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Crime and Criminality in County Durham

1840 - 1855

Submitted for the degree of
Master of Arts to the Department
of Modern History, University of
Durham, on October 30, 1980.

James Christopher Burke

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14. MAY 1984

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Abstract

Between 1840 and 1855 the population of County Durham rose markedly in response to the needs of industry, especially the coal mines. Throughout this period there was a widely held assumption that an increase in industrial population would automatically result in a startling increase in crime. It is argued that despite the growing number of workers (especially colliers) this assumption cannot be sustained for County Durham. To substantiate this contention, several factors affecting criminality are reviewed: the introduction and development of the Durham County Constabulary; the awkward criminal litigation procedure; and the regimen of the Durham Gaol. These are examined in light of their functions as institutional restraints on the working class. In addition, the colliers are examined with a view to establishing the reasons for their surprisingly low rate of crime. Further, the quarterly returns of the Chief Constable, the County Treasurer's Annual Report and the Quarter Sessions Indictment Rolls are analysed by a computer to establish certain patterns such as the increasing efficiency of the police and the growing number of cases payed for by the county. Finally, each bill of indictment from 1840 to 1855 was reduced to a 'computer readable' form and then analysed to supply information on issues such as the number of criminals and types of crime; the resident parish of the offender; the plea, verdict, particulars; and (where applicable) the sentence incurred in each case.

Acknowledgement

I must from the outset acknowledge with deepest gratitude the efforts of my advisor, Mr. A.J. Heesom. He gave unselfishly of his time, listened attentively to my arguments, offered valuable criticisms and sustained my confidence throughout the process of writing this thesis.

I should also like to express my thanks to Mrs. Wingrove, Mr. Jenkins and Mrs. Stephen of the Durham County Record Office; the staff of the Department of Paleography, University of Durham; the members of the Library, Palace Green, University of Durham; Mr. Kirby of the Wakefield Prison College; as well as the staff of both the British Library and the Public Records Office for their expert advice and thoughtful suggestions.

I must also mention Father J.M. Tweedy of St. Cuthbert's Church in Durham who graciously allowed me to read his lively and instructive ms. on the County's Roman Catholics. I look forward to the publication of this work.

Much is owed to a confrère, Eric Berthoud, who suggested that I attend a lecture on the computer analysis of social science information. Without that lecture and subsequent help, the appendices to this paper would certainly never have been attempted. In this regard Messrs. D.C. Whitehead and J. Steele of the Department of Computing, University of Durham, gave generously of their time and assisted with much good humour both the preparation and presentation of the appendices. Not to be overlooked are Mrs. Taylor and the staff of the Computer Unit who patiently and carefully entered the thousands of lines of data into the machine for me. I should also add that friends Eric Berthoud, Hugh Munro and Philip Moore patiently filled in the many gaps in my understanding of the workings of a computer.

John and Jan Montgomery, Bill and Shona Domeris and Jon and Maggie Draper helped in the preparation of this effort more than I think they know.

And finally, this is dedicated to my wife Joan, whose support in every way made this thesis possible.

Introduction

This thesis is intended to be a fundamental study of criminality in County Durham set against the contemporary presumption that an increased working class population would axiomatically result in an increased crime rate. The time frame, 1840 to 1855, was chosen because these dates reflect significant events for the factors governing criminality. 1840 was both the onset of the economic depression known as the 'Hungry Forties' and the introduction of the Durham County Constabulary. 1855 (specifically, June 1855) signalled the influence of the Criminal Justice Act which restructured the litigation process and expanded the summary conviction procedure. The 1840's and 1850's were times of remarkable change in other ways. Durham's population swelled in response to the needs of industry; most notably, the coal mines. This demographic change sparked a series of reactions: the County adopted a rural police force; and the prison built extensions in anticipation of an onslaught of offenders. Yet some conventions did not change. From 1840 to 1855, the system of criminal litigation remained the same; namely, time consuming, cumbersome and expensive.

Each of the chapters is directed towards a specific issue. The police are examined in light of Engels' accusation that they constituted an institution for oppressing the working classes. The procedure of the criminal court is reviewed to suggest that had it been reformed to process cases more expediently and cheaply than it did, more members of the working class would have appeared at the Bar. In Chapter 3, Durham Prison is viewed as a peculiar mixture of the doctrines of 'reformation' and 'deterrence'. The final

Chapter, concerning the coal miners, argues that contrary to the widely held belief, the colliers were a surprisingly law abiding group.

Limited use has also been made of a computer. It was intended from the outset that the computer analysis would complement, not dominate, the written sources. Accordingly, the device was used to marshal certain information and to confirm trends and patterns already suggested by other sources.

The Introduction and Development of
The Durham County Constabulary

England as a whole, and the country gentlemen in particular, were highly suspicious of anything in the nature of a national police

Young, Portrait of
An Age.

1

In his most famous work, The Condition of the Working Class in England, Frederick Engels contended that the presumed¹ rise in the rate of crime indicated that a class "war" was being waged. Moreover, this war was causing deep cleavages within English society and therefore Engels believed that the "enemies are dividing gradually into two great camps"; namely the bourgeoisie and the workers.² One mainstay of the former group was the judiciary (especially the "bourgeois" Justice of the Peace) whom Engels claimed expressed such "enmity" towards the working class that he concluded class hatred was evidently "the basis of the law".³ Another strand in this theoretical web was the recently reorganized police. Engels viewed the constabulary as an institution which functioned principally to oppress the proletariat and sustain the domination of the bourgeoisie:

And the conduct of the police corresponds to that of the Justices of the Peace. The bourgeois may do what he will and the police remain ever polite, adhering strictly to the law, but the proletarian is roughly, brutally treated; his poverty both casts the suspicion of every sort of crime upon him and cuts him off from legal redress against any caprice of the administrators of the law; for him, therefore, the protecting forms of law do not exist, the police force their way into his house without further ceremony, arrest and abuse him; and only when a working-men's association, such as the miners, engages a Roberts,⁴ does it become evident how little the protective side of the law exists for the workingman, how frequently he has to bear all the burdens of the law without enjoying its benefits.⁵

It would seem that these contentions were based on a presumption that the police possessed sufficient monetary and popular support from the bourgeoisie to effectively carry out a campaign of control of the proletariat.⁶ Although the



introduction and development of the Durham County Constabulary did demonstrate some of the characteristics claimed by Engels, it would not appear to fit precisely within his analysis. Without doubt, Durham's chief constable expressed anxiety over the growing working class within his jurisdiction and he readily pointed to specific groups of them whenever the crime figures jumped. But from the formation of the constabulary, it proved extremely difficult to secure the support or the mantle of legitimacy from either of Engels' camps. The police were frequently the target of attacks from workers, especially during strikes. Nor were the middle class ratepayers wholly won over; for, at times, they vigorously denounced the cost of the service. Even Whitehall measured its support and was reluctant to shore up the constabulary with Metropolitan Police or troops during times of particular stress. These objections coupled with the understandable instability of a new institution would seem to have made the Durham County Constabulary a remarkably inefficient weapon with which to bludgeon the proletariat into submission. In light of these restraints, the constabulary had little alternative but do the most it could with its limited resources, expand its influence and operations wherever possible, and grudgingly accept a certain level of disorder while pursuing its primary objective; namely, the prevention of crime and the maintenance of law and order in a rapidly expanding industrial society.

To test the applicability of Engels' hypothesis to the Durham police, this chapter is divided into three broad

categories. The first examines the thoughts of some nineteenth century authors on the major reasons for the establishment of a rural force. The next reviews certain modern interpretations of the same topic. The final section analyses the nineteenth century documentation regarding Durham's constabulary with particular emphasis given to the reports prepared by the chief constable for use by the Justices in Quarter Sessions.

I

Not all of Engels' contemporaries saw the introduction of a rural constabulary in Draconian terms. For example, the respected legal scholar, Sir James Stephen, believed that a county police was a progressive and needed legislative direction towards uniformity which culminated in the 1856 County and Borough Police Act.⁷ His approach to the topic also differed from Engels': it was technical, legalistic and treated a criminal 'as a criminal' without regard for class. Stephen's analysis of the police began with an investigation of the eighteenth century constables and watchmen whom he immediately dismissed as an exhibition of unsurpassed incompetence.⁸ The situation improved "slightly, but very slightly"⁹, with the advent of magistrate's constables like the Bow Street runners, which survived, despite Parliamentary enquiries, until 1829. In that year Peel's laudable Metropolitan Police Act¹⁰ was passed which Stephen proclaimed as "the first of a series of acts which put the administration of the law as to the apprehension of offenders upon quite a new footing".¹¹ Six years later, the Municipal Corporations Act¹² allowed boroughs to establish watch committees comprised of

"fit men"¹³ to perform the duties of constable. It was not until 1839, however, that the County and District Constabulary Act¹⁴ was to make another inroad "towards the provision of a general system of police".¹⁵ The drawback here, Stephen claimed, was the act did not compel all counties to adopt forces, but at least the legislative drift was towards compulsion. The pinnacle of this progression was the 1856 law which required the counties and boroughs not only to establish, but also to maintain constabularies. Stephen was obviously pleased with finally securing a nation-wide bulwark against crime:

The result is that a disciplined force in the nature of a standing army for the suppression of crime and the apprehension of offenders has been provided throughout every part of England by four successive steps, namely, (1) the establishment of the metropolitan police in 1829, (2) that of the borough police in 1836, [sic] (3) the partial establishment of the county police by the permissive act of 1839, and (4) its complete establishment by the compulsory act of 1856¹⁶

Another legal scholar, F. W. Maitland, employed an approach and arrived at a conclusion remarkably similar to Stephen's. Maitland's brief but accurate account of the introduction of the rural constabulary in 1839 implied, but did not express, a belief that 1856 was the completion of a long unfulfilled policy. In Justice and Police, the 1856 act followed ideologically (albeit not chronologically) close on the heels of the 1839 measure:

In 1839 a permissive Act enabled justices at Quarter Sessions to create a paid county constabulary. Then there was a long struggle; some counties did, some did not adopt the Act; many maintained to the last that the new force

was unnecessary. This time of hesitation was ended by a statute of 1856 . . . Thus was England policed. 17

The examination of the establishment of various police forces was by no means restricted to legal scholars. A retired army officer, W. L. Melville Lee, produced a work which concentrated on the more sensational aspects of criminal and police behaviour. He was, however, quite willing to agree that the various constabulary acts were continuous links in a chain and to examine events in that fashion. Lee made this categorically clear by contending that it was necessary to launch his argument by "describing the successive steps by which the County Constabulary progressed towards its long-delayed organization".¹⁸ Not surprisingly, Lee thought that the pre 1839 rural constabulary was not merely an unworkable institution, but a positive menace. While analysing "the march of events" to 1856, he denounced the early system as "disastrous" and responsible for the "deplorable condition of rural England under its influence".¹⁹ Furthermore, the pre 1856 efforts were essentially preparing the ground for the country wide forces:

. . . the 1856 act was thus completing the process which had been initiated at Bow Street more than a hundred years before, The Metropolitan Police Act, and the Permissive Act, valuable and indeed indispensable as they were, had been effective only in certain districts²⁰

Lee considered the failure of the 1839 act was its voluntary nature which left areas of the country under-guarded. He arrived at the conclusion that the whole country had to be

policed by relying heavily on the report and evidence of Chadwick's 1839 Royal Commission on the Rural Constabulary and by whole-heartedly adopting its oblique 'migration' theory. According to this notion, criminals left London after the 1829 Police Act and journeyed to areas without a constabulary. This process was repeated in 1835 following the Municipal Corporations Act and again in 1839 from counties which had a new police. Only the 1856 Act, with its nationwide applicability, ended these sojourns.²¹

The works of Stephen, Maitland and Lee provide valuable alternatives to Engels' synthesis but they are by no means flawless: these men wrote from a tradition which assumed that the past was struggling towards the present, that events like the constabulary acts were connected and progressive, and that the individual offender deserved little attention. This absence of concern for the individual criminal probably stemmed from a presumption that the police would defend property and persons, not oppress the populace. It might also have been an expression of faith that should the upper echelons of the force fail to check excesses, the judiciary would be ready to do so - something Engels certainly did not believe possible.

The profession of these writers also tells much. As authorities on the law or army officers, they would have experienced difficulty understanding criminal behaviour and thus they project an "official" or "police" appreciation of the subject.²² And the idea that crime could be motivated by any emotion save

avarice or cruelty, or could be "political"²³ would surely have been instantly dismissed.

II

Unlike the nineteenth century writers, Leon Radzinowicz approaches the topic of the rural constabulary as a process which centred upon a clash of interests. Stripped of much of its useful detail, the argument begins with an analysis of the reaction to Chadwick's 1839 Commission Report and the Magistrate's Circular on the need for a police force. The uproar caused by these documents came from an astonishingly diverse spectrum of political opinion: the Chartists opposed the concept of such a constabulary because they believed it would be used by the Government to undermine its movement; the country gentlemen considered it would be an unnecessary, costly, Whig experiment directed against them; and the press believed it would be despotic, unconstitutional and akin to continental gendarmes and spies.²⁴ Radzinowicz claims that because of the mountain of opposition, the best chance of implementing Chadwick's recommendations lay in removing the emphasis on centralization, thereby assuaging localist sensitivities:

Hostility cut across divisions of political conviction, religious creed, social and economic standing. It was shared by Whigs and Tories by rural and manufacturing districts, by country gentry, high court judges, and leaders of the London Corresponding Society . . . And the best hope of reducing the resistance to the new provincial police seemed to lie in keeping to a minimum any element of central control.²⁵

In the face of this varied resistance, Russell introduced the 1839 Rural and District Constabulary Bill. According to Radzinowicz, one of the principal reasons for the measure can be found in the Prime Minister's opening remarks. Though Russell was referring specifically to the Potteries, his comments accurately described the demographic changes then taking place in County Durham:

Many districts in the counties had in the present time come to be thickly peopled with a manufacturing or mining population, which partook of the character or nature of a town population, while, at the same time, it was impossible to confer upon them municipal institutions. Nevertheless they required the institution of a police.²⁶

Disraeli led the attack on the measure by denouncing it as a centralizing, unconstitutional and precipitous move left until too late in the session for proper debate which treated the effects rather than the causes of crime.²⁷

He also shared with the Commons his suspicion of the Constabulary by recalling instances in which the police had harassed members of the working class and violated the "celebrated national dogma, that every Englishman's house was his castle".²⁸ Evidently Engels was not alone in interpreting the police in class terms, for Disraeli recognized which level of society the Bill had been written for. It is not surprising, then, that Engels thought that Disraeli was one of the few Members who understood the working class:

It might be said that these were salutary regulations, regulations, and referred only to the labouring classes; but he (Mr. Disraeli) looked

upon their rights as equally sacred
with those of the rest of the community.²⁹

Radzinowicz, however, sees the 1839 Act as "wise and useful"³⁰ but certainly not as a total solution to the problem. First, it lacked a framework for co-operation between the various police forces; second, it lacked a provision for inspection; and most importantly, it lacked central control. In fact Professor Radzinowicz lays the blame for the failure of most counties to adopt the 1839 Act at the doorstep of the local magistrates:

The initiative, and the real power, was left to the magistrates and the success or failure of the measures hung upon how far they would decide to adopt them and how wholeheartedly they would put them into effect. In spite of the hopes of the Constabulary Commissioners that counties would adopt the improved system more and more . . . it was left to local interests. . . and the system was extended only slowly.³¹

The anti-centralists had won the engagement and most counties retained their existing forces and local particularisms. Indeed, the author carefully traces the numerous attempts to breathe new life into the "plethora of organizations" such as private or company police, parish constables, the watch, or lighting and watch committees.³² However, the combined pressures of Chartism and a change in government policy on the use of the military prompted moves towards standardization. According to Radzinowicz, this combination of the "weakening of traditional devices" by Chartists and the reluctance of the Home Office to despatch troops was a plan calculated to coerce the counties into acceptance of the 1839 Act:

The government might not be willing to proceed forthwith to legislative compulsion, but it increasingly put other pressures upon them [counties] to accept the responsibilities for police which they so vehemently claimed. This was done by withdrawing, tentatively at first but later absolutely, the alternative resources upon which they had come to rely. The response to local demands for the help of the Metropolitan Police and the army hardened as a matter of deliberate policy. ³³

With the demise of Chartism, Radzinowicz perceives a fundamental shift in opinion on the principle of a constabulary. He notes that it was beginning to receive support from periodicals,³⁴ from Parliament,³⁵ and, of course, from the 1853 Select Committee on the Police.³⁶ Thus once the obstacle of 'local interest' was crossed, the way became open for county-wide legislation. Yet one final element was needed - the achievement made under a permissive 1839 Act allowed for a compulsive one in 1856.³⁷

Radzinowicz's work is valuable not simply for the quality of its scholarship or its depth of research, but also because the argument emphasizes a number of important issues that are sometimes overlooked. He correctly underscores the fact that opposition to the principle of a central police did not disappear with the passing of the 1839 Act and that the issue unified such enemies as high Tories and Engels. And though others have convincingly argued that troops were not withheld primarily as a matter of policy,³⁸ it remains a plausible thesis. There are, however, some points which seem to require clarification. Philosophically, he sides with the 'centralists' and this appears to lead him to paint the 'localists' in darker hues than perhaps

they deserved. For example, it is claimed that the "sincerity" of those who preferred to wait for regional consent before establishing a rural force "was not always unimpeachable" because such a contention was "often an attempt to conceal or justify local administrative inertia, indifference to the well being of the community, or selfish and narrow vested interest".³⁹

Radzinowicz also seems to display a degree of political innocence when he dismisses the foremost opponent to the 1839 Bill, Disraeli, as "one of the most inaccurate".⁴⁰ As an ambitious new member, Disraeli was seeking recognition and might well be excused a degree of inaccuracy for the sake of political impact. Moreover, Disraeli was clearly adhering to a cherished principle, for he consistently argued that the Tories "should always oppose the centralization, and favour the distribution, of power."⁴¹

Finally, Radzinowicz might have been misled by his sources in formulating his thoughts on the reactions of some counties to the new police. He claims, for example, that even after the 1844 miner's strike, the Durham Magistrates refused to increase the size of the constabulary because of false economy and local obstinacy towards central authority.⁴² Such was not, however, the whole case. In October 1844, Durham's chief constable submitted a report to the Lord Lieutenant, Londonderry, on "the subject of the augmentation of the Police Force and to relate the amount of increase that might be required."⁴³ Instead of taking advantage of the situation and demanding more staff as he had done many times before, Major Wemyss inexplicably expressed confidence in the size of his force and in the Home

Office policy of combining self protection with economy by swearing in special constables as required:

. . . my letter to Londonderry concluded with this observation - the question hinges upon this, "will there be another strike this winter", if not I expect to preserve the peace with the present Force, if there should be another the present Force will be inadequate without having recourse to the same expedients as before [special constables].⁴⁴

Regardless of what the Home Office or the Lord Lieutenant wanted, the magistrates could hardly ignore the advice of the chief constable. Despite Wemyss having admitted that he received frequent appeals for officers "in ordinary times which I am unable to meet"⁴⁵ he did not press the point on October 13, 1844. Perhaps he was merely acknowledging a fait accompli, or ingratiating himself to his superiors (except Londonderry), since the Justices had already voted down a police rate increase on October 5, 1844.⁴⁶

Reference was made earlier to the 'migration' theory advanced by the 1839 Royal Commission and to the effects this thesis had on police legislation. Some modern historians, like their nineteenth century counter-parts, contend that the mobility of criminals necessitated the protection of the whole country by standardized constabularies. The most stalwart proponent of this idea is J.J. Tobias who argues from it that the 1839 Act fits within "the rapidity of legislation in response to changing conditions";⁴⁷ or simply, the string of police acts beginning in 1829 and ending in 1856. Tobias bases his support for this 'migration' thesis on the "wealth of testimony"⁴⁸ produced by sources like the 1839 Chadwick Commission, the

Chadwick Papers, the Parliamentary debates and contemporary literature. Moreover, he criticizes others, like J.M. Hart, for questioning the theory on the same grounds: "There is thus much contemporary evidence against Mrs. Hart".⁴⁹ Yet Tobias too might have been beguiled by his sources; for it does not seem to occur to him that reliance on Chadwick's 1839 Commission could be a risky proposition. Chadwick's biographer, S.E. Finer, claims that the Commissioner realized that a recommendation for a central force would be unpopular so Chadwick decided to "present so alarming a picture that the public would stampede in the direction he pointed out".⁵⁰ It is also apparent that Chadwick had been convinced at least ten years earlier of the need for a standardized police and believed that "public opinion cannot be too early or too fully matured by research and discussion on every part of the subject".⁵¹ One of his ways of 'maturing' the public mind was to orchestrate the evidence and reports of the commissions with which he was involved. Hence the sensational sections of the 1839 Commission on the contemporary rural forces made such "grand reading"⁵² they were readily referred to in the press and in Parliament. It follows, then, that once the Commission is suspect, the sources which later repeated its findings became equally so; for the devices used to excite public opinion did not become any more valid with the telling.

It also seems that Tobias might have misinterpreted Hart's views on the 'migration' thesis and they are not ideological worlds apart. In a thoughtful examination of the police, Hart succinctly outlines her position on this theory:

I am sure that this did [migrate], though to what extent has not in my view been established. Nor was I in my article meaning to deny that this took place, though I can see how this impression was given. I was merely exploring the question whether the reform of the borough police in 1835 and the rural police in 1839 was a response to the migration of criminals, or whether it was done for other reasons.⁵³

One writer who deprecates the thesis is T.A. Critchley who insists that it "bears no relation to the facts . . . and there is no evidence" that the 'migration' theory prompted either the Municipal Corporations Act (1835) or the Rural Police Act (1839).⁵⁴ He contends that the former was "a fresh breeze of radical thinking" as well as a continuation of the "great agitation for Parliamentary reform" which had secured the 1832 Reform Act. Critchley continues this theme of the sensitivity of Parliament to pressure coupled with political requirements in his analysis of the 1839 Act. In that instance though, it was not philosophy but action which precipitated the measure: "If the threat of Chartism provided the occasion for the Bill, political necessities dictated its form".⁵⁵ This combination of a suspicion of the concept of insidious progression inherent in the 'migration' theory and an appreciation of political realities make Critchley's book a valuable contribution to the study of the police.

Yet in spite of this, Critchley's work suffers from an oversight to be found in the great majority of police histories - it does not focus on a specific county but tries to view the various constabularies as a single entity. This probably results from the small number of counties which took advantage of the

1839 Act, since by 1848, only 20 whole and 5 partial counties had a force.⁵⁶ But a generalization about the rural constabulary is seemingly unwarranted because the circumstances faced by the Southampton police, for example, were decidedly^d different from their Durham counterparts.

Another author, R.D. Storch, has sought to complement the scholarship on this topic by outlining the reactions of certain radical working class elements in northern England from 1840 to 1857. According to Storch, the constabulary represented a "significant extension . . . of both the moral and political authority of the state".⁵⁷ Furthermore, these agents of "official morality" sprang into existence because of the wishes of the bourgeoisie:

The implantation of a modern police in the industrial districts of Northern England resulted from a new consensus among the propertied classes that it was necessary to create a professional, bureaucratically organized lever of urban discipline and permanently introduce it into the heart of working-class communities.⁵⁸

The merit of this article lies in the tracing of radical working class resistance to the police in towns like Colne, Lancaster and Wibsey. It is significant, however, that the violent opposition occurred during the Chartist period and very little convincing evidence is produced to support a belief that after 1850 the police remained the object of concerted attack. Instead of concluding from this that by 1850 the working class had little choice but recognize the legitimacy of the force (which he denies) or that Chartist fervour had expended itself, Storch tries to suggest that resistance "assumed a

more restricted shape"⁵⁹ such as the occasional anti-police protest.

A major problem with this work is that it gives the impression that only working class radical elements opposed the police since no references are made to, for example, the efforts of Disraeli and others to denounce it in principle or to the various ratepayer's memorials to disband the force. It is difficult to know why these other sources of dissent did not receive more than passing mention.⁶⁰ Furthermore, since it is argued that the constabulary constituted a "significant extension into hitherto geographically peripheral areas",⁶¹ it is difficult to establish why the county bourgeoisie remained so reluctant to form forces under the 1839 Act.

The most incisive and exhaustive study of a rural constabulary is David Philips' work on the 'old' and 'new' police of the Black Country. Drawing heavily from a wealth of the region's official sources, he presents a number of well-reasoned conclusions about the force. Despite the fact that the Durham County Constabulary has released nothing like the volume of documentation Philips consulted, it is still possible to see certain parallels between the two areas. For example, between 1842 and 1857, 1848 is viewed by Philips as the watershed year for the Black Country constabulary. Before this, he finds that the "force could not have been functioning with great efficiency". The reasons for this assertion are legion: a high number of turnovers in all ranks; a meagre rate which kept some areas under policed; a marked hostility from "Chartists and Radicals"

as well as "some violence" from individuals; and, a number of petitions to the Quarter Sessions from districts wishing to leave the scheme. After 1848, however, the institution matured and gained stability plus legitimacy. Philips notes that efficiency improved (probably because more station houses gave the police a higher public 'profile'), there were fewer turnovers through dismissal or forced resignation, and the incidence of assaults on officers declined.

There is, though, one patent distinction between Staffordshire and Durham. Philips states that from the outset Staffordshire was able to prevent major disturbances during strikes - an achievement that the Durham County Constabulary certainly could not boast of.⁶²

III

On December 31, 1840, the local historian, T. Fordyce, noted the introduction of the Durham County Constabulary. With both precision and perception he observed the obstacles before a rural force:

The whole of the staff are efficient, and this is essentially necessary, as the duties of the police in the rural districts differ from the routine in large towns, being of a more comprehensive nature; and each constable, not being so immediately under the eye of a superior, is left more to his discretion, and greater responsibility attaches to him. Hence the necessity of strict discipline, and the difficulty of always attaining the requisite degree of efficiency in a disciplined force.⁶³

The main source of information on the development of the Durham Constabulary is a set of diaries prepared by the chief constable pursuant to the 1839 Act and its regulations.

This officer was required to submit a report to the Quarter Sessions Justices containing an account of the staff, all orders issued by him regarding the force, all charge sheets, and a summary of that quarter's criminal activity in which the police were directly involved.⁶⁴ The scope of the diaries was wide and they record the chief constable's opinions on topics such as the relationship between crime and population, the chronic problem of staff shortages, and the strained relations between his men and the community. And thus the diaries speak to the question of the feasibility of interpreting the constabulary solely as a class weapon.

Between April 8, 1840, and July 4, 1855, the chief constables submitted sixty-two reports to the Justices in Quarter Sessions.⁶⁵ From these it is evident that the men were acutely aware of the relationship between the rise in population and the rise in the incidence of crime, for the point is mentioned almost twenty times. Customarily the observation of this phenomenon was joined with a request for staff increases. For instance, Major Wemyss frequently complained that the ratio between the number of constables to the population far exceeded the 1 to 1,000 prescribed by the Act and consequently certain districts were woefully under protected:

. . . I have been receiving applications for Policemen from various parts of the county, and that from the limited number of the Force, there has been no means of affording the protection required by the increase being of an unruly description in some localities.

