures for creating a new and improved system of police, for universal security and better access to justice for all (Letters Vol. 12, 241,270).

Improving both the structure and methods of police was connected to Bentham’s central concern of security, not only for lives and property, but also for securing individual rights and to prevent misrule by government, including the misconduct of public functionaries and other officials. With a living wage, proper oversight and a new hierarchy for purposes of supervision and coordination, police corruption was reduced from the much higher levels of the old system. Bentham advocated for central (i.e., not local) control, so that any measures for preventing crime, could be made more uniform, coordinated, and expansive. These efforts were consistent with Bentham’s utilitarian principles, applied to a variety of social and political reforms, so that England’s ‘bloody-code’ could one day be replaced with something more effective and moderate. And while chapter three explored how Bentham’s theory could be applied in practice, in chapters four and five, we discovered just how he accomplished this with both the Thames River police and the London Metropolitan Police.

In chapter four we explored how, with Bentham’s planning, advocacy and guidance, policing with its “loosely coordinated patchwork of public and private arrangements” (Sklansky, 1202) became a full-time profession under one head. In this chapter we discussed how Patrick Colquhoun, ‘a good Benthamite’ also advocated for centralized preventative policing for London (Reynolds, 90). Finally then, beginning in 1800 with the river police, and continuing on with the Metropolitan Police in 1829, police would no longer be able to accept “supplemental private payments for their work” (Sklansky, 1203). A discussion in chapter four on the development of

modern police for the River Thames in 1800, led to a further discussion in chapter five on the subsequent development of modern policing for *all* of London in 1829. In both cases, we discovered how Bentham worked with Colquhoun and Peel on the reform of police yet wanted his involvement with them to be kept secret, because of his numerous ‘enemies’ in parliament.

In chapter five, we also saw that up until Peel’s time in office, the bureaucracy involved in creating a modern preventative police, for the most part, did not exist. Centralization changed all of that, by establishing a standardized organization from many disparate local ones, with more uniform practices and procedures, for a more coordinated approach to the prevention of crime. In this sense then, Peel’s London Metropolitan Police of 1829, “was administratively a Benthamite reform”(Reynolds, 163). But we also know that Peel’s achievement in 1829, was the culmination of two previous attempts by Bentham, once in 1785 and again in 1800, when he attempted to provide all of London with modern policing by working on bills of reform. In addition to this, we discussed Peel’s reputation of taking credit for the ideas of others, and how Bentham had a reputation for offering his designs to others and lacked ‘pride in authorship’ in regard to his many works (Letters Vol. 12, 208). Before concluding this account of modern policing, I would like to first discuss a possible objection to it.

2. Foucault’s Objection

In chapter one, we briefly discussed two competing accounts in the history of criminal justice. One of them was the empirical approach that has been traditionally adopted by most historians writing about policing. It is this empirical evidence, much of which has been taken from such sources, which has been the focus of this thesis in which Bentham’s work was set against the backdrop of the historical and philosophical context in which modern policing emerged. Another account, that we will now turn to as part of an anticipated objection, is the theoretical perspective

of criminal justice, which pushes back against the empirical approach found in this paper. (Lawrence in Knepper and Johansen, 18) According to this theoretical interpretation of criminal justice, the origin of modern policing is tied to the rise of capitalism, the modern nation state and the exercise of power through government institutions, with a need for increased discipline and control for society. This structuralist interpretation of criminal justice is rooted in a Marxist perspective with economic motives at the heart of social controls. The approach is conspicuous, in the popular works of Michel Foucault (Lawrence in Knepper and Johansen, 22). According to Foucault's account, the rise of modern police was not developed to combat injustice and to improve the lives of the general public but was tied, rather, to the consolidation of state power and the exercise of control through systematic surveillance. Instead of a positive story about progress and improvement, we get a more complicated and mixed story.

