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The nineteenth century 'revolution in government', from which a dramatically altered relationship between central and local government emerged, is of central concern to social historians. This article uses the work of Pierre Bourdieu to analyse the struggles between the magistracy in Cheshire and the Home Office over the centralisation of prisons and policing between the 1820s and 1840s. During this period legislative enactments increased the role of central government in monitoring and overseeing administrative management in both areas and this produced both direct and indirect conflict. The article argues that Bourdieu's concepts of 'field', 'capital' and 'habitus' provide a framework for analysing the changing relationship between central and local government which makes evident the effects of divisions between and within social classes and enables the varying nature of the course and outcome of conflicts to be understood. Overall the analysis demonstrates the potential of the approach to be used more widely to explore the changing relationship between central and local government in other areas of social policy.

## **Fields of Struggle: A Bourdieusian Analysis of Conflicts over Criminal Justice, c. 1820-1850<sup>1</sup>**

Government in the early nineteenth century was guided by the basic principle of '*local provision, for local wants, locally identified*'.<sup>2</sup> The role of central government was essentially limited to maintaining the security of external relations, both diplomatic and fiscal, the payment and staffing of services related to this, and the provision of ultimate force for the maintenance of internal order in emergencies. Localities were granted coercive authority to ensure local governance and they applied this with a large degree of independence and discretion. By the mid-point of the century, however, a steady process of centralisation had resulted in a shift in the balance of power between the two with "general rules and directives" increasingly becoming the prerogative of the centre and "details" the substance and limit of local discretion'.<sup>3</sup>

Prior to the 1820s most social reform took place at a local level but over the next four decades the government began to take a more forceful role, first through the introduction of model clauses acts and later by establishing rules and regulations, mechanisms for inspection and grants in aid.<sup>4</sup> Early legislation was often permissive or applicable only in limited circumstances but over the course of the century the discretion of local government was reduced and the administration of social policy was increasingly conducted by professional or elected bodies implementing national legislation. The reform of both prisons and the police roughly followed this general trend, although policing was traditionally more

embedded in local communities and, in England and Wales, has still not been subjected to the direct control of central government.

The general trend of centralisation was not uniform across different areas of social policy since the chronology, course and outcome of centralisation processes varied and movement was frequently characterised by hesitation, improvisation and conflict. Local government at this time was diverse and reform operated through the auspices of Quarter Sessions made up of local magistrates, MPs, voluntary bodies and parish government. During the 1830s important legislation was introduced in relation to both policing and prisons which increased the role of central government and this generated the potential for tension in the following decade over the relative authority of local and central government. This article employs the concepts of 'field', 'capital' and 'habitus', taken from the work of Pierre Bourdieu, to analyse the centralisation process in relation to policing and prisons in the county of Cheshire between approximately 1820 and 1850. It argues that conflict was most evident in relation to prisons and this can be explained by the differing structures of the penal and policing field. Interpretations of such processes based on divisions relating to social class cannot incorporate the conflicts which occurred within class groups and such a perspective is essential when analysing relations between central and local government. A Bourdieusian approach offers significant advantages over a more traditionally Marxist account of the centralisation process as it incorporates a more flexible view of both social class and the State.

## Theorising Central-Local Relations

Centralisation did not merely entail modifications of the superstructure of the State but also represented a shift in the social distribution of power and this makes it vital that historians trying to understand the effects of such changes have some way of theorising power relations. The changing relationship between central and local government in the nineteenth century has generated both Whig and revisionist interpretations with the former focusing on bureaucratic changes and seeing centralisation as an inevitable and beneficial process while the latter present accounts centred on the displacement of one economic élite by another. Revisionist discussions are more finely attuned to the significance of the shifting distribution of power, therefore, but often struggle to provide a convincing depiction of the local arm of the State.<sup>5</sup>

Richard Volger's study, *Reading the Riot Act*, provides a more sophisticated picture of the changing relationship between local and central government in relation to the enforcement of public order in the nineteenth and twentieth centuries. Volger draws on the work of Nicos Poulantzas to examine the changing relationship between different agencies of the State (the army, the magistracy, the police and central government) by analysing ten specific incidents of disorder between 1831 and 1981. He argues that Poulantzas's work helps to rectify some of the 'serious drawbacks' of Marxist explanations of the State in part because Poulantzas conceives of the local State as a social relation and a condenser of class forces, rather than merely a scaled-down version of the central State, and this makes

apparent the organic relationship between central and local government.<sup>6</sup> Volger's work is sophisticated and marks an important advancement in understanding central-local relations in the nineteenth century. However, it remains tied to a traditional Marxist conception of class. Although Volger analyses both conflicts between central and local government and those within them, he is only able to do so by conceiving of agents as representatives of either the landowning interest or the bourgeoisie.<sup>7</sup>

The current article contributes to Volger's understanding of an organic relationship between central and local government by drawing on a theoretical perspective which, although undoubtedly influenced by Marxist thinking, is not tied to an economically determined model of class. A Bourdieusian perspective allows the complex and heterogeneous relations involved in struggles between central and local government to be analysed but also moves away from a model which sees divisions as being predominantly class based. This makes evident the importance of conflict between *and* within dominant social groups and enables a more nuanced analysis of the varying trajectories and outcomes of struggles over centralisation.

At the core of Bourdieu's approach are three interrelated concepts: field, capital and habitus. Bourdieu conceives of the social world as a space comprised of a series of hierarchically organised fields which he defines as:

a structured social space, a field of forces, a force field. It contains people who dominate and people who are dominated ... a space in which various actors struggle for the transformation or

preservation of the field. All the individuals in this universe bring to the competition all the (relative) power at their disposal. It is this power that defines their position in the field and, as a result, their strategies.<sup>8</sup>

The power or resources which agents bring to these competitions, and which determine both their position and their strategic orientation within the field, are referred to as 'capital'.<sup>9</sup> Capital is a resource which yields power within a particular field and it operates both as a weapon and a stake of struggle.<sup>10</sup> However, Bourdieu does not conceive of agents simply as "*particles*" that are mechanically pushed and pulled about by external forces'. Agents' actions or practices are the result of both their position and 'an obscure and double relation' between a habitus and a field.<sup>11</sup> Habitus has similarities to the notion of habit and refers to 'something which one has acquired, but which has become durably incorporated in the body in the form of permanent dispositions' but which is not the result of fully conscious calculation. It is 'acquired through the lasting experience of social position' and is both durable and transposable.<sup>12</sup> Habitus has a circular relationship with the objective structures of society since it is a product of one's position within the game but also has an efficacy which shapes the future position and practice of a player.<sup>13</sup>

The interplay of field, capital and habitus is best described through Bourdieu's metaphor of a game. He suggests that a field represents a state of play between different players each equipped with piles of tokens of different colours (capital). Their position in relation to other players is

determined by the volume and make-up of these piles and it is, accordingly, capital which makes 'the games of society [...] something more than simple games of chance offering at every moment the possibility of a miracle'.<sup>14</sup> The moves players make within the game, however, are only partly determined by their position and the chances available to them within the game. The other aspect which influences decisions is the agent's 'feel for the game' or 'practical sense' of the field and their position and chances within it (*habitus*).<sup>15</sup>