According to the Census of 1841 . . . [Durham had] a population of 206,449, which no doubt has greatly increased during the last seven years, by the extension of Coal and Iron

Works &c. To superintend this population, there are 90 Policemen . . . [or] each Policeman has the charge of 2,293 persons supposing that there had been no increase of population since the last census.⁶⁶

Nor did Wemyss' successor, Colonel G.F. White, enjoy greater luck with the Justices. After having received "several complaints" he deemed an addition to the staff essential for the "efficient protection of the inhabitants and the security of property". Furthermore, he reminded the Justices that County Durham possessed demographic features which had to be considered when gauging the needs of the police:

. . . it should be borne in mind that [Durham] comprises many considerable Towns and that in a large portion of the Coal, Iron, and other Districts a succession of populous Villages and places are in close vicinity to each other or bordering upon large Borough Towns - so as to present the features rather of an Urban or Suburban than a rural population in its requirements.⁶⁷

Before the Select Committee of the Commons in 1852, White informed the members that Durham's population was approximately 320,000 and that it had 117 constables, for a police to population ratio of 1:2757. And he expressed his disapproval of this situation to the Chairman Edward Royds Rice:

[Q] 1824. Do you conceive that force sufficient?

- I do not, for all purposes.

[Q] 1825. In what way is the force insufficient?

- As far as the prevention of very serious crime is concerned the force is perhaps sufficient, but not for general police purposes.⁶⁸

From these examples, it is apparent that the Durham police were concerned not only with the inadequacies of its force, but also with the rise and type of population within its jurisdiction.

Moreover, the largest industrial employers - the mines, the iron works and the railway - were held to be the largest contributors to the crime rate. Of these groups, it seems that the colliers attracted the most official attention. This scrutiny resulted from their numbers, their exuberant recreational activities and the turmoil which often attended their strikes, rather than from numerous examples of criminal behaviour. Yet, in spite of these characteristics, the constabulary believed, generally, that its presence had a tranquillizing effect on the mining communities. According to one report, prior to the introduction of a rural force, pay night in the pit town had been a rough affair indeed. This changed after 1840, but the chief constable confessed that the tumult had diminished, not disappeared:

. . . [villages and towns] surrounded by the Pit population were a year ago the scenes of such disorder as to be scarcely habitable. I need hardly call your attention to the improvement which has taken place, altho' a certain degree of disorder will probably always exist on such occasions. 69

Sources independent of the police would seem to confirm the view that the police presence calmed some of the colliers' recreations. Before the 1842 Royal Commission on Children's Employment, George Canney M.D., of Bishop Auckland applauded the work of the constabulary:

We were in a sad state from drunkenness and disorder until we got the rural police, but now we are quiet and orderly. We are certainly much indebted to them for the good order which they have established. 70

To what extent this behaviour was prompted by the rural constabulary and to what degree the colliers themselves decided to change is debatable. In 1853, White recognised that, at times,

the pitmen could react violently but customarily they were law abiding:

[Q] 1859. [Lord Lovaine] Is not the mining population generally a quiet population?

- Except during strikes and combinations, which are frequent; almost every year.⁷¹

The rapidly expanding iron processing facilities⁷² also caused consternation. Perhaps the drudgery and the arduous nature of their tasks (though this was by no means confined to the iron trade) led the workmen to excessive alcohol and then to offence.⁷³ The County's iron industry drew most of its workers from the Irish immigrant population whose lawless behaviour was regarded as a major factor in inflating the court figures:

. . . but this [population rise] would not account for the rapidity of the increase in so short a period as a twelvemonth. I think it may be fairly ascribed to the influx of a great number of workmen, to supply the demand for labour at the numerous ironworks which are now in operation, and others which are expanding.⁷⁴

Whereas the colliers or iron workers remained stationary and tended to commit offences in their own districts, the railway labourers were often moving and employed in remote, under guarded areas. Because the navvies were uneducated, socially rootless and accustomed to hard work and even harder play, they were widely regarded as a decidedly dangerous set of men. According to the 1846 Select Committee Report, the railway labourers were prone to violence and deserved especially careful watching:

Looking, both to the disposition to commit fearful outrage, which has notoriously been manifested on some of the great works, and

to the general advantage, which results from . . . having persons to represent the public authority wherever large bodies of uneducated men are collected together. Your Committee thinks that the power of the local authorities to appoint constables at the expense of the company making a public work, should be ample. . . .⁷⁵

It is clear that the arrival of the navvies signalled trouble for the local constabulary. For example, John Jones, Superintendent of Dumfriesshire, admitted to a Select Committee that his district suffered from "very little crime". If, however, "railroads were to be formed through any part of the county again" he claimed that his present force would be "perfectly ineffectual" against the onslaught of railwaymen.⁷⁶ It was much the same story in County Durham and the chief constable did not hesitate to single out the railwaymen as responsible for a lengthy Quarter Sessions docket:

. . . when it is borne in mind that the population of the County has been greatly increased by a large number of excavators employed on the new line of Railway, who are necessarily of a very mixed description . . . the state of crime . . . may be considered satisfactory. . . .⁷⁷

From the information contained in the diaries, it is apparent that, at times, the working class objected to the police. One accurate indication of this is the prevalence of offences against the officers listed in the quarterly abstracts of criminal activity. Regrettably, it was not until the Easter Session of 1851 that the single category of "assault" was split into "assaults upon police officers" and "common assaults". However, if Durham followed Philips' Staffordshire model, it can safely be assumed that the number of attacks on the constabulary between April 1851 and June 1855 was markedly less than between

January 1840 and April 1851.⁷⁸ If so, 'police bashing' was a disturbingly regular occurrence. For instance, the abstract for Michaelmas 1854 (an average return) records beneath the heading "assaults upon police officers" that 3 persons had been committed over to the Assizes, 14 had had their charges dismissed, for a total of 45 charges against 53 people. The chief constable blamed working class prosperity: higher wages resulted in drunkenness and "lawless acts to the prejudice of the peaceable inhabitants!".⁷⁸ More importantly, White perceived an alarming pattern developing and used his report to prod the Justices into exercising their authority against the perpetrators:

. . . I may state that during the last 6 months there have been no less than 70 assaults upon police officers in the execution of their duty - many of these of an aggravated nature and 5 committed for Trial which I beg to draw the serious attention of the Magistracy of this County.⁷⁹

If these examples of assaults could be labelled as 'individual' attacks, there are instances in the diaries which might be referred to as 'collective'. These incidents appear to be isolated and spontaneous outbursts as there is little to suggest they were connected with strikes or anti police protests.⁸⁰ The first refers to clashes with railway workers which seemingly were "rough encounters" where "several" officers sustained "serious injuries". Plainly the chief constable was not relating the entire episode because he remarked that "such affrays have become less frequent" and had not resulted in deaths to either side.⁸¹ The other incident involved the colliers. It is possible that the exchanges were nothing more than serious pay night 'punch ups' but the tone of the report would seem to indicate they were directed against specific constables:

I regret to state that lately some of the Officers stationed singly in the Pit Villages have been assaulted in the most dastardly manner while in the execution of their duty - & one man in particular upon two occasions barely escaped with his life, which has since been threatened. . . .⁸²

Abuse of the police was a persistent problem throughout the period but during a strike the battles became the most pitched. This is understandable, for the workers vigorously objected to what they saw as the use of an 'army of strangers' to further the owner's ends. The most famous strike, that of the coal miners in 1844, stretched the resources of the rural constabulary beyond its limits and large numbers of auxiliary or special constables were sworn in.⁸³ This action was, for the most part, unnecessary because the 1844 strike was not nearly as riotous as those of 1831 and 1832 had been.⁸⁴ In 1844 the men realized that violence would have brought the troops into the dispute as well as discrediting their cause in the public's mind.⁸⁵ The colliers, therefore, sought to prevent disturbances from occurring and succeeded to a remarkable extent in doing so:

At almost every general and district [striker's] meeting resolutions were passed such as -
 "We pledge ourselves, individually and collectively, that we will keep the peace, and should any man or men act otherwise, he or they are not friends but traitors to the cause and as such as we should treat them".⁸⁶

Isolated fighting did, however, occur and since the police were required to perform such potentially hazardous tasks as guarding 'blacklegs',⁸⁷ turning strikers out of their homes,⁸⁸ or attending miner's rallies,⁸⁹ the police regarded 1844 with trepidation. On June 30, Wemyss advised the Sessions that because of the demands occasioned by the 'bust out', his report

contained inaccuracies. In fact, no figures were returned for part of Easington Ward:

My own difficulties at this moment are much increased by my being deprived of the services of Superintendent Goule who was severely wounded yesterday in apprehending prisoners at Castle Eden Colliery and who is the only officer stationed here. . . .⁹⁰

Throughout the turmoil of the 1844 strike, it is evident that the Government was reluctant to supplement the Durham County Constabulary with either Metropolitan Police or troops. This is not to suggest that Whitehall would have tolerated chaos, but rather that these forces would be employed only after all other efforts had failed to restore order. The use of the Metropolitan Police during the miners' dispute was highly unlikely. Allegedly, the London Constabulary had exacerbated the situation during the 1839 Chartist meeting in Birmingham.⁹¹ Furthermore, the Home Secretary, Sir James Graham, believed that neither party benefitted from their presence: "It has the effect of impairing its discipline, and sometimes excites a strong public feeling against the Police."⁹² And since there was little support among the Durham Justices (a 40 to 15 vote against)⁹³ the proposal for the introduction of the London Police was dropped and an alternative had to be found.

The obvious alternative - the military - was not a card the Government liked to play. By the 1830's⁹⁴ it was becoming apparent that troops were not tactically suited for crowd control. According to Russell, the army was of questionable value during riots because its use presented a variety of problems:

. . . applications of that kind [for soldiers] tended to break and destroy the discipline of the

troops. It was very necessary to preserve that discipline, especially where there was a considerable number of troops, and for that purpose, they should be kept together, and not divided into small detachments. There was great inconvenience also in their being disposed in billets of one or two together over large towns . . . The military, though they were able to put down disorder, were useless in capturing and arresting the person who caused it.⁹⁵

The use of troops was also condemned by the 1839 Rural Police Commission,⁹⁶ for reasons which a later Committee saw fit to extract from one of its witnesses. In reply to a series of strikingly leading questions, the Chairman managed to have Durham's chief constable White repeat almost every major point of the 1839 Report on the ineffectiveness of the army during disturbances:

[Q] 1874. Is it not frequently the fact that the police, in the suppression of a riot, go into the crowd and endeavour to persuade the men to desist from their proceedings?

- Yes; and I have known a superintendent of our force go into a crowd of upwards of 1,000 men, a great number of those men being armed with picks, and some with guns, and merely from the fact of his being dressed as a policeman, and seeing that there was another force of policemen at hand, captured the ringleaders for whose apprehension he held a warrant, and the crowd have been too astonished to offer any opposition.

[Q] 1875. Would not a policeman, if he only used his truncheon, always have one arm at liberty with which to hold a man?

- Exactly.

[Q] 1876. Is it not a fact, if a soldier is employed with musket in his hand, that both hands are engaged for that purpose, and he has no means of securing the prisoner?

- Yes; and the musket may be used fatally, as probably it would.⁹⁷

Given these liabilities, it is not surprising the Government suggested that Durham enlist the services of special constables for the duration of the strike and keep the military in reserve. Accordingly, the Government's response to Durham's application came in a letter dated April 12, 1844 from the Home Secretary to the Chairman of the Quarter Sessions, Rowland Burdon:

Sir James Graham advises the Magistrates to swear in a sufficient Force of Special Constables - and it will be absolutely necessary, that an adequate Civil Force should be employed for the protection of the public peace. Sir James Graham has written to the Officer in command of the Northern District, giving full directions to him to support the Civil Authorities with a Military Force, in case it should be necessary.⁹⁸

Shortly after this, Burdon received a letter from the Commander, Major F.W. Brotherton which followed Graham's lead. Brotherton implied that troops were not particularly effective in strike situations and suggested local police and special constables be used instead: In my opinion both the police . . . and the special constabulary force ought to be tried [however inefficient the latter may prove] before the troops are called for."⁹⁹

Whitehall was not, however, uncompromising on the military issue: It was prepared to bargain with the County. In a letter dated June 14, 1844, Graham informed the Lord Lieutenant (Londonderry) that if the Durham Quarter Sessions would permanently increase the size of the rural constabulary, he would not be "indisposed" to supplying "temporary assistance" if needed.¹⁰⁰ Yet try as Londonderry did, he could not persuade the Court to increase the police rate. The Lord Lieutenant was

disappointed by this decision and related to Graham the extent of the opposition to the proposal:

I regret to say I found an invincible and unanimous opposition and dislike to any augmentation of the local Constabulary forces. The jealousy between the Agricultural and Colliery districts and the impossibility of obtaining a fair and satisfactory arrangement as to the assessments between them renders anything like incurring permanent expense to the County most difficult to accomplish.¹⁰¹

Considering that the massive strike had been on since April 5, it might seem curious that the Quarter Sessions did not rise to the Graham-Londonderry bait. Arguably the Court could have dismissed the offer because the colliers were acting with restraint, therefore hiring any more policemen was a needless, permanent expense. Even Londonderry conceded to the Home Secretary that during May and June the colliers had given no indication they were intent on riot: "All accounts agree . . . there was no prospect of violent outrage, or serious destruction of property."¹⁰³ Or the Justices might have claimed that should violence have erupted, the special constables were on hand to deal with it. Yet despite the availability of these arguments, the issue failed because of the opposition of the agricultural members to the rural constabulary. The agriculturalists opposed the increased rate because they contended that an enlarged constabulary gave them no benefits. Before the 1842 Epiphany Quarter Sessions Reverend J.W.D. Merest outlined the differences between the County's agricultural and colliery interests which resulted in the dismissal of the Graham-Londonderry scheme:

Mr. Merest considered it was a manifest injustice to compel the rural population to maintain a police for the benefit of the colliery districts. The police were not wanted in the agricultural districts, and it was hard they should have to pay for them.¹⁰⁴

Apparently the bourgeoisie had more to complain about than the cost of the new constabularies because the standard accounts depict them as "hardly more than bodies of barely literate and often drunken ex-labourers with rapidly changing membership."¹⁰⁵ The Durham County Constabulary has not released sufficient documentation (i.e. personal records) to deny or confirm this appraisal. But it is still possible to draw some parallels between the development of, for instance, the Black Country's and Durham's force.

The regulations to the 1839 Act indicate that the qualifications to become a constable were not outrageously high. They demanded a man be physically fit, at least 5 feet 7 inches tall and to be "recommended as of irreproachable Character and Connexions".¹⁰⁶ Yet once accepted into the force, the regulations governing individual conduct were exacting. The General Rules of Conduct and Discipline provided a list of prohibitions for the officer: he was enjoined to avoid "squabbles or altercations"; "to keep a curb upon his temper"; to refrain from being "over zealous or meddlesome"; to use no "improper language"; to pay all debts promptly; to abstain from frequenting public houses; to marry no one from a family of "reputed bad character"; and many, many more.¹⁰⁷ In sum, there were an astonishing array of behavioural rules because it was assumed that every policeman would "devote his full time to the Public Service".¹⁰⁸

It has been justifiably suggested that the standards set for the police were ridiculously high. The new recruits were provably unaccustomed to a work discipline which required that "not only was a policeman not to be drunk on duty: he must not get drunk off duty either."¹⁰⁹ And it is likely that these restraints cost Durham personnel. In April 1840, the chief constable complained of difficulty in recruiting and keeping men despite the fact that the wages were higher than a labourer could expect.¹¹⁰ Moreover, Wemyss found himself hard pressed to replace men who had left, therefore he had to cope with staff shortages:

. . . the difficulty of getting good men is great and also that of keeping them after they have been got . . . there have been some dismissals, and some resignations which not only caused a good deal of trouble in the examination of Candidates but occasions considerable difficulty . . . [with shortages].¹¹¹

Durham's constabulary also suffered from the occasional scandal. In June 1840, the chief constable cashiered a constable for accepting a bribe.¹¹² There are even indications that Wemyss should have taken greater care with the accounts. During the summer of 1848 Wemyss died and Daniel McEwen became the acting Superintendent. In the report to the Michaelmas Quarter Sessions the auditors noted a discrepancy in the constabulary books. No accusations were recorded, but, significantly, a Standing Committee on the Police Accounts was formed:

We [the auditors] have to remark that Superintendent McEwen states there is a deficiency in the late Chief Constable's accounts amounting to about £255 - the greater portion of the sum has been paid by the County Treasurer, and the receipts are held by him; but Superintendent McEwen states that he handed over the amount of such accounts to the late Chief Constable.¹¹²

On January 8, 1842, The Times published an article entitled "Opposition to the Rural Police in Durham" which reported that deputies from 172 of the county's townships had submitted petitions with approximately 6,400 signatures calling for the "dismissal" of the constabulary.¹¹³ At base, the agricultural rate payers objected to paying for a force which was allegedly needed in only the industrial regions:

. . . such an establishment [of rural police] was unnecessary, and the maintenance of it a [was] great additional burden to the rated inhabitants residing the the rural districts . . . and, that should it be found requisite for the maintenance of the laws, in the colliery and populous districts, it is only reasonable that such districts should pay for their own protection.¹¹⁴

Aside from Wemyss, the only other voice of approval of the force was that of Colonel Shipperdson.¹¹⁵ Importantly, even he agreed that the rate structure was inequitable:

He admitted that the rural districts were taxed too heavily and suggested that an increased rate should be laid by the overseers on colliery property.¹¹⁶

In the face of such concerted protest, the Quarter Sessions appointed a committee of two magistrates "for the purpose of inquiring generally into the prayer of the petitioners";¹¹⁷ but, no doubt to the disappointment of the memorialists, the rural constabulary was not dissolved.

Despite the opposition from without and the problems within, the police improved markedly throughout the 1840's. By 1849, White could even claim that the constabulary was successful in preventing disturbances during strikes:

. . . During these last six weeks, many of the collieries in this County have wholly, or partially struck work. This has necessarily

being [sic] attended with some excitement, and disturbance have arisen in consequence, but not of a serious nature, - the timely intervention of the Police having been successful in restoring order.¹¹⁸

This probably resulted from the fact that the police were securing better recruits:

. . . there has been no difficulty in obtaining men of good description to select from - indeed the number of eligible applicants has been greater than on any former occasion.¹¹⁹

It follows, then, that the development of the county constabularies in Durham and Staffordshire shared certain characteristics. Throughout the early years both suffered from understaffing, discipline problems, turnovers, and ratepayer disapproval.¹²⁰ Yet clearly they matured as institutions by the late 1840's. By 1853, White could boast that the police had not only gained popular support, but even ratepayer opposition had died:

[Q] 1828. [Chairman] Are you capable of stating what the feeling with regard to the police force is in Durham: is it popular or unpopular?

- I make every effort to inquire into that; I ride about the county, and I make inquiries from those people who do not know who I am, and will therefore give an unbiased opinion, and I think the force is popular with the county; I never hear a different opinion expressed.

[Q] 1829. Has there been any attempt in the county of Durham, from its expense, to abolish the police force since it has been established?

- Never since I have been there; I have been there four years and a half, and there has never been a petition against the force; not since the first five years, to my knowledge; but they were frequent at one time, at the early establishment of the force.¹²¹

From the computer analysis of the returns of the chief constable to the Quarter Sessions (contained in Appendix "A") it is evident that the police became more efficient at prosecuting offenders as each year passed.¹²² Since the constables launched suits strictly as individuals (they had no more official authority than any other citizen during criminal proceedings)¹²³ the analysis shows a steady increase in the efforts of the officers to arrest and prosecute offenders. Some of the increases can be ascribed to instances of heightened activity such as strikes. But the increase in prosecutions cannot be reasonably attributed to the enlarging of the force, for the number of prosecutions cannot be reasonably attributed to the enlarging of the force, for the number of prosecutions proportionately outstrips the same increases in personnel.¹²⁴ Clearly, then, both the individuals and the institution were gaining expertise and stability as the years went on.

As well as progressively gaining in efficiency, it is also apparent that the constabulary actively sought to expand its areas of operation. Durham did not invent this 'expansionist policy' for Chadwick had recommended it as early as 1829 in the interest of economy and rationalization:

Many duties which are not now performed by the police-officers, might advantageously be included within their functions . . . Might they not, with advantage to the public, during such vacant [patrol] time, enforce the provisions of the new street act; see that the streets are duly cleansed, according to the contracts, before the hours of business; apprehend vagrants; keep the public thoroughfares free from obstruction; and perform other duties which are now badly discharged by different sets of peace-officers? Labour and expense would thus be economised.¹²⁵

One means employed by the police to extend their authority was for the chief constable to convince the Quarter Sessions that a certain function could be efficiently handled by his force. In this way, the constables became Inspectors of Weights and Measures.¹²⁶ Another might well be termed the 'half-a-loaf' approach. By April 1850, the police were acting as "assistants to [the Poor Law] relieving officers, for checking of vagrancy and as inspectors of nuisances" in some of Durham's districts.¹²⁷ Less than a year later, White went for the whole loaf and informed the Sessions that Essex had successfully employed constables as poor law inspectors but "the system should be general to be effective" in Durham.¹²⁸ Although it is not recorded, it is reasonable to expect that constabulary's wish for county wide jurisdiction was granted. Another example of this scramble for power concerned the county's lodging houses. According to the chief constable, many benefits would accrue once his men were appointed inspectors under the Lodging Houses Act:

. . . The Superintendents and Inspectors of the Force are the Persons best qualified to carry out the Act, as they will obtain an additional surveillance over the resort of Trampers, and suspicious characters, which must operate favourably towards the Prevention and Detection of Crime.¹²⁹

In addition to securing greater responsibilities for itself, the county constabulary showed a marked willingness to work with companies to expand its influence: Section 19 of the 1840¹³⁰ Act provided that "any Person or Persons showing the Necessity thereof" could apply to the chief constable for the appointment of additional officers. All that was required

was Quarter Sessions approval and an acknowledgement that the cost of the constables would be paid by whoever employed them. Because of the frequently turbulent character of labour disputes in Durham, this device was often used for the mutual benefit of constabulary and company. The industry gained because it could draw on the resources of a government for reinforcements if needed. But more importantly, the amalgamation of company police with the county's men meant that the ranks of the Durham force swelled. This would seem to have been an exceedingly liberal interpretation of the section, but plainly it was done:

I should here explain that by an arrangement with the Derwent or Consett Iron Company they have consented to bear the expense of the Superintendent of the Shotley Bridge and Lanchester districts, consequent on the consolidation of their Police with ours, as additional County Constables, under the 19[th] Section of the Amended Constabulary Act, a measure calculated to increase the efficiency of both in that quarter.¹³¹

Another means by which the constabulary furthered its influence while solidifying its connections with companies was by building police stations or lock ups. Perhaps the most illuminating example of this is the West Hartlepool Dock Company. In April 1853, the report to the Sessions contained two references to this business. The first was an offer from it of "£100, a free site and stone sufficient for building a Police Station". The second was a notation that the company's private police would be consolidated with the County Constabulary "on similar terms to those with the Consett Iron Company and others".¹³² In June 1854, the return indicates that 5 "additional" officers were sent pursuant to Section 19 of the

Act to the care and cost of the "Society for the Protection of the Hartlepool Docks", or, simply, the owners.¹³³ In December 1854, the West Hartlepool Improvement Act came into effect and the two police forces were finally amalgamated and the station house was completed. According to the chief constable, it had been "built at the joint expense of the County and the West Hartlepool Dock and Railway Company, after the plans of Mr. Howison upon the site given by the Company for that purpose".¹³⁴

For many reasons, then, the police sided heavily with the County's manufacturing elements. This preference was understandable since, apart from Sir Thomas Clavering and "seventy three gentlemen farmers, yeomen and others", who considered their rates "indemnified", the agricultural interest opposed the force in theory in London and in practice in County Durham. On the other hand, the industrial concerns showed willingness to assist the police to extend their influence. As such, County Durham seems to have followed the pattern suggested by the "socially radical historians and sociologists"¹³⁶ who contend that the agriculturalists stuck to their traditional guns and defended their property whereas the new manufacturers preferred to pay a bureaucracy to do it for them. It is also possible that the conflict between farmer and factory owner had a different, more selfish, meaning. Engels might have been referring to such controversies when he claimed that a social war was in progress because every individual was battling only for himself and "whether or not he shall injure all others who are his declared foes, depends upon a cynical calculation as to what is most advantageous for

himself."¹³⁷

In conclusion, Engels was correct that the worker had been, at times, abused by the police; for it would be spurious to argue otherwise. But of greater importance is the implication of his idea. Did the Durham County Constabulary function as efficient 'troops' for the bourgeoisie? They certainly had very close ties with the industrial 'masters'. They certainly interrupted strikes. But the constabulary had very little choice: the basis of their support was the manufacturer because, by and large, the agriculturalist deprecated the institution. And as for interfering with strikes, that was a matter of strict law. Moreover, the institution of the police was plagued, again, at times, by external pressures and internal instability. Given that bourgeois support for the constabulary was far from total, it would seem to be inaccurate to claim that Engels' synthesis fits Durham's circumstances.

The Introduction and Development of the Durham
County Constabulary, 1840 - 1855

1. It is not intended to examine here the complex question of whether or not crime was increasing or decreasing throughout the century. For a full treatment of this issue see V.A.C. Gatrell and T.B. Haden, "Criminal Statistics and Their Interpretation", in E.A. Wrigley, (ed.), Nineteenth Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data (Cambridge, 1972), pp. 336-396; J.J. Tobias, Crime and Industrial Society in the 19th Century (London, 1967); D. Philips, Crime and Authority in Victorian England: The Black Country, 1835 - 1860 (London, 1977); and a similar approach to the French and German rates, H. Zehr, Crime and the Development of Modern Society, (London, 1977).
2. Karl Marx and Frederick Engels on Britain (2nd. ed., Moscow, 1962), p. 166.
3. Ibid., p. 318. It would be interesting to speculate to what extent the opinions of Engels and Marx on the English constabulary were influenced by their bitter memories of the Prussian and French police. See K. Marx and F. Engels, Collected Works (12 vols.; London, 1975), Vol. 4, p. 73; Vol. 7, p. 437; Vol. 9, p. 376. For an analysis of the relationship between crime and class oppression see E.P. Thompson, Whigs and Hunters (Harmondsworth, 1975), pp. 260-267.
4. W.P. Roberts was the solicitor who represented the miners and their Association throughout the period under examination. For an examination of his activities which focus on his efforts to maintain peace (especially during the 1844 strike) and to end the Pit-Bond see R. Fynes, The Miners of Northumberland Durham (Sunderland, 1923), reprint of 1873 ed., pp. 37-49, p. 78, pp. 241-244; M. Dunn, View of the Coal Trade of the North of England (Newcastle upon Tyne, 1844), pp. 224-228; R. Challinor and B. Ripley, The Miner's Association, A Trade Union in the Age of the Chartists (London, 1968), pp. 94-111; pp. 126-144; S. Webb, The Durham Miners Story, 1662-1921 (London, 1921), pp. 40-43; and a collection of pamphlets in Anon., Labour Disputes in the Mines (New York, 1972), "What do the Pitmen Want?"; "Pitman's Strike".
5. Engels on Britain, p. 319.
6. For an analysis of the attempts by the police to regulate urban working class activities and the violent reaction to such a policy see R.D. Storch "The Plague of the Blue Locusts. Police Reform and Popular Resistance in Northern England, 1840-57", International Review of Social History, XX (1975), 61-90.