In his work *Discipline and Punish*, Foucault states that modern police of the centrally controlled type, became "co-existent with the social body" (Foucault, 213) creating an "indefinite world of a supervisor" (Foucault, 213) so that "discipline reigns over society" (Foucault, 216). Discipline was the function of police, and their power, according to Foucault "must bear over everything" (Foucault, 213). While Foucault might agree that Bentham's motive was to improve public welfare, he would not agree that is what occurred. The change that occurred to society he might say, had more to do with advancing state and commercial economic interests, through increased discipline and control of the public. Benthamites may counter that after a period of reform in which the state's interests were more closely aligned with that of the general public over time, any consolidation and extension of state power resulted in an overall improvement to public welfare.

After Foucault discusses Colquhoun's efforts and merely surveys only a small part of the landscape, (he does not discuss, and may not have been aware of Bentham's central role in creating modern policing, with its use of organized, hierarchized surveillance outside of prison walls), he comes to a hasty conclusion about modern policing. And that is, in the early 19th century London, with the river police says Foucault, "there emerged the need for a constant policing concerned essentially with this illegality of property" (Foucault, 87). Here, Foucault is referring to the problems that arose in relation to theft involving river pirates, fences and others, that we discussed in chapter four. While the privately run river police may have been solely concerned with commercial interests and the protection of private property, we now know that Bentham was involved in transforming this body into a public river police with much broader goals. Bentham's police reforms resulted in the consolidation of state power, but this was for good purpose because it was for protecting the public from the cruel, unjust and arbitrary exercise of power, and to reduce overall suffering more broadly.

For Foucault, this was not about the illegality of property, at a time when increased commercial activity and material wealth led to increased theft and other related offences along with more punishment in response. Rather, modern policing is more about a focus on the needs of the propertied class, as in protecting the interests of the capitalists and bourgeoisie. Such illegal activities he states, "while resented by the bourgeoisie... was intolerable in commercial and industrial ownership" (Foucault, 85). In support of this view, he goes on to describe the 'great warehouses' and increased commercial activity at ports along the Thames river where "economic development was most intense" (Foucault, 85). It was here Foucault claims that a severe repression of illegality occurred, enabled by people such as Patrick Colquhoun, who provided supporting figures from insurance companies and estimates of merchant's losses. And from

Colquhoun's figures in his popular treatise on crime, came an urgent need to address innumerable illegal practices along the Thames river according to Foucault (Foucault, 85).

And while Foucault was aware of Colquhoun's pioneering work on police reform, by claiming it to a form of severe repression he appears to overlook the ultimate purpose behind such reforms which we know was to alleviate suffering. Instead he focuses on a single subordinate means, the protection of property, one of many in service to a goal of reducing suffering, before claiming modern policing was mostly about protecting great warehouses and ports along the Thames. But police were meant to be much more than simply for the protection of commercial interests. The story of modern policing is one that includes the central element of Bentham's vision and his work over decades on implementing it. This account involves a concept of universal benevolence for a more caring and compassionate society with increased focus on reducing suffering of all types in service to the greatest happiness principle. This is how modern policing, involving Bentham and a few of his followers, was developed, something overlooked by Foucault and many others who have written on the history of both philosophy and policing.

3. A Benthamite Response

One of the problems with Foucault's theory-laden interpretation on criminal justice, is that he developed his theory without relying on archival sources (Lawrence in Knepper and Johansen, 22,23). In relation to modern policing, he does not consider that Bentham would never have knowingly involved himself in furthering what he termed sinister interests of the mercantile class or the bourgeoisie. And if this is what Foucault says resulted, perhaps he did not fully consider the other social benefits that extended beyond the narrow interests of the powerful and elite. Bentham made this abundantly clear in his numerous works and letters, that legislators should serve the

general interests of all in society and not just the interests of a particular class, as had always been the case in England.