Such an approach contributes to a traditional Marxist understanding of conflict between central and local government both in terms of the concept of class and understandings of the State. Within a Bourdieusian framework, class is not simply determined by the levels of economic capital possessed. Fields are structured 'in such a way that the closer the agents, groups or institutions which are situated within this space, the more common properties they have, and the more distant the fewer'.<sup>16</sup> Groups and agents positioned closely together in the field of power can be considered a 'theoretical class' and Bourdieu distinguishes these from social classes in reality which represent groups that are acknowledged by the society under study through language, organisations and symbolism. Theoretical class is, then, explicitly a metaphor and provides a model within which there is room for an infinite and changeable number of social groupings. Similarly the relative degree of dominance of a particular class differs not only over time but between fields and so social structure is not merely replicated unbendingly throughout society. These factors enable



competition within dominant groups to become a central part of analysis in a way which is rare in Marxist-influenced work.<sup>17</sup>

Bourdieu's conception of the State also offers advantages for exploring the process of centralisation. For Bourdieu, the State does not represent 'a well-defined, clearly bounded, unitary reality'.<sup>18</sup> Instead it consists of an 'ensemble of fields' in which the central stake involves the monopoly over the legitimate use of physical and symbolic violence.<sup>19</sup> The State is, therefore, dispersed throughout social space and is not simply reducible to the government or politics. Both penalty and policing, as fields in which the legitimate use of physical and symbolic violence are key, would, therefore, form part of the State, although operating with their own unique dynamics and laws of functioning. Associated with State power is a specific form of capital which operates as 'a sort of meta-capital' capable of influencing the value and distribution of other forms of capital across all fields. Bourdieu refers to this as statist capital and sees the field of power as the arena in which agents compete for this meta-capital.<sup>20</sup>

Bourdieu distinguishes four fundamental types of capital (economic, cultural, social and symbolic) but recognises that other forms are relevant in specific fields.<sup>21</sup> Symbolic capital is the most elastic of these, referring to any type of capital which is legitimately recognised as having value within a given field and so encompassing a wide range of resources.<sup>22</sup> In a Bourdieusian analysis of the penal and policing fields during the nineteenth century, several types of capital can be identified as having value but the most prominent form was symbolic capital – the authority to make

decisions concerning the operation and administration of the various agents and agencies within the fields. Symbolic capital is ‘the basis of the specific authority of the holder of state power’ and a crucial component of this is the power of nomination, or the authorization to appoint and dismiss officers of State.<sup>23</sup> The central struggle within the policing and penal fields in the nineteenth century concerned the relative levels of symbolic capital of various groups and agents, especially over this power of nomination. The analysis which follows draws upon these concepts to explore the centralisation process in relation to prisons and policing between about 1820 and 1850 and the conflicts which accompanied this. It is important to recognise, however, that the current discussion adopts a somewhat restricted notion of the two fields. Punishment clearly involved more than just imprisonment and there were prisons run directly by central government in this period but this article concerns itself only with struggles relating to the management of county gaols and houses of correction. Similarly, the policing field did not merely include the public police but they form the focus of the current analysis. Before going on to consider the specific course of struggles over these two areas in the county of Cheshire it is first necessary to give a brief account of the reform of prisons and policing in Bourdieusian terms.

### **The Reform Process**

Centralisation within the penal and policing fields between 1820 and 1850 mainly involved a shift in the balance of power between central and local government. In essence, the symbolic capital of local government was

reduced and that of central government expanded. Prior to this, however, symbolic capital was more widely dispersed and there had been a preceding process of centralisation in which justices of the peace, the primary agents of local government for most of the nineteenth century, increased their levels of symbolic capital within the policing and penal fields.

Authority over county gaols was split between justices of the peace and the Sheriff whereas Houses of Correction were 'professedly under the direct administration of the justices of the peace.'<sup>24</sup> Magistrates were responsible for the conveyance and detention of offenders and were empowered to gather economic capital from the county rate to do so, although provision was minimal and gaols 'were carried on as the profit-making concerns of the gaolers' with fees charged for almost all services, including release.<sup>25</sup> The job of inspection traditionally lay with the Sheriff and the Grand Jury, providing a small role for wealthy local inhabitants in the penal field. However, in 1791 this power of oversight was transferred to the magistrates who were compelled to regularly 'visit and inspect' prisons.<sup>26</sup> The most significant actor within the gaol was the governor who, in the eighteenth century, was relatively free to impose regulations of his choosing.<sup>27</sup> The power of nomination over this crucial office was vested in the magistrates and this formed a fundamental aspect of their symbolic capital.

Within the policing field, the dispersal of symbolic capital was wider and practices varied. The inseparable relationship between the work of

parochial constables and the law meant that magistrates inevitably had authority over them and eighteenth century pamphlets describe constables as the subordinate officers of the justices who were bound by law to execute their warrants.<sup>28</sup> Magistrates were also responsible for applying penalties in cases of misconduct as well as swearing constables in, thus vesting them with their legal authority. However, the power of nomination was not definitively that of the justices and various practices existed for appointing constables.<sup>29</sup> High constables and special constables were selected by magistrates but parish constables were chosen by either the parish vestry or, as was most common in Cheshire, the Court Leet. However, there had been a long process of drawing constables more firmly under the control of justices of the peace from the sixteenth century and this continued into the nineteenth.<sup>30</sup> In the 1820s, therefore, magistrates had significant levels of symbolic capital within both the policing and penal fields. Central government played a minimalist role and reform was largely a local affair.

Prior to the 1820s, legislative enactments relating to prisons chiefly served to limit the value of economic capital by prohibiting the payment of fees and encouraging regular salaries in their place.<sup>31</sup> This did little to alter the balance of power between central and local government and was, in any case, difficult to enforce. Other reforms depended on local government using its statist capital through private Acts of Parliament to introduce new initiatives. The first significant alteration to levels of symbolic capital in the penal field was the 1823 Gaol Act which made it a 'duty of the Justices

to organise their prisons on a prescribed plan' and required them to report quarterly to the Home Secretary on conditions in these institutions.<sup>32</sup> This established central government as an agency within the field in possession of some degree of symbolic capital but again included no mechanisms for enforcement and so did little to directly empower the government.<sup>33</sup>

The pace of change intensified from 1835 when central influence was given more potency with the introduction of a small government-appointed Inspectorate and the requirement that the Home Secretary must approve prison rules and diets. These new powers were augmented over the next ten years by legislation which bolstered the position of the inspectorate and introduced further regulations.<sup>34</sup> These developments have been described as 'revolutionary' and significantly altered the balance of power between central and local government in relation to county prisons in two ways.<sup>35</sup> First, the inspectors represented new agents within the field. Although they lacked their own symbolic capital, their reports significantly expanded the informational capital available to central government, and this was essential in enabling them to enforce their symbolic capital. Secondly, the role of the Home Secretary in sanctioning prison rules and diets was a powerful statement of central government's influence over prison conditions and this was extended by 'ever increasing regulations made by the Home Office on every detail of prison life'.<sup>36</sup> In 1865, the government increased its ability to utilise this symbolic capital by employing economic capital as a tool of coercion through the mechanism of government grants which could be withheld for non-compliance with rules and regulations.

Finally, in 1877 the process of centralisation was completed when the control and ownership of county gaols was transferred to the Prison Commission, thus ending the role of local government in the penal field.<sup>37</sup>

Reform in the policing field followed a similar pattern but varied in outcome, falling short of full central control. Legislation prior to the 1830s focused on altering the role and value of economic capital within the field by permitting official payments for police work in an attempt to use 'avarice to overcome inertia', thus increasing prosecutions.<sup>38</sup> Other aspects of reform at this time were reliant on private legislation, usually through the mechanism of Improvement Acts, a model which many towns adopted in the late eighteenth and early nineteenth centuries.<sup>39</sup> In 1830 the government passed an Act enabling towns to introduce paid police officers without the expense of a specific statutory measure.<sup>40</sup> Later the Municipal Corporations Act, 1835, obliged incorporated towns to introduce a Watch Committee to oversee local policing.<sup>41</sup> Such initiatives usually vested the nomination and control of any constables appointed in the hands of a corporation or elected Commissioners and so did not significantly alter the relationship between central and local government.