7. 18 & 19 Vict. c. 126.
8. J.F. Stephen, A History of the Criminal Law of England (3 vols.; New York, N.Y., reprint of 1883 ed.), I, 196.
9. Ibid.
10. 10 Geo. 4, c.44.
11. Stephen, Criminal Law, I, 197.
12. 5 & 6 Will. 4, c.76.
13. Stephen, Criminal Law, I, 198.
14. 2 & 3 Vict. c.93.
15. Stephen, Criminal Law, I, 199.
16. Ibid., p. 200; See also W.S. Holdsworth, A History of The English Law (3rd ed.; 17 vols.; London, 1923), III, 205-208. As will be shown, the Stephen reference to "a standing army" was one of the main criticisms of those who opposed the introduction of police forces see J. M. Hart, "Reform of the Borough Police 1835-1856", English Historical Review, LXX (July, 1955), 422.
17. F.W. Maitland, Justice and Police (London, 1885), p. 109.
18. W.L.M. Lee, A History of the Police in England (Montclair, New Jersey, 1971, reprint of 1901 ed.), p. 279.
19. Ibid.
20. Ibid., p. 306.
21. S.E. Finer, The Life and Times of Sir Edwin Chadwick (London, 1952) pp. 164-168; Parliamentary Papers, 1839 (169), XLX, I. Report of the Commissioners on the establishment of a rural constabulary.
22. Philips, Crime and Authority, pp. 20-21..
23. For a review of crime as a political act see E.P. Thompson, The Making of the English Working Class (Harmondsworth, 1963), pp. 64-69.
24. Hart, "Reform of the Borough Police:", p. 442.
25. L. Radzinowicz, A History of English Criminal Law and its Administration from 1750 (4 vols.; London, 1968), IV, 263.
26. Parliamentary Debates (1839), 3rd. ser., vol. 49, col. 730.

27. The Times, 25 July 1839, House of Commons Debates.
28. Parl. Debates (1839), 3rd. ser., vol. 50, col. 357.
29. Ibid., See also Lord Stanhope's denunciation of the Bill for a rural constabulary in the House of Lords, Parl. Debates (1839), 3rd. ser., vol. 50, cols. 435-437. See also E.J. Hobsbawn, (ed.) Condition of the Working Class in England (London, 1969), pp. 317-318.
30. Radzinowicz, A History, IV, 268.
31. Ibid., pp. 269-270.
32. Ibid., pp. 271-277.
33. Ibid., p. 280.
34. Ibid., p. 288.
35. Ibid., p. 289.
36. P.P., 1852-53 XXXVI (603), 1. First Report of the Select Committee on a uniform police. P.P. 1852-53 (715), 161. Second Report of the Select Committee on a uniform police.
37. Radzinowicz, A History, IV, 291.
38. Storch, "The Plague of Blue Locusts", p. 64.; F.C. Mather, Public Order in the Age of the Chartists (Manchester, 1959), pp. 106-107, 109.
39. Radzinowicz, A History, IV, 292.
40. Ibid., p. 265.
41. R. Blake, Disraeli (London, 1966), p. 161. See also T.A. Critchley, A History of Police in England and Wales (London, 1967), pp. 79-80 for a summary of Disraeli's actions during the 1839 discussions.
42. Radzinowicz, A History, IV, 282.
43. Durham County Record Office, CC.P/37, Chief Constable's Dairy, 13 October 1844.
44. Ibid.
45. Ibid.
46. Durham County Record Office, Londonderry Papers, D/Lo/c80(40), 19 June 1844.

47. Tobias, Crime, p. 233.
48. Ibid., p. 235.
49. Ibid.
50. Finer, Chadwick, p. 167.
51. Anon., [E. Chadwick], "Preventative Police", London Review 1 (1829), 252.
52. Finer, Chadwick, p. 167. For an examination of the manipulation of government committees and the use of the ensuing publicity see: Philips, Crime, p. 17; C. Fox, "The Development of Social Reportage in English Periodical Illustration During the 1840's and early 1850's", Past and Present, No. 74 (February 1977), 90-111.
53. J.M. Hart, "Police", p. 195 in W.R. Cornish and others (eds.), Crime and Law (Dublin, 1978).
54. Critchley, Police History, p. 58.
55. Ibid., p. 62.
56. Radzinowicz, A History, IV, 269.
57. Storch, "The Plague of Blue Locusts", p. 61.
58. Ibid.
59. Ibid., p. 89.
60. Ibid., p. 78 "Here [Lancaster] feeling against the implantation of the police had been running high for some time not only among the lower classes but among middling ratepayers as well". See also p. 84.
61. Ibid., p. 61.
62. Philips, Crime and Authority, pp. 78-81.
63. T. Fordyce, Local Records; or, Historical Register of Remarkable Events (3 vols.; Newcastle-upon-Tyne, 1867), III, 138.
64. These diaries (Durham County Record Office CC/P37, CC/P38) were re-copied to Quarter Sessions Books (D.C.R.O. series Q/S/0B) as the "Chief Constable's Report" to the Sessions. For convenience, the diaries are cited throughout this chapter. The Chief Constables were Major James Wemyss from 1840 to his death on September 24, 1848. A superintendent, Daniel McEwen, assumed the position for the Michaelmas term 1848; and Lieutenant Colonel George F. White held the

- chair from December 1848 to the end of the period under review (July 1855).
65. After July 1855, the returns begin to reflect the influence of the Criminal Justice Act, 18 & 19 Vict. c.126.
 66. Diaries, 3 January 1848.
 67. Ibid., 28 June 1854.
 68. Parliamentary Papers, 1852-53, XXXVI (603), 113. Evidence of G.F. White before the Select Committee on the Constabulary.
 69. Diaries, 2 January 1841.
 70. P.P., 1842, XVI (381), 162. Evidence of G. Canney before the Royal Commission of Inquiry into the Employment of Children. See also Ibid., p. 167, evidence of 17 year old Joseph Dawson: "Before the police came there was a great deal of fighting".
 71. P.P., 1852-53, XXXVI (603), 115. Evidence of G.F. White before the Select Committee on the Constabulary.
 72. For a business history study of the Consett Iron Works see the unpublished thesis A.S. Wilson, The Consett Iron Company Limited: A Case Study in Victorian Business History (University of Durham, 1973), M. Phil. For a more general work, see W. Jenkins, Consett Iron Company Limited. A Description of the Works (Newcastle-upon-Tyne, 1893). For less scholarly but interesting accounts of the development of this industry see: Lady Bell, At the Works (Newton Abbot, 1969), reprint of 1907 ed.; Viscount Ridley, The Development of the Iron and Steel Industry in North West Durham (Tyneside, 1961).
 73. B. Harrison, Drink and the Victorians (London, 1971).
 74. Diaries, 8 April 1846. For an examination of the iron workers see R.J. Cooter, The Irish in County Durham and Newcastle c.1840-1880 (University of Durham, 1972), M.A., pp. 171-176.
 75. P.P., 1846, XIII (530), 432. Report of the Select Committee on Railway Labourers.
 76. P.P., 1852-53, XXXVI (715), 292. Evidence of J. Jones before the Select Committee on the Constabulary.
 77. Diaries, 24 June 1843.
 78. Ibid., 18 October 1854.
 79. Ibid.
 80. Storch, "The Plague of Blue Locusts", pp. 76-90.

81. Diaries, 2 January 1841.
82. Ibid., 14 October 1843. An account of a particularly brutal attack on an individual constable can be found in Storch, "The Plague of Blue Locusts", p. 86.
83. Department of Paleography, University of Durham Shipperdson Papers, Vol. 2, letter 3329. Edward Shipperdson to Sir James Graham dated 24 April 1844. On the basis of the testimony of a "credible witness" Shipperdson and another magistrate, W. Fawcett, believed "that riot and tumult might reasonably be apprehended". Accordingly, they swore in 62 additional special constables to guard the Sacriston Colliery for three months.
84. Fynes, Miners, pp. 19-37; Dunn, The Coal Trade, p. 34.
85. Challinor and Ripley, Miners' Association, p. 130.
86. Fynes, Miners, pp. 62-63.
87. Ibid., p. 72.
88. Ibid., pp. 74-75.
89. Ibid., pp. 77, 100.
90. Diaries, 30 June 1844.
91. Radzinowicz, A History, IV, 252-255.
92. Draft letter from Graham to Londonderry dated 10 June 1844 cited in F.C. Mather, Public Order in the Age of the Chartists (Manchester, 1959), p. 109.
93. Durham County Record Office, Londonderry Papers, D/Lo/C 80 (28). Londonderry to Graham 19 June 1844.
94. Storch, "The Plague of Blue Locusts", p. 64.
95. The Times, 24 July 1839, Reports on the Parliamentary Debates.
96. P.P., 1839, XIX (169), 83.
97. Ibid., 1852-53, XXXVI (603), 116.
98. Shippersdson Papers, Vol. 2, letter 3322 Graham to Burdon.
99. Ibid., letter 3325 Brotherton to Burdon. For a full treatment of the use of troops during strikes see the thesis of R.A. Rizzi, The British Army as a Riot Control Force in Great Britain: 1811-1848 (Oxford, 1974), B. Litt.

100. Londonderry Papers, D/Lo/C 80 (25), Graham to Londonderry 14 June 1844.
101. Ibid., D/Lo/C 80 (29), Londonderry to Graham, 19 June 1844.
102. Webb, Durham Miners, p. 43.
103. Londonderry Papers, D/Lo/C 80 (29), Londonderry to Graham, 19 June 1844.
104. The Times, 8 January 1842.
105. Hart, Crime and Law, p. 209; J.P. Martin and G. Wilson, The Police: A Study in Manpower (London, 1969), introduction.
106. Radzinowicz, A History, IV, 266.
107. G.F. White, Regulations, Orders and Instruction Framed for the Government and Guidance of the Durham County Constabulary (Durham, 1892), pp. 21-28.
108. Ibid., p. 4.
109. Hart, Crime and Law, p. 209.
110. Some agree Storch, "The Plague of Blue Locusts", p. 71., others disagree Philips, Crime and Authority, p. 70., with this contention.
111. Diaries, 8 April 1840.
112. Durham County Record Office, Quarter Sessions Order Books, Q/S/OB 27, 16 October 1848.
113. The Times, 8 January 1842.
114. Ibid.
115. If this "Colonel Shipperdson" was Edward Shipperdson, he did not have long to wait for a reward for such a defence of the constabulary. In 1843 Edward Shipperdson was awarded the prestigious and ceremonial office of Sheriff of the County. C.H.H. Blair, The Sheriffs of the County of Durham (Gateshead, 1944), pp. 62-65.
116. The Times, 8 January 1842.
117. Ibid.
118. Diaries, 17 October 1849.
119. Ibid., 29 June 1848.

120. Philips, Crime and Authority, pp. 78-81.
121. P.P., 1852-53, XXXVI (603), 114.
122. The analysis of the quarterly returns of the chief constable to the Sessions was performed by a 370 IBM computer using the MIDAS statistical package. See appendix "A".
123. For a further discussion of this point see chapter 3 of this thesis.
124. In 1841, Durham had a population of 239, 256 and a constabulary of 81 men. By 1851 the population had grown to 390, 997 and the force consisted of 118 officers in 1852. P.P., 1854, LII (211), 618. Return of the Counties with Constabularies.
125. Chadwick, "Preventative Police", p. 29. Compare this with White's evidence on the issue. P.P., 1852-53, XXXVI (603), 115. They are essentially the same.
126. Diaries, 10 April 1850. White describes this function as being "co-exclusive with his Police jurisdiction".
127. Ibid.
128. Ibid., 4 January 1851.
129. Ibid., 7 April 1852.
130. 3 & 4 Vict. c.88.
131. Diaries, 10 April 1850.
132. Ibid., 6 April 1853.
133. Ibid., 28 June 1854.
134. Ibid., 29 December 1854.
135. Ibid., 2 January 1841.
136. Hart, Crime and Law, p. 179.
137. Engels on Britain, p. 165.

The Court and the Common People:

Law and Procedure

Each wanton judge new penal statutes draw,
Laws grind the poor, and rich men rule the law. . . .

Goldsmith

In the preceding chapter, the constabulary was examined in light of its function as an institutional constraint on Durham's rapidly growing working class. Another means of restraining its behaviour was certainly the criminal court. In many ways, the procedure of the court had a profound effect upon the number of actions which came before the Quarter Sessions. The overwhelming majority of prosecutions were private, or paid for by individuals, and therefore a citizen had a choice of whether or not to pursue a criminal suit against his neighbour. Furthermore, the procedure to be followed was cumbersome, time-consuming and necessitated, at least initially, a substantial outlay of money. Yet despite these debilities, Durham's working class did proceed with criminal suits; and often these actions were over paltry sums. Proof of working class proceedings should be found in the court records, but regrettably the evidence from the Durham Quarter Sessions is somewhat imprecise on this point. Although this court considered most of the county's criminal cases, it is impossible to state exactly where the litigants belonged on the social scale. However, the Sessions indictment rolls¹ reveal much about criminality in Durham such as the areas where criminal behaviour was more prevalent, the favoured types of offence and the patterns of sentencing. But the indictments did not distinguish between coal miner and farm labourer or sailor and navvie - all were lumped beneath the umbrella of "Labourer".²

It is suggested, however, that had the procedures governing

litigation been simplified and less expensive, the Quarter Sessions would have handled considerably more working class actions than it did. For the trial at Quarter Sessions was, in fact, the third stage of an involved proceeding. For example, Jane Jobling secured a conviction against John Savage and his wife Ellen for theft of a gown, shawl, sheet, razor and cap.³ The Quarter Sessions trial was the third 'compartment' that Jobling had taken the Savages through. Assuming that the accused had been arrested by the County Constabulary at no cost to Jobling (unlike the Parish Constables who charged for this service) the first hurdle was the local magistrate who had to be satisfied that the prosecution had a prima facie case. Second, the grand jury had to be persuaded to endorse an indictment. Finally, Jobling or her counsel had to convince the petty jury of the Savages' culpability. Each of these 'compartments' was an individual stage with its own set of costs and inconveniences and Jobling truly worked hard to have the Savages imprisoned "in the House of Correction until the rising of the Court".⁴ As will be seen, these expenditures of time and money could have persuaded even a wealthy litigant that the final result was simply not worth the effort. And, of course, the separate sets of costs could have put a prosecution beyond the reach of a poor litigant.

In 1829, Edwin Chadwick proposed a radical scheme for the reorganization of the police.⁵ One facet of this comprehensive plan was a wholesale re-structuring of the criminal trial process.

According to him, the "general principle" guiding reform of the system demanded the "expediency of consulting the convenience and inclinations of prosecutors".⁶ Moreover, Chadwick's Utilitarian broom intended to sweep clean the contemporary, archaic system because "simplicity, expedition, certainty, and freedom from expense, are the most desirable qualities for penal as well as other procedures".⁷ Shorn of many of its subordinate suggestions, the proposal called for the police to fill out a "revised and simplified"⁸ indictment form for use by the courts. This would eliminate the services of the court clerks and solicitors who prepared the bills and diminish the opportunity for the accused to evade justice by having the indictment quashed on a technicality at a later stage. Chadwick also examined the "utility" of the grand jury and found that in the past it had performed a valuable function but "now promotes a great number of bad purposes".⁹ He therefore argued that the accused should go directly from the magistrate to the bar "without the intervention of the second [clerk] and third [grand jury] process".¹⁰ Finally, Chadwick recommended changes in the law of evidence,¹¹ and the rationalization of sentencing by linking severity of punishment to gravity of offence.¹² A few of Chadwick's proposals had been adopted by 1840,¹³ but significantly, the structure he denounced remained intact throughout the period under review.

Nor was Chadwick the only individual who realized that procedure could operate to detriment rather than the advancement

of justice. In 1844, Mr. Justice Maule recognized that equality before the bar could, at times, be illusory. His Lordship's caustic remarks to a convicted bigamist said much for the state of the law generally and for the working class participation in the legal system specifically:

" . . . the institutions of your country have provided you with a remedy. You should have sued the adulterer at the Assizes and recovered a verdict against him, and then taken proceedings by your proctor in the Ecclesiastical Courts. After their successful termination, you might have applied to Parliament for a Divorce Act, and your counsel and your witnesses would have been heard at the bar of the House". "But, my lord," pleaded the culprit, "I cannot afford to bring actions or obtain Acts of Parliament; I am only a very poor man". "Prisoner", said Mr. Justice Maule, "it is the glory of the law of England that it knows no distinction between the rich and the poor".¹⁴

To support the contention that had the law made greater distinction between rich and poor and had the courts been structured more efficiently the working class would have participated more than it did in the process, two major subjects are examined: the changes in the criminal law between 1840 and 1855; and the procedures followed by prosecutions before the Court of Quarter Sessions.

From the turn of the nineteenth century efforts had periodically been made to improve the administration of justice and rationalize, or at least mitigate, the rigors of the eighteenth century 'bloody code'. Under the governments of Peel and Russell, several administrative reforms took place and the

number of capital offences was reduced from perhaps two hundred to a handful such as murder, attempted murder, treason, sodomy and others.¹⁵ Aside from the efforts of 1841,¹⁶ the number of crimes punishable by death was not further reduced until 1861 when only murder remained.¹⁷ Many historians have devoted much scholarship to accounting for these changes, but Leon Radzinowicz's analysis is the most comprehensive. According to him, the legislative reforms were the culmination of several influences including private reforming zeal, the belief that capital punishment had no deterring power, that such sentences were unnecessary as very few were actually hanged, that execution for property offences was incongruous and that many European countries had already softened their codes.¹⁸ Others, like Sir C.K. Allen, viewed these reforms as essential preconditions to providing England with a legitimate, respected judiciary. The reduction in the number of capital crimes together with the administrative reforms probably did remove the bulk of the complaints Allen listed. But it would seem likely that these abuses of the law would have promoted a working class tradition of distrust of the courts¹⁹ which would not have totally disappeared by mid century:

The ferocity of the criminal law led not to fear but to contempt of it. Juries would not convict of [sic] trivial offences which sent petty thieves often children, to the scaffold; innumerable spoliations went unpunished because private prosecutions were too expensive to be worth while, and in any event justice was openly bought and sold and perjury flourished unchecked.²⁰

Parallel with these changes ran a stream of Benthamite rationalism which sought to bring order to chaos. Throughout

the 1830's, 40's, 50's and even into the 1870's,²¹ a number of unsuccessful attempts were made to codify the criminal law. In 1833, the first Royal Commission was established to inquire into different branches of the criminal law and procedure. Its claim to have been a "Benthamite conception"²² is amply verified both by its professional membership and by the specialized nature of its deliberations.²³ Between 1834 and 1849, three further Commissions (with virtually the same members) issued thirteen Reports on subjects ranging from burglary, treason, religious disabilities, duress, juries, to digests of criminal procedure.²⁴ Yet none of these works resulted in a criminal code and the 1853 bill to institute a rationalized system was killed by a select committee.²⁵

The impetus to reform did not, however, end with the grand designs to reduce capital punishment or codify the law. After many years of neglect, the Court of Quarter Sessions came under legislative scrutiny. According to Stephen, this court owed its existence to a statute of Edward III and its jurisdiction was "settled" by a Commission from 1590 until 1842.²⁶ Thus the jurisdiction of the Quarter Sessions before 1842 has been viewed as particularly confused: on the one hand the Sessions were regarded as "virtually coterminous" with the Court of Assizes; but on the other as "in practice inferior"²⁷ to it. Another interpretation of the Court's jurisdiction claims that it was restricted by the 1590 Commission yet formed by years of practice until finally statutorily set in 1842. This analysis

argues, furthermore, that though the Court lost some areas of jurisdiction, the 1842 Act gave the Sessions control over an enormous array of criminal cases:

. . . [Quarter Sessions heard] all crimes except treason, subject only to this, that in cases of difficulty a judge of one of the benches or of assize ought to be present. This jurisdiction was exercised, and sentences of death were pronounced and executed accordingly. But in practice these powers were gradually dropped, and the limits of jurisdiction are now settled by 5 & 6 Vict. c.38, which removes the cognizance of treason, murder, capital felony, felony punishable on first conviction with penal servitude for life, and some other specific offences.²⁸

During the deliberations on the 1842 Act, the Home Secretary Sir James Graham, considered supplementing the unpaid magistrates with a "stipendiary functionary"²⁹ - an Assistant Barrister. Graham was acutely aware that the appointment of one such official for each county would improve the efficiency of the local Sessions. But he also knew that this measure would adversely affect the position of the local gentry, for it would inevitably "diminish the inducements to useful gratuitous exertions in the public service, by closing some of the avenues to honourable distinction".³⁰ And the Duke of Wellington, writing on behalf of like-minded contemporaries, deplored the proposal and Graham eventually abandoned the idea:

. . . [the proposals were] a plan for attaining the object of destroying the influence of the local gentry, and of persons of education and good social manners and habits

We all agree in thinking it desirable to maintain the influence of men of property

and education in the interior of the country, and we feel that an alteration of the criminal jurisprudence might affect that influence.³¹

Finally, since it appeared that the Quarter Sessions were considering only non capital offences, Stephen claimed that the 'old law' had unduly restricted the entire jurisdiction of this Court.³² In Durham, however, these constraints are not apparent from the Court's records. Of the thirty-seven actions listed for the 1840 Midsummer Sessions a number were more serious than the Stephen analysis would seem to permit a pre 1842 court. The roll included three indictments for assault against police officers, William Oliver and Thomas Guthrie, a single woman charged with passing off a counterfeit half crown, another single woman for concealing a birth, Robert Taylor had two indictments preferred against him for three bigamous marriages, and Anthony Sisle was accused, but found not guilty of theft of five stone of coals from the Stockton and Darlington Railway.³³ Seemingly, then, the 1840 Sessions were hearing actions as grave as those assigned to it by statute in 1842. This situation would alter appreciably, however, with the later extension of summary proceedings³⁴ but the Durham indictments from 1840 to 1855 are remarkably consistent in content.³⁵

II

For the years under examination, there were two ways to bring an action before the Sessions. Until restrictions were placed on such powers in 1859, a prosecutor possessed what

Maitland termed a "liberty of secret accusation".³⁶ Although "comparatively rare", it was possible that an individual would know nothing of the existence of a criminal suit against him until well after the magisterial-inquiry stage:

. . . the first notice that a man may have of a criminal charge made against him may be notice that the indictment has been found, and being indicted, a warrant for his arrest can at once be obtained and he can be brought to trial.³⁷

The other, and more likely occurrence, was to have the accused arrested after which he would be "examined by a magistrate and committed, or bailed for trial".³⁸ Prior to 1848 the magistrate's decision was made on the basis of oral and written depositions of the prosecutor and his witnesses. After 1848, however, 'Sir John Jervis' Act allowed both parties to supply depositions and cross-examine each others' witnesses.³⁹ If the magistrate was not satisfied that a prima facie case existed, he dismissed the action, and the accused was immediately released. And importantly, if the action failed at this stage, neither party could recover any costs for the magisterial-inquiry step.⁴⁰ Presumably this was intended to act as a deterrent to frivolous actions.

If the magistrate decided that a case warranting a trial at the Sessions had been established, the prosecutor was required to supply assurances that the action would proceed. This was accomplished by signing a "recognisance" which could be from £40 to £ 20 for a prosecutor and £ 20 to £ 10 for each witness.⁴¹ The sums were not physically transferred to the magistrate but

In the event that the parties did not appear at trial, the accused was released, the amounts were deemed "estreated" and the Quarter Sessions would move to recover the sureties. If bail was granted to the accused, a parallel guarantee system was employed. The accused and one or two others would pledge amounts on the understanding that if the accused absconded, the bail was forfeit and a bench-warrant for the accused's arrest would issue.⁴² Although unusual, a default of prosecution and the issuance of a bench warrant did occur in Durham.⁴³

From the proceedings at the magisterial-inquiry level alone it is apparent that the initiative and responsibility for criminal suits rested with the individual. Maitland explained this emphasis by noting that "the prosecution of criminal [is] very much left in the hands of the public."⁴⁴ He reinforced this statement by outlining the distinction between a "state" or "official" prosecution like those conducted abroad with the English custom of allowing its "public" (i.e. individuals) to shoulder the burden.⁴⁵ Indeed, a Director of Public Prosecution was not appointed until 1879⁴⁶ and it would be many years after 1855 before it could correctly be claimed that "the majority of prosecutions are in theory private".⁴⁷

Once the magisterial obstacles had been cleared, the next step for a prosecutor was the preparation of a bill of indictment. Normally the practice was to have the bill drawn (in the Court of Quarter Sessions) by the Clerk of the Peace on the basis of the depositions which had been before the magistrate; but should the prosecutor wish he could have his solicitor do it.⁴⁸

Whoever drafted the bill had to exercise extreme care, for it was the most important ingredient in the trial process. Partially as a reaction against the excesses of the "bloody code" and partially because of the technical strictness of the law, any flaw in the bill was fatal. Any error or omission - George identified as Gerald, stolen property assigned to the wrong number of owners or neglecting to indicate a value to the stolen goods⁵⁰ - was sufficient to fail the action. However, during the late 1840's this anachronism which provided "that the most trumpery failure to fulfil the requirements of an irrational system should be sufficient to secure him [the accused] practical impunity"⁵¹ came under review. After a series of Acts tinkered with the problem, an 1851 statute allowed courts to "amend mistakes in names and descriptions of people and things and in details of the ownership of property"⁵² provided it did not pervert justice.

Another problem with the bill of indictment was its extreme technicality and size. Contemporary standards demanded that the more complicated the issue, the greater the bill's length and thus the larger the clerk's payment, for they were paid for each count.⁵³ At the Assizes, the bill could be enormous: Stephen referred to a murder indictment which contained seventy counts;⁵⁴ another scholar recalled an "important Government prosecution" which was ninety yards long.⁵⁵ At Durham Quarter Sessions bills involving nuisance,⁵⁶ theft from one's employer,⁵⁷ embezzlement,⁵⁸ false pretences,⁵⁹ or John Bright's suit against Lord Dungannon⁶⁰

filled several large folio pages. Moreover, the jargon could be pedantic. For example, Joseph Hodgson had been refused credit by shopkeeper Robert Christopher. Hodgson entered the store and told Isabella Christopher that her husband had lifted the ban. Isabella, believing the tale, supplied Hodgson with goods, the deceit was uncovered and a successful action for obtaining goods by false pretences was brought. The indictment read, in part:

. . . the said Joseph Hodgson did then and there unlawfully obtain from the said Isabella Christopher she the said Isabella Christopher then and there being the wife of the said Robert Christopher and then and there being entrusted with and attending the management of the shop of the said Robert Christopher two pounds weight and three ounces weigh [sic] of bacon of the value of one shilling and ten eggs of a certain tame and reclaimed bird called a Hen . . .⁶¹

Ordinarily, however, the indictments were quite brief and contained a list of the prosecutor's witnesses (on the back), the resident parish of the accused, the plea, the particulars of the offence, the verdict and where applicable, the length of sentence imposed. The form of the bill did not normally vary greatly and the majority of offences, even of a rare variety, could be accommodated by this succinct format. For example, James Pepper was found not guilty of the crime of which he was charged. This case lends further support to the contention that Durham's Sessions were not unduly restricted prior to the 1842 Act, for bestiality was a capital offence until 1861⁶² and after 1842 this offence was triable only at Assizes. Pepper's bill read:

"Pld Not Guilty"

"Not Guilty"

Durham (to wit) The Jurors for our Lady the Queen upon their Oath present that James Pepper late of the parish of Kelloe in the County of Durham Labourer on the tenth day of June in the third year of the Reign of our Sovereign Lady Queen Victoria "True Bill" [did] with force and arms at the parish aforesaid in the County aforesaid [sic] a certain female ass then and there being did seize lay hold of beat and illtreat with intent that deatable [sic] and abominable crime (not to be named among Christians) called buggery with the said female ass then and there feloniously wickedly diabolically and against the order of nature to commit and do to the great displeasure of Almighty God against the form of the statute in such case made and provided against the peace of our said Lady the Queen her Crown and Dignity.