Lawrence has summed up the problem with Foucault's interpretation of modern policing. "Many authors have observed that while Foucault does describe transformations in the administration of justice well, he does not provide a particularly convincing explanation of them" (Lawrence in Knepper and Johansen, 23). Bentham and Colquhoun did not only want police for the Thames river in service to the commercial interests and property owners. Instead they had to settle for it after failing to convince parliament to adopt their more ambitious plan of a fully funded public police, in service to much broader goals than has been reflected in Foucault's account. As we recall from chapter four, both reformers wanted a new and improved police for London, a public service for all classes and for all neighborhoods of the metropolis, not just in the centers of commerce protecting great warehouses. The commercial class and property owners did not lack access to justice or security under the old system of police, because they already had a private financial system in place for accessing these social goods. It was the poor and emerging working class, many of whom languished in 'debtor's prison' or who were denied the services of a detective or prosecutor from a lack of funds after being victimized, who were typically denied justice under the old system of policing. Foucault seems to have overlooked these flaws in the old ways of police, on which Bentham worked for decades removing such sinister interests from society, including those of the wealthy and the private police in relation to criminal justice.

We remember that Bentham not only tried to advance modern policing for London but for *all* of England as he wrote in *IPML*, before later helping to draft the failed Reeves-MacDonald Bill that would have introduced police for all of London as early as 1785. It was parliament that settled on a publicly funded police along the Thames in 1800, before approving the same measures

for all of London in 1829. We should also remember that in Colquhoun's rather lengthy treatise on crime in the metropolis, he wrote much more about wanting to improve the conditions of the poor and ameliorate the harm of a brutal criminal justice system through measured and reasonable preventive techniques, than protecting property.

And as earlier noted, if Bentham and Colquhoun were concerned about property crimes, it was only because such offenses were becoming so commonplace in a state of universal insecurity (Letters Vol. 12, 241), in which so much suffering from punishment occurred. And from such insecurity, much of it due to the difficult socio-economic circumstances of the times, came the maintenance of a brutal and ineffective system of retribution-based punishment with too much avoidable pain and suffering for utilitarian reformers. So as we now know, modern policing was not just for securing property or focused on the needs of the 'bourgeoisie' over all others but was also for the alleviation of suffering that would be achieved through the prevention of crime and the avoidance of cruel punishments. We also know that police were meant for securing individual rights, including the right to one's life and health, whether as a free citizen or as a prisoner.

Modern policing according to Bentham's plan, was created for increasing national felicity, and as he explained in a letter to Peel about increasing police salaries for "rendering justice accessible" to the great majority of people (Letters Vol. 12, 270). We also know that policing was meant for preventing calamities and for avoiding the use of deadly military force against civilian populations. So without these added considerations, involving Bentham's own words, intentions and work on legislation for police reform, meant to alleviate suffering more than anything, Foucault's account of modern policing is incomplete.

Improvements to police were approached like many other issues by Bentham and his supporters. Their general way to remedy problems involving justice was based on a rough 'felicific

calculus' with broad descriptions of pain and pleasure in relation to crime and punishment. From this, a general utilitarian calculation was made based on principles and rules, some made into laws that were especially important for legislators to know (Crimmins in Koritansky, 137,138). Modern policing began as part of a theory for the greatest happiness and was turned into an 'instrument of direction' for government and public officials (Crimmins in Koritansky, 139). And with these considerations in mind, Foucault's account of modern policing, like his analysis in regard to Bentham's other works, remains 'hopelessly incomplete' (Crimmins in Koritansky, 155).

It should also be quickly noted here before moving on, that the old police were almost exclusively from the 'propertied' class when they were not others who may have been paid in their place, to perform these traditional duties in service to the land-owning gentry. Nepotism and corruption was rife, in this closed and more exclusive system of locally controlled police. With modern policing, came an array of individuals from all of London's neighborhoods with the new constables former laborers, tradesmen and military types (Emsley, 62,63). The new police were more representative of the working class than the old had been. They were meant to provide their services of prevention, detection and protection for all citizens without favor, something was not a feature in the old system of policing.

These new police officers were supposed to rise through the ranks as a result of merit, and not because they were part of the landed gentry or the more privileged set. With better supervision and more uniform practices, abuses of power would be reduced, and a better level of service could be extended to all of society, not just reserved for the wealthier. Foucault does not make mention of this fact in his sweeping criticisms of modern police, that he states was mostly for securing property, and little else. Both Bentham and Peel, contrary to what Foucault may think, spent much

of their time working against powerful interests, while focused primarily on the “benefit of the people as a whole” (Hurd, 394).