The first shift in the balance of control within the policing field did not occur until 1839, sixteen years later than in the penal field, and was more tentative, relying on permissive legislation. The County Police Acts of 1839 and 1840 enabled magistrates to appoint a force of paid officers for all or part of their county.<sup>42</sup> The decision to adopt lay with the Quarter Sessions but, once made, provided a statutory role for the Home Secretary.

He was to approve the selection of a chief constable and any subsequent changes to the overall manpower of the force, as well as setting rules and regulations for any constabularies established. The permissive nature of this legislation left counties free to resist central influence but this move marked a significant alteration to the dynamics of the policing field, at least in those counties which implemented the Acts.

One less recognised impact of this legislation was that it broke the traditional relationship between local communities and the appointment of police officers, thus removing the symbolic capital which wealthy local residents enjoyed at the Vestry or Court Leet. Under the County Police Acts the appointment of constables was subject to a hierarchical chain of command, being the responsibility of the Chief Constable, who was in turn selected by the magistrates (though with the approval of the Home Secretary). From 1842, partly as a result of low levels of adoption, a second model for police reform developed which included no role for central government. The Parish Constables legislation did alter the structure of the policing field, however, by shifting the power of nomination over unpaid parish constables from vestries or Courts Leet to the justices and this provision was compulsory across the country.<sup>43</sup> It also permitted magistrates to appoint salaried superintending constables to oversee paid and unpaid parish constables in their district. Ratepayers retained greater levels of symbolic capital than under the County Police legislation, however, since the decision to appoint *paid* parish constables lay with them.

These two approaches to reform co-existed until the County and Borough Police Act, 1856, ‘took the principles of 1839 and made them mandatory’, rendering the establishment of a county constabulary compulsory across England and Wales.<sup>44</sup> It was, therefore, no longer possible to opt out of central government influence. The capacity of central government to use its symbolic capital was also increased with the introduction of grants for efficiency and a national inspectorate. Although changes continued to be made to this tripartite system of governance centred on a Chief Constable, the Home Secretary and the Quarter Sessions, the idea of a mixed system of control combining elements of local and central authority over policing persists to this day.

### **Conflicts over Prisons**

Prior to the Gaol Act of 1823, Cheshire had shown a commitment to prison improvement. In 1783 it passed a local Act to improve standards of decency and discipline in gaols and houses of correction and this was one of the initiatives which influenced the national legislation of 1791, an indication of the degree to which central government was guided by its local partners in the early stages of reform.<sup>45</sup> The magistrates also substantially re-built Chester Gaol and constructed a new house of correction at Knutsford. Improvements continued to be made at both sites after 1823, some of which were necessitated by specifications within the Gaol Act.<sup>46</sup>

In the early nineteenth century, the Quarter Sessions appointed Committees to inquire into such things as prisoners’ diet, the construction



of solitary cells, and the introduction of crank mills and a stepping wheel.<sup>47</sup> Direct communication between the magistrates and the Home Office in the 1820s, however, was limited and evinces little signs of tension. There were requests for clarification or advice on the part of the magistrates and appeals for information from the Home Secretary but central government's prime concern related to its ultimate responsibility for the maintenance of internal order.<sup>48</sup> The magistrates had some concerns about problems emanating from section 24 of the 1823 Gaol Act which prevented those convicted of any offence more serious than petty larceny from giving evidence in court, feeling that this made it difficult to prosecute robberies committed in prison.<sup>49</sup> Overall, however, the initial increase of central government's symbolic capital generated little tension.

There was an increase in correspondence following the Prisons Act of 1835, often relating to aspects of the Inspector's reports. These were detailed and included recommendations as to best practice as well as cataloguing infringements of government regulations. The Inspectors' lacked any direct symbolic capital, however; their role 'was to inquire and report as to the state of the several gaols' but they could not make or alter any regulations already in place.<sup>50</sup> Occasionally the Home Department exerted pressure on magistrates to rectify problems highlighted by the Inspectors but it did not act in all instances. For example, as early as 1836 Captain Williams, the Inspector for the northern district of England, reported that the surgeon in Chester Gaol did 'not inspect prisoners upon committal before they are classed' but it was not until his report in 1841

that the Home Secretary questioned whether any 'steps have been taken to correct this omission'.<sup>51</sup>

Increasing tension becomes evident around 1840 when two complaints prompted central government intervention and the tone of these letters is markedly different to those of the 1820s. In the first case, a debtor in Chester Gaol complained of 'violent treatment on the part of the Governor' and the Home Secretary – Lord Normanby – requested that the magistrates would 'make inquiry into Day's statement and report the result' to him. In the second, a solicitor objected because he had been denied access to one of his clients, a prisoner in Chester Gaol, in response to which Normanby directly demanded 'why Mr Parry has been refused admittance to see the prisoner Brooks.'<sup>52</sup> Complaints were sometimes simply passed back to local government, however, with requests for 'observations' or 'information'.<sup>53</sup>

It was the newly acquired symbolic capital of central government over rules and regulations which generated most conflict. In January 1840 Normanby declined the magistrates' application to construct additional day rooms at Chester Gaol, stating that he could not 'sanction any outlay of money for the object proposed by this Court of Quarter Sessions' and this shift to a position where central government could dictate how magistrates should spend the economic capital raised through local taxes was a significant one within the field.<sup>54</sup> There was further disagreement in 1841 over the wine allowance within the prison rules and this persisted for five months. The correspondence concerning this concluded with a polite but

firm statement confirming the symbolic capital of central government within the field: ‘the 2<sup>nd</sup> Section of the Act 5 & 6 Wil. 4 c.38 provides that when the “Secretary of State shall have subscribed such Certificate or Declaration, such Rules and Regulations, alterations and additions, shall be binding upon the Sheriff and all the persons”’; the rules Normanby had approved were, therefore, the only regulations which could be ‘legally adopted and enforced’.<sup>55</sup>

There was less communication concerning Knutsford House of Correction. The Inspector’s report of 1841 highlighted that prisoners were being punished without the governor’s sanction, a practice Captain Williams considered illegal and ‘at variance with every principle of justice’. The Home Secretary reiterated that this deviated from the law and requested to be ‘informed whether it has been discontinued’.<sup>56</sup> Generally, however, the report was positive and Williams concluded by expressing his ‘satisfaction’ with the prison’s governance which he attributed ‘solely to the keeper’, a Mr George Burgess; this positive tone was not to continue.<sup>57</sup>

In February 1843, Thomas Duncombe, the radical MP for Finsbury and ‘the Chartists’ best friend in Parliament’, drew the attention of the House of Commons to ‘the manner in which the Lord Chief Baron Arbinger discharged his duty as a judge’ during the recent trial of Chartist prisoners in Lancashire and Cheshire.<sup>58</sup> Duncombe gave a long speech ranging over a number of issues, one small part of which concerned allegations about the treatment of two prisoners at Knutsford. His motion for an inquiry into the conduct of Lord Arbinger was comprehensively

defeated by 228 votes to 73, but the matter was not quite over. Six days later Cheshire's MP, William Tatton Egerton, spoke to the House with a view to 'correcting the inaccuracies' in Duncombe's statements about Knutsford. Egerton denied several of the allegations and claimed that the chief source of complaint – threatening language used by the governor – was essential to enforcing the discipline of the gaol under rules which, he reminded Parliament, were 'adopted under the authority of the Secretary of State for the Home Department'. His speech failed to achieve its intended effect and instead instigated a government appointed inquiry under the auspices of Captain Williams which was to examine 'all the circumstances of the case'.<sup>59</sup>