Misdemeanor
~~Felony~~

Brignai
[counsel]

Wharton
[Chairman] 63

Once the bill was drawn, the prosecutor assembled his witnesses and awaited the opening of the Quarter Sessions which were held at Michaelmas, Epiphany, Easter and the Translation of St. Thomas (also known as Midsummer).⁶⁴ The document which authorized the Sessions was the Commission issued by the County Sheriff. Appended to the Commission was a list of prospective jurors who were "generally drawn from the magistracy or superior classes of the community";⁶⁵ namely, those citizens who had sufficient monetary resources to fulfil the provisions of the 1825 Jurors Act.⁶⁶ In Durham, the juror's name was often followed by an occupation listing of "Gentleman", but tallow handlers, publicans, drapers, ironkeepers, plumbers, joiners and painters also sat in judgment of their peers.⁶⁷ After being sworn in, the grand jurors were 'charged' by the Chairman of the Sessions. This instruction was designed to supply jurors with recent information

regarding "any matters of law concerning the various cases which seem to need explanation"⁶⁸ but also served as a forum for the Chairman to voice his opinions on such diverse matters as the state of prisons, education or religion.⁶⁹ Once the charge was completed, the jurors retired to secretly consider each bill by questioning the prosecutor's witnesses in the reverse order of their listing on the bill.⁷⁰ The secrecy was complete: the prosecutor's counsel had no automatic right to be present; the accused (or his witnesses) were allowed neither to attend nor to make submissions; and no record was kept of what transpired in the grand jury room.⁷¹ The rationale for a procedure which seemed to deprive the accused of an opportunity to defend himself lay in the nature of the grand jury. It was intended to accuse; not to try an offender:

. . . the finding of an indictment is only in the nature of an enquiry or accusation which is afterwards to be tried and determined; and the grand jury are only to enquire, upon their oaths, whether there is sufficient cause to call a party to answer it.⁷²

If the grand jury was satisfied that a prima facie had been presented, the foreman endorsed "A True Bill" (earlier billa vera) on the parchment, or if the bill was unsatisfactory, "No Bill" (earlier ignoramus, we do not know).⁷³ If the action was dismissed, the accused was released although a new bill, for the same offence, could be preferred in the future.⁷⁴ After the indictment had been endorsed the parties could then proceed to the actual trial. However, the ex parte nature of the process concluded and the accused was allowed benefit both of counsel

and making representations during trial.⁷⁵

For the trial itself a new jury - the petty jury - was sworn in. The court opened with the accused entering his pleas of guilty (or confeseth) or not guilty. The final compartment continued with the prosecution calling and examining its witnesses after which the accused or his counsel had the right of cross examination. Next the accused or his counsel would submit his case and examine his witnesses.⁷⁶ Regardless of whether or not the accused produced witnesses, the prosecution always had the final word to the jury by way of reply. The Chairman would then sum up the evidence and the jury would retire to consider its verdict. When the jury had arrived at its decision, the Chairman would either free the accused or pronounce sentence. However, the monetary amount or duration of the punishment was decided by all the Justices but the Chairman alone rendered the judgement in Court.⁷⁷

Superficially, the trial process might have appeared straightforward, but several important factors were at play. Until 1851, the evidence of "interested parties" such as the driver of a cart and the pedestrian who had been struck by it, was inadmissible in the belief that such people lacked sufficient detachment from the issues and therefore could not be expected to tell the whole truth.⁷⁸ Also, the accused was not allowed to give evidence, but instead proffered an unsworn statement at the end of the trial which carried little probative weight with the jury.⁷⁹ And justice could be dispensed with unseemly dispatch: one barrister recalled a case (which carried

a sentence of 7 years transportation) that lasted less than three minutes. Furthermore, this counsel estimated that the length of the trials held after the London judges had eaten dinner was not more than an average of four minutes each.⁸⁰

It is doubtful, however, that Durham equalled London's pace as the indictments for even petty larceny customarily listed five or six witnesses. Presumably this heavy reliance on witnesses reflected a prosecutor's understanding that the expense of a criminal proceeding dictated that it could not be done in half measures which could allow an accused escape conviction because of insufficient evidence.⁸¹ One expression of this tendency might have been the case of the "Labourers" from Jarrow, Amos Dowell and William Jones. John Strachan assembled the unusually large number of twenty witnesses to obtain convictions against Dowell (for theft) and Jones (for receiving stolen goods) for property given as five pieces of cloth worth ten shillings and three shawls worth three shillings.⁸² But haste had its rewards for the juries: until 1870, it was possible to "famish them into unanimity" because they were allowed neither food nor fuel during deliberations.⁸³

Clearly a major consideration of the private prosecution was cost. Some historians, like Stephen, had not considered this aspect of the law "worth while to examine . . . minutely" and therefore he dismissed the topic in a footnote consisting of part fact and part conjecture.⁸⁴ Perhaps he treated the issue lightly because he did not realize that it could materially affect the

decision of whether to prosecute or not. If so, this disposition would seem to indicate a degree of class bias on Stephen's part. Or, he might have done so because the disarray of this branch of the law offended his Benthamite-Austinian sympathies,⁸⁵ for Stephen was never daunted by legal technicality or minutiae:

The principal statute in force on the subject of costs at the time when 11 & 12 Vic. c.42 was passed (i.e. in 1848) was 7 Geo.4, c.64, s.23, which empowered the court to allow costs in case of prosecution for ten specified misdemeanours, viz. all those mentioned in 11 & 12 Vic. c.42, s.23, with the exception of concealment of the birth of a child. Probably therefore there were in 1848 some provisions in force enabling the court to give costs in cases of misdemeanour other than those mentioned in 11 & 12 Vic. c.42, s.23.⁸⁶

Chadwick's position on the matter of costs is somewhat less consistent than that of Stephen. Chadwick recognized the place of "naked pecuniary interests" on the Benthamite pleasure-pain calculus and therefore recommended a reward system for constables who demonstrated "real service in prevention" of crime.⁸⁷ He also realized that a prosecution could not reasonably expect to recover his real costs, but Chadwick argued that this situation should prevail in order to prevent spurious actions:

. . . payment to prosecutors and witnesses for their loss of time, even when the same amount of money is given that they would have obtained in business, (which is rarely the case), does not compensate for the annoyance which they must have to sustain. Full pecuniary compensation, could it be settled in most cases, would be attended with great danger, and operate as a premium to improper prosecutions.⁸⁸

Modern writers, like Tobias, seem convinced that the 1826 Statute (and, by intimation, the subsequent extensions), greatly aided the trial process. Furthermore, Tobias links the increasing

efficiency of the various constabularies with increased court room activity. Certainly this analysis is valid, but it also infers that the police forces of the 1840's and 1850's instantaneously supplanted a large number of private prosecutions. If that is what Tobias meant, his conclusion is questionable indeed, for it is evident that most prosecutions remained private until well after the 1850's:

Whether for the reason [reward money] or, more probably, for the more respectable reason that most of the expense could now be recovered, the [1826] Act was successful in increasing the general willingness of the public to prosecute. However, the expense involved continued to be cited as a deterrent to prosecution until the middle 1840's. Its dying out then appears to be attributable to other improvements in the enforcement of the criminal law.⁸⁹

The most exhaustive and reasoned analysis of the issue of costs between 1840 and 1855 is by Philips. He convincingly argues that a private prosecutor was in a situation similar to Maule's bigamist; namely, that taxed costs⁹⁰ made no distinction between a rich and a poor man. Yet whereas the former could withstand the financial shock which accompanied a prosecution, the latter obviously could not. At base, Philips' argument rests on five points:

- (1) The 1826 Statute pertained only to certain offences and not others.
- (2) The Act did not apply to the initial phases of the process. Should a suit have failed at the magisterial-inquiry step, the prosecution assumed any outlay up to that point such as the cost (where applicable) of apprehending the accused, travel and accomodation bills.

- (3) Taxed costs were a repayment, if a litigant did not have sufficient financial resources he could not initiate the action.
- (4) Success often depended on counsel's skill and the fees for such services were higher than could be allowed by the Court's tariff.
- (5) The records from 'thief catching' associations demonstrate that their expenditures outstripped what they could reclaim from the court. This difference had a pronounced effect on the decision of whether or not to prosecute.⁹¹

Philips' research on this issue leaves little doubt that the prospect of a criminal suit could evoke consternation from all parties and that the working class could, understandably, have been reluctant to prosecute. But he also makes it quite clear that "despite the financial difficulties involved, the working class made considerable use of the system of prosecution, predominately to prosecute property offences committed against themselves".⁹²

Aside from the characteristics of the colliers examined in a later chapter,⁹³ generally it would appear that the situation in Durham regarding prosecutions was similar to that in the Black Country. From 1839 to 1853⁹⁴ the county treasurer's reports indicate that Durham was releasing more funds almost every year for certain categories of litigation in spite of the fact that the real costs remained higher than the Court's taxed costs. This would seem to lead to the conclusion that the populations of Durham and the Black Country - including the working classes - were prosecuting each other more freely than they had in the past. However, Durham does not fit exactly into Philips' analysis of the

relationship between cost and prosecution. For instance, Durham, unlike the Black Country, had a county constabulary from 1840. Significantly though, increased constabulary activity could not account for the county's rising expenditures as these men received only a salary.⁹⁵ Since the evidence indicates clearly that the county police were becoming progressively more efficient and that the parish constabularies and thief catching societies (who charged for their services) were declining in influence throughout the period,⁹⁶ the accounts should have declined if the level of prosecutions had remained stable between 1839 to 1853. Clearly, then, more persons - other than county constables - were prosecuting in Durham as the period progressed.

One obstacle to the prosecutors was the 'categorization' of offences outlined in the 1826 law which arguably limited the range of litigants who were eligible for repayment. From 1839 to 1853 the county treasurer recorded the following categories only; but seemingly they were adequately broad to have encompassed most cases:

Debtors
Felonies for Trial
Misdemeanours for Trial

Under
Summary
Conviction:

Assaults
Poaching
Bastardy
Smuggling
Other Offences
Vagrants

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Furthermore, some of the allowances were substantial. On July 4, 1840, the attorney Legge received £ 22 4s. 2d. and £ 7 12s. 10d. for the two prosecutions against the bigamist Robert Taylor.⁹⁸

On July 5, 1840, the solicitor Brignal collected £ 9. 4s. 8d. for the unsuccessful suit against James Pepper.⁹⁹ As can be seen, the allowances varied considerably but a rough average award from 1839 to 1853 would be between £ 8 and £ 10 per case. Since it was generally agreed that taxed costs would seldom match real costs and, importantly, the court's award was a repayment it is not difficult to see why prosecutions could certainly have been beyond the resources of many of Durham's working class.

The graphs contained in Appendix "B" demonstrate that the rates of payment (and thus the number of prosecutions) were increasing yearly. Certain offences do, however, fluctuate markedly in response to specific events. For example, the startling increases in the misdemeanour and assault categories unmistakably show the effects of the 1844 coal miner's strike upon the courts. However, one additional factor might help to explain the continual increases in the county's accounts. From 1836 to 1846 Durham assumed one half of the cost of prosecutions; from 1846 to 1853 (in the present instance) the central government bore the whole.¹⁰⁰ To what extent the accelerated rate of expenditure from 1846 to 1853 is attributable to an increased judicial willingness (by allowing a party his costs) to spend the 'nation's' money rather than its 'own' is impossible to decide.

Further indications of the increasing number of prosecutions are found in the indictment rolls. A sampling of the total number of bills (regardless of disposition) from the various sessions amply substantiates this drift:

<u>Sessions</u>		<u>Total</u>	
Michaelmas	1841	43	
Michaelmas	1851	55	
Easter	1842	30	
Easter	1852	62	
Midsummer	1843	42	
Midsummer	1853	52	
Epiphany	1845	54	
Epiphany	1855	96	101

Assuming that these increases in court room activity represented working class actions, it might be argued that this group was progressively lending more support to the judicial system. Admittedly the county paid for 207 felony charges in 1842 and 296 of them ten years later ¹⁰² and there were 42 more cases before the Sessions in 1855 than 1845 but such direct comparisons do not consider population increase. A conservative estimate of the increase in Durham's population between 1845 and 1855, without weighting the figure to reflect the fact that the population grew at a much faster rate after 1850 than before, would be 75,000. ¹⁰³ And most of this migration was to serve the needs of industry. It is, therefore, questionable to what extent the working class regarded the courts as the first means of redress.

It is evident that the trial process was 'the tangle of the law' and fraught with expenses and inconveniences. Given these liabilities, it must have been remarkably tempting to remain silent after you had been the victim of an offence and seek satisfaction by means other than the judiciary. In this regard, Chadwick certainly recognized the injustice of convicting a

man of misprision:

To punish a man for misprision of felony under the present system, which renders prosecution, often so troublesome and expensive would often be to punish him for not incurring a greater loss than that which he had already sustained from the deprecation. ¹⁰⁴

It is clear, however, that some members of the working class were prepared to undergo this process in order to secure legal retribution. Probably many more would have appeared before the Sessions had the procedure been simpler and faster. But this group, like those who spurned participation as a result of the legacy left over from the 'bloody code', did not leave records after them.

The Court and the Common People:
Law and Procedure

1. The indictments from 1840 to 1855 are analyzed with the use of a computer in Appendix "D".
2. Some actions, however, did use different labels. For instance a case for public nuisance - railway engines on the Monkwearmouth to South Shields line emitting excessive amounts of smoke - required that the civil engineer be referred to as "Esquire". Durham County Record Office, Indictment Rolls, Q/S/i 79, 29 June 1840.
3. Ibid., Q/S/i 122, 21 December 1840.
4. Ibid. This was probably not very satisfying since such a sentence was approximately seven to ten days.
5. For a full review of Chadwick's proposals, see L. Radzinowicz, A History of English Criminal Law and its Administration from 1750 (4 vols.; London, 1968), III, 448-474.
6. Anon. [E. Chadwick], "Preventative Police", London Review, I (1829), 292.
7. Ibid., p. 294.
8. Ibid., p. 296.
9. Ibid., p. 298.
10. Ibid., p. 300.
11. Ibid., p. 301. It is difficult to tell precisely what changes Chadwick wanted: ". . . chances [of having a case dismissed] are determined by the exclusion of particular descriptions of evidence, which our limits will not permit us to specify. . . ." In all probability, Chadwick's Benthamite sensitivities were enraged by the fact that parties directly affected by the issues could not testify until 1851. See infra page 60 note 78.
12. Ibid., pp. 259-260.
13. For instance, the number of capital offences had been drastically reduced, see infra pp.49-50 notes 15-17. It also appears that it was no longer necessary to give viva voce evidence before the court, as all depositions were taken before the magistrate. See Anon., "State Prosecutions", Blackwood's Edinburgh Magazine, LV (January, 1844), 10-11.

14. C.S. Christopher, 'Progress in the Administration of Justice During the Victorian Period', pp. 536-537, in Select Essays in Anglo-American Legal History (2 vols.; London, 1968), I, 516-557, reprint of 1907 ed. See also note 80.
15. A sample of the available material on this topic might include: E. Halevy, A History of the English People 1830-1841, trans. E.I. Watkin (London, 1927), pp. 103-105; R.K. Webb, Modern England (New York, 1975), pp. 174-176, 184-185; J.J. Tobias, Crime and Industrial Society in the 19th Century (London, 1967), pp. 223-241.
16. W. Holdsworth, A History of English Law (16 vols.; London, 1965), XV, 163.
17. Radzinowicz, A History, IV, 341.
18. Ibid., pp. 303-311.
19. E.P. Thompson, The Making of the English Working Class (Harmondsworth, 1963), p. 66.
20. C.K. Allen, The Queen's Peace (London, 1953), p. 98.
21. Sir James Fitzjames Stephen continued until the late 1870's to secure a rationalized criminal law see C.H.S. Fifoot, Judge and Jurist in the Reign of Victoria (London, 1959), pp. 112-124.; Holdsworth, English Law, XV, 153-155.
22. Radzinowicz, A History, IV, 310.
23. Ibid.
24. Holdsworth, English Law, XV, 141-146.
25. Ibid., p. 147.
26. J.F. Stephen, A History of the Criminal Law of England (3 vols.; New York, n.d.), I, 113, reprint of 1883 ed.
27. J.H. Barker, An Introduction to English Legal History (London, 1979), p. 24.
28. A.T. Carter, A History of English Legal Institutions (4th ed.; London, 1910), pp. 202-203.
29. C.S. Parker, Life and Letters of Sir James Graham 1792-1861 (2 vols.; London, 1907), II, p. 333. Letter from Peel to Graham dated 12 October 1842.
30. Ibid. Letter from Peel to Graham dated 18 November 1842.

31. Ibid., p. 335. Letter from Wellington to Graham dated 22 November 1842. 5 & 6 Vict. c.38 contains no reference to employing Assistant Barristers as Justices.
32. Stephen, Criminal Law, I, 115.
33. Q/S/i 79, 29 June 1840. This is the first set of indictments available for 1840; the final rolls to be examined are Q/S/i 150, 1 July 1855 after which the influences of the 1855 Criminal Justice Act can be seen.
34. Criminal Justice Act 1855, 18 & 19 Vict. c.126.
35. After Q/S/i 136, 15 October 1852, however, the printed form of most of the indictments changed and the parish of residence was dropped from the format.
36. F.W. Maitland, Justice and Police (London, 1885), p. 138.
37. Ibid., p. 137.
38. Ibid., p. 138.
39. Stephen, Criminal Law, I, 220. Indications are that the depositions had been taken down in writing before 1848. See "State Prosecutions" Blackwood's, LV, 10.
40. D. Philips, Crime and Authority in Victorian England (London, 1977), p. 114.
41. Ibid., p. 100.
42. Ibid.
43. Q/S/i 105, 6 April 1846. Thomas Nixon declined to continue his suit against Patrick Casey and Catherine Thompson (alias Donaldson) for theft of 4 pen knives "at a value of two shillings." This was probably done because William Murchamp and Thomas Meighill had already secured a conviction against Casey for theft of 40 yards of ribbon and John Joplin had successfully prosecuted both Casey and Thompson (Donaldson) for theft of 5 handkerchiefs at the same sessions. In such an instance, it is doubtful that Nixon would have lost his sureties. For an example of a bench warrant see Q/S/i 110, 5 April 1847. This action involved the theft of chickens and a lock worth 6d. The accused had a previous felony conviction which meant certain transportation if he had stayed for the trial and been found guilty.
44. Maitland, Justice and Police, p. 138.

45. Ibid.
46. A. Harding, A Social History of English Law (Harmondsworth, 1966), p. 16.
47. P. Devlin, The Criminal Prosecution In England (London, 1960), p. 16.
48. Maitland, Justice and Police, p. 138.
49. Phillips, Crime and Authority, pp. 107-108.
50. Q/S/i 85, 3 January 1842. Until around 1852 (Q/S/i 135, 28 June 1852) the practice was to always include the value of the goods in question. In 1842 a not guilty verdict was entered because "obj. [ection] taken to Indt." notation suggests that the particulars were insufficiently precise. In this instance it involved a cart driver misrepresenting himself to a Railway company and claiming a large quantity of coals. The bill failed presumably because there was no indication of the worth of the coals.
51. Stephen, Criminal Law, 1, 284.
52. Tobias, Crime, p. 229.
53. Stephen, Criminal Law, 1, 287.
54. Ibid.
55. Christopher, "Progress in the Administration of Justice", p. 550.
56. Q/S/i 80, 11 October 1840; building material on a public path.
57. Q/S/i 93, 24 February 1844; theft of 40 yards of cloth.
58. Q/S/i 147, 1 January 1855; for the astonishingly small amounts of 6d. and 3d. No bill was returned by the grand jury.
59. Q/S/i 86, 4 April 1842; 252 yards of ship canvas worth £12.
60. Q/S/i 91, 16 October 1843; this bill was not found. For a background to this suit see D. Large, "The Election of John Bright as Member For Durham City in 1843", Durham University Journal, N.S., XVI (1954-55), 17-23.
61. Q/S/i 136, 28 June 1852; Hodgson received 6 weeks at hard labour for this offence.

62. Radzinowicz, A History, IV, 341. See also pp. 330-331 for the frequency of conviction and number of executions for this offence between 1842 and 1849.
63. Q/S/i 79, 29 June 1840; See note 75.
64. Baker, Introduction, p. 24.
65. Anon., "State Prosecutions", p. 12.
66. Philips, Crime and Authority, p. 106. The Act required freehold land worth £ 10 per year, a yearly dwelling rate of £ 20, or a house with at least fifteen windows. It would, then, have precluded many of the working class. Compare the requirements of the Jurors Act with the 1832 Reform Act in Webb, Modern England, p. 195.
67. Q/S/i 82, 3 April 1841; Q/S/i 92, 1 January 1844; the Commission from Q/S/i 87, 7 June 1842 seems to include a "hairdresser".
68. Maitland, Justice and Police, p. 139.
69. Philips, Crime and Authority, p. 102. For a sample of the remarks of a justice, at assizes, in Durham on 4 March 1851 see T. Fordyce, The History and Antiquities of the County Palatine of Durham (2 vols.; London, 1857), I, 295.
70. The foreman would then check off the name of the witness, so it is possible to tell the number that appeared before the grand jury.
71. Maitland, Justice and Police, p. 139; Philips, Crime and Authority, p. 102; Tobias, Crime, pp. 226-227.
72. Anon., "State Prosecutions", p. 12.
73. Baker, Introduction, p. 415. The bill then became, technically, an indictment.
74. Maitland, Justice and Police, p. 137.
75. Anon., "State Prosecutions", p. 12.
76. Philips, Crime and Authority, p. 106. The accused could claim no costs for his witnesses.
77. Ibid., pp. 106-107.
78. Christopher, "Progress in the Administration of Justice", p. 521.

79. Philips, Crime and Authority, p. 106.
80. R. Harris, (ed.), The Reminiscences of Sir Henry Hawkins (London, 1904), p. 41. For an interesting analysis of Mr. Justice Maule's character see pp. 42-49.
81. Philips, Crime and Authority, p. 120; Philips argues that this was one of the reasons why litigants were prepared to pay handsomely for solicitors. See pp. 118-119.
82. Q/S/i 119, 2 April 1849.
83. F.W. Maitland and G.C. Montague, A Sketch of English Legal History (7th ed.; London, 1927), p. 176.
84. Stephen, Criminal Law, I, 239.
85. Fifoot, Judge and Jurist, pp. 112-124.
86. Stephen, Criminal Law, I, 239; also p. 499: "The legislation on the subject is scattered, cumbrous, and in some points capricious. . . ."
87. Chadwick, "Preventative Police", p. 288.
88. Ibid., pp. 296-297.
89. Tobias, Crime, p. 224.
90. Taxed costs refers to the monetary award given by the Court after one of its officials had scrutinized or 'taxed' a solicitor's account or 'bill'.
91. Philips, Crime and Authority, pp. 112-123.
92. Ibid., p. 285.
93. See chapter entitled "Coal Miners and Crime".
94. Regrettably the treasurer's accounts from 1853 to 1855 do not appear to have survived.
95. Quarter Sessions Order Books, Chief Constable's Report, Durham County Record Office, CC/P 37, 15 October 1842.
96. Parliamentary Papers, 1852-53, (603) XXXVI, 114-115. Select Committee on the Police, evidence of G.F. White.
97. The General Account of the Treasurer of the County of Durham for the Year 1840 (Durham, 1840), p. 5.

98. ibid. Taylor was imprisoned for 1 year at hard labour for this offence. See also supra p.53.
99. ibid. see supra p.53.
100. Maitland, Justice and Police, p. 141.
101. Michaelmas, 9 October 1841, Q/S/i 84; 13 October 1851, Q/S/i 131; Easter, 4 April 1842, Q/S/i 86; 5 April 1852, Q/S/i 134; Midsummer 26 June 1843, Q/S/i 90; 27 June 1853, Q/S/i 140; Epiphany 1845, Q/S/i 97-98, 12-30 December, 1844; 2 January 1854, Q/S/i 142.
102. Appendix "B" graph FEL.
103. See chapter entitled "Coal Miners and Crime".
104. Chadwick, "Preventative Police", p. 286.

A Choice of Philosophies:
Durham County Gaol

The punishment must depend on the circumstances of the offender. For some commit theft although they have means of subsistence, and others out of poverty. Some, therefore, should be punished by fines, and others by beating; some severely, and others more leniently. But when the punishment has to be severe, let it be administered in charity, not in anger; for the purpose of such correction is to save the wicked from hell-fire . . . So charity must always be our motive and indicate the means of correction, so that we may do nothing unreasonable.

Bede, A History of the
English Church and People
Book One.

In the preceding chapters, the constabulary and the procedures of the criminal courts were examined as institutional checks on Durham's rapidly increasing labouring population. . . . Another means of controlling the working class was the penal institution; namely, the Durham Gaol. Like many others, Durham's prison officials were acutely aware of the pressures of an expanding population and actively sought to prepare for the expected onslaught of criminals. There were, however, certain national factors which limited the range of available penal treatments. By the 1840's English prison authorities were faced with a decreasing number of options: the list of capital offences was being shortened; the prison hulks were being phased out of service; and the colonies were becoming adamantly opposed to banishment, or as it was known, "transportation beyond the Seas".¹

England was therefore forced to find new ways to incarcerate its criminals. Whitehall found part of the solution to this 'population' problem by building new prisons or refurbishing old ones. In Durham, the response to a rising industrial population was to extend its Gaol facilities. With the establishment of these institutions, both the central government and Durham had to make a choice of philosophies for the governance of their prisons. As such, this period was marked by continual controversy over issues such as the respective merits of the "Solitary" and "Separate" regimens, or the value of "detering" rather than "reforming" the offender.

