The implications of judicial utterances: an examination of the legal basis of murder investigations (1919-1939)

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Abstract

Murder investigation had been a feature of British policing for centuries but by the inter-war period, the legal justification for its operating practices was being called into question. Police responsibility had previously been restricted to the arrest of suspected offenders and placing them before the courts. Now, political, social and legal attention was being paid to the procedural treatment of arrested people and a partial recognition of a new concept of investigation was beginning to emerge. The law governing this area was unclear and attempts by the courts to informally clarify the position was dismissed as mere judicial utterances. The continuing confusion led the police to adopt inconsistent practices but socio-political opinion argued that there were apparent breaches and circumventions of the existing guidance but which attracted little criticism from the courts. There existed a fundamental disagreement between parliament, the Home Office, the police and the courts about the nature of an investigation. No legislation was introduced to clarify the position. This was caused partly by a lack of understanding of the criminal investigation process and a lack of recognition that the police had developed into a more meaningful investigative body. This position of an unstable and ambiguous legal landscape was exacerbated by legislation which mandated that the primary responsibility for the investigation of murder remained with the historic office of coroner. A duality of process existed where suspected offenders appeared both at an inquest and magistrates' proceedings. This led to an inefficient police investigative process and one where the integrity of evidence was being compromised. The combined position of an unstable investigative framework, and an outdated attitude towards which body had primacy in murder

investigations, created a dysfunctional legal environment which did not allow inter-war police to lawfully and effectively perform its role.

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Table of Abbreviations

(BUF) British Union of Fascists

(MEPO) Metropolitan Police

(RCPPP) Royal Commission on Police Powers and Procedure

(TNA) The National Archives

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Agnew v Jobson (1877) 13 Cox CC 625, 42 JP 424, 47 LJMC 67

Alexander (1913) 9 WLUK 6, 9 CAR 139, 109 LT 745

Baldry (1852) 16 JP 276, 2 Den 430, 169 ER 560

Beard (1920) AC 479

Bessell v Wilson (1853) 17 JP 567, 1 E & B 489, 118 ER 518

Best (1909) I KB 692

Booth and Jones (1910) 5 CA R 177

Brackenbury (1903) 17 Cox CC 628

Brown (1976) 12 WLUK 80, 64 Cr App R 231

Callis v Gunn (1964) 1 QB 495, 3 WLR 931, 3 All ER 677, 10 WLUK 40, 48 CAR 36

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Coroners Act 1892 (55 & 56 Vic c 56)

Coroners' (Amendment) Act 1926 (16 & 17 Geo 5 c 59)

County and Borough Police Act 1856 (19 & 20 Vic c 69)

County Coroners Act 1860 (23 & 24 Vic c 116)

County Police Act 1839 (2 & 3 Vic c 93)

Criminal Justice Act 1925 (15 & 16 Geo 5 c 86)

Criminal Law Act 1967

Criminal Law Act 1977

Defence of the Realm Act 1914 (4 & 5 Geo 5 c 29)

Evidence Act 1851 (14 & 15 Vic c 99)

Forgery Act 1913 (3 & 4 Geo 5 c 27)

Gaming Act 1845 (8 & 9 Vic c 109)

Incitement to Disaffection Act 1934 c.56 (24 & 25 Geo 5 c 56)

Indictable Offences Act 1848 (11 & 12 Vic c 42)

Infanticide Act 1922 (12 & 13 Geo 5 c 18)

Infanticide Act 1938 (1 & 2 Geo 6 c 36)

Larceny Act 1916 (6 & 7 Geo 5 c 50)

Licensing Act 1902 (2 Edw 7 c 28)

Licensing (Consolidation) Act 1910 (10 Edw 7 & 1 Geo 5 c 24)

Lincolnshire Coroners Act 1899 (62 & 63 c 48)

Metropolitan Police Act 1829 (10 Geo 4 c 44)

Metropolitan Police Act 1839 (2 & 3 Vic c 47)

Middlesex and Surrey Justices Act 1792 (32 Geo 3 c 53)

Municipal Corporations Act 1882 (45 & 46 Vic c 50)

Perjury Act 1911 (1 & 2 Geo 5 c 6)

Police Act 1919 (9 & 10 Geo 5 c 46)