There is a well-known professional educational tool that has become a central feature of ‘modern’ policing, widely used for instructing police on the use of force. This educational tool is commonly referred to as the “use of force spectrum” (cacp.ca) which begins at the lowest level of coercion available to police in their visible presence, a simple form of observation. This is often followed by the next level in the use of force, verbal instructions or commands. The use of force for police, according to this design, proceeds all the way up to the opposite end of the spectrum, with the use of deadly force. In his vision for modern policing, after insisting that it be centrally controlled and publicly funded, Bentham also emphasized it was for the primacy of prevention over detection, which could be achieved with the mere presence of police, whether along the Thames River, or throughout the streets of London.

Ideally then, Bentham wanted his police to be less coercive, and more observant, less confrontational and corrupt, while adopting a more cooperative, informative and persuasive approach. Long before a use of force spectrum was created for policing, Bentham became obsessed with police using the lowest levels of force, as a way to prevent crime most effectively, and so that deadly force used by the state through its functionaries could be avoided. Bentham even gave us a way to do this, to guide people with silken threads (Mack, 168), with a government of inclination not of force, writing “men would do what they saw was better and all without coercion” (Mack, 168). This was a theme that was at the very heart of his detailed work on preventative police, contained in the essay *Indirect Legislation*.

So Bentham’s approach to policing, like his famous design for prisons, found its strength in the way it was an institution designed to avoid intervention, a “perfect exercise of power”

according to Foucault, “assuring its efficacy by its preventative character” (Foucault, 206). It is important to note here, that while Bentham’s plan for modern prisons may have failed miserably in parliament, his plan for modern policing was a resounding success. This part of the ‘surveillance society’ overlooked by Foucault, involved Bentham’s plans for police in London, (and for England), not just along a short stretch of the Thames river.

This amounted to a form of organized observation by police, much of it done with highly visible and regular patrols, which also turns out to be the lowest level of force, mere police presence, that Bentham and others utilized in their new system of policing. Police were supposed to avoid needlessly interfering in the lives of citizens, and the success of this approach could best be assured through prevention (Foucault, 206). Could it be that Foucault’s account involving a “Benthamite physics of power” (Foucault, 209) for purposes of creating a ‘disciplinary society’ is too narrow ?

The transition from a minimal state to a modern one involved more intervention by government, but this was done in part for purposes of reducing suffering and for extending government care to the disadvantaged and poor. As was previously alluded to this was an approach to governing that reformers believed was more aligned with the humanitarian, enlightened spirit of the times. While Foucault is right to claim the minimal states of old involved a minimum of interference in the daily lives of citizens (a role traditionally played by legions of local and church authorities), a Bentham’s physics of power did something much different. This new approach in the use of power was for finding a balance between too little, and too much state interference through the expanded size and role of central government (Foucault, 209). Once power had been consolidated, the enlightened legislator that Bentham wrote about would then use a minimum of coercion or physical force while providing more benefits to society. Such a government would

also be in a better position when addressing problems that were becoming most evident in newly expanded urban areas with exploding populations.

4. England's Utilitarian 'Preventative' Police

In *Utilitarianism and Beyond*, Dasgupta seems to describe what Bentham was doing with his centralized approach to policing, first along the Thames, then for all of London and later for the rest of England. Society, he wrote, is a “cooperative venture among individuals for mutual advantage and shall take it that some form of centralized authority, is required for coordinating the activities of the members of society” (Sen and Williams, 200). So perhaps policing was more for coordinating the activities of individuals, than for the exercise of power or control by the privileged and wealthy over the poor and disadvantaged.