However, Durham differed from the central government on one critical point. Unlike many other authorities, Durham was more successful at keeping its prison population lower than might have been expected. In fact, despite the heavy migration into the County, the total number of prisoners actually declined between 1848 and 1855:²

He [Prison Chaplain] shows, while the population of the County during the last six years has been increasing at the rate of about 9,000 per annum, there has been a progressive diminution in the number of commitments; so that, notwithstanding the population shows an increase of 57,008 over that of 1848, the diminution in the number of commitments during the period has been 310.³

Between 1841 and 1852, the population of Durham leapt from approximately 240,000⁴ to "about 420,000"⁵ yet the County managed to decrease the number of its prisoners. In some ways, this seems to be attributable to the combination of the doctrines of 'deterrence' and 'reformation' which formed the basis for the Gaol's regimen. On the one hand, the Prison Governor, its surgeon and the Prison Inspector believed that deterrence was the primary aim of the institution and therefore set their policies in that direction. On the other hand, the Prison Chaplain relied on 'reformation' through education to reduce the number of inmates. In Durham, this amalgamation of 'hard bed, hard work, hard fare' and regular instruction was clearly successful for the years 1848 to 1855. Yet it was argued later that such a combination of opposing ideologies could not result in an effective system:

The conclusion to which the prison and penal experiences of all countries appear to lead, is that the special objects of deterrence and of reformation, whilst each of essential importance, cannot, with the greatest advantage, be simultaneously combined, except in a very limited degree . . . Both are good, both are essential; but they should be administered, for the most part, separately and in succession.⁶

In order to substantiate the contention that the coupling of the doctrines of deterrence and reformation along with other factors did result in a decrease in Durham's convict population, this chapter is divided into three sections: the first reviews the available historiography; the next examines the nation's efforts to deal with offenders; and the final portion analyses the conflicting philosophies on the regimen of Durham Prison.

Regrettably, the historiography on the local or county prison between 1840 and 1855 is not particularly illuminating. For the most part the nineteenth century (and later) examinations tend to concentrate on the more spectacular penal treatments. Descriptions of solitary confinement, the tread wheel, the crank or the hulks abound,⁷ but a careful examination of the operation of an efficient local gaol is difficult to find.⁸ Even when such institutions are examined, it is often on a macabre level as evidenced by the amount of information available on episodes like the "Birmingham Scandal".⁹

A further difficulty with this topic is that many authors chose to write about the national penitentiaries like Pentonville

or Millbank rather than the local institutions. Seemingly this preference stemmed from the size of these prisons, their colourful experiments and the availability of documentation.

In addition to these shortcomings, some writers have used penal history as a stick with which to beat their ancestors. One example of the genre is a book by George Ives. His History of Penal Methods provides some interesting facts and useful descriptions such as the design of the mask worn by inmates in Pentonville or the operation of a crank or tread mill but he does seem to have had some difficulty understanding the difference between a local and a national prison.¹⁰ It is in the interpretation of data, however, that Ives comes into his own. He unequivocally condemned the Separate System and all its proponents. Moreover, his blanket denunciation of prison reformers (called, perjoratively, "philanthropists") shows an inadequate appreciation of the nineteenth century efforts to come to grips with the problem of dealing with offenders:

With crass ignorance and blundering barbarity well worthy of the scientific knowledge of that age, the offenders against morality were to be left in their living graves, their numbers too few to bring discredit on the system with the public . . . And so more "philanthropists" of various grades and professions continued shutting people up, starving them in body, mind and soul and expecting reformation to arise out of the cell.¹¹

A more astute scrutiny of the penal system comes from Henry Mayhew and John Binny. Their massive undertaking, The Criminal Prisons of London and Scenes From Prison Life, provides a comprehensive overview as well as a detailed

examination of the prison organization. For example, as well as supplying an accurate review of the various forms of prison discipline,¹² this work also gives the minutiae of daily operation. We learn that breakfast was served on the hulk "Defence" at 6.30 a.m. sharp; that the chapel at Brixton females prison did not have individual compartments;¹⁴ and that the chief warden of Coldbath Fields considered the possibility of deterring criminals remote indeed:

. . . if you were to go out into the streets with a gallows following you, sir, and hung every thief and rogue you met by the way, you wouldn't deter one out of his evil courses.¹⁵

Nevertheless, there are certain drawbacks to Mayhew and Binny's work, although they by no means destroy the value of the study. First it deals only with the prisons of London and therefore is not representative of the whole country. Second, because of the constantly changing penal regimens between the 1840's and 1860's, it is often difficult to know precisely when the writers made their observations.¹⁶

Unquestionably the finest work on the local prisons is by the Webbs. With admirable precision, they analyse every important facet of the penal system such as the origins of the regimen, the diet, labour and education between 1835 and 1864. They begin their argument with the contention that the years between the Prison Acts of 1835 and 1877 were ones of doctrinal flux:

The period was one of almost incessant controversy . . . the prison reformers were divided among themselves as to the best means by which the regimen of the gaols

and bridewells was to be regenerated. What they quarrelled about; and what Justices and Home Office officials perpetually experimented with, were particular devices by which prisoners might be sufficiently punished to deter others from crime; prevented from escape, disorder or rioting; kept in what was then deemed reasonable health, and possibly even reformed in character.¹⁷

These contentions are overlaid with an argument which claims that the issue of who was to control the prisons - central control or local authority - was "scarcely ever raised" until the 1860's.¹⁸ Because there was no dispute over power, the period was one in which both sides sought a mutually agreeable modus vivendi: the local interests tried to improve their facilities while the Home Office attempted to enforce standardization as well as allowing "some margin for local conditions or the exigencies of special cases".¹⁹ The Webbs also accuse both Whitehall and the local powers of narrowness of vision resulting from a "refusal to conceive of the prison regimen as a whole" as well as excessive emphasis on the Separate System, diet and hard labour.²⁰ To support this judgment, the Webbs claim that inmate education received "very scanty attention"²¹ and, importantly, that the penal authorities were unconcerned with this aspect of prison life:

. . . education in the gaol, meant, to the chaplains of the time, little more than the reduction of the prisoners to a state of abject submission supposed to be produced by compelling them to contemplate pictures of the eternal sufferings to which they were destined.²²

On this point the Webbs' analysis loses applicability to Durham. It is evident from the Chaplain's reports and his

testimony before an 1850 Select Committee that the reforming influence of instruction was certainly one of his primary concerns. Moreover, it also seems clear that the Chaplain did not instigate a schooling programme to emphasize the terrors of hell but rather to alleviate what he saw as abysmal ignorance.

Another sound study of the development of prisons is found in The English Prison and Borstal Systems by L.W. Fox. In a section aptly entitled "The Question is Posed", Fox (like the Webbs) approaches this topic from a legalistic angle and traces penal legislation and government inquiries from the late eighteenth century to 1856. According to Fox, early nineteenth century English penal thought was widely influenced by Howard and Bentham as well as by the ill-conceived American attempts to implement these policies.²³ Along side these philosophic forces, Peel was about the work of improving the administration of justice and reforming the criminal law by reducing the variety of capital offences and substituting 'secondary punishment' or, imprisonment, for them. And Peel's reforms affected prisons: in 1823 he consolidated the scattered penal statutes and required quarterly reports to the Home Secretary on each gaol's activities. Furthermore, Peel implemented the "Benthamite idea" of "classifying" inmates or incarcerating them with offenders charged with similar crimes. This scheme envisaged five categories of offender; namely, "debtors (or in the bridewells, vagrants), unconvicted felons, unconvicted misdemeanants, convicted felons, and convicted misdemeanants".²⁴ From the 1820's to the 1840's, Fox detects

a division in penal opinion which manifested itself in some areas by deterrence and hard, unproductive labour and in other regions as a demand for reformation through the use of separate cells.²⁵ In response to these pressures, the Whigs enacted a measure in 1835 which permitted the Home Secretary to appoint prison inspectors and required that the local gaols submit any changes in the rules of their regimen to him for approval. In 1844 the centralizing principle was extended and the regional prisons were forced to submit all plans for the construction of new cells to the Surveyor General for ratification.²⁶ At the same time as these measures, the central government was building or renovating the prisons under its control.²⁷

Neither were the alternate means of disposing of inmates - the hulks or transportation - free from turmoil throughout the 1840's and 1850's. These traditional methods were being hotly criticized for their lack of "deterrent effect" and "because of revelations of revolting conditions which prevailed in the hulks, and of alarming reports from the penal settlements".²⁸ In 1839, not only the practice but also the philosophy of prison control came under review and the "Battle of the Systems" was being waged in full force.²⁹ In that year, the Prison Act substituted separate confinement for classification of inmates and introduced a grants system as a reward for regional adherence to Home Office policies. In the 1840's a "violent press campaign against the separate system and 'reformatory discipline' generally "resulted in an 1850 Select Committee on Prison discipline."³⁰ This Committee managed to both support deterrent

measures such as unproductive labour and applaud reformatory schemes like separate confinement.

Viewed from the perspective of Government reports or penal legislation, both Fox and the Webbs arrived at the conclusion that the 1840's and 1850's was a particularly unsettled time in prison history. From an analysis of these records it is quite true that alternatives disappeared, philosophies clashed and neither the doctrine of reformation nor deterrence nor standardization could gain primacy. But that was on a national level and, as will be seen, not necessarily applicable to all local prisons. In Durham, for example, a consensus of opinion was reached on both penal philosophy and regimen.

II

In the early nineteenth century a favourite means of dealing with criminals was to execute them. From the 1820's onward, Peel, and later Russell, took steps to reduce the number of capital offences and substitute the punishment of imprisonment. Throughout the 1820's, 1830's and 1840's the range of crimes punishable by death was reduced to a handful such as murder, manslaughter, treason, arson and a few others.³¹ Together with this, the Courts of Quarter Sessions (in the present instance) were granted authority to impose terms of transportation for offences which had formerly warranted hanging.³² By the 1830's, however, the British Government was encountering increasing opposition to the practice.³³ Quite reasonably, the colonists argued that transports tended to "lower the moral tone of the

colony" as well as swamping them with males and slowing the process towards self-government.³⁴ Furthermore, it was argued that the convicts constituted a threat to the economy of the antipodes and that by the 1840's, transportation was not the fearful punishment it once had been:

This [Van Dieman's Land] was now thoroughly settled and transportation ceased to be regarded as a punishment. There was no punishment in being sent to an area where free labourers were anxious to go themselves. The opposition in the colony itself was very great and centred around, not the landed interest, but the free and emancipated. Convict labour was depriving them of jobs.....³⁵

Others contended that the discovery of gold in Australia in the 1850's would attract immigrants thereby eliminating the need for convict labour.³⁶ Mary Carpenter even implied that the prospect of gold and a free passage to the fields might have lured the impressionable into criminal acts:

Australia has been regarded as an El Dorado by the ignorant; reports of enormous fortunes acquired, have made emigration [voluntary or forced] to the antipodes an object of desire instead of terror, to the restless and daring.³⁷

The advantages of transportation do not appear to have been recognized by Durham's convicts. The Prison Chaplain, George Hans Hamilton, claimed that it had considerable deterrent effect and alarmed the prisoners to such an extent that "frequently some of the stoutest are affected to tears when an old companion appears in chapel in the party-coloured dress of a transport."³⁸ Regardless of how beneficial transportation was considered elsewhere, in Durham inmates would go to extreme lengths to avoid it:

William Fenwick Robson and Edward Hewitt both sentenced to Ten Years transportation have during the walks in the Airing Yard whilst in a state of confusion in consequence of some alteration in it succeeded in cutting off the fingers of their left hands by means of hatchets inadvertently placed within their reach with a view to render themselves unfit for transportation.³⁹

As a result of the combination of colonial and internal opposition, the Government had little option but to discontinue transportation. It was halted to New South Wales in 1840 and to Van Diemen's Land in 1846.⁴⁰ In 1853 provision was made for serving penal servitude in England in lieu of transportation and in 1867 the practice was discontinued.⁴¹

Along with transportation, another system of punishment - imprisonment on the hulks - was breaking down in the 1840's and 1850's. After the American war of Independence stopped transportation to those shores, criminals were 'temporarily' incarcerated in well worn man-of-wars anchored along the Thames. Initially the scheme envisaged employing the convicts in public works such as dredging the river, but this plan was abandoned and the hulks became nothing more than floating prisons.⁴² By the 1840's, the hulks were disgracefully dirty, extremely unhealthy and obviously unsuited for any form of separate or solitary confinement. After a Select Committee investigated allegations against the hulks,⁴³ the Government gradually phased them out of service and the last one was burned in 1857.⁴⁴

The Government's response to the withdrawal of these options was to increase the number of separate cells under its control.

From 1842 until 1856, Pentonville, Portland, Dartmoor and Chatham prisons were either built or extensively refurbished under the direction of the Surveyor General Joshua Jebb.⁴⁵ However, a regimen had to be devised for these new facilities which would reclaim and reform the inmate, deter future offenders and prevent the contamination connected with unregulated association. Again, part of the answer came from America. By 1790, the Philadelphia Quakers had succeeded in abolishing capital punishment and supplanting it with indefinite terms of imprisonment in total silence and absolute isolation in which the inmate never left his cell.⁴⁶ The rationale behind the Philadelphia regimen was reformation and the inmates were "classified and segregated, and put to work in prisons where their sentences would be indeterminate and release dependent upon their progress."⁴⁷ In 1842 Charles Dickens toured this establishment and recorded a highly emotional yet probably accurate account of the convicts. Given that the criminals were deprived of any communication save the occasional word with a Turnkey, it is not surprising that the incidence of insanity ran so high amongst its population:

In its intention I am well convinced that it is kind, humane and meant for reformation . . . [but] I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers. . . .⁴⁸

The competing Auburn System (named after its place of origin, Auburn, New York) presented a variation on this plan in which the prisoners were locked up individually at night but worked

communally, in total silence, by day. However, this "Silent System" too had its drawbacks and whip carrying guards punished any efforts at communication.⁴⁹ In 1834, William Crawford reported enthusiastically on the advantages of the Pennsylvania experiments⁵⁰ but, mercifully, the Home Office deemed the effects of the regimen too "appalling"⁵¹ for implementation. Instead the Government chose Separate Confinement and reflected this preference in the 1839 Act.⁵² According to one of its main proponents, Jebb, the Separate System combined the best elements of reformation with the most rigorous elements of deterrence by eliminating all contact by the prisoner with anyone but guards and ministers:

This [difference between solitary and separate confinement] will be more apparent when it is considered, that in depriving a prisoner of these contaminating influences arising from being associated with his fellow prisoners, all the good influences which can be brought to bear upon his character are substituted for them; and that scarcely an hour in the day will pass without his seeing one or other of the prison officers, and that he is required to have constant employment or labour.⁵³

Once the government had chosen the regimen, it was necessary to decide upon the philosophy which would govern the day to day prison operation. To some, the most effective doctrine was deterrence. Stephen, for example, was firmly convinced that severity of punishment would both prevent reoccurrence of the offence and satisfy society's need for retribution:

I think it highly desirable that criminals should be hated, that the punishments inflicted upon them should be so contrived as to give expression to that hatred, and to justify it so far as the public provision of means for expressing and gratifying a healthy natural sentiment can justify and encourage it.⁵⁴

Others, though, were not prepared to take the arguments of deterrence as far as Stephen Tallack, for instance, considered deterrence was the primary aim of prisons because the government did not possess sufficient resources to make reformation effective; and, importantly, rigorous punishment would leave a more lasting impressions on an inmate than efforts to improve his character. To Tallack, the cell was the most important instrument of penal treatment: "The chief function of the cell is deterrence, with the least danger of further corruption."⁵⁵

The other side of the doctrinal coin was reformation. Its proponents claimed that it raised the level of prison treatment above the baser emotions of punishment or revenge. Moreover, its advocates could point to its efficiency: Captain Alexander Maconochie had successfully replaced a deterring system with a reforming one thus providing inspiration to those who favoured a gentler regimen.⁵⁶ According to Maconochie, prisons conforming to the tenets of deterrence - retribution were seriously misguided:

The sole direct object of secondary punishment should, therefore, it is conceived, be the reform [of inmates]. . . it raises the character of both these elements in treatment, placing the first [reform] in the light of a benevolent means, whereas it is too often regarded as a vindictive end, and obtaining the second [deterrence] by the exhibition of the law constantly and necessarily victorious over individual obstinacy. . . . ⁵⁷

III

These conflicting factors were also very much in evidence in Durham. The Gaol's officials, like Whitehall's, were seeking ways to deal with its inmate 'population' problem. However,

Durham's concern was not the loss of transportation or the hulks but the prospect of heavy industrial migration into the county. Part of Durham's response to the increased number of citizens was to build extensions onto its inadequate prison:

. . . some considerable enlargement of the Gaol is in our opinion highly necessary, the population of the County having vastly increased since the erection of the present Buildings and the accommodation for the male Prisoners having been totally disproportional to the ordinary numbers.⁵⁸

But this would certainly not solve all of Durham's problems. After the 1839 Prisons Act, Durham had to forge links with the central government to obtain grants to defray its costs. And it had to decide upon a philosophy to govern the establishment. Hence accommodations were made by both sides: Durham sought to remain loyal to the Governemant's policy on separate confinement; and Whitehall endured localisms which blocked some of its standardizing measures.

Between 1840 and 1855 the relations between the county and central government were regulated by the Acts of 1839 and 1844. One indication of the extent of Whitehall's influence in Durham's affairs is illustrated by the efforts made to build an addition onto the County's Prison. By 1841, it was becoming evident that the Gaol had become too small to serve Durham's pressing needs. It was holding 170 people in a structure designed for 40 and the Justices distressingly noted that "this number has not been unusual of late".⁵⁹ The county architect, Ignatius Bonomi, was therefore instructed to prepare plans for the building of facilities according to the needs of the Separate System as contemplated by the Act.⁶⁰ Furthermore, Bonomi was ordered to design the

structure in accordance with the preliminary sketches prepared by Jebb. At the request of the Quarter Sessions, Jebb had toured the Prison and recommended 120 cells be added at a cost of approximately £50 each for a round total of £7,000.⁶¹ Designs were then drafted and submitted to the Home Office for approval, and after lengthy delays because of a dispute with one of the contractors,⁶² the new building was scheduled to be opened in April 1845. However, the Prison Inspector, Frederick Hill, objected to the finished cells; Jebb agreed with Hill, so further repairs were done.⁶³ Finally the structure received 'certification' from the Home Office (thus making Durham eligible for grants⁶⁴) and it was opened with much acclaim in February 1846.⁶⁵ Clearly, then, the Home Office influenced every important aspect of gaol building, from providing technical advice at the planning stage, to approving the designs, or certifying the structure. Thus, effectively, the Home Office issued the grants to defray the costs.

The provision for inspection and certification of buildings was not the only link between the county and central authority. Pursuant to the 1835 and subsequent Acts, inspectors were given a free hand to comment on any facet of a gaol's operation. Once a year the inspectors filed a report with the Home Office which contained information on the number of inmates, their employment and any funds produced by their labour, the diet and the general state of the gaol. Before 1839, these inspectors functioned primarily as information gatherers as the government had no authority to act on these reports. After 1839, however, Whitehall

could withhold funds in order to enforce its wishes:

Should the Inspectors have reason to find fault if the cells were defective, if they were dissatisfied with the management, or thought the rules of conduct were neglected, it was their duty to call the attention of the Secretary of State to the fact, and it rested with the latter to exercise the powers vested in him to withhold the State subvention accorded by Parliament to each local prison.⁶⁶

These inspector's reports were often indicative of prevailing opinion. For example, in the early 1840's Durham's convicts were manufacturing a sizeable number of items such as rugs, mats, nets and cloth for sale in the markets in Newcastle.⁶⁷ Hill was in agreement with this policy and recommended "those kinds of work which are most profitable and which will be most useful to them after they have left prison."⁶⁸ Hill even suggested that a tailor be employed to teach the inmates the craft and that the tread mill "be discontinued and removed and the place which it occupies to be converted into a smithy and Work Shop".⁶⁹ Nine years later the Select Committee on Prison Discipline⁷⁰ deprecated the use of productive labour and another prison inspector, John Kincaid, reversed his predecessor's position. The Visiting Justices noted that Kincaid "recommends strongly that the crank machine be used on vagrants, as it has proved to have a very deterring effect in other Prisons."⁷¹ Instead of having the criminals perform useless labour, the Prison Governnor believed that a reduction in the diet to the lowest allowable level held greater terror to the short-term offender.⁷² In this instance, the local practice prevailed and a crank was never installed in Durham.⁷³

In addition to Kincaid, several other officials at Durham supported the doctrine of deterrence. The authorities - the Governor, William Green, the Surgeon, George Shaw and the Chairman of the Quarter Sessions, Rowland Burdon - believed that diet had a direct effect on the number of inmates. In 1849, the Surgeon experimented with reducing the diets of short term offenders and he claimed it had a marked effect on the recommitment rate. Shaw further contended that the reduction in food was not harmful to the inmates' health because, inexplicably, the prisoners gained weight despite receiving less food:

When the Diet was so good many of the Prisoners lived better in the Gaol than they could out therefore it was a strong inducement for many to commit some slight offence in order that they might be recommitted to Prison. Since the change [reduction] took place the number of recommitments [sic] has been lessened to a considerable extent. The prisoners themselves appear to increase in weight altho' the Diet has been less in quantity.⁷⁴

Yet Durham could not arbitrarily adjust the inmate's diets. With permission from Whitehall it was, however, possible to change the rules governing regimen and thereby decrease the amount of food served.⁷⁵ In addition to this, Sir James Graham had set a diet in 1843 which he had hoped all prisons would follow but which many did not. Graham's national diet directed that gaol fare should be adequate but not excessive, wholesome but not expensive and, significantly, that "the diet ought not be made an instrument of punishment".⁷⁷ A further expressions of this principle was later contained in Gray's 1850 Select Committee Report which was quoted often and in full by Durham's authorities:

"the diet should invariably kept as low as is consistent with the health of the Prisoners".⁷⁸ Although there is no recorded instance of a prisoner being deprived of food as a punishment, it is evident that Durham decreased the diet in order to deter certain classes of offenders:

The reduced diet and the strict discipline that is intended to be enforced on this description of Prisoners [vagrants, petty offenders] will make the imprisonment more severe than longer periods on the Old System.⁷⁹

Moreover, although the Visiting Justices were inclined to ignore Kincaid's recommendation that the crank be used against vagrants, they were willing instead to adopt Green's suggestion that a class I (the most meagre) diet be sanctioned for offenders sentenced to 7 to 14 day terms:

If this suggestion [Class I diet] be adopted it might be unnecessary to try the Crank Machine; and Magistrates may probably think that by committing Vagrants for a fortnight with this diet they will be inflicting a punishment more likely to give a dread of the Gaol, than by a month's imprisonment under the present Dietary.⁸⁰

In addition to the recommendations on separation and diet, the Select Committee believed that it was essential for prisoners to receive instruction on "religious and moral duties".⁸¹ From 1840 to 1846 indications are that the state of education behind Durham's walls was neglected. During these years, the order books do contain few references to instruction aside from Hill's recommendation that the library be expanded with books selected by the Chaplain.⁸² Pointedly, the order books do not disclose that from 1840 to 1843 Hill annually complained about the

inadequacy of the educational facilities or the inabilities of its schoolmasters.⁸³ By 1846, the Quarter Sessions were taking the issue more seriously, for it is noted that a teaching room had been extended and the juveniles were receiving 3 hours of tutoring (and the men 1 hour) per day.⁸⁴

Certainly this instruction was desperately needed; for both chaplains (Charles Granville Wheeler 1819 to 1848; Hamilton 1848 to 1854) deplored the lack of moral and religious knowledge among the prison population. Hamilton firmly held that woeful ignorance was a major cause of crime, so he paraded individual cases before the Sessions to spur them into allocating more resources to combat the problem. In accordance with Home Office directives, Hamilton would ask inmates a series of questions and record the replies in a journal. From the consistency of the answers the Chaplain received, it is arguable that more than a few of the inmates did not know the months of the year:

H. G. is a female aged 43 years - committed for the third time - Education none - Father unknown to her - cannot say the Lord's prayer - never was at school - does not know how many months in a year - nor can she name any month. . . .⁸⁵

Once in possession of this startling information, the Quarter Sessions had little alternative but proceed to improve the opportunities for learning. One step was to admit Durham "Ladies" into the gaol to conduct a one hour Sunday School for the females;⁸⁶ after having categorically refused the same request five years earlier.⁸⁷ Noteworthy improvements were also made to the library and teaching staff. The inmates therefore had

voluntary access to Sunday and Day Schools (in addition to compulsory daily chapel) and Hamilton claimed that generally the "attention given to moral and religious instruction has increased and the Library Books have been read and valued in direct proportion with the increased strictness of discipline."⁸⁸

Hamilton's concern for education is highlighted in other fashions. For example, Hamilton's pre-occupation with instruction was the basis for the only substantive criticism record^{ed} of his work. Kincaid noticed that the Chaplain provided tutorship to inmates sentenced to terms as short as 14 days. The Prison Inspector considered this to be an unjustifiable erosion of the deterrent principle:

. . . [this instruction is] an indulgence which I conceive should not be extended to anyone under a six week sentence; for it is but [blank] they can learn in so short a time; and punishment being the primary object of imprisonment, short sentences cannot be too stringently dealt with; but if they are to be allowed an hour at school in addition to their attendance in chapel, it destroys the penal purpose of their imprisonments. . . .⁸⁹

This clash of philosophies was undoubtedly not the first one Hamilton had encountered. The Governor, the Surgeon and even the Chairman of the Sessions⁹⁰ all espoused the primacy of deterrence. What Hamilton argued for was not operating the prison totally on reformative principles, but for a combination of discipline and the reforming influences of separate confinement and education. Before Grey's 1850 Select Committee he explained this position:

Would you separate the corrective and the reformatory processes?

- I would not. By the present system at Durham, which works well, a man must do his work before he is allowed to come to school; and there are very few men who do not so manage to perform their work in so many hours as to get an hour for school.⁹¹

And in his report to the Sessions, Hamilton emphasized that his reformatory tendencies were complementary to the deterrence advocated by most of the other officials:

. . . it is important to shew that the deterring and reforming portions of Prison Discipline, so far from being antagonistical, mutually assist each other. The first causing the second to be valued and the second softening the harshness of Penal treatment. . . .⁹²

The measure of the success of this combination of doctrines can readily be seen from the total number of inmates. From 1848 to 1852, the total number of convicts declined despite an annual influx of approximately 9,000 migrants. Moreover, Hamilton could correctly claim that "[t]here are fewer criminals in the county than is supposed"⁹³ - a judgment clearly justified if inmate population figures are accepted as measure of criminality.

This is not to suggest that the blending of reformatory and deterrent practices in Durham Prison was solely responsible for the decline in the number of convicts. As will be seen, the comparatively pacific disposition of the majority of the County's colliers probably affected this figure. The increasing efficiency of the police might also account for part of the decrease. But it seems evident that the regimen in Durham Gaol was a major cause - something Tallack did not think possible.