Williams investigated a number of specific allegations but also uncovered additional failings in the management of Knutsford House of Correction. He concluded that the central complaint was unfounded as, although the alleged words had been spoken, they were used only as an acceptable warning. Overall he considered that the governor's treatment of prisoners at Knutsford was 'humane' but he identified a lengthy list of regulation infringements including irregularities in the punishment of prisoners, insufficient allocations of food and exercise, neglect of sick prisoners and an absence of printed rules in the cells. More serious for the governor was the discovery that county funds and property had been misappropriated and, yet more damning still, that Burgess had, in 1841, continued to allow the whipping of a young prisoner after the surgeon had declared that the ordeal should cease.<sup>60</sup>

Sir James Graham – the new Home Secretary – responded to the report by requesting the magistrates to consider whether they could ‘with safety and confidence’ continue to employ Burgess ‘in an office of such responsibility’. He made his own position clear by reminding them that the governor was guilty not only of ‘indiscretion’ and ‘inattention’ but also of ‘very great misconduct’. However, he acknowledged the magistrates’ unchecked power of nomination within the field by stating that they had ‘finally to decide on the governor’s conduct’, a position he reiterated in Parliament: the power to elect or remove the governor ‘was absolutely vested by law in the Court of Quarter Sessions’.<sup>61</sup>

The magistrates’ response to the inquiry was unexpected: they dismissed the prison chaplain, who had been charged with no offences by the inspector but had revealed things to Williams not previously disclosed to them. However, they took no action against the governor or the surgeon, both of whom had been criticised. The magistrates submitted a report to Graham justifying their actions which reads as a litany of excuses for the governor. In some cases others were blamed, including the magistrates themselves, in others it was argued that such practices were longstanding or that Burgess had acted in good faith: property stolen was of ‘inconsiderable value’; irregularities in recording punishments were a ‘clerical error’. All charges but one were considered to be ‘not of much importance’. The prolonged whipping of the young boy was recognised as ‘serious’ but the magistrates contended that, since Burgess had already been ‘severely reprimanded’, no further action was necessary.<sup>62</sup> It is true

that many of the offences were minor infringements of government-imposed regulations which had been taking place for some time, often with the cognisance of the magistrates. In many ways, then, the Report was not so much a vindication of Burgess (to whom, as we will see, the magistrates later showed little loyalty) as a defence of local government's autonomy to manage the prison without interference from the centre.

The magistrates' defiance prompted a second, more forceful, letter from Graham which threatened the independence they sought to preserve. He reiterated his concern at their decision, adding the ominous warning that this may 'lead to evil consequences' by 'reducing the confidence Parliament has been disposed to impart to magistrates in the superintendence and regulation of gaols'.<sup>63</sup> Later in May, Duncombe, still dissatisfied, called for further investigations and Egerton again rose to defend the magistrates. He made clear that his opinion differed from that of his colleagues but repeated the string of excuses given previously and argued that the magistrates – gentlemen 'residing on the spot and accurately acquainted with the whole circumstances of the case' – were 'better judges than the House might be what was the real state of the question'; a clear endorsement of the importance of vesting symbolic capital in local government.<sup>64</sup> Graham felt that the facts of the case were already well established but revealed the 'evil consequences' that lay behind his threat to the magistrates by proposing new legislation giving the Home Secretary concurrent powers of dismissal over prison staff.<sup>65</sup>

Two months later Graham had drafted legislation empowering the Home Secretary to suspend or dismiss any ‘Gaoler, Keeper, Governor, Master, Surgeon or Medical Officer’ (but not, interestingly, chaplains) in future cases of misconduct.<sup>66</sup> This Bill was never to reach the statute book, however, being withdrawn due to time constraints a month later. Graham hinted that he might reintroduce the measure in the next session, and Duncombe questioned him on this in February 1844, but there the matter rested.<sup>67</sup> Later that year the Cheshire magistrates finally dismissed Burgess, ostensibly for an unrelated incident, but *The Times* was sceptical:

The magistrates ... were highly indignant that such a functionary [the Home Secretary] should presume to interfere with an important body like the Cheshire magistracy in the management of the gaol. However, having the fear of the bill giving concurrent jurisdiction to the Home Secretary before their eyes, they seized upon another pretext at the earliest convenient opportunity, and dismissed the governor.<sup>68</sup>

The extent to which the Cheshire magistrates had ‘knuckled under’ to government pressure was even more evident in their choice of successor: a government nominee formerly of the centrally controlled Pentonville Model Prison.<sup>69</sup>

This confrontation fits uncomfortably into a model which sees the state (local and central) as a condenser of class struggle since most of the key actors (apart from Burgess) came from a genteel or aristocratic background; this was not a conflict between a declining nobility and an

emergent bourgeoisie. Graham was ‘the head of a long-established and influential family’ and Duncombe a member of the landed gentry.<sup>70</sup> The Cheshire magistrates were also predominantly landed, although there were a few middle class members by the 1840s. A closer reading of the debates over the Burgess affair, however, offers no indication of division along class lines. Ten magistrates who participated in the vote about Burgess’s future can be considered to come from middle class backgrounds and nine of these voted to retain his services. Indeed there was almost universal consensus about Burgess’s fate and the chaplain’s dismissal, with just five magistrates voting against either of these motions. Four dissenters came from prominent gentry families and the fifth was the son of a prosperous cotton manufacturer. Similarly, four were Liberals and one a Conservative. What united them is that they had all sat, were sitting or would in the future sit as MPs.

From a Bourdieusian perspective it is significant that all those who were in accord with central government were MPs. Agents who were both magistrates and MPs, or even aspiring MPs, were positioned both within central and local government and their ‘social trajectory of chances’, and so habitus, was affected by this.<sup>71</sup> Their future in the world of politics depended upon their actions at a local level, particularly in a clash with central government. This overlap between the two branches of government is important, although one should not overestimate it: only six of the forty magistrates involved in voting over whether to respond to Graham’s letter were MPs at some point in their lives and it was the four who were most



active in Parliamentary matters who voted in support of central government. The two outliers both had seats in Parliament but are recorded as making no speeches during their career whereas the other four all made in excess of thirty.<sup>72</sup>

This protracted and public dispute demonstrates the desire of the majority of the magistracy to retain their independence within the penal field: as one justice stated, ‘it is our affair and we will act in this matter as we think proper’.<sup>73</sup> Their resistance to the Home Secretary’s requests was a demonstration that, as things stood, they retained that crucial aspect of their symbolic capital – the power of nomination – and Burgess’s continuation as governor for almost a year after the inquiry is a reflection of their autonomy. Central government, however, was becoming increasingly confident in its use of the symbolic capital it possessed and was not afraid to threaten the use of its ultimate power – statist capital – to ensure compliance with its wishes. Whether the government would have gone so far if it had not been so persistently pushed by Thomas Duncombe can only be surmised. Similarly, it is telling that the government used statist capital merely to pressure the magistrates, backing off from any attempt to actually alter the structure of the penal field, a task not undertaken for a further twenty-two years.<sup>74</sup> Yet the government had made its point: it expected compliance from the magistrates in the management of prisons and was keen to ensure that it had influence over the discipline of staff even if this fell outside its official remit.