Police and Criminal Evidence Act 1984

Prevention of Corruption Act 1906 (6 Edw 7 c 34)

Prevention of Corruption Act 1916 (6 and 7 Geo 5 c 64)

Prosecution of Offences Act 1879 (42 & 43 Vic c 22)

Public Bodies Corrupt Practices Act 1898 (52 & 53 Vic c 69)

Public Order Act 1936 (1 Edw 8 & Geo 6 c 6)

Regulation of Investigatory Powers Act 2000

Town Police Clauses Act 1847 (10 & 11 Vic c 89)

Vagrancy Act 1898 (61 & 62 Vic c 39)

Yorkshire Coroners Act 1897 (60 & 61 Vic c 39)

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Coroners Bill (14 Geo 5 1923)

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Chapter 1: Introduction and the setting of context

The research carried out in this thesis stems from a series of unanswered questions that lingered after writing my first book.[1] It was an examination of a murder investigation in 1919 which resulted in me believing that the police behaviours were not in accordance with the established rules. This led me to try and clarify my understanding of the law at that time and its associated police procedures. I am a former police officer responsible for the investigation of many cases of murder and I decided to develop a greater understanding of how police investigations operated a century ago. This thesis is the result of that research.

It is a multi-layered analysis of inter-war society and specifically examines the context and the operational realities of police murder investigations throughout the period. It adopts a dual approach by examining the subject from historical and legal perspectives. The historical approach provides an important context to the period. It explains the roots of inter-war socio-political thinking, attitudes towards the police generally and more specifically, contemporary thinking about the need for police powers to carry out the function of murder investigations. The legal element examines the details of the operative law at the time, why that law was in existence and how it was applied to the practical realities of policing. The broad research question is to establish whether the law of the period allowed the police to lawfully and effectively investigate murder and whether any perceived deficiencies in it, were a result of socio-political resistance or oversight.

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[1] Paul Stickler, *The Murder that Defeated Whitechapel's Sherlock Holmes: At Mrs Ridgley's Corner* (Pen & Sword 2018).

The thesis examines the generally recognised position in the literature that the police were the de facto body which carried out murder investigations and argues that legally, and practically this position was not as clear as has been previously assumed. The term 'investigation' is used liberally throughout existing literature but this thesis brings further clarity to its meaning. It focuses on the concept and the operational reality of a criminal investigation, its constituent elements and the extent to which society, parliament, government and the courts recognised the police function of conducting each of the discrete aspects of the process. The thesis does not suggest that the police were not conducting investigations but puts forward a new argument that the importance and significance of the critical, evidence-gathering element was not fully understood by parliament, government departments or the courts. It was a developing concept which had tacitly emerged in the years leading up to the inter-war period. Effectively, the process was not recognised in practice or law. It further argues that the police were not regarded by the courts as being required to perform this evidence-gathering role. The research examines the effect of this lack of recognition, its exclusion from any legislative regulation and the significant impact it had on police operational practices.

The historical development of police investigative responsibilities is examined, and it is argued in this thesis, that the inter-war period may be described as the birth of the concept of an investigation with an increasing recognition by society and parliament of its evidential importance. However, neither the courts nor the

police were actively seeking change and for this reason it presents as a particularly interesting period in police history.

The research has identified the relevant legislative, common law and governmental guidance relating to the practicalities of police procedures and has developed an assumed investigative standard by which the police were expected to comply. This assumed standard is created by this thesis and not one identified by contemporaries. Analysis of this guidance demonstrates that it was contradictory in its meaning and operationally confusing. Informal advice issued by the courts was critically described as mere 'judicial utterances'.[2] This led to multiple interpretations of the guidance by the police, the Home Office, parliament and the courts. The focus of the research has been to explain why this ambiguous position existed and how that translated into police practice.

The research also investigates the impact of other legislation which adversely affected the ability of the police to investigate murder. The role of the coroner is examined and the thesis analyses the effect that legislation governing the function of the office had on murder investigations. Legally, it remained the primary responsibility of the coroner's office to investigate all deaths and legislation failed to recognise the increasing expertise and competence of the police in this area of investigation. Legislation was introduced during the period which partially recognised this dilemma, but analysis of police and coroners' files demonstrates that a duality of purpose existed between the two bodies; both had

[2] Justice of the Peace and Local Government Review, 17 November 1928 page 743.

an investigative role to play and the thesis examines how one adversely affected the other. The net effect was that the police were further inhibited in their ability to effectively investigate.