A Choice of Philosophies:
Durham County Gaol

1. Quarter Sessions Order Books, Report of the Visiting Justices, Durham County Record Office, Q/S/oB 25, 8 April 1843, p. 733. Richard John Lawson also known as George Thompson was convicted of his second felony offence and accordingly transported "for his natural life".
2. Parliamentary Papers, 1856, XXXIII (2061), 717. Report of Prisons Inspector. When the prison population increased in 1856, the governor blamed it on the influx of specific industrial workers: "The governor ascribes the increase in prison to an increase in the population, a large number having been brought into the country to work at new railways, iron-works &c."
3. P.P., 1854 XXXII (1755), 75. Report of Prisons Inspector.
4. P.P., 1854 LIII (211), 617. Return of Counties with Constabulary forces. This population increase is examined in greater depth in the chapter entitled "Coal Miners and Crime".
5. Sessions Books, Chaplain's Report, Q/S/oB 27, 18 October 1852.
6. W. Tallack, Penological and Preventative Principles (London, 1889), pp. 147-148.
7. A sample of this material would include: the inmate's story, Anon., Five Years' Penal Servitude (3rd. ed.; London, 1878); A Merchant, [Anon.], F. Henderson, (ed.), Six Years in the Prisons of England (London, 1869); the governor's stories, A. Griffiths, Fifty Years of Public Service (London, 1895); _____, Secrets of the Prison-House or Gaol Studies and Sketches (2 vols.; London, 1894); the novel based on fact, C. Reade, It is Never Too Late to Mend (London, 1856); or the modern works, K. Chesney, The Victorian Underworld (London, 1970); C. Hibbert, The Roots of Evil (Boston, 1963).
8. Exceptions to the would include Preston Prison's Chaplain, Rev. W.L. Clay, The Prison Chaplain: A Memoir of the Rev. John Clay, B.D. (Cambridge, 1861); and Pentonville's Chaplain, J. Kingsmill, Chapters on Prisons and Prisoners, and the Prevention of Crime (3rd. ed.; London, 1854).
9. This is not to suggest that the Birmingham Scandal was not a significant event; rather that it has received an unwarranted share of attention. In 1851, the aging Captain Maconochie failed in an attempt to implement a 'marks' system which required a certain amount of labour (marks) to fulfill a sentence. Along with this open ended approach, corporal punishment was virtually abandoned.

The Birmingham Justices disagreed with this regimen and replaced Maconochie with one Lieutenant Austin who preferred a ferocious and sadistic approach towards prisoners. In 1852 a juvenile committed suicide after enduring particularly cruel treatment and a Royal Commission was struck to examine Birmingham gaol. In 1854 the Commission report outlined the various means employed by Austin to ensure obedience and roundly condemned the governor's excesses. D.L. Howard, The English Prisons (London, 1960) pp. 87-94; G. Ives, A History of Penal Methods (Montclair, 1970), reprint of 1914 ed., pp. 177-178; S. and B. Webb, English Prisons Under Local Government (London, 1963), reprint of 1922 edition, pp. 164-176; and Reade, Never Too Late, is based on this episode.

10. Ives, History, p. 180.
11. Ibid., p. 181.
12. H. Mayhew and J. Binny, The Criminal Prisons of London and Scenes of Prison Life (London, 1968), reprint of 1861 edition, pp. 100-106.
13. Ibid., p. 214.
14. Ibid., p. 186.
15. Ibid., p. 302.
16. For example, Mayhew and Binny describe at some length the cleanliness aboard the Hulk "Defence". (pp. 213-215) Was this observation made before the Superintendent of Prisons investigated the allegedly deplorable hulk conditions in 1847? (See P.P., 1847 XLVIII (149), 63. Report) Or, importantly, after? We do, however, know that the authors were aboard the ship before 14 July 1857; for that was the day the "Defence" was burned. See W. Branch-Johnson, The English Prison Hulks (London, 1957), p. 198.
17. S. and B. Webb, English Prisons Under Local Government (London, 1963), reprint of 1922 ed., p. 113.
18. Ibid.
19. Ibid., p. 157.
20. Ibid.
21. Ibid.
22. Ibid., p. 158.

23. L.W. Fox, The English Prison and Borstal Systems (London, 1952), pp. 32-33.
24. Ibid., p. 35.
25. Ibid., pp. 36-37.
26. Ibid., p. 37.
27. Ibid., pp. 38-39.
28. Ibid., p. 38.
29. Ibid., p. 39.
30. Ibid.
31. J.F. Stephen, A History of the Criminal Law of England (3 vols.; New York, N.D.), reprint of 1883 ed., I, pp. 473-475. The reduction in the number of capital offences is examined more fully in the chapter entitled "The Courts and the Common People: Law and Procedure".
32. Ibid., p. 482.
33. W.R. Cornish, "Criminal Justice and Punishment", in W.R. Cornish, J. Hart and others, (ed.), Crime and Law (Dublin, 1978), p. 22. See also P.P., 1837, XIX (518), I. Report of the Select Committee on Transportation.
34. A.G.L. Shaw, Convicts and the Colonies (London, 1966), p. 357.
35. J.F.H. Moore, The Convicts of Van Diemen's Land, 1840-1853 (Hobart, 1976), p. 32.
36. Shaw, Convicts, p. 346.
37. M. Carpenter, Our Convicts (2 vols.; London, 1864), I, p. 237.
38. Sessions Books, Chaplain's Report, Q/S/oB 27, 18 October 1850.
39. Ibid., Visiting Justices' Report, 13 October 1851.
40. Cornish, "Criminal Justice", p. 25.
41. Shaw, Convicts, pp. 351-352.
42. For the story of the hulks see, Branch-Johnson, English Prison Hulks; J. Ashton, The Fleet (London, 1889); S. and B. Webb, English Prisons, pp. 45-49; Howard, English Prisons, pp. 16-18; 25-26.

43. Cornish, "Criminal Justice", p. 23. See also Report of the Superintendent of Prisons on the Woolwich Hulks, P.P., 1847, XLVIII (149), 63.
44. Branch-Johnson, English Prison Hulks, p. 198.
45. In fact, Jebb designed Pentonville prison. See Dictionary of National Biography, Vol. 29, pp. 261-262.
46. Howard, English Prisons, p. 60.
47. Ibid.
48. C. Dickens, American Notes (London, N.D.), pp. 114-115. For an analysis Dickens' writings on American prisons see P. Collins, Dickens and Crime (London, 1964), pp. 117-140. For an attack on Dickens' American Notes see J. Adshead, Prisons and Prisoners (London, 1845), Chapter 2 "The Fictions of Dickens upon Solitary Confinement". G.L. Chesterton, Revelations of Prison Life (2 vols.; London, 1856) II, p. 16. He disapproved of the Philadelphia system because of the "cases of dementia, an aggravated form of insanity, were constantly occurring".
49. Cornish, "Criminal Justice", p. 34.
50. P.P., 1834, XLVI (593), 349. Report of W. Crawford on Penitentiaries in the United States of America.
51. S. and B. Webb, English Prisons, p. 117.
52. 2 & 3 Vict. c.56, S.3.
53. J. Jebb, Modern Prisons: Their Construction and Ventilation (London, 1844), pp. 9-10.
54. Stephen, Criminal Law, II, pp. 81-82.
55. Tallack, Penology, p. 63.
56. Howard, English Prisons, pp. 87-93; Shaw, Convicts, pp. 290-294.
57. Carpenter, Our Convicts, p. 96. citing "a pamphlet published in Hobart Town, in 1839".
58. Sessions Books, Visiting Justices' Report, Q/S/o 43, 4 April 1842.
59. Ibid., 4 December 1841
60. Ibid., 4 April 1842.

61. Ibid., 4 December 1841.
62. Ibid., 30 June 1845. The contractor eventually served a Writ of Summons on the Quarter Sessions for non-payment of the account.
63. Ibid., 13 October 1845. Why the defect (insufficient number of wash basins) was not corrected at the design stage is not known.
64. 2 & 3 Vict. c.56, s.4.
65. Sessions Books, Visiting Justices' Report, Q/S/oB 26, 6 April 1846. A similar procedure had to be followed when Durham built either police stations or lock-ups. See Report of the Station House Committee, Q/S/oB 26, 29 June 1846.
66. Griffiths, Fifty Years, p. 262.
67. For extensive lists of the products made by the inmates see: Sessions Books, Visiting Justices' Report, Q/S/oB 25, 18 October 1841, 2 January 1843.
68. Ibid., 28 June 1841. Occasionally, the Quarter Sessions would re-copy the Prison Inspector's Report into its order book. Hill's remarks can also be found in P.P., 1841 V (340), 413. For convenience, the Sessions Book citation is used whenever possible.
69. Sessions Books, Visiting Justices' Report, 28 June 1841. There would appear that there were two tread mills in the prison. A notation from the Visiting Justices' Report of 4 June 1842 indicates that a tread mill supplied the water to the cells. Presumably Hill would not have advocated the removal of this device.
70. P.P., 1850, XVII (632), 1. Report of the Select Committee on Penal Discipline.
71. Sessions Books, Visiting Justices Report, Q/S/oB 27, 30 June 1851.
72. Ibid., Prison Governor's Report, 13 October 1851.
73. P.P., 1854, XXXII (1755), 77. Report of the Prison Inspector.
74. Sessions Books, Surgeon's Report, Q/S/oB 25, 15 October 1849.
75. Ibid., Visiting Justices' Report, Q/S/oB 28 June 1841.



76. S. and B. Webb, English Prisons, p. 135.
77. Ibid.
78. Sessions Books, Joint Report of the Surgeon and Chaplain, Q/S/oB 27, 14 October 1850; Surgeon's Report, 18 October 1852. See also P.P., 1850, XVII (632), VI. Report of Select Committee on Penal Discipline.
79. Ibid., Governor's Report, 30 June 1851. See also Visiting Justices' Report, 8 April 1850.
80. Ibid., Visiting Justices' Report, 30 June 1851.
81. Ibid., Chaplain's Report, 14 October 1850.
82. Ibid., Visiting Justices' Report, Q/S/oB 25, 28 June 1841.
83. P.P., 1840, XXVI (254), 49; P.P., 1841, Sess. 2, V (340), 432; P.P., 1842, XXI (419), 404; P.P., 1843, XXV and XXVI (507), 531. Reports of the Prison Inspectors.
84. Sessions Books, Visiting Justices' Report, 6 April 1846.
85. Ibid., Hamilton's Report, 16 October 1848. For a closer examination of the Chaplain's thoughts on the relationship between ignorance and offence, see chapter entitled "Coal Miners and Crime".
86. Ibid.
87. Ibid., Visiting Justices' Report, 8 April 1843.
88. Ibid., Chaplain's Report, 13 October 1851.
89. P.P., 1852-53, LII (1622), 436. Report of the Prison Inspector.
90. P.P., 1850, XVII (632), 391. In response to a question concerning the efficiency of Shaw's redirection of diet in 1849 Burdon said "The result has been quite satisfactory . . . it is beneficial as deterring from crime as far as it goes . . ."
91. Ibid., p. 388.
92. Sessions Books, Chaplain's Report, Q/S/oB 27, 18 October 1852.
93. P.P., 1850, XVII (632), 390. Evidence before the Select Committee on Penal Discipline.

Coal Miners and Crime

Miners as a class are not looked on with respect by the public, and the great majority of the press seems to be against us.

Mark Dent recorded in
Fynes, The Miners of
Northumberland and Durham

Reference has earlier been made to the apprehension felt by the police and prison officials over the heavy migration into the Durham coalfield. To be sure, this apprehension was well-founded if the equation that increased industrial population automatically resulted in increased crime.¹ Such was not the case in the County and one indicator - the total number of prisoners in Durham Gaol - declined steadily from 1848 to 1855.² Among the many reasons advanced for this occurrence was that the colliers had (barring strikes) remained remarkably peaceful.³ Moreover, the available documentation indicates that the coal workers were regarded as surprisingly law-abiding citizens.⁴ It is argued that several reasons existed for this situation. First, the colliers did not figure prominently in the prison and court records because they chose not to participate in legal institutions. By this it is meant that in an age when a criminal prosecution was overwhelmingly a private concern and the courts were costly and marred by cumbersome procedures,⁵ the colliers would probably have resorted to 'rough' justice or 'self help' measures rather than invoke the law. Furthermore, the coal miners were deeply suspicious of bourgeois institutions, and many of its conventions, thereby being more likely to settle disputes among themselves than taking them to a higher authority. It is not suggested that the pit villages hid anarchy from the police and other observers, but that the miners were probably more reluctant to prosecute than other members of society. Moreover, contemporary literature indicates

that the colliers were more peaceful than other industrial groups such as Ironworkers or Railwaymen.⁶ It is also argued that the Methodist Churches could have claimed the lion's share of the credit for the progressive elements of the coal miner's character. Finally, the influence of the pit village cannot be overlooked: the fierce loyalty engendered by the insularity of the comparatively well-paid community probably served to deter some members from committing the petty offences which constituted the vast majority of crimes within the County.

Between 1841 and 1861, the population of County Durham expanded from 324,277 to 509,018 for an increase of 57%.⁷ In order to arrive at an approximate figure for 1855, the per centage increase between 1851 and 1861 (30.1%) was halved and added to the earlier date. Using this admittedly rough calculation, the increase between 1840 and 1855 was approximately 35.6% or 115,442 persons making an average annual increase of just under 7,700:

1841	324,277	
1851	390,997	
1861	509,018	
1851	390,997 + 15%	
1855	449,466	8

However, an examination of the raw population totals for Durham between 1840 and 1855 practically conceals several issues of fundamental importance. According to most authorities,⁹ the middle of the century was both a demographic and economic turning

point in the County's development. After 1850, the region expanded at a much faster rate than it had before that date and thus the per annum increases should be weighted accordingly. Furthermore, as impressive as these figures are, they throw little light on how serious an impact this rapid industrialization and wave of people (especially colliers) made upon Durham. Despite claims by, for example, the Children's Employment Commissioner James Mitchell that the county was in "no way disfigured by the collieries",¹⁰ it is difficult to accept that a high degree of physical and social changes did not result from such increases in industrial activity:

. . . this diocese [Monkwearmouth] differs from most others . . . in the singular and most appalling frequency with which changes of population take place in it. There is no diocese . . . in which such numerous instances occur of the inhabitants so rapidly increasing, or being so suddenly created. Where a barren moor lately presented the appearance of a desert, never inhabited, and but rarely visited by man, a railroad may perhaps be formed, or a coal pit opened on it; cottages are built; and men, women and children appear diligently employed in gaining their daily bread. . . .¹¹

Even Mitchell had to admit that rapid industrialization and population rises caused striking regional changes; the most prominent of which was the new, frontier town:

Within the last ten or twelve years an entirely new population has been produced. Where formerly was not a single hut of a shepherd, the lofty steam-engine chimneys of a colliery now send their volumes of smoke into the sky, and in the vicinity is a town called, as if by enchantment, into immediate existence. The population is very great, 1000, 2000, and even 5000, is sometimes the amount.¹²

Another problem exists regarding the actual number of works involved in the County's above and below ground coal operations. Often conjecture and estimation are the only available guides. Mitchell, for example, argued on the basis of "imperfect data" that from 12,000 to 15,000 worked between the Wear and the Tees.¹³ His confrère on the 1842 Commission, John Roby Leifchild, set the Northumberland and Durham north of the Wear figures at 7,261 adults, 1,932 young persons and 1,349 children for a total of 10,542.¹⁴ However, Leifchild also claimed that 11,963 worked above and below ground in the "Tyne Collieries" while 9,000 laboured in the "Wear Collieries" for a total of 20,954.¹⁵ This figure would match fairly closely one quoted by the coal mine inspector Seymour Tremenheere who believed that 22,749 worked below ground in Northumberland and Durham in 1844.¹⁶ Other contemporaries disagreed with Tremenheere's totals. During the 1844 strike, the coal owners issued a statement which listed the number of collieries and workers for the two counties. It was appreciably higher than the coal mine inspector's:

	<u>no. of collieries</u>	<u>no. of working people</u>
Tyne	65	15,556
Blyth	4	1,051
Wear	31	13,172
Tees	24	4,211
	<u>124</u>	<u>33,990</u> of which
		8,607 were employed above ground,
		and 25,383 below ground. ¹⁷

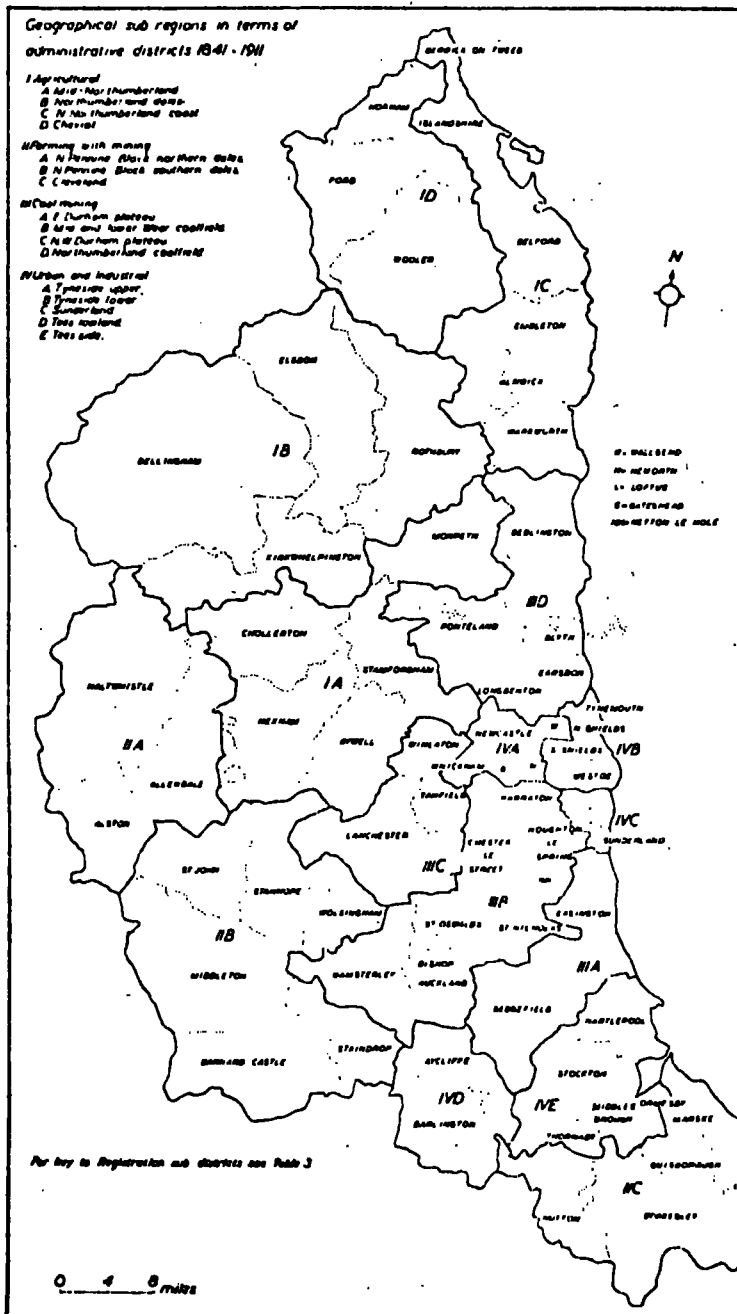
A modern author, J.W. House, has advanced yet another set of numbers. His charts indicate that in 1841 "Labourers" including coal workers formed 22.8% of the "occupied population" or 4.7% of the whole.¹⁸ In addition, House provides a comprehensive

breakdown of population and per centages of occupation for certain geographical sub-regions. The following diagram and (over) schematic map show that for these four regions the per centage of population involved with coal production was 21% in 1841, 23.5% in 1851 and 23.5% in 1861:

<u>Coal - Mining</u>				
	East Durham Plateau	Mid & Lower Wear Coalfield	North-West Durham Plateau	
1841	26,303 4.3	84,345 13.7	18,838 3.0	21%
1851	39,674 5.3	106,432 14.3	28,915 3.9	23.5%
1861	39,067 4.1	142,386 15.1	38,236 4.1	23.5%

Obviously, then, it is difficult to estimate the number of collieries in Durham from 1840 to 1855. And each of the sets of suggested figures seems to have a particular drawback: Mitchell's 15,000 is probably too low; Leifchild's 10,542 or 20,954 considers too much of Northumberland for this study; and Tremenheere's 22,749 considers not only Northumberland, but also only underground workers. The coal owners statement is equally dubious. It was apparently issued as a reminder to the strikers of "the great surplus of pitmen"²⁰ and could possibly have been inflated. Finally the 20% plus figures advanced by House are too regional and cannot be transposed to the whole County.

One characteristic of the Durham population should not, however, be overlooked. Colliers were often concentrated around their place of work in the pit villages or towns where they would have constituted a much higher proportion of the population than the county or even regional figures suggest. In effect,



these settlements were homogeneous communities existing primarily to serve the mines and the needs of its workers. For example, J.W. Day, Poor Law Chairman of Houghton-le-Spring claimed that of the 20,000 in his Union "nearly the whole . . . are connected with the collieries".²¹ Significantly, Houghton-le-Spring was not a unique instance of this phenomenon, for colliery villages were being established throughout Durham:

Within the last ten years collieries have been opened in very many places between the Weare and the Tees; and wherever a colliery has been opened a large village or town has been instantly built close to it, with a population almost exclusively of the colliery people, beer-shop people, and small shopkeepers.²²

By all accounts, the work in the coal pits was difficult, dirty and dangerous.²³ In addition, the industry was acutely sensitive to price changes in the market place and hence was, at times, insecure employment for the workers. These liabilities were, however, offset by one crucial factor: although the wage levels fluctuated with the market (and, naturally, certain jobs within the process commanded better wages than others) miners were more highly paid than many other workers. Generally, the coal workers received smaller wages than "highly skilled artisans in large towns" but their income definitely exceeded the hand loom weavers, agricultural labourers and "the greatest part of the population" involved in the cotton, linen, woolen and silk trades.²⁴

This combination - a recent and substantial influx of immigrants into a relatively well paid but cyclical industry - was the connection most saw between collier and crime.²⁵ Throughout the nineteenth century controversy existed over whether or not 'prosperity' (or stable working class wages) increased or decreased criminal activity. Those who believed prosperity diminished the number of offences anchored their argument on the observation that high wages meant food effectively became cheaper thus reducing temptation and, further, that the prospects for steady employment were enhanced. According to the Prison Chaplain, George Hans Hamilton, the number of prisoners in Durham declined from 1848 to 1852 (indeed to 1855)²⁶ partially as a result of improved economic conditions:

. . . it may be observed generally, upon the statistics presented in the Appendix [to his report], that the progressive decrease in crime is attributable [in part] . . . to the increased cheapness of the necessaries of Life; and to the greater comforts now within the reach of the Working Classes - to the enlarged demand for labour, and the consequent steadiness of wages. . . .²⁷

Hamilton was by no means alone in the belief that crime was abated by 'good times'. The region's Prison Inspector, Frederick Hill, claimed that should society eliminate "the causes of poverty" and control "those fluctuations of income which now expose the labouring man to the temptations of alternate penury and affluence"²⁸ the prison ranks would shrink. Hill later qualified these sweeping statements by contending that certain offences might well increase during prosperity but crime

generally would decline. After having conferred with police and penal authorities, the inspector outlined his beliefs:

. . . [the police and others] attribute it [a decrease in crime] to the abundance of employment; and in this I myself concur . . .
 Certain kinds of offences, such as assaults and other breaches of the peace, arising from drunkenness, may sometimes be increased in number by a sudden improvement in trade and rise in wages; but that, as a general rule, a good remuneration for labour tends to prevent, rather than (as some seem to suppose) to foster crime. . . .²⁹

Nor was the link between economic advance and criminal behaviour lost on Durham's coal owners. In a fierce attack on Ashley's proposal to promote "legislative interference" with the pits, Londonderry forecast what the result of such action would be on the county:

Poverty almost invariably leads to crime; such is the law of nature, although not the law of the land. Poverty however, consequently crime, are both, comparatively speaking, strangers in the northern coal-districts; all the records both local and general, confirm this. How narrow, then, must be the views of those who, without a substitute, would at once bring these evils upon places uncontaminated to any degree. . . .³⁰

Those who claimed that 'good times' swelled the court rolls and prison population held a powerful weapon of argument. To them, good wages meant drink and with drink went crime:

The besetting sin of the poor is drunkenness. Not only is it an evil in itself, but it is the parent of almost every crime that comes before a court of justice. . . . The several heads of the police force in the various divisions of the county, [Lancashire] concur in this particular, that the committals to prison were never so few in the 'same period as they have been for the last six months; and yet the distress

of the operative was never known to be greater. How is this? All the police superintendents give the same answer: with a decrease of wages, there has been a decrease of drunkenness; and with a decrease of drunkenness, there has been a decrease of crime.³¹

In County Durham, contemporary evidence indicates that colliers would, on some occasions, consume alcohol to excess. Significantly though, in most cases drinking itself was not denounced specifically, but drinking in conjunction with collier recreational practices. As such, it is difficult to know if the charge of drunkenness reflected concern for its frequency or whether drink was included to emphasize the corrupting influences of certain forms of amusement. For example, George Elliot, a 27 year old head viewer from the Washington and Belmont Collieries decried the proximity of Sunderland and its entertainments:

. . . the morals of the lads here [are] worse than in most colliery districts. The cause is the nearness of the town of Sunderland. . . Generally the neighbourhood of a town corrupts the colliery people. Fairs, dances, theatres, &c. seduces them. Drunkenness is prevalent here. The police prevent many disorders.³²

Also, there are the observations of the conduct of the workers at a recently established mine by a "pit lad":

There is much blackguardness there; bowling matches, cock and dog fighting, and such like. Almost all drink there . . . young lads of 17 and all.³³

Finally, Edward Potter, viewer, claimed that some of the men at South Hetton Colliery were "amateurs at cock-fighting", some played at bowls and some indulged in prodigious drinking:

"There are instances of the pitmen receiving their money on Friday, and going to the public-house and remaining until Monday morning."³⁴

There is, however, an abundance of information which indicates that the coal miners were not noted for their abuse of alcohol. Despite the fact that the pit towns provided ample opportunity for consumption - Coxhoe, for instance, had a population of 5000 and 30 beer shops³⁵ - the miners were depicted as "frequently very temperate, especially since the introduction amongst them of teetotalism."³⁶ Or, in the words of "An Eminent Engineer", the colliers were not "a drunken set of men, at least on my circuit".³⁷ Moreover, there are examples of different varieties of temperance societies, some of which held sufficient influence over their members to inflict fines (and even dismissal from the club) for contravention of the rules.³⁸ Indications are that beer was preferred to the more potent spirits,³⁹ and even George Tweddell (M.D. commented no further on the topic than observing that generally the collier's health was good "with, however, exceptions chiefly of those who injure their health by excess of drinking".⁴⁰

In addition to the Children's Employment Commissioners, other officials remarked upon the colliers' restraint in matters of drink. Between 1844 and 1855 only the 1846 Report of the Coal Mines Commission made reference to this subject. In it, Tremenheere reproduced the observation that in the village of Skelton with a population of approximately 2000 "you rarely see

a drunken man; their [miners] habits are improved of late years".⁴¹ As well as noticing less public drunkenness, W. Bailey of Hetton perceived a general improvement in the coal miner's conduct:

I think the habits of the pitman are improved within the last ten years; many of them have got more instruction than they used to have, and that takes their attention more; their habits of drinking have decreased greatly, and they are more religious. . . .⁴²

In Durham, the coal miners drinking habits did not figure prominently in the Quarter Sessions Reports of either the Chief Constable or the Prison Chaplain. Significantly, the police diaries contain few references to drink and none that apply exclusively to colliers. Perhaps the chief constable was cautious of the topic because Hamilton had twice suggested⁴³ that the majority of assaults on officers resulted from the inept handling of drunken men by the police. Or perhaps he felt no compulsion to reply to a charge that the police were authors of their own misfortune.