Accustomed to playing a role within the penal field from the 1820s, by 1835 the government increased its involvement in the management of prisons and adopted a more direct and forceful approach. Its habitus changed slowly, however, and it was after 1839 that significant shifts in the use of symbolic capital by central government can be seen through more frequent references to legislation – demonstrating the basis of this symbolic capital – and a greater keenness to carry its point over key issues. By the 1840s, therefore, central government had begun to use its symbolic capital more flamboyantly and it was this which helped to generate the magistrates' entrenched response to the disagreement over Burgess.

### **Conflicts over Policing**

There was much less tension in the interactions between local and central government over policing in the period covered mainly because there remained the possibility of opting out of central government influence in this sphere after 1839. Centralisation followed a different course and chronology with tension most prominent in the 1830s and occurring within local government. As with prisons, the power of nomination was a central element but conflict over this concerned the magistrates and local ratepayers with central government playing a minimal role. This alternative course can be explained by three key differences between the structures of the policing and penal fields. The first relates to the fact that representations of law and order were more central to the logic of the policing field, thus making fears of central control more acute. The second concerned the boundaries of the policing field which were much wider

since policing, like the law, has a universal characteristic which draws all social actors within it to some degree and this formed a contrast to the relatively closed world of the penal field.<sup>75</sup> The third difference – the wider dispersal of symbolic capital within the policing field – resulted from the other differences since the extensive boundaries of the policing field and the sensitive nature of the importance of representations of law and order necessitated a broader devolution of power. In essence, there was a further tier of local government within the policing field in the form of ratepayers – the middling sorts or parish élites – who exerted an influence over policing and so possessed a degree of symbolic capital, including the power of nomination. This meant that ratepayers had an investment in the stakes and struggles of the policing field, not only as potential recipients or users of police action, but also in terms of possessing authority, and this added a further dimension to the process of centralisation.

The two national models for police reform which existed after 1839 affected the symbolic capital of ratepayers differently but in Cheshire the situation was further complicated by the establishment of its own Constabulary in 1829.<sup>76</sup> This initiative has been described as ‘the earliest police reform’ in provincial England and it continued in operation until its disbandment in the wake of the County and Borough Police Act of 1856.<sup>77</sup> The Cheshire Constabulary was introduced by a piece of private legislation and emerged out of collaboration between central and local government. The initial impetus for the scheme was local but the finer details were negotiated with the Home Secretary, a process which resulted in authority over the force being mainly vested in the magistrates at Quarter Session.

Cheshire's Act empowered, but did not compel, the justices to appoint salaried Special High Constables for any hundred in the county and, on the recommendation of three justices at Petty Sessions, Assistant Petty Constables for the townships.<sup>78</sup> These men were controlled by local magistrates and funded out of a two-tier system which drew from both the county and the poor rates, with the Special High Constable's salaries paid from the country rate on the Hundred but those of the Assistant Petty Constables from the poor rates.<sup>79</sup> This represented an alternative form of policing to the unpaid parish constables and, since it was firmly under the authority of the justices, reduced the ability of local communities (outside boroughs) to exert control over policing. The power of nomination lay entirely with the magistrates and so ratepayers were excluded from any significant input and lacked direct authority over their local officer, their only influence being the capacity to limit any salary to £20 per annum.<sup>80</sup> Informal mechanisms of control within local communities were also reduced because most paid constables were responsible for groups of townships. In the early years of its operation the Constabulary encountered significant opposition which mainly resulted from this change to the structure of the field.

Bourdieu considers that agents wishing to displace dominant representations or forms primarily use strategies of succession or subversion. In this light we can see that opposition to the new constabulary relied partly on attempts to subvert the police by withholding assistance and introducing rival forms of policing.<sup>81</sup> The prominent form, however,

involved attempts to supersede the Constabulary by forcing its disbandment. The Quarter Sessions quickly began to receive petitions requesting the removal of Constabulary officers and in April 1831 the strength of opposition in one area of the county – Nantwich Hundred – forced the magistrates to authorise a reduction of constables in that district.<sup>82</sup> There was a delay in enforcing this which amplified hostility and in the following year a county-wide meeting resolved to petition Parliament about the excessive rates imposed in Cheshire, with the Constabulary forming the chief source of complaint.<sup>83</sup> The petition alleged that county business had been badly managed and its first point concerned ‘the arbitrary and oppressive manner in which the Cheshire Constabulary Act was carried into execution’.<sup>84</sup> It was argued that there had been a ‘denial of justice to those ratepayers who appealed for redress’ and there was resentment at ‘the additional fees extracted by these extra police-officers’. The ratepayers were disappointed in their appeal to central government as the petition received little sympathy from Parliament, but it did succeed in forcing the magistrates finally to reduce the number of constables in Nantwich.<sup>85</sup>

Petitioning was a way of using the small amounts of political capital available to the middle classes to influence local and central government. The petitions were, among other things, an expression of the ratepayers’ resentment at their loss of status within the policing field, which formed a significant threat to their local power base. Although the Constabulary continued to exist, opposition was a testament to the ability of the middle

classes to resist a form of policing which they perceived as acting to protect landed interests rather than their own. One of the indirect effects of this opposition was to generate a degree of ambivalence among the magistrates, particularly in areas where opposition was strong, with the result that their implementation of the Act lacked the degree of firmness necessary for the Constabulary to succeed, at least in some areas.<sup>86</sup>

This experience of struggle with local ratepayers generated dissatisfaction among some magistrates and so, when the prospect of central government influence was introduced in 1839, there was a little enthusiasm for the national scheme. Two justices proposed adopting the County Police Act in October 1839 but the motions were postponed for 'serious and mature consideration'.<sup>87</sup> The issue was reconsidered in March the following year, but, by this time, uncertainty had turned to negativity and the proposal was rejected by fourteen votes to seven.<sup>88</sup> Instead the magistrates chose to implement their own Constabulary more uniformly throughout the county, a measure slowly introduced over the next two years. Support for the County Police Acts did not instantly dissipate, however, and a further motion was introduced in 1841 suggesting adoption solely in the rural southern districts of the county, although this was also unsuccessful.<sup>89</sup>

Over time, as the Cheshire force was implemented more consistently, support for the measure grew and opposition declined. By 1851, the magistrates were prepared to go to the expense of a second private Act to alter the funding arrangements for their force, moving to a single rate

levied on each hundred of the county which was remarkably similar to the County Police legislation. It also broke the last remaining connection between constables and individual townships since officers were attached to Petty Sessional divisions. During their discussion of the Cheshire Constabulary Amendment Act, the justices reiterated their preference for their 'present Constabulary' as opposed to one which entailed 'centralisation' and greater expense. Their decision to incur the expense of private legislation instead of adopting the County Police Acts is worth exploring in greater detail.<sup>90</sup>

Philips and Storch consider that the Cheshire magistrates' rejection of the County Police Acts was a way of proclaiming that their county was 'already well policed at a moderate cost' and avoiding a bitter conflict among the county justices.<sup>91</sup> This interpretation places the 'regional centralisation', which Steedman sees as 'one of the clearest results' of the County Police Acts, at the core of the decision made in Cheshire.<sup>92</sup> Steedman is not, however, referring to regional centralisation in terms of the township level of governance but the shifting of authority over policing from the Petty Sessions to the Quarter Sessions, a move which favoured the wealthier magistrates who made up the county élite. A closer analysis of the ways in which the proposals raised in Cheshire would have affected the structure of the policing field, however, demonstrates that it was actually the increased influence of central government that was being resisted.