Much academic and historical treatment has been given to policing activities since the introduction of the Metropolitan Police in 1829 but significantly less attention has been paid to the inter-war period. Scant attention has been specifically given to the legal basis upon which police operational practices were based and this presents as a significant omission in the understanding and explanation of contemporary and successive police behaviours. It is argued in this thesis that the conduct of murder investigations throughout the inter-war period was governed by the confusing and ambiguous landscape, and the police were effectively given licence to self-interpret extant law and shape their procedures accordingly. This resulted in a variety of investigative practices being adopted with seemingly no consequences when dubious practices were identified. The thesis argues that mandating an explicit set of rules, enshrined in legislation, would have provided the best opportunity to regulate police practices that would have withstood public scrutiny. A more coherent and transparent set of rules could have been established by which the police could have more easily been held to account and further safeguards put in place to protect citizens from unnecessary State interference.

The thesis provides a snapshot of inter-war police practices and offers a new insight into the period. Its primary purpose is to analyse and explain how procedural and evidential law of the period operated. Its effect, though, is to

suggest an area of further research, that the socio-political dialogue of the inter-war years has a direct correlation with the criminal justice narrative of the 1980s, with its consequent introduction of the Police and Criminal Evidence Act 1984. Fundamentally, the concerns of the inter-war period did not disappear.

Section 1 of this chapter provides the political and social context of the period and identifies its relevance to the research conducted in this thesis. Policing of the inter-war period cannot be understood without a good knowledge of the years which preceded it and recognising that events of the 18th and 19th centuries fundamentally shaped the activities and political thinking of the years which followed. It outlines the key historical moments which contributed to the political thinking and policing practices of the inter-war years. It is divided into two specific periods: the political landscapes before and after 1829.

Section 2 then sets out the thesis outline and provides a broad overview of each of the subsequent chapters to demonstrate the academic path taken to build the central arguments.

1.1 The political and social context of the research

1.1.1 The political landscape before 1829

There is a marked distinction between patrol policing and investigative policing. The former is concerned primarily with a visible presence and preventing crime

from happening in the first instance and the latter is principally concerned with identifying an offender after the commission of an offence.[3] This thesis examines investigative policing, specifically the investigation of murder, and it argues that how investigations were carried out, only became a major social concern during the inter-war period. Before that, emphasis had been placed on preventative policing and little attention was paid to the manner in which suspected offenders were brought before the courts. Chapter 2 acknowledges the obvious presence of police investigations in the 18th and 19th centuries but identifies that little academic attention has been paid to the legal basis of police practices during this period. The literature indicates that the police officers employed to investigate, acted under the verbal authority of a magistrate to arrest and bring suspected offenders before the courts. The individual elements of an investigation are only vaguely acknowledged and there is no reference to their legal authority. These are the elements of an investigation which only became the focus of political and social attention during the inter-war period. The literature also demonstrates that towards the end of the 18th century, concerns were being expressed about police practices.[4] The thesis argues that these concerns resurfaced at the beginning of the 20th century.

Political debates concerning the necessity for a more organised police force were frequent.[5] It is important to provide a very brief overview of those debates to

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[3] L Radzinowic, A History of the English Criminal Law and its Administration, vol 3 (Stevens 1956); Clive Emsley, The English Police: A Political and Social History (2nd edn, Longman 1991) 142-147; P Rawlings, Crime and Power: A History of Criminal Justice 1688-1988 (Addison Wesley Longman 1999) 133-5; Haia Shpayer-Makov, The Ascent of the Detective: Police Sleuths in Victorian and Edwardian England (Oxford Publishing online 2011) 13.
[4] See chapter 2.
[5] See for example Richard J Terrill, 'Politics, Reform and the Early-Nineteenth-Century Reports on the Committees on the Police of the Metropolis' (1980) 53 (3) The Police Journal 240, 242 <