As the Chaplain of the Gaol, Hamilton was no friend of the publican or beer shop owner, for he believed that these establishments were inducements to excessive consumption which ultimately led to an offence.⁴⁴ Significantly though, Hamilton did not recommend teetotalism for Durham's working class, nor even was he opposed to moderate beer provided it was done in the home.⁴⁵ Not surprisingly, instances were regularly recorded wherein prisoners blamed drink for their situation, but it was not a subject which pre-occupied the Chaplain.⁴⁶ Clearly

Hamilton did not regard drink to be the urgent problem John Clay thought it was.⁴⁷

From these various sources, it seems justifiable to conclude that Durham's coal miners did not give themselves over to outrageous abuses of alcohol. It would be naive, however, to believe that a good deal of excessive drinking did not occur within the mining communities, but significantly, it did not draw much official fire. Even the rare accusation that the coal miners' drinking did result in crime was tempered with remarks about their integrity:

Colliers and fishermen I have found, as classes, to be in frequent practice of committing assaults and other breaches of the peace (generally from drunkenness) but to be for the most part honest.⁴⁸

One charge that the colliers could not evade was their lack of education (termed "ignorance") which has been treated, then and since, as a fundamental tenet of criminology. In accordance with Home Office directives, Durham Gaol performed crude literacy tests on its inmates. Unlike others,⁴⁹ Hamilton saw a link between ignorance and crime and despaired over the results of literacy examinations. Quite reasonably the Chaplain deplored the state of the county's education and concluded that in "whatever light these facts may be viewed they present a truly humiliating picture".⁵⁰

Shewing the state of the Education of the
Prisoners when committed

	1848	1849	1850	1851	1852
None ie. could neither read nor write	853	682	703	70	644
Knew the alphabet, some a little more	319	339	328	339	310
Able to read only	115	144	158	100	99
Able to Read and Write imperfectly	624	630	593	666	683
Able to Read and Write Well	116	26	7	20	19
Superior Education	5	1	1	1	1
Unknown	51	64	35	17	31
Total	2083	1886	1825	1846	1707

51

In an effort to raise the educational level not only of the inmates but also of the general populous, the Chaplain placed numerous examples of illiteracy before the Quarter Sessions. Hamilton was certainly selective in his choice of samples, for they were intended to illustrate specific inadequacies in the social, educational and penal practices of the county or various aspects of criminological thought. Of the 14 vignettes on "ignorance" given between 1848 and 1851, pitmen or pit boys were described in 8. Clearly, the colliers were Hamilton's backward class as the following typical example from his diary shows:

J.P. aged 19 years a Pitman. Unable to say the Lord's Prayer - never was at School - has not been at Church for 12 years - Does not know the name of the Queen - nor can he name any Month in the year - never heard of the Saviour - counts to a hundred by five twenties.⁵²

Along with the other liabilities associated with coal miners some claimed that they were subject to a debilitating malady called "idleness". Like drunkenness or ignorance this condition was held by the police and penal authorities to be

one in which the working classes could be tutored in the ways of crime and thus led into crime. In the collier's case, moreover, destructive indolence assumed many guises. One form which particularly disturbed the police was unemployment or under-employment. Chief Constable Wemyss viewed unemployment as the acid test of his men; if they could keep the crime rate low during 'hard times' they were justifying their existence:

As there has been a much greater number of persons out of employment than usual in that [Barnard Castle] place for some time, it may be reasonable to infer that where there is a sufficient force, a Police is effective in the prevention of as well as in the detection of crime.⁵³

Another face to the problem of inactivity was the strike. According to John Clay, a "turn-out" or "lock-out" was "certain to affect the moral and social condition of the place, and, consequently, the committals".⁵⁴ In Durham, the police contended that a strike like the one in 1844 caused both short and long term damage to the area. During the dispute the force was kept busy quelling disorders. And even as late as October 1845, reminders of the 'bust-out' were still present:

This increase in the graver offences is startling, and may, perhaps, be in some measure ascribed to the habits of idleness engendered by the cessation from labour during the long protracted strike of last year. . . .⁵⁵

There were, however, further facets to the relationship between inactivity and offence. Hamilton argued that "partial idleness" often led adult colliers into conflict with the law. To him "partial idleness" was the eight hours a day not spent

in the pits or in bed but passed "in what each man considers his recreation".⁵⁶ The Chaplain cast his nets wide on this issue and condemned most forms of working class entertainment:

Where education is deficient, and bad habits have been acquired, the Beer-house, with its Quoits and evil associates, consumes his time and wages.

Poaching, Cock-fighting, Dog-fighting, Gambling, Pigeon-stealing and Assaults may be traced to this source, and no permanent remedy suggests itself, except the obvious advantages of establishing innocent amusements and recreations to occupy the leisure hours of the Working Classes.⁵⁷

Hamilton was not alone in denouncing working class amusements.⁵⁸

David Liddell, for example, was appalled at the way in which some citizens spent their Sundays:

On Sundays the older persons meet to pass their time in frivolous and impure conversation. The youths resort to the fields and engage in amusements; these amusements are frequently of a barbarous character, as many of the boys have dogs.⁵⁹

With regard to recreation, Hamilton thought that pit boys were in a more favourable position than their older counterparts. He argued that since children worked long, exhausting hours and relatively well paid, they were effectively removed from opportunities or temptation to commit offences. Yet these advantages were only temporary; for with age, the telling effects of a lack of instruction became evident and the adults succumbed to the excitements of the public house or other forms of spurious entertainment:

It may be that Boys are sent to work in "the Pit" at so tender an Age, and for such protracted hours, that when not fully

occupied, they are obliged to seek rest at home; and it may also be, that the good wages thus earned, have their effect in lessening the inducements to commit Petty Thefts. . . .⁶⁰

Hamilton could not have been more accurate about the tedious hours spent by the pit children although he does seem to have been unmindful of the supposition that long work days were contributing to ignorance by precluding education. For example, a trapper, aged 6 years 7 months started his day at 3:00 A.M., was in the mine by 4:00 A.M., returned home between 4:30 and 4:45 P.M. and was in bed by 6:00 or 7:00 P.M. Certainly the pit boy had very little time for mischief or schooling:

. . . he will be up never more than two hours from the pit for eating, washing and playing. When his son gets a little more hardened to the pit, his father means to send him to night-school, and stop an hour off his sleep.⁶¹

Even play was often an unreasonable demand on a pit boy's time. John Otterson, aged 13, worked from 5:00 A.M. to 5:00 P.M. and retired to bed "about eight". He claimed that "I do not go out to play; the more we play [let alone search out trouble] the more we sleep in the pit"⁶² - a circumstance which invited a cuffing from the older colliers.⁶³ On the basis of such testimony, the Shaftesbury Committee reasonably concluded that many children "never see the light of day for weeks during the greater part of the winter season".⁶⁴

To offset the detrimental effects associated with the coal mining, Hamilton devised a reclamation plan for the juvenile delinquents who came under his care. If, at the expiration of their sentence, they could not be returned to

their parents, the Chaplain would endeavour to "supply employment by sending Lads to Sea &c.",⁶⁵ rather than secure positions for them in the mines. This procedure points out several issues. As will be seen in the chart in Appendix "C", sailors constituted a sizeable proportion of Durham's prison population, so it is questionable whether fewer temptations existed aboard ship than below ground. Such a proposal is indeed curious in light of Hamilton's view that the long hours of work in the pits together with the high wages effectively removed most incitements to offence.⁶⁶ It might be argued that Hamilton was recommending a form of temporary transportation to his charges. Perhaps the rigorous sea life was intended as an opportunity for them to mediate upon their earlier mistakes, or as a chance to allow the offenders to burn off adolescent energy in a constructive fashion. It might have simply been that ship agents were more willing than other employers to overlook an applicant's past. Whatever the reasons, it was a favoured means of treating juvenile delinquents: in 1849, 12 of 19, in 1851,⁶⁷ 84 and in 1852, 94 adolescents were "Commended to a ship agent to be sent to Sea".⁶⁸

The chart contained in Appendix "C" shows that from 1848 to 1852, the colliers constituted between 11.3% and 12.6% of the population behind the walls of Durham Gaol. Although some historians⁶⁹ have questioned the reliability of occupation figures, it is apparent that the per centages for Durham did not vary greatly thus suggesting the the totals represented the reality fairly accurately. Further support for the belief

that an 11%-12% collier prisoner figure remained constant (ignoring 1844) throughout 1840-1855 is found in the early reports on the coal workers:

In the years 1839 and 1840 as many as 25 pitmen out of the whole county were committed to gaol on the charge of felony, of whom five were sentenced to be transported. It is to be lamented that so many as 12 or 13 per annum should have to be committed on so serious an account. It is, however, but about one-eleventh of the whole number of committals for felony out of the whole county, the gross number of those two years having been 226, and the miners are far more than one-eleventh of the population.⁷⁰

From the available accounts, the colliers were regarded as remarkably law abiding and certainly less dangerous than other groups. It was claimed that "under the influence of strong beer"⁷¹ the coal workers were known to have committed assault. Yet, importantly, the miners were prone to neither drinking nor fighting: for the years 1839 and 1840 there were 54 committals for trial for assault.⁷² This is an amazingly low number considering the size of Durham's collier population. In this regard J.W. Day, Chairman of the Houghton-le-Spring Poor Law Union, produced an abstract from that district's Petty Sessions from 2 June 1839 to 7 September 1840. Clearly the miners were not a violent contingent in that region of approximately 20,000 inhabitants:

	<u>Pitmen</u>	<u>Other Persons</u>	
Felony	-	3	
Willful Damage	-	1	
Breach of Peace	-	2	
Assault	2	-	
Disorderly	-	2	
	<u>2</u>	<u>8</u>	73

In addition to this Poor Law Chairman, the Prison Chaplain and the Chief Constable, some coal owners apparently did not think that the pitmen indulged heavily in criminal pursuits. As mentioned earlier, Londonderry considered that prosperity made crime a "stranger" to Durham.⁷⁴ Another owner, Thomas John Taylor, thought that the miners were ignorant, somewhat loose in their morals, full of "vanity and conceit" but, significantly, not criminal. According to Taylor, the Methodist Churches were responsible for this behaviour:

There is no class amongst whom great crimes are rarer than amongst pitmen: at the same time their morals, speaking more particularly of the young men, are not very strict: but much of this must be owing to the want of proper instruction. The pitmen owe so much of religious knowledge as they possess to certain sects of Dissenters, especially the Wesleyan Methodists.⁷⁵

It is also apparent that most observers considered the coal men to be less criminal than other working class groups.⁷⁶ In comparison to, for example, sailors, Hamilton expressed surprise that there were fewer coal men than sea men behind bars in Durham. It would be difficult⁷⁷ to establish the precise proportion of colliers and sailors to Durham's total population, but from the information readily available, it can be assumed that the former was considerably larger than the latter:

The whole number of Sailors sent to Prison during the past year amounts to 301. . . while the pitmen *(generally considered a worse class, certainly a more neglected ignorant class) number 246 . . . *[Foot] Note - I have no means of ascertaining the fact, but it appears to me that the pit population of this County must far exceed the number of Sailors at any one time resident in the County, for it will be remembered that the great majority of Sailors are always at Sea.⁷⁸

Given that Durham was undergoing an expanding population with accompanying social dislocation, it was indeed astonishing that there were so few colliers behind the Prison walls. And from the descriptions of the new towns, it would appear that they should have been fertile ground for criminal activity.⁷⁹ One element which allegedly was absent from the pit village was the social control associated with a long established community:

. . . considering the circumstances by which this increase [in population] is produced, an increase of crime greater in proportion than the growth of population might be reasonably expected. A sudden demand for Labourers in the Coal and Iron districts continues to induce a supply of migrating operatives to settle for a time in the New Villages these are often men of bad character, and dissipated habits who seek a new residence because they have been driven by their own misconduct from their native place. Such settlers, unchecked by the moralities of relationship and public opinion, often carry with them evil habits and find greater facilities for indulging them where their characteristics are unknown.⁸⁰

In addition to what might be termed 'social rootlessness', the assembling of such a congregation of "men of bad character" allegedly drove out the local gentry. Hence the presumption that colliers were deprived of both the beneficial influence of the secure, established neighbourhood as well as "the active benevolence of higher ranks":⁸¹

At the winning of a new colliery the erection of long rows of unpicturesque cottages - the arrival of waggons piled with ill-assorted furniture - the immediate importation of the very scum and offscouring of a peculiar, mischievous, and unlettered race - the novelties introduced with almost fabled rapidity, into the external features of the country - the funereal colour imparted

to the district - are surely sufficient to untenant the seats of the wealthy, and untenanted do they speedily become.⁸²

Indications are that throughout the years under examination (especially before 1845) the colliers were quite mobile within the coalfield and often moved their households from one community to another. In operation, once a worker was offered a better wage or wished to "avoid the visits of troublesome tradesmen",⁸³ he would merely sign a bond with a different owner who would pay to have the collier's belongings removed to the new location. Only an exhaustive study of the local census returns would accurately reveal how prevalent this phenomenon was,⁸⁴ but Leifchild thought it involved "Probably 25 per cent."⁸⁵ of the population. In a study of the 1851 census returns for Monkwearmouth, for instance, the 6 members of the Robson family were born in 6 different locations within the coal field between 1810 and 1836.⁸⁶ This practice was, however, stridently denounced as yet a further erosion of the already tenuous links between coal worker and coal owner as well as being considered to be socially disruptive:

. . . there is perhaps one-third of the miners who are no sooner settled in one place, then they begin to speculate on removing at next year's binding to another. This has a very injurious effect on the minds of the mining population, and they are never imbued with that respect for their employers, which long and permanent subordination naturally produces.⁸⁷

In the absence of the struts which were widely believed to secure society, it might be assumed that the pit towns were scenes of general degradation. They were not, however, as the following description of Coxhoe and the home life of a coal

miner demonstrates:

[Within Coxhoe] . . . there was no unpleasant nuisance, no filth, nor ashes, nor decaying vegetables. All was swept and clean . . . It was about 1 o'clock, and the collier had got his day's work done, and was clean washed, and was sitting at a table and luxuriating [over his ample meal] . . . The wife seemed happy in making him comfortable. In all this country [sic? county?], the colliers do not want their wives to go out to work, but retain them at home to perform their domestic duties, and to attend to the happiness of their own families. This house, like most of the collier's houses in the several villages, was very clean and well furnished. ⁸⁸

III

Since the colliers were a mobile immigrant (albeit often short distance)⁸⁹ group assembled for the needs of industry and without either the leadership of the landed gentry or the opportunities for education, certainly more signs of social disruption could have been expected. Various reasons could be advanced to explain the apparent anomaly of the collier's 'respectable' deportment - the relatively high wages, the comparatively low incidence of drunkenness, the wish to emulate middle class virtues, or even the desire to repay the owner's generosity with 'correct' behaviour.⁹⁰ All of these are probably contributing factors, but most contemporaries claimed that the principal cause was the influence of the Methodist Churches. The accounts of the pit villages abound with information indicating that the Methodist Churches were accessible to,⁹¹ and evoked a strong following from,⁹² the coal worker. According to Mitchell, the effects of the Methodists were

apparent to all who cared to look:

Both men and boys on Sundays are dressed exceedingly well. The men generally wear a black suit, and a stranger seeing them would hardly suspect them to be the men whom he had seen coming up from the pits begrimed with sweat and coal-dust, and as black as negroes. Some of the witnesses in evidence, and all persons in conversation, give the credit to the Wesleyan Methodists of having brought about a great change in the respectability of dress and general good behaviour of the miners.⁹³

And his fellow Commissioner, Leifchild, was no less unequivocal in his analysis of the testimony:

The Methodists, subdivided into various denominational sects, have chiefly, and in several instances exclusively, undertaken the charge in providing religious instruction in the collieries. Considerable moral amelioration has ensued through their agency, for which they merit, and have received from nearly all parties, their meed of praise.⁹⁴

However, the Methodist Churches provided other influences for which they received no "meed of praise" from the coal owners: during strikes the Methodists actively encouraged the miners and their chapels were used not only as meeting halls to elevate collier morale but also as centres to collect funds to continue the struggle.⁹⁵ When, for example, the 1844 strike ended, the owners lost no time retaliating against the Methodist preachers who were "the first, at most of the works, to be dismissed by the masters".⁹⁶ There are also indications that the Primitive Methodists (called "Ranters") might have played a more prominent role during 'bust-outs' than their Wesleyan brethren. According to the manager of Evenwood Colliery near

Bishop Auckland, such a division was evident during the dispute there:

The strike which with us lasted from November, 1843, till July, 1844, has cleared the district of a great many of the worst characters, who are [sic] gone to the iron-works on the hills. The 'Ranters' were the worst agitators at the time of the strike. The Wesleyans were quite the other way.⁹⁷

Yet if the pit workers chose to adopt certain qualities such as pride of possession, moderation in drink or cleanliness, (surely the job accounted for this) it is likely that it was an independent decision rather than an attempt to ape the middle class, for it is uncertain to what degree the colliers were influenced by 'outsiders'. Undoubtedly the pit village or frontier town was a closed, exclusive community which contemporary middle class observers found difficult to understand. These communities were held to exemplify "moral insulation" and "clanishness" while the inhabitants were thought to possess "numerous anomalies".⁹⁸

The pitmen themselves have been shown to be commonly an intractable race, suspicious from ignorance, and ignorant from comparative neglect - self-sufficient from partial knowledge, and jealous, perhaps from the partial sympathy of their superiors - unattached by any enduring ties to one master, and not rarely annually migratory.⁹⁹

Such insularity and self-sufficiency was not unique to colliers, for a similar social loyalty could have been found in, for instance, fishing or farming communities. One means of ensuring the maximum level of homogeneity was to restrict the number of interlopers by marrying only within the group.

Thus it was considered a "rare thing"¹⁰⁰ that a coal miner should marry anyone but a fellow miner's daughter. The reason for this preference was, again, the circumscriptive nature of the pit village:

. . . the collier girls seldom go out as servants and have very little or no opportunity of seeing anything but the homely work and cooking of the collier village; and they have less opportunity than other girls of acquiring good taste. Their great ambition is to marry a collier lad, and there is always a fair chance of success.¹⁰¹

Along with excluding 'outsiders', the colliers also exhibited a marked distrust of strangers. Leifchild, for example, complained that obstacles such as the accents, the localisms and the parents silencing their children severely hampered his inquiries. At base, however, suspicion impeded the Commissioner's progress:

If they [pit boys] had little time, they had less inclination to be examined, and still less to answer the questions of a total stranger; and even when their attention was obtained, the barriers to our intercourse were formidable.¹⁰²

The intractability of the coal workers seemingly became more pronounced with age and one manifestation of their collective character was a pervading skepticism of the intentions of higher authorities. For example, the workers produced two magazines during the 1844 strike - the Miner's Journal and the Miner's Advocate - which fuelled the cause with "imputations of dishonourable and unchristian motives cast upon those above them".¹⁰³ Furthermore, it was alleged that the conflict lasted longer than it should have because of "the suspicion inculcated

against the whole body of masters".¹⁰⁴ However this disposition was not reserved merely for strikes, for it seems clear that colliers customarily regarded their superiors with a jaundiced eye:

For a stranger to read the mind of a pitman, a circuitous approach and no small amount of tact are requisite. A prominent feature of his character, is jealousy of his superiors, and of his employers. It would seem to be assumed by him as a truth, amply established by experience, that his master can have no desire to benefit him. . . .¹⁰⁵

The rift between the workers (with their "clannish feelings and suspicious turn of mind"¹⁰⁶) and authority was wide indeed; for the colliers certainly distrusted not only the words but also the deeds of the owners. This wariness of upper class paternalism was, moreover, very difficult for some to understand.¹⁰⁷ Out of exaggerated "jealousy" the colliers would often refuse to participate in an institution or scheme once it had been soiled by an employer's hand. In one case, a company offered to contribute 1/2d. per exported chaldron (matched by a 6d. per ton payment in wages by the men) to a benefit fund for disabled colliers, their widows and children. After an initial flurry of enthusiasm, the men dismissed this plan which conceivably could have assisted them considerably:

There is always the best feeling [sic] of the employers towards the men, but the employed are excessively jealous, and will not listen to anything, even for their own good. Their obstinacy would be quite admissable if exerted in a better cause . . . The men thought well of it [the fund] at first, but after meeting and discussions their jealousy got the better of their prudence, as they thought it impossible that their employers could offer such a boon without having some selfish motive in it, and that it was in fact what they called "a take in" intended as a fraud upon them.¹⁰⁸

The closed nature of the mining society was further compounded by the general absence of education. The Gaol Chaplain deplored the state of schooling in the County, but he blamed the educational system, and does not appear to have considered either that the colliers were not interested in this form of self improvement or that the miners believed the owners had "some sinister object . . . in providing school for their children".¹⁰⁹ Moreover, the pressures of obtaining a child's pay packet coupled with the isolation of the community contributed heavily to the paucity of instruction:

The neglect of education arises from the men being uneducated themselves, and being anxious to get the wages which their children earn. Much of the ignorance of the collier children arises from the population of the collieries living by themselves in collier villages, and the women have no opportunity for improvement by associating with people in better condition than themselves. . . .¹¹⁰

It would also appear that the segregation of the pit village entrenched both a vicious circle of incomprehension and a 'seige mentality' among the inhabitants. In 1849, Tremenheere reproduced the remarks of what he termed an "intelligent" ex-pitman. These observations suggest that some colliers were not opposed to learning in principle; provided it came in measured doses:

They want just to be taught to reason fairly and properly. A very little more pains would put them right, and make them fit to meet other men. They are a kind, honest, well-intentioned set of men, and have all the moral faculties in them, if they were cultivated, but they have been left entirely to themselves, and to teachers of their own choosing; in fact, they have

never, as a race, come into contact with other ideas or other people than their own, namely the viewer, the overman, the clerk, the shopkeeper, the preacher at the chapel, and their fellow workmen . . . They have not knowledge enough to reason soundly themselves, and suspect every one who attempts to set them right. ¹¹¹

Finally, if the worker's children could not broaden their horizons, many of their elders would not. In the wake of the 1839 and 1844 strikes, some companies rushed to supply reading rooms for their workers in hopes that enlightenment would curb their radical tendencies.¹¹² Once again, the miners spurned a gift from their employers in preference to their own entertainments. Instead of consulting the improving literature offered in the company library, the men chose "cheap penny periodicals . . . or newspapers and periodicals advocating Chartism and Socialism":¹¹³

. . . they [libraries] were very little used, and have in some cases been abandoned . . . But the spirit of jealous suspicion with which everything set on foot by the masters is regarded, and the superior attractions of low, cheap, and exciting periodicals to those who were inclined to read at all, caused the libraries to be neglected.¹¹⁴

Further support for the contention that the coal workers remained adverse to 'bourgeois' institutions comes from the Poor Law Unions. Admittedly the colliers were, at times, relatively well paid and therefore in no need of assistance and that benefit societies were commonly subscribed to,¹¹⁵ but it still remains that they were less likely to accept relief than other groups. In this regard, a viewer and the Chairman of the

Durham Union, Thomas Crawford, claimed that "the miners make fewer applications for relief than any other class."¹¹⁶

Finally, much to the despair of some,¹¹⁷ the colliers disregarded the favoured middle class virtue of thrift. According to George Canny in 1841 "many miners were earning 30s. a-week"¹¹⁸ yet they refused to open accounts with the area's bank. Although they could not possibly have known it at the time, the coal miner's prodigal ways were the best course: in 1857 the Northumberland and Durham District Bank collapsed.¹¹⁹

Once it is accepted that the miners were profoundly suspicious of bourgeois institutions and often refused participation in them, much light is thrown on the deceptively low rate of collier criminality. Clearly the collier's first loyalties were to his family, co-workers and community, not to the authorities or their works. It is also evident that the forces of authority in some ways recognized this; for the police were apprehensive about the growing number of coal workers; the prison officials were appalled by their ignorance and the owners distressed by their intransigence. Without the leadership customarily supplied by gentry, employer or government, the pit villages became insulated, exclusive and socially self-reliant - in short, alien communities to most of the upper classes. Furthermore, once it is agreed that the miners were, in many ways, independent of middle and upper class control, it would seem unlikely that the colliers would automatically turn to 'bourgeois' courts for redress. It is suggested that they would not because of the nature of collier society and because of the

prohibitively high cost and time consuming nature of criminal litigation. After all, once an owner was distrusted, 'his' court would become as tainted as 'his' church, 'his' benefit fund, 'his' library, or 'his' thrift.

A central argument in Philips' study of the Black Country is that the working class accepted the legitimacy of the law and hence took advantage of facilities such as the courts.¹²⁰ This contention is not denied: what is suggested is that the incidence of unreported or 'hidden' crime as well as 'rough' justice was probably higher in Durham than elsewhere because of the colliers' mentality and disposition. And it is further contended that the miners were much more law abiding than many 'bourgeois' observers realized.

It might be argued that the retention of the solicitor Roberts indicated a readiness to use the courts. However this action would seem to have been a matter of fraternal defence. It would not seem to lend great support to the belief that colliers were prepared to drag each other before the courts, but rather that the miners were prepared to fight the owner's fire with fire. It will also be remembered that it was the courts that imprisoned men for breaking the bond; something surely not lost on the pitmen.

This, however, attempts to explain only one facet of the low rate of criminal activity. Another is that the coal miners were probably more law abiding than other groups. Since the overwhelming number of offences were of the petty theft variety,¹²¹ the comparative prosperity, the insulation of the village and

the clannishness would all have acted to curtail criminal behaviour. Moreover, the colliers appear to have been less violent than other segments of the working class. The relatively low drunkenness rate goes far to explain this conduct. And the progressive influence of the Methodist Churches would seem to have had a civilizing effect on the majority of the collier people.

Coal Miners and Crime

1. For examples of this sentiment see The Times, 8 January 1842; Parliamentary Papers, 1847, XVI (844), 420. Report of the Coal Mines Commissioner.
2. See Appendix "C".
3. P.P., 1852-53, XXXVI (603), 115. Select Committee on the Police, evidence of G.F. White.
4. C.W. Vane, [Marquis of Londonderry], A Letter to Lord Ashley, M.P. on the Mines and Collieries Bill (London, 1842), p. 86.
5. See chapter entitled "The Court and the Common People: Law and Procedure".
6. See chapter entitled "The Introduction and Development of the Durham County Constabulary".
7. P.P., 1841, Sess. 2, II (52), 1. 1841 Census returns; ibid., 1851, XLII (1339), 103. 1851 Census returns; ibid., 1861, L (2846), 860. 1861 Census returns; for a breakdown of the population by parish and surrounding area see ibid., 1841, Sess. 2, II (52), 300; ibid., 1861, L (2846), 872. There is some question as to the precise population figure for Durham in 1841. On page 18 of this thesis, Wemyss (in 1848) cited the total as 206,449. On page 76, the Prison Inspector (in 1854) claimed it was approximately 240,000. How these men arrived at these numbers is uncertain and I accordingly chose to use the Parliamentary returns in this chapter. In all probability, the Wemyss and Kincaid returns reflect the influences of the 1844 Detached Parts of Counties Act which removed 64,369 acres from Durham to the jurisdictions of Northumberland and Yorkshire. See T. Fordyce, Local Records; or, Historical Register of Remarkable Events (4 vols.; Newcastle-Upon-Tyne, 1867), III, pp. 188-189.
8. This is drawn from the census returns for 1841, 1851 and 1861.
9. D.J. Rowe, "The Economy of the North-East in the Nineteenth Century: A Survey", Northern History VII (1972), 73-88; N. McCord and D.J. Rowe, "Industrialization and Urban Growth in North-East England", International Review of Social History XXII (1977), 30-64; A.E. Smailes, North England (2nd. ed.; London, 1968), pp. 172-174; J.W. House, North-Eastern England (Newcastle Upon Tyne, 1954), pp. 56-62; A. Redford, Labour Migration in England 1800-1850 (2nd. ed.; Manchester, 1964), pp. 57-58, 175-176; I. Leister, The Sea Coal Mine and the Durham Miner (Durham, 1974), pp. 46-48.