The key difference between the Cheshire Act and the County Police legislation, which was unavoidable under any of the proposals raised at the

Quarter Sessions, was the introduction of greater government influence over policing. This is because the legislative framework was flexible and allowed a number of options for implementation. Two of the proposals made in Cheshire concerned only a few districts within the county and this would have avoided any bitter conflict among the justices about the balance of power between the Quarter and the Petty Sessions. In such cases a county constabulary would operate much as the force in Cheshire did, although with no role for the Quarter Sessions other than to approve the initial decision.<sup>93</sup> Once the initial decision to adopt was taken, the magistrates at Petty Sessions replaced the Quarter Sessions in managing the force and a superintendent acted in the role of Chief Constable. If these proposals had been successful, therefore, the Quarter Sessions would actually have had *less* power within the district(s) chosen.

It was actually in 1829, when the Cheshire Act was drafted, that the balance of power between the Petty Sessions and the Quarter Sessions was in question. By the 1840s strong central control within the county was widely accepted and it was this that enabled a firmer implementation of the Constabulary, another legacy of the opposition of the preceding decade. Parsimony does not seem a persuasive explanation either: not only was the county prepared to spend money on a new piece of legislation but, by 1853, Cheshire's own force cost slightly more than the average expenditure of other county constabularies and more than twice that of the largest overheads in counties with superintending constables.<sup>94</sup> However, it is important to remember that the costs for the parish constable model do not



include payments to parish constables and so underestimate the total expenditure on policing. By rejecting the County Police legislation, what the Cheshire magistrates actually avoided was an increase of the symbolic capital of central government within the policing field.

Philips and Storch are right, however, to suggest that the debates over the County Police Act in Cheshire should lead us to reject an uncritical reading of the ‘rhetoric of police reform’ as, again, a model based strictly on class divisions does not quite fit the evidence.<sup>95</sup> There was a clear class element to the conflict between the magistrates and the ratepayers – although it must be remembered that there was some overlap between these groups. However, the ratepayers petitioning against the police were mainly middle class and the magistrates were predominantly landed gentry or aristocrats. It was not, therefore, the industrial bourgeoisie who were at the forefront of the opposition to the Constabulary in Cheshire. Although fears that the County Police Act would force agricultural districts to pay to protect the property of manufacturers were raised in debates at the Quarter Sessions – an aspect suggestive of traditional class conflict – the most sustained support for this legislation actually came from magistrates in rural districts.

There is no evidence, therefore, of division among the magistrates on the basis of class or social position. The justices who supported adoption of the County Police Acts were all landed gentry and the magistrate who led the campaign was a prominent figure at the Quarter Sessions and a member of the county élite. Additionally, in this conflict, there is no evidence of

magistrates who were MPs voting in favour of central government influence, but this was not a public and direct clash, as was the case of Burgess, and so their trajectory of chances in the political sphere was not at stake.

The most obvious line of division related to geographical area with the most persistent commitment to the County Police model emanating from the rural hundreds in the south where struggles with the ratepayers had been fiercest. The difficulties in implementing the Constabulary in these areas generated support for a different approach and a desire to further reduce the influence of township ratepayers over policing decisions. These struggles were inherently rural (much opposition stemmed from the perception that the magistrates were using the police to supplement their game protection) and belonged to a wider class struggle – that ‘long affray’ between the middle classes and the landed gentry over poaching which reminds us that ‘the most relentless, the most persistently brutal and embittered – and the most continuous – current of violence running through the nineteenth century was not urban, but rural’.<sup>96</sup> The habitus of magistrates in these areas was influenced by their local circumstances and prior experience of reform.

The impact of prior experience is also evident in the overall decision of the magistrates to reject the County Police Acts which was influenced by the existence of their own constabulary. The existence of the Cheshire Constabulary enabled the magistrates to resist the encroachment of central government whilst also ensuring there were sufficient mechanisms for

maintaining order; a choice not available to other counties until the Parish Constables legislation was introduced and, even then, this did not offer the ability to dislodge ratepayers from their traditional position within the policing field. The structure of the policing field presented a dual threat against which the magistrates needed to defend themselves. What they negotiated, and eventually fairly comprehensively agreed upon, was a way of securing their dominance in the field against the ratepayers without ceding symbolic capital to central government.

### **Conclusion**

Central government made moves to increase their levels of symbolic capital within both the policing and the penal fields across the first half of the nineteenth century. The most significant legislative movements towards this occurred in the 1830s and this generated significant moments of conflict between central and local government in the following decade. However, the course and chronology of change differed between the two fields and this produced direct conflict only within the penal field. The government was prepared to use its symbolic capital with confidence and firmness in relation to struggles over prisons; they expected compliance from the localities and were prepared to legislate in order to ensure this. In relation to policing, however, the permissive nature of the legislation of 1839 meant that conflict was indirect and the government remained content to let the localities opt out of increased influence from the centre, wise to the more sensitive nature of assuming control within this sphere. Conflict over central government control took place within the magistrates,

therefore, and concerned whether they should adopt the County Police model. Direct conflict over policing happened earlier and involved the two tiers of local government. The Cheshire magistrates were, then, keen to defend their symbolic capital in both fields but they faced an additional threat from ratepayers within the policing field and this also structured their actions, making some of the magistrates willing to concede some symbolic capital to the centre. A Bourdieusian analysis helps to illuminate the reasons for the different course and chronology of struggles between the policing and the penal fields because it focuses attention on a detailed analysis of the position of agents within them, thus making their subtly different structures evident.

A Bourdieusian analysis also enables a close reading of the dynamics of struggles over centralisation which can accommodate social class but is not dependent on that concept alone, allowing other possible reasons for division, both within and between local and central government, to be examined. Class was evident as a factor in the conflicts between magistrates and ratepayers within the policing field, but it was much less relevant to struggles between central and local government where many actors came from similar social positions. In these struggles, other factors become relevant in explaining the actions of agents both in terms of their position and habitus. In the very public standoff between the Cheshire magistrates and the Home Office over Knutsford House of Correction it was the position of magistrates in relation to central government which seems to have divided opinions. However, in the policing field the prior experience of magistrates in struggles with local ratepayers had greater

importance. A Bourdieusian approach, therefore, has the capability to incorporate class conflict where this is relevant but also enables other factors to be assessed. It has the flexibility to produce a nuanced account of the various struggles which occurred but also to fit these within a wider framework and so address both the general and the particular.

Furthermore, Bourdieu's recognition that the State is not 'a well-defined, clearly bounded and unitary reality' is surely invaluable when exploring the relationship between central and local government in the nineteenth century.<sup>97</sup> The resultant focus on an *ensemble* of fields in which the stake of struggles concerns the monopoly of physical and symbolic violence clearly positions the law, policing and punishment within the State without making them part of a definite embodiment of this. This approach is capable of incorporating the decentralised nature of government in the nineteenth century and the organic relationship between central and local aspects of the State. It also has the potential to accommodate the diversity of experiences across the provinces in the early period of penal and police reform and to understand these as distinct instances indicative of more general patterns. In relation to policing specifically, such an approach enables the indirect nature of government control over public policing to be understood and this is especially important when analysing the reform of 'civilian municipal' policing organisations where central government did not adopt full and direct control.<sup>98</sup> A Bourdieusian analysis is capable of recognising that punishment and policing were within the State, in the sense that they formed part of the government's monopoly over the use of

force, but does not reduce them to simple apparatuses or tools of central (or local) government, instead representing them as arenas shaped by the struggles between many agents and groups for power and influence.