provide the context for the analysis carried out in this thesis. Concerns about the State possessing too many powers arguably have their roots in 1785 when parliament debated a Bill[6] put forward by William Pitt outlining proposals to improve the existing defective laws dealing with the prevention of crime and the punishment of offenders.[7] The Bill, however, was dismissed due to concerns about the proposed centralisation of the existing police offices[8] and the disproportionate level of police powers being suggested.[9] On the latter point, it was argued that such a proposition would 'annihilate the ancient and constitutional office of the Justice of the Peace'[10] and threatened the constitutional rights of Londoners.[11] Debate also highlighted the fear Britain had of a continental style of policing and the perceived intrusive behaviour of police spies within a military structure of a national force similar to that developed in France.[12] It is these concerns that persisted and underpinned the social and

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https://0-journals-sagepub-com.serlib0 > accessed 14 October 2020; F M Dodsworth, 'The Idea of Police in Eighteenth-Century England: Discipline, Reformation, Superintendence, c. 1780-1800' (2008) 69 (4) Journal of the History of Ideas 583, 589 < www.jstor.org/stable/40208080 > accessed 4 November 2020. Also, for an understanding of the historical development of the office of constable see H B Simpson, 'The Office of Constable' (1895) 10 (40) The English Historical Review 625.

[6] A Bill for the further Prevention of Crimes and for the more Speedy Detection and Punishment of Offenders against the Peace, in the Cities of London and Westminster, the Borough of Southwark and certain Parts adjacent to them (25 Geo III 1785). See Elaine A Reynolds, *Before the Bobbies: The Night Watch and Police Reform in Metropolitan London, 1720-1830* (Macmillan Press 1998) 74.

[7] A Bill for the further Prevention of Crimes and for the more Speedy Detection and Punishment of Offenders against the Peace, in the Cities of London and Westminster, the Borough of Southwark and certain Parts adjacent to them (25 Geo III 1785) 2.

[8] Report from the Committee on the State of the Police of the Metropolis, 1 July 1816, page 11.

[9] Richard J Terrill, 'Politics, Reform and the Early-Nineteenth-Century Reports on the Committees on the Police of the Metropolis' (1980) 53 (3) The Police Journal 240, 243 < https://0-journals-sagepub-com.serlib0 > accessed 14 October 2020.

[10] JF Moylan, *Scotland Yard and the Metropolitan Police* (G P Putnam's Sons Ltd 1929) 18.

[11] Charles Reith, *The Blind Eye of History* (Faber and Faber Ltd 1952) 140.

[12] The gendarmerie in France was the heir to the Maréchaussée, a military regime which was responsible for the enforcement of law and order. The British perception of the organisation was that it remained military-based and comprised plain clothed spies intruding on the country's citizens. Charles Reith, *The Blind Eye of History* (Faber and Faber Ltd 1952) 143; Tim Newburn et al, *Handbook of Criminal Investigation* (Willan 2007) 41; Clive Emsley, *The Great British Bobby* (Quercus 2009) 33; See also [12] Third Report from the Committee on the State of the Police of the Metropolis, 5 June 1818, page 32.

political discourse throughout the 1920s and 1930s, which argued that police powers should remain restricted.

Four years later, magistrate and social reformer, Patrick Colquhoun, developed Pitt's earlier thinking and argued that policing be considered a modern science,[13] and was critical of the emphasis which had been placed on heavy punishments and any lack of rehabilitation of offenders.[14] Though the incidence of murder was all too prevalent,[15] he argued that the detection of offences made such little difference and that preventing crime in the first place must be the way ahead.[16] Despite this position statement, two further Select Committees continued to reject the proposals for a centralised police force.[17] This thesis argues, though, that this preventative principle remained through to the turn of the twentieth century and was a contribution to investigative practices attracting little social and political attention: the prevention of crime retained a central position in policing objectives.