10. P.P., 1842, XVI (381), 123. Children's Employment Commission. Report of Sub Commissioner James Mitchell.
11. Parliamentary Debates (1849), 3rd. ser., vol. CIII at col. 1043.
12. P.P., 1842, XVI (381), 151. Report of Mitchell.
13. Ibid., p. 156.
14. Ibid., p. 524. Report of Sub Commissioner John Roby Leifchild.
15. Ibid., p. 571.
16. Ibid., 1846, XXIV (737), 394. Report of Coal Mines Commissioner.
17. M. Dunn, View of the Coal Trade of the North of England (Newcastle Upon Tyne, 1844), p. 227 citing Newcastle Journal 4 May 1844.
18. House, North-Eastern England, p.59.
19. Ibid., p. 57.
20. Dunn, View of the Coal Trade, p. 227. See also P.P., 1846, XXIV (737), 394. Report of Coal Mines Commission.
21. Ibid., 1842, XVI (381), 736. Children's Employment Commission. Evidence of J.W. Day.
22. Ibid., p. 143.
23. An abundance of material is available on coal operations; a sample includes G. Parkinson, True Stories of Durham Pit-Life (2nd. ed.; London, 1912); R.L. Galloway, Annals of Coal Mining and the Coal Trade (2 vols.; 2nd. ed.; Hertford, 1969), reprint of 1904 ed., _____, A History of Coal Mining in Great Britain (Devon, 1969), reprint of 1882 ed.; W. Fordyce, A History of Coal, Coke, Coal Fields, Iron, its Ores, and Processes of Manufacture (London, 1860); F. Atkinson, The Great Northern Coalfield, 1700-1900 (Guisborough, 1966); P.A. Grant, The Coalmines of Durham City (Durham, 1973).
24. P.P., 1842, XVI (381), 153. Report of Mitchell. See also Redford, Labour Migration, p. 57.
25. For expressions of this sentiment see P.P., 1847, XVI (844), 420; Ibid., 1849, XXII (1109), 400. Reports of Coal Mines Commissioner.
26. Ibid., 1856, XXXIII (2061), 717. Report of Prison Inspector.

27. Quarter Sessions Order Books, Durham County Record Office, Q/S/OB 27, Chaplain's Report, 18 October 1852. See also Anon., [E. Chadwick], "Preventative Police", London Review, I (1829), 261.
28. P.P., 1837-38, XXI (120), 302. Report of Prison Inspector.
29. Ibid., 1846, XX (740), 463.
30. Londonderry, A Letter, p. 89.
31. Anon., "The Manufacturing Poor", Fraser's Magazine, XXXVII (January, 1848), 9, reprinted in J.M. Goldstrom, (ed.), The Working Classes in the Victorian Age (5 vols.; Germany, 1973), III. Chadwick denied this connection in "Preventative Police", p. 262-263.
32. P.P., 1842, XVI (381), 660. Children's Employment Commission. Evidence of George Elliot.
33. Ibid., p. 541 evidence.
34. Ibid., p. 157. Evidence of Edward Potter.
35. Ibid., p. 151. Report of Mitchell.
36. Ibid., p. 179 evidence.
37. Ibid., p. 160. Evidence of An Eminent Engineer".
38. Ibid., p. 162. The Rechabite temperance club had 100 members and inflicted fines for possession of liquor. On the fourth fine, the individual was expelled from the society. In addition to this, the teetotalers claimed 300 pledged members. For the testimony of a teetotaler see Ibid., p. 171. Evidence of W. Wilke.
39. Ibid., p. 158. Evidence of J. Wood: "Drinking beer is the chief frailty, not much spirits".
40. Ibid., p. 163. See also Ibid., p. 166. Evidence of Joseph Dawson. A beer shop owner himself, it is not surprising that Dawson claimed that very little drinking was done by the colliers. It would have tarnished the already spotty public image of the beer-shop: "At a fortnight's end, when the men are paid many of them take a few pints. A pint or two does them good, which induces them to take more sometimes. But many drink only water at all other times".
41. Ibid., 1846, XXIV (737), 403. Report of Coal Mines Commissioner.
42. Ibid., p. 402. Evidence of W. Bailey

43. Sessions Books, Chaplain's Report, 15 October 1849, 14 October 1850.
44. Hamilton mentions this connection three times. Ibid., 15 October 1849, 14 October 1850, 18 October 1852.
45. The Chaplain claimed: "The root of the evil lies in permitting Beer to be consumed on the [Beer-shop] premises. No one wishes to prevent the industrious Labourer or Artizan from enjoying his glass of Beer if he can afford it but let him do so in his own house where his family are around him and where natural affection will prevent such selfish indulgence as will end in the ruin of his wife and children". Report, 14 October 1850. For an analysis of the efforts to have alcohol consumed at home and the efforts to promote the dwelling as a place of recreation see B. Harrison, Drink and the Victorians, (London, 1971) pp. 319 et. seq.
46. Colliers were never singled out in Hamilton's vignettes on the links between drink and crime.
47. Clay violently deplored drink in all its forms. W.L. Clay, The Prison Chaplain: A Memoir of the Rev. John Clay, B.D. (Cambridge, 1861), p. 510, 519, 554.
48. P.P., 1837-38, XXXI (120), 302. Report of the Prison Inspector.
49. Londonderry, A Letter, pp. 105-106.
50. Sessions Books, Chaplain's Report, 18 October 1852.
51. Ibid. For the results of such tests on the inmates of Preston Gaol, see Clay, Prison Chaplain, p. 551.
52. Sessions Books, Chaplain's Report, 13 October 1851.
53. Quarter Sessions Order Books, Chief Constable's Report,
54. Clay, Prison Chaplain, p. 551.
55. Sessions Books, Chief Constable's Report, 30 October 1845. See also chapter entitled "The Introduction and Development of the Durham County Constabulary".
56. Ibid., Chaplain's Report, 13 October 1851.
57. Ibid.
58. For attempts by the police to control working class recreations see R.D. Storch, "The Plague of Blue Locusts. Police Reform and Popular Resistance in Northern England, 1840-1857", International Review of Social History, XX (1975), 61-90. See also P.P., 1842, XVI (381), 159 for navvies gambling on Sundays and Ibid., p. 140 in which a twenty year old spent his Sabbath either "lying in bed or about home" or pre-occupied "much less innocently".

59. P.P., 1842, XVI (381), 728-729.
60. Sessions Books, Chaplain's Report, 18 October 1852.
61. P.P., 1842, XVI (381), 17. Report of Mitchell.
62. Ibid., p. 171. Evidence of John Otterson.
63. Ibid., p. 137.
64. Ibid., p. 32.
65. Sessions Books, Chaplain's Report, 18 October 1852.
66. Supra p. 31.
67. Sessions Books, Chaplain's Report, 13 October 1849. Of the remaining 7, 5 were returned to their parents, 1 was apprenticed to a coachsmith and 1 became a "gentleman's servant".
68. Ibid., 18 October 1852.
69. J.J. Tobias, Crime and Industrial Society in the Nineteenth Century (London, 1967), Introduction; D. Philips, Crime and Authority in Victorian England (London, 1977), pp. 147-168. Tobias claims that prisoners would often change 'occupations' to secure easier labour within gaol. It is at best doubtful that listing yourself as a collier would aid in securing easier or harder tasks to perform. It didn't seem to make much difference what your former trade was in Durham Prison. P.P., 1849, XXVI (1034), 184. Report of the Prison Inspector of return of "ordinary" occupation of the prisoners.
70. Ibid., 1842, XVI (381), pp. 152-153. Report of Mitchell.
71. Ibid., p. 153.
72. Ibid.
73. Ibid., p. 737. Evidence of J.W. Day.
74. Londonderry, A Letter, p. 89. Supra pp. 16-17; note 30.
75. P.P., 1842, XVI (381), 627. Evidence of J.J. Taylor.
76. See chapter "The Introduction and Development of the Durham County Constabulary".
77. Only herculean efforts could obtain these figures for the whole county. It would be necessary to take each census roll for each district and add the totals. For such an analysis see G. Patterson, (ed.), Monkwearmouth Colliery in 1851 (Durham, 1977).

78. Sessions Book, Chaplain's Report, 16 October 1848.
79. For descriptions of the pit villages see the unpublished thesis of J.Y.E. Seeley, Coal Mining Villages of Northumberland and Durham: A Study of Sanitary Conditions and Social Facilities 1870-1880 (University of Newcastle Upon Tyne, 1973) M.A.; P.P., 1854, XIX (1838), 609. Report of the Coal Mines Commissioner: "The colliery villages of these two counties [Durham and Northumberland] are in general such open situations, that they are free from many of the physical disadvantages which affect the mining population of Staffordshire [i.e. proximity to large towns] and portions of the other mining districts. "For a study of 'folk-hero' bandits see E.J. Hobsbawn, Bandits (London, 1969).
80. Sessions Books, Chaplain's Report, 14 October 1850.
81. P.P., 1842, XVI (381), 529. Report of Leifchild.
82. Ibid.
83. Ibid., p. 149. Report of Mitchell.
84. Ibid., p. 527. Report of Leifchild; also ibid., p. 737. Evidence of J.W. Day: "This is not so much practiced as it used to be some years ago. . . ."
85. Ibid., p. 527. Report of Leifchild.
86. Patterson, Monkwearmouth, pp. 37-42.
87. P.P., 1842, XVI (381), 149. Report of Mitchell.
88. Ibid., p. 144.
89. Patterson, Monkwearmouth, pp. 37-41.
90. The last of these possibilities is, it is suggested, remote indeed.
91. P.P., 1846, XXIV (737), 396. Report of the Coal Mines Commissioner. "As soon as the new works are opened, and the cottages around them begin to be inhabited, or as soon as the population around old works increases, Dissenting chapels . . . spring up."
92. A modern study of Methodism and miners is R. Moore, Pit-Men, Preachers and Politics: The Effects of Methodism in a Durham Mining Community (Cambridge, 1974). Contemporary account include W.M. Patterson, Northern Primitive Methodism (London, 1909); Parkinson, Durham Pit-Life
93. P.P., 1842, XVI (381), 178. Report of Mitchell.

94. Ibid., p. 543. Report of Leifchild.
95. Ibid., 1846, XXIV (737), 390. Report of Coal Mines Commissioner.
96. Ibid.
97. Ibid., p. 405. See also A.J. Heesom, "Problems of Church Expansion in a Victorian New Town: The Londonderrys and Seaham Harbour", Northern History, XV, 1979, 138-155.
98. P., 1842, XVI (381), 527. Report of Leifchild.
99. Ibid., p. 544.
100. Ibid., p. 152. Report of Mitchell. See also Patterson, Monkwearmouth, pp. 53-55.
101. P.P., 1842, XVI (381), 152. Report of Mitchell. See also Ibid., p. 529. Report of Leifchild: "The females exercise, or are destined early to exercise, an unusual and unlimited influence over the miners; and nearly the whole of the arrangements and duties of upper-ground life are by common consent deputed to them".
102. Ibid., p. 524.
103. Ibid., 1846, XXIV (737), 389. Report of Coal Mines Commissioner.
104. Ibid., p. 390.
105. Ibid., 1842, XVI (381), 524. Report of Leifchild. The Commissioner also thought the colliers were wary of his inquiry because they believed it was the precursor of "the imposition of a tax upon their [collier's] resources."
106. Ibid., 1849, XXII (1109), 397. Report of Coal Mines Commissioner.
107. Ibid., p. 399.
108. Ibid., 1842, XVI (381), 160. Evidence of "An Eminent Engineer".
109. Ibid., 1849, XXII (1109), 403. Report of Coal Mines Commissioner.
110. Ibid., 1842, XVI (381), 152. Evidence of John Wood.
111. Ibid., 1849, XXII (1109), 403. Report of Coal Mines Commissioner.
112. Ibid., 1850, XXIII (1248), 620.
113. Ibid., p. 622.
114. Ibid., p. 620. See also Ibid., 1850, XXII (1109), 399, for the lack of interest in the company's library or visiting

lecturers; ibid., 1851, XXIII, (1406), 475, for the lead miners refusal to read and pp. 480-481 for a list of where "Infidel" and "Chartist" literature could be purchased. See also ibid., 1842, XVI (381), 160. Evidence of "An Eminent Engineer" in which the colliers stayed away from the library because "they find more amusement at bowling and at quoits, and gossiping together. . . ."

115. ibid., p. 159.
116. ibid., p. 156. Evidence of Thomas Crawford; he is supported in this belief by the Union Clerk, John Wetherall Hays, at p. 161.
117. ibid., p. 149. Report of Mitchell.
118. ibid., p. 162. Evidence of George Canney.
119. McCord and Rowe, "Industrialization and Urban Growth", p. 56.
120. Philips, Crime and Authority, pp. 285-286.
121. See Appendix "D" for a computer analysis of the Quarter Sessions Indictments from 1840 to 1855.

Conclusion

Certain general conclusions can be drawn from the available information on criminality in County Durham. It seems evident that the assumption that a pronounced increase in industrial population did not result in an equally pronounced increase in crime. This was so because too many variables were present to allow such a strict comparison. These variables or changes were active both on national and regional levels. National legislation allowed for the establishment of police forces as well as the rebuilding of prisons. Durham took advantage of these provisions over the objections of some of its citizens. The landed gentry and the ratepayers decried the introduction of a police force. Neither the proponents of 'deterrence' nor those of 'reformation' could secure philosophic control of Durham Gaol. Yet some elements remained constant throughout the period under review: namely, the criminal procedure system, and the apprehension expressed by bourgeoisie over the expanding number of workers in the County.

In many ways, this examination is a study of deterrence. In all probability, the increased efficiency of the constabulary deterred some from crime. It is also likely that the amalgamation of the regimens of 'deterrence' and 'reformation' in Durham Gaol served to decrease the number of inmates. But of the remaining variables, the dual elements of a cumbersome, costly court procedure and the insulated, exclusive nature of the pit village possibly caused the greatest impact on criminality.

Introduction to Appendix "A"

Between 1841 and 1855 the Chief Constables submitted 59 charts on criminal activity as part of the report to the Justices in Quarter Sessions. These charts were designed to show at a glance the increase or decrease in the number and type of criminal cases prosecuted by the police. The 5 divisions of 'disposition' of these cases were: the number committed for trial, the number convicted, the number discharged, the number of charges layed and the number of persons charged. The 21 categories of crime listed in these reports were: felony, assault, property damage, drunkenness, vagrancy, poaching, misdemeanour, desertion from the armed forces, murder, assault on a police constable, public house informations concerning licencing, hawking without a licence, child murder, manslaughter, distilling, maiming, arson, trespass and damage, perjury, riot and trespass. Some of these categories such as trespass and damage and simple trespass or murder and child murder might, reasonably, have been combined. The reports did not do so and therefore I retained them as separate divisions.

This data was entered into the computer and a statistical package - MIDAS - performed the mathematical analysis of this material. Of the many mathematical functions available on MIDAS, 2 operations were chosen to examine the police activities. The first was anova or one way analysis of variance which demonstrates the rate occurrence for each category of crime up to the maximum of 59. Clearly, then, the police did not prosecute a sufficient number of child murders, distillers, arsonists and others to make a graphic analysis legitimate. Accordingly, such categories

with low incidence patterns were not considered.

The second function chosen was the scatter bystrata plot. Essentially, these graphs show the incidence of each category of crime such as misdemeanour or assault plotted against the years (usually 1841 to 1855) according to the number given in the reports. Thus the first graph reveals that between 1841 and 1855 the police prosecuted and had committed for trial a minimum of 15 and a maximum of 62 cases. Each year (save 1855 which, after June, showed the influences of the Summary Conviction Act) customarily has 4 stars to indicate each quarter's return. But this is not a strict rule. Duplicates of the same report number are graphed as "2" (committed for trial, felony) or "3" (convicted of misdemeanour). A notation of "0" on the police return does not appear on the plot. It should also be noted that the vertical numbers which end in 2 or 3 decimal points (committed for trial, felony, 21.714) represents the precise mathematical division of the scale between 15 and 62.

It is evident from these plots that generally the police were becoming more proficient at prosecuting offenders as the years passed. Of the five divisions of 'disposition' illustrated by these plots, this tendency is most startling in the comparisons between the number of persons charged and the year.

Introduction to Appendix "B"

These graphs are, again, scatter plot bystrata analysis functions of the MIDAS statistical package. In effect, they measure the rate of each category's occurrence according to year. The figures on the left side vertical line show the incidence of the offence and the horizontal line indicates the year. For example, the graph for felony (FEL) indicates that the county paid costs in 141 actions in 1839, 229 in 1843, 165 in 1846, and 296 in 1852. These graphs are a result of transferring the Treasurer's Reports (see page 64 for the format) to the computer and having the statistical package - MIDAS - complete the mathematical functions. The Treasurer's categories were: Debtors, Felonies for Trial, Misdemeanours for Trial (at Assizes), Assaults, Poaching, Bastardy, Smuggling, Other Offences and Vagrants (under Summary Conviction).

Two significant points are readily apparent from these graphs. First, the County was, with some exceptions, annually increasing its payments for litigation showing expanded court room activity. Second, certain graphs (i.e. misdemeanour and assault) show the unmistakable effects of the 1844 strike.

Appendix "C"

Shewing the Occupation of Male Prisoners when Committed

	1848	%	1849	%	1850	%	1851	%	1852	%
Miners and Pitmen	246	11.8	213	11.3	226	12.4	237	12.8	226	12.6
Sailors	301	14.5	206	10.9	206	11.3	294	15.9	217	12.1
Tailors	32	1.5	23	1.2	22	1.2	20	1.1	32	1.8
Professional Men & Schoolmasters	6	.3	7	.4	2	.1	4	.2	6	.3
Labourers & no Occupation	527	25.3	548	29.0	576	31.6	508	27.5	546	30.6
Smiths & Foundrymen	84	4.0	171	9.0	101	5.5	93	5.0	93	5.2
Hawkers	17	.8	11	.6	9	.5	16	.9	12	.7
Carpenters and Shipwrights	77	3.7	70	3.7	65	3.6	53	2.9	53	2.9
Brewers and Publicans	4	.2	2	.1	1	.05	3	.2	10	.6
Masons	23	1.1	21	1.1	20	1.1	11	.6	16	.9
Weavers	53	2.5	32	1.7	28	1.5	18	1.0	16	.9
Glass Blowers	35	1.7	24	1.3	20	1.1	25	1.4	26	1.5
Soldiers	9	.4	18	.9	11	.6	6	.3	9	.5
Chimney Sweeps	11	.5	4	.2	7	.4	8	.4	9	.5
Shoemakers	36	1.7	32	1.7	26	1.4	38	2.0	42	2.4
Other trade not included in the above	189	9.1	135	7.2	108	5.9	115	6.2	83	4.6
Unknown and Children	38	1.8	17	.9	12	.7	20	1.0	12	.7
Women	395	19.0	352	18.7	385	21.0	378	20.4	379	21.2
Total	2083	99.9	1886	99.9	1825	99.95	1846	99.8	1787	100

Quarter Sessions Order Books, Durham County Record Office Q/S/OB 27, Chaplain's Report,
13 October 1852.

Introduction to Appendix "D"

The two sections of this appendix represent the indictment rolls before and after the implementation of MIDAS. Because different line printers listed the 2 sets of data, the analysis portion of the indictment rolls is found in the volume with appendices "A" & "B".

Each of the 3,095 indictments was entered into a computer file which was ultimately analysed by the MIDAS package. In their raw state, these lines of print are somewhat difficult to read. But the format is the same for all and numbers were simply substituted for variables such as the parish of residence, the crime, the plea and others. For example, line 105 represents:

1	}	line number
0		
5		
0	}	day
4		
0	}	month
1		
4	}	year
1		
0	}	crime number
2		
0	}	parish
1		
2		number of persons involved
1		occupation
0		wife co-accused
2		plea first accused
1		plea second accused
1		verdict first accused
1		verdict second accused
2		sentence type
1		previous felony conviction
3		number of particulars

I P ?	}	1 accused had a previous felony conviction (date unknown)
; H A N = I S ;	}	1 handkerchief worth 1 shilling
S H I R T = I S	}	1 shirt worth 1 shilling

Once the variables are substituted for these numbers it is known that 2 labourers from Jarrow were charged with theft of clothing, one pleaded not guilty, the other guilty to a charge of felony. Both were found guilty, one had a previous felony conviction (date unknown) and the particulars or goods stolen were 2 shillings worth of clothing. The length of their sentences, however, was not listed on the indictment.

The codes for this material are:

Crime Number

01 = Theft of money	13 = Theft of books
02 = Theft of clothes	14 = Theft of cutlery
03 = Theft of jewellery	15 = Theft of provisions
04 = Theft of tools	16 = Theft of cloth
05 = Theft of metal	17 = Theft of decorations
06 = Theft of cattle	18 = Theft of food
07 = Theft of fowl	19 = Concealing birth
08 = Theft of sewing materials	20 = Bigamy
09 = Theft of household goods	21 = Buggery
10 = Theft of coal	22 = Poaching
11 = Theft of crops	23 = Misrepresentation
12 = Theft of wood	24 = Embezzlement

- | | |
|-------------------------------|-----------------------------|
| 25 = Riot | 37 = Pit bond |
| 26 = Riot & Assault | 38 = Burglary |
| 27 = Police Constable Assault | 39 = Adulterated food |
| 28 = Promissory note | 40 = Intent to assault-rape |
| 29 = Nuisance | 41 = Assault/Wounding |
| 30 = Assault | 42 = Assault/Felony |
| 31 = Rape | 43 = Bill of Exchange |
| 32 = Break & Enter | 44 = Prison Break |
| 33 = Counterfeit | 45 = Assault Wife |
| 34 = Receiving goods | 46 = Disorderly House |
| 35 = Robbery & Assault | 47 = Theft of Mail |
| 36 = Gaming House | 99 = Unknown |

Place of Origin (Parish)

- | | |
|----------------------------|---------------------------|
| 01 = Sunderland | 35 = Stainton |
| 02 = Jarrow | 36 = Norton |
| 03 = Bishop Wearmouth | 37 = St. Helen's Auckland |
| 04 = Kelloe | 38 = Sedgefield |
| 05 = Houghton-le-Spring | 39 = Hartlepool |
| 06 = Chester-le-Street | 40 = Church Herington |
| 07 = Stockton-upon-Tees | 41 = Pitlington |
| 08 = Sedgefield | 42 = Monkheseldon |
| 09 = Monkwearmouth | 43 = Stanhope |
| 10 = St. Andrew Auckland | 44 = Wolsingham |
| 11 = St. Nicholas | 45 = Wickham |
| 12 = Greatham | 46 = Great Aycliffe |
| 13 = Hart | 47 = Merrington |
| 14 = Aycliffe | 48 = Trimdon |
| 15 = Darlington | 49 = Dalton-le-Dale |
| 16 = Boldon | 50 = Piercebridge |
| 17 = Gainford | 51 = St. Mary le Bow |
| 18 = Lanchester | 52 = Whitworth |
| 19 = Seaham | 53 = Hurworth |
| 20 = Whitburn | 54 = Castle Eden |
| 21 = Cockfield | 55 = Esh |
| 22 = Staindrop | 56 = Longnewton |
| 23 = Heighington | 57 = Houghton-le-Skerne |
| 24 = Ryton | 58 = Southwick |
| 25 = Gateshead | 59 = Auckland-upon- Tees |
| 26 = Easington | 60 = Elswick Hall |
| 27 = Winlaton | 61 = Egglecliffe |
| 28 = Bishop Middleham | 62 = Redmarshall |
| 29 = Brancepeth | 63 = Medomsley |
| 30 = Billingham | 64 = Elton |
| 31 = Middleton in Teesdale | 65 = Tanfield |
| 32 = St. Oswald | 66 = Middleton St. George |
| 33 = St. Giles | 67 = Witton-le-Wear |
| 34 = Washington | 99 = Unknown |

Occupation

Ø1 = Labourer
 Ø2 = Female (single)
 Ø4 = Wife
 Ø5 = Widow
 Ø9 = Unknown

Plea

Ø1 = Guilty
 Ø2 = Not Guilty
 Ø3 = Confeseth
 Ø4 = No Bill
 Ø5 = Non appearance
 Ø9 = Unknown

Verdict

Ø1 = Guilty
 Ø2 = Not Guilty
 Ø3 = Withdrawn
 Ø4 = No Bill
 Ø5 = No evidence
 Ø6 = Bench Warrant
 Ø9 = Unknown

Sentence Type

Ø1 = Misdemeanour
 Ø2 = Felony
 Ø3 = Larceny
 Ø9 = Unknown

In order to conserve space, it was necessary to adopt abbreviations for certain particulars. These were kept as close as possible to their actual meaning and can usually be deciphered once the context is understood. For example: 5NT means a £ 5 note, SV should be read sovereign, C indicates crown, HAMM means hammer, CL denotes cloth, STOC indicates stockings, TL means tools, PANT refers to trousers, XMAS means from one's master, XSHIP means from a ship, T7 means transportation for 7 years, 6MHL or 6 months at hard labour, +ASS means plus assault, P0501₃₅ reveals a previous felony conviction on January 5, 1835, a "+" sign at the end of the line of particulars indicates that more goods were involved than could be conveniently entered onto a single line.

The analysis of the 3,095 cases reveals some surprising results. Of the crimes themselves (4:CRIME), certain categories are definite favourites. Clearly theft of clothes, money and tools represent almost 45% of the whole. This is perhaps understandable because

these commodities were easily stolen, hidden or simply used by the 'new' owner.

It is much the same story with the parish of residence (5.PARISH). Of the 63 parishes listed in the rolls Sunderland, Bishop Wearmouth, Jarrow, Stockton-upon-Tees, Houghton-le-Spring, represent almost 45% of the total. Obviously, rural crime was not the major problem

The number involved (6.INVLD), the occupations (7.0CC), the pleas (9.V9,10.V10) and the verdicts (18.V18,19.V19) might profitably be read as a single unit. It is evident that most of the indictments (97.0%) concerned one or two people, that the ratio of men (76.7%) to women (23.7%) (7.0CC) was roughly the same as the figure given by Philips (p. 148). In addition to these, most people pleaded not guilty but were found guilty of their offence.

It is worth noting that 45 cases involved the husband and wife (8.WIFE) acting together and significantly, over 10% or 332 of the total number of actions (28.PFC) concerned persons who had previous felony convictions. Finally, the sentence types (27.SENT) indicate that the vast majority of the cases for the 15 years were of the less serious larceny and felony variety.

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