Such an understanding is evident to some degree in Volger's analysis of public order, at least with relation to policing. The crucial aspect that a Bourdieusian perspective adds is the flexibility to analyse conflicts without conceiving of them as essentially and necessarily representing competitions for dominance between different social classes. The main, but not sole, clashes over centralisation in the nineteenth century were between central and local government and in these there was such a high degree of overlap in terms of class that other aspects become indispensable to understanding the course of conflicts. Bourdieu's framework is able to include an infinite number of social groupings which are not necessarily replicated unbendingly throughout all areas of society, thus enabling the differences between magistrates or between politicians to have a more central place and providing a structure which can incorporate the varying local circumstances of groups of actors. This offers potential for identifying common elements among the assorted trajectories and outcomes involved in the many local struggles over centralisation. An application of Bourdieu's work to conflicts over policing and prisons in Cheshire, although limited both geographically and chronologically, is suggestive of the potential of this approach to be used more widely to explore the relationship between central and local government in other areas of social policy and at different stages of the centralisation process.

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<sup>2</sup> E.P. Hennock, 'Central/local Government Relations in England: An Outline, 1800-1950', *Urban History*, IX, (1989), 38-49, 38-9 (italics in original).

<sup>3</sup> D. Eastwood, *Government and Community in the English Provinces 1700-1870*, (Basingstoke, 1997), 164.

<sup>4</sup> See *ibid.*, 160-3.

<sup>5</sup> For discussions relating specifically to prisons and policing see C. Emsley, *Crime and Society in England, 1750-1900*, 4<sup>th</sup> Ed., (London, 2010), 261-2 and C. Emsley and H. Shpayer-Makov, 'Introduction: The Police Detective and Police History' in C. Emsley and H. Shpayer-Makov (eds), *Police Detectives in History, 1750-1950* (Aldershot, 2006), 4.

<sup>6</sup> R. Volger, *Reading the Riot Act: The Magistracy, the Police, and the Army in Civil Disorder*, (Milton Keynes, 1991), 3-4.

<sup>7</sup> For example, see *ibid.*, 12-3, 32-7 and 47-8.

<sup>8</sup> P. Bourdieu, *On Television and Journalism* (London, 1998), 40-1.

<sup>9</sup> P. Bourdieu and L.D. Wacquant, *An Invitation to Reflexive Sociology* (Cambridge, 1992), 99.

<sup>10</sup> *Ibid.*, 98.



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- <sup>11</sup> Bourdieu and Wacquant, *op. cit.*, 126.
- <sup>12</sup> Quotations from P. Bourdieu, *Sociology in Question* (London, 1993), 64 and P. Bourdieu 'Social Space and Symbolic Power' in *In Other Words: Essays Towards a Reflexive Sociology* (Cambridge, 1990), 131.
- <sup>13</sup> F. Poupeau, 'Reasons for Domination: Bourdieu versus Habermas' in B. Fowler (ed.), *Reading Bourdieu on Society and Culture* (Oxford, 2000), 71.
- <sup>14</sup> P. Bourdieu, 'The Forms of Capital' in A.H. Halsey, H. Lauder, P. Brown and A.S. Wells (eds), *Education: Culture, Economy, Society* (Oxford, 1997), 46.
- <sup>15</sup> See Bourdieu and Wacquant, *op. cit.*, 98-9 and Johnson, *op. cit.*, 5.
- <sup>16</sup> Bourdieu, *In Other Words, op. cit.*, 126-8.
- <sup>17</sup> Bourdieu, *In Other Words, op. cit.*, 126-8.
- <sup>18</sup> Bourdieu and Wacquant, *op. cit.*, 111-2.
- <sup>19</sup> P. Bourdieu 'Rethinking the State: Genesis and Structure of the Bureaucratic Field', *Sociological Theory*, XII(1), (1994), 1-18, 3. Bourdieu and Wacquant, *op. cit.*, 111-2.
- <sup>20</sup> Bourdieu 'Rethinking the State', *op. cit.*, 4.
- <sup>21</sup> See *ibid.*, 107-8.
- <sup>22</sup> Bourdieu and Wacquant, *op. cit.*, 114.
- <sup>23</sup> Bourdieu, 'Rethinking the State', *op. cit.*, 10-1.
- <sup>24</sup> S. Webb and B. Webb, *English Prisons Under Local Government*, (London, 1922), 12, 17.
- <sup>25</sup> *Ibid.*, 5.
- <sup>26</sup> 1792 (31 Geo. 3 c. 46)

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<sup>27</sup> Webb and Webb, *op. cit.*, 9

<sup>28</sup> See, for example, Anon, *The Complete Parish Officer*, (London, 1744), 1-2, J. Paul, *The Compleat Constable* [sic.] (London, 1784), 13-4.

<sup>29</sup> 1842 (5&6 Vic., c.109).

<sup>30</sup> J. Kent, 'The English Village Constable, 1580-1642: The Nature and Dilemmas of the Office', *Journal of British Studies*, XX (2), (1981), 25-33.

<sup>31</sup> Examples include 1744 (14 Geo. 3 c.59), 1782 (22 Geo. 3 c.64), 1791 (31 Geo. 3 c. 46), 1815 (55 Geo. 3 c. 48), and 1815 (55 Geo. 3 c. 50).

<sup>32</sup> 1823 (4 Geo. 4 c. 64). Webb and Webb, *op. cit.*, 73-4.

<sup>33</sup> Eastwood, *op. cit.*, 163.

<sup>34</sup> 1835 (5 & 6 Wil. 4 c.38), 1839 (2 &3 Vic. c. 56), 1842 (5 & 6 Vic. c. 53) and 1844 (7 & 8 Vic. c.50).

<sup>35</sup> Webb and Webb, *op. cit.*, 112.

<sup>36</sup> Webb and Webb, *op. cit.*, 112.

<sup>37</sup> 1865 (28 & 29 Vic. c. 126) and 1877 (40 & 41 Vic. c. 21).

<sup>38</sup> See L. Radzinowicz, (1956) *A History of English Criminal Law and its Administration from 1750, Vol. 2*, (London, 1956), 578. Quotation taken from P. J. R. King, *Crime, Justice, and Discretion in England 1740-1820*, (Oxford, 2000), 48.

<sup>39</sup> See, for example, Chester 1761 (2 Geo. 3, c. 47), Manchester 1792 (23 Geo. 3 c.69) and Stockport 1826 (7 Geo. 4 c.118).

<sup>40</sup> 1830 (11 Geo. 4 c. 27) amended by 1833 (3 & 4 Wil. 4 c. 90).

<sup>41</sup> 1835 (5 & 6 Wil. 4, c. 76).

<sup>42</sup> 1839 (2 &3 Vic. c. 93) and 1840 (3& 4 Vic. c. 88).

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<sup>43</sup> 1842 (5 & 6 Vic. c. 109) amended by 1844 (7 & 8 Vic. c. 52) and 1850 (13 Vic. c. 20).

<sup>44</sup> 1856 (19 & 20 Vic. c. 69). Quotation taken from D. Philips and R. D. Storch, *Policing Provincial England, 1829-1856: The Politics of Reform*, (London, 1999), 226.

<sup>45</sup> 1783 (28 Geo. 3 c. 82). See Webb and Webb, *op cit.*, 40.

<sup>46</sup> BPP, *Gaol Reports Transmitted to the Secretary of State*, 1825 (5), 41 and 43. Cheshire Records Office (subsequently CRO), *Quarter Session's Recognizances, Orders etc.*, QJB 3/18, 17 Oct. 1815, 5 Oct. 1816. CRO, *Quarter Session's Order Books*, QJB 4/1, 11 Jul. 1819, 9 Jan. 1821, 16 Oct. 1821, QJB 4/5, 13 Oct 1828, 12 Jan. 1829.