The classical criteria of social welfare according to Utilitarians, “required for their furtherance a central authority whose activities far exceeded the provisions of a limited number of public services, such as the enforcement of contracts, and the protection of persons or groups against force, theft and fraud that delineate the activities of the minimal state” (Sen and Williams, 200). As was discussed in previous chapters, Bentham and other reformers created modern police for purposes of increasing ‘national felicity’ and for enhancing social welfare, particularly to those most vulnerable. They wanted to extend police protection to everyone, not just those with an ability to pay, as was the tradition before the minimal state transitioned into something larger.

It is a duty, said Foucault, “to always bring the testimony of people’s suffering to the eyes and ears of governments, sufferings for which it’s untrue that they are not responsible” (Chomsky-Foucault, 212). And this is exactly what Bentham was doing in regard to his own government by

drawing their attention to the suffering of others in which the state abdicated their responsibility, before aiding them in addressing the problem.

In his attempts to reduce the overall suffering, much of which occurred from increasing levels of crime, disorder and the suffering from an established regime of ineffective and brutal punishments, Bentham's goal was to provide a net gain in utility for society. And with the basic need for security better served through improved policing and better prevention, there would also be a corresponding net gain of happiness in society. This was due in large part because a properly funded police supported entirely by public taxes would be vital for making justice more accessible to all, said Bentham when he wrote to Peel in 1827 (Letters Vol. 12, 271).

5. Concluding Notes

So after having reviewed the central thesis of this paper, some of the evidence in support, and a potential objection to it from Foucault, I would like to now conclude by summarizing a few of the more salient points of this thesis. We know that Bentham encouraged Peel and others before him, to follow his lead on policing and we also know this advice came with a warning to anyone seconding Bentham's designs. And this warning from Bentham directly to Peel as we recall, was to not ever "dare mention my name" (Letters Vol. 12, 255). He gave a similar warning to Colquhoun when working with him on the river police as well. And if Bentham, as was stated earlier, was a man of vision and Peel a man of action, we also know that a theory of action is what grounded the principle of utility which all three pioneers of policing appealed to.

And with his preoccupation of crime prevention, not discussed in IPML, pursued through the institutional reform of police and a variety of practices and law Bentham was also a man of action and influence, guiding others with his vision supported by utilitarian principles. (Burns in

IPML introduction, xiv, xviii), The modern police for London that emerged over the first few decades of the 19th Century, was made possible in large part from the “changes in state formation and the functions of government” (Finnane in Knepper and Johansen, 458) directly on the heels of Bentham’s insistence on a publicly funded police with more focus on prevention.

It is not as though Bentham and the utilitarians created the concept of crime prevention for police, for this notion had been around for centuries and was the overt purpose of all types of night watch schemes and irregular patrols. However, this was the first time such techniques, a catalogue of best practices for crime prevention, calculated to positively effect as much of society as possible through central control, was fully implemented. Bentham was among the first to write about the purpose of policing, for the prevention of crime, before analyzing and advancing some of its best methods for this purpose. He reasoned along the lines of what his predecessors and contemporaries said about preventing mischief in society, and his approach was an adaption and an improvement on earlier methods, not merely a reproduction (Hume, 239).

Partly as a result of Bentham’s work, more effective ways of crime prevention aimed at reducing the harm to society resulting from crime, were identified and incorporated into newer methods, some of which Bentham developed himself or in collaboration with others. The study of policing was in its infancy, and these early pioneers were attempting to advance certain approaches that seemed effective in deterring crime at minimal cost to society, while attempting to discard all that was harmful in relation to punishment. Included in this sweeping plan was an attempt at providing universally accessible security to individuals, for their lives, rights and freedoms, and their property, with a modern preventive police, whose ultimate purpose was to augment national felicity, or happiness.

Peel was in a position to act on this notion of increased felicity during a time in which there was increased pressure throughout society for something to be done about crime and punishment. So in 1828, he established a commission for the reform of police in London, with Benthamite Edwin Chadwick preparing a report (Emsley, 68). Bentham who by 1829, was over eighty years old and in declining health, observed from his home in London as changes occurred on the streets around him, with the introduction of the Metropolitan Police. This became for Bentham another occasion in which he experienced the “triumph of his creed” (Stephens, 229) in concrete form, just a few years before his death in 1832.