<sup>47</sup> CRO, *Quarter Session's Order Books*, QJB 4/1, 16 Oct. 1821, OJB 4/5, 13 Oct. 1828, 12 Jan 1829.

<sup>48</sup> The National Archives (subsequently TNA), *Domestic Entry Books*, HO 43/33, Home Secretary to Keeper of Chester Gaol, 27 Mar. 1826 and HO 43/38, Home Secretary to Visiting Magistrates, Chester Gaol, 12 Dec. 1829.

<sup>49</sup> TNA, *Domestic Entry Books*, HO 43/33, Home Secretary to Trafford Trafford, 23 Jun. 1825.

<sup>50</sup> Hansard, HC Debate, 23 May 1843, vol. 69, cc817-41.

<sup>51</sup> BPP, *Report of Inspectors of Prisons of Great Britain II Northern District*, 1836 (117-II), 17-8. BPP, *Sixth Report of the Inspectors of Prisons of Great Britain II Northern and Eastern District*, 1841 Session 2 (339), 3.

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TNA, *Domestic Entry Books*, HO 43/61, Home Secretary to the Visiting Magistrates, Chester Gaol, 5 Feb. 1842.

<sup>52</sup> TNA, *Domestic Entry Books*, HO 43/59, Home Secretary to the Visiting Magistrates of Chester Gaol 29 May 1840 and 23 Nov. 1840.

<sup>53</sup> TNA, *Domestic Entry Books*, HO 43/61, Home Secretary to the Visiting Justices, Chester Gaol, 5 Nov. 1841 and HO 43/62, Home Secretary to the Visiting Justices, Chester Gaol, 11 Jun. 1842.

<sup>54</sup> TNA, *Domestic Entry Books*, HO 43/59, Home Secretary to the Clerk of the Peace, Chester, 20 Apr. 1840.

<sup>55</sup> TNA, *Domestic Entry Books*, HO 43/60, Home Secretary to Trafford Trafford, 21 Jan. 1841, 1 Apr. 1841 and 25 May 1841.

<sup>56</sup> BPP, 6<sup>th</sup> Report, 13. TNA HO 43/61, Home Secretary to the Visiting Justices, Knutsford, 5 Feb. 1842.

<sup>57</sup> BPP, 6<sup>th</sup> Report, p. 14.

<sup>58</sup> P.W. Kingsford, 'Radical Dandy: Thomas Slingsby Duncombe, 1796-1861', *History Today*, XIV(6), (1964), 399-407. Hansard, HC Debate, 21 February 1843, vol. 66, cc. 1037-1140.

<sup>59</sup> Hansard, HC Debate, 27 February 1843, vol. 66, cc1340-1343.

<sup>60</sup> BPP, *Report on an Inquiry into the Treatment of Prisoners in the Knutsford House of Correction*, 1843 (126).

<sup>61</sup> BPP, *Additional Correspondence Between the Home Office and the Magistrates of the County of Chester, Relative to Knutsford Gaol*, 1843 (265), 1-2. Hansard, HC Debate, 20 Mar. 1843, vol. 67, cc.1127-1131.

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<sup>62</sup> BPP, *Further Papers with Reference to the Inquiry Respecting the Treatment of Prisoners in House of Correction, Knutsford*, 1843 (243).

<sup>63</sup> *Ibid.*

<sup>64</sup> Hansard, HC Debate, 23 May 1843, vol. 69, col. 817-41.

<sup>65</sup> *Ibid.*

<sup>66</sup> BPP, *A Bill for the Improvement of Prison Discipline*, 20 Jul. 1843, (457).

<sup>67</sup> Hansard, HC Debate, 10 Feb. 1844, vol. 72, c. 488.

<sup>68</sup> *The Times*, 5 July 1844.

<sup>69</sup> *Ibid.*

<sup>70</sup> N. McCord and B. Purdue, *British History, 1815-1914*, 2<sup>nd</sup> Ed., (Oxford, 2007), 158 and Kingsford, *op. cit.*, 399.

<sup>71</sup> Bourdieu and Wacquant, *op. cit.*, 99.

<sup>72</sup> See Historic Hansard 1803-2005 available at:

<http://hansard.millbanksystems.com/index.html> (Searches carried out on 1<sup>st</sup>

September 2013). The MPs who voted to in line with central government

were Sir William Tatton Egerton, John Cheetham, Edward Davies

Davenport, John Edward Stanley and George Wilbraham. The two

magistrates who were MPs were voted to retain Burgess were Thomas

Marsland and Gibbs Crawford Antrobus.

<sup>73</sup> *The Times*, 24 May 1843.

<sup>74</sup> 1865 (28 & 29 Vic. c. 126).

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<sup>75</sup> R. Terdiman, 'Translator's Introduction' to 'The Force of Law: Toward a Sociology of the Juridical Field', *The Hastings Law Journal*, XXXVIII, (1987) 805-853, 811.

<sup>76</sup> 1829 (10 Geo. 4, c. 97).

<sup>77</sup> Philips and Storch, *op. cit.*, 85. 1856 (19 & 20 Vic. c. 69).

<sup>78</sup> 1829 (10 Geo. 4, c. 97), s.1, 2.

<sup>79</sup> *Ibid.*, s.17, 18, 23.

<sup>80</sup> *Ibid.*, s. 24.

<sup>81</sup> Bourdieu and Wacquant, *op. cit.*, 98-9.

<sup>82</sup> *Stockport Advertiser*, 13 Jan. 1832, 25 Feb. 1832, 11 Jan. 1833 and 6 Sep. 1833. TNA, *Constabulary Force Commission Correspondence*, HO 73/16, Copies of Petitions to the Quarter Sessions from Nantwich Hundred, n.d.

<sup>83</sup> *Stockport Advertiser*, 13 Jan. 1833, *The Morning Chronicle*, 11 Jul. 1832.

<sup>84</sup> Hansard, HC Debate, 10 Jul. 1832, vol. 14, cc. 215-9.

<sup>85</sup> *Manchester Times*, 22 Oct. 1836.

<sup>86</sup> BPP, *The First Report of the Commissioners Appointed to Inquire as to the Best Means of Establishing an Efficient Constabulary Force in the Counties of England and Wales*, 1839, (169), 121.

<sup>87</sup> *Chester Chronicle*, 18 Oct. 1839, *Manchester Times*, 19 Oct. 1839.

<sup>88</sup> *Chester Courant*, 24 Mar. 1840.

<sup>89</sup> CRO, *Quarter Sessions Printed Minutes*, QJB 6/1, 13 Jan. 1841.

<sup>90</sup> *Stockport Advertiser*, 3 Jul. 1851, 30 Jun. 1851.

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<sup>91</sup> Philips and Storch, *op. cit.*, 208.

<sup>92</sup> C. Steedman, *Policing the Victorian Community* (London, 1984), 49 and Eastwood, *op. cit.*, 99.

<sup>93</sup> 1839 (2 & 3 Vic. c.93), s. 19. The legislation did prevent adjoining divisions from introducing separate forces.

<sup>94</sup> Data taken from BPP, *Return of Superintending Constables Pay and Allowances*, 1852-3 (675) and BPP, *Accounts of County Treasurers in England and Wales*, 1854 (365).

<sup>95</sup> Philips and Storch, *op. cit.*, 167, 208.

<sup>96</sup> H. Hopkins, *The Long Affray: Poaching Wars in Britain*, (London, 1985), 5-6.

<sup>97</sup> Bourdieu and Wacquant, *op. cit.*, 111-2.

<sup>98</sup> See C. Emsley, 'A Typology of Nineteenth Century Police', *Crime, History, and Societies*, III (1), (1999), 29-44.