After Bentham died, his legacy in relation to policing would continue, as his closest associate and most loyal follower Chadwick began extending modern policing outward from London to the rest of England, along with Peel’s close associate, Charles Rowan. By the mid-1840s, this new model of policing, with an improved ‘preventative’ approach, first proposed by Bentham for all of England in 1780, was well established (Emsley, 68, 75). And with the words “all penal police are but a choice of evils” (P of PL, 579), because they were central to a system of punishment at the root of so much suffering, Bentham began designing an improved structure and method for police. Perhaps with an effective preventative police, he felt this choice of evils for legislators and society could be avoided altogether, and England’s bloody code could be replaced with something better. If nothing else Bentham believed an improved police would be central in a whole new range of precautions against crime which could then make the occasions for punishment ‘extremely rare’ (P of PL, 556).

Transportation, as punishment, was abolished for England in 1868, had almost ceased entirely by 1857, and had long before this time become a very limited form of punishment. The use of hulks, those windowless cesspools in which prisoners often fell ill or died after being

deprived their liberty, ended in 1857. Capital crimes, of which there were so many during Bentham's lifetime, most of which were sentences handed down for relatively minor property offenses, had been reduced by two-thirds by 1832, the same year Bentham died (national.archives.gov.uk). A correlation here becomes evident, between the introduction of modern policing throughout England occurring over the first half of the 19th century, and the elimination of England's bloody code over this same period of time. And while a causal link between improved policing and the moderation of punishment might be more difficult to establish, Benthamite police reformers, would have expected nothing less.

So we have come to realize, it was not a politician who either invented or founded modern policing, it was a philosopher and his helpers after fifty years of toil. Modern police, as in a centrally controlled, civilian branch of government focusing on the prevention of crime to reduce overall suffering in society, including that of punishment, was a utilitarian achievement more than anything else. Peel was not the originator of these innovative ideas, but he understood them well. And when they were presented to him for good purpose, he "was quick to assimilate and act on the ideas of others" (Hurd, 72). We discussed in chapter five, how Peel's career was in large part, "a great appropriation clause" (Hurd, 361). We also know of Bentham's reputation for freely giving away his ideas, from his work with Colquhoun and Peel as was described in chapters four and five.

And while Robert Peel and Patrick Colquhoun played important roles during "the genesis of modern police" (Lee, 217), there was nobody whose efforts were as substantial as those of Bentham who played a more complex role, over a much longer period of time. The other two police reformers proved themselves to be good Benthamites. Colquhoun and Peel were skilled in their more limited roles, well positioned to act, and followed Bentham's lead when they felt the

time was right. Bentham pointed to the path (Lee, 218), after he had completed much of the work creating a structure and more well-defined purpose for modern police, that others could follow, should they choose to act.

The sweeping police reforms that Colquhoun and Peel took part in, involved creating what has been referred to as “the Benthamite character of policing” (Reynolds, 163), after Bentham first perceived “the true functions of a rational police force as it should be” (Lee, 218). Master Peel as Bentham referred to the much younger Home Secretary, only became a good boy (Stephens, 226), when he avoided some of the evils that the most influential political philosopher of the time had warned him about in their correspondences (Letters Vol 12, 249).

“I once remarked to him” (Works, XI, 75), said editor John Bowring to Bentham, “that of all modern writers, he was the one from whom most had been stolen-and stolen without acknowledgement. ‘True’, he said, and robbed by everybody, he is always rich”, (Works, XI, memoirs, 75) added Bowring. The sweeping political reforms that resulted in modern policing as a new institution and part of the structure of contemporary government, was in large part due to Bentham. In chapter five we recall John Stuart Mill referring to Bentham as the father of innovation for English Institutions before adding, “he is the great subversive” (Everette, 18). Modern Policing as we now know, emerged directly from his broader utilitarian philosophy and the reforms that he spearheaded. And as the great subversive whose years of work on improving police was often done in secret and whose efforts were largely ignored, it is Bentham not Peel who should be considered the single most important figure in the development of modern policing.

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