Home Secretary Robert Peel urged parliament to again review its approach to policing and once more argued that prevention of crime was the strategy to be employed rather than the punishment of offenders.[18] The matter, however, was

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[13] A Treatise on the Police of the Metropolis (6th edn, 1800) Preface. His original publication was in 1796.
[14] A Treatise on the Police of the Metropolis (6th edn, 1800) page 4. Colquhoun pointed out that there were 160 offences which carried the death penalty and was critical of public hangings. See also Clive Emsley, *The English Police: A Political and Social History* (2nd edn, Longman 1991) 21; Clive Emsley, *Theories and Origins of the Modern Police* (Ashgate 2011) xii.
[15] A Treatise on the Police of the Metropolis (6th edn, 1800) p.25; See also, JF Moylan, *Scotland Yard and the Metropolitan Police* (G P Putnam's Sons Ltd 1929) 21.
[16] A Treatise on the Police of the Metropolis (6th edn, 1800), page12.
[17] Third Report from the Committee on the State of the Police of the Metropolis, 5 June 1818, page 22; Report from the Select Committee on the Police of the Metropolis, 17 June 1822, pages 8-9.
[18] HC Deb 28 February 1828, vol 18, col 813. See Elaine A Reynolds, *Before the Bobbies: The Night Watch and Police Reform in Metropolitan London, 1720-1830* (Macmillan Press 1998) 149.

again dismissed until 1828, when a further Select Committee concluded that the current system of policing was defective and the time for change had arrived.[19] The Metropolitan Police was established in June 1829 with its primary purpose being the prevention of crime.[20]

It is important to re-emphasise that the pre-1829 dialogue was set against a mixed political landscape of a desire to address street disorder and also considerable concerns about affording the police too many powers. This position may be directly translated to the arguments put forward in the thesis that inter-war politicians wanted to ensure that murder investigations would be solved but were reluctant to introduce new powers to facilitate it. This particular aspect is examined in the thesis through the specific areas of arrest, search, questioning and the charging of suspected offenders.

1.1.2 The political landscape after 1829

The inception of Peel's new police was set against a backcloth of rising property crime. Emphasis was placed on prevention, detection was not a priority and did not feature in any of its guiding principles.[21] The police role fundamentally concerned the enforcement of urban order with an array of responsibilities

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[19] Report from the Select Committee on the Police of the Metropolis, 11 July 1828, page 22.
[20] Metropolitan Police Act 1829 (10 Geo 4 c 44). L Radzinowic, *A History of the English Criminal Law and its Administration, vol 3* (Stevens 1956); Clive Emsley, *The English Police: A Political and Social History* (2nd edn, Longman 1991) 142-147; P Rawlings, *Crime and Power: A History of Criminal Justice 1688-1988* (Addison Wesley Longman 1999) 133-5; Haia Shpayer-Makov, *The Ascent of the Detective: Police Sleuths in Victorian and Edwardian England (*Oxford Publishing online 2011) 13.
[21] See Charles Reith, *The Blind Eye of History* (Faber and Faber Ltd 1952) 154-167.

ranging from dealing with drunkenness, street sanitation enforcement and the 'moving on' of hawkers, beggars and prostitutes.[22] David Churchill pointed out that the broad role of the new police in regulating the city, suggests a common governmental purpose, linking notions of 'police' and 'improvement.'[23]

Emphasis was firmly placed on prevention but the police were empowered with broad-sweeping powers of arrest, including the power to force entry into dwellings if an immediate arrest was necessary.[24] Throughout the nineteenth century, scarcely a session of parliament ended without further duties being placed upon the police, a result of the increasing influence and size of the Criminal Department of the Home Office which was designed to develop policies to tackle urban behaviour.[25]

However, only four years after its inception, concerns about police powers surfaced once more when charges were made that the Metropolitan Police had

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[22] Haia Shpayer-Makov, *The Ascent of the Detective: Police Sleuths in Victorian and Edwardian England* (Oxford Publishing online 2011) 58. Numerous Acts of Parliament were introduced to tackle the urban street scene. For example: Beerhouse Act 1834 (4 & 5 Will 4 c 85); Metropolitan Police Act 1839 (2 & 3 Vic c 47 s 31); Town Police Clauses Act 1847 (10 & 11 Vic c 89). See also Geoffrey Best, *Mid-Victorian Britain 1851-1875* (Fontana 1971) 251.
[23] David Churchill, Crime Control in Everyday Life in the Victorian City: The Police and the Public (Oxford Online 2018) 59.
[24] This was a power provided to allow the police to arrest for offences committed rather than any power to investigate and determine the identity of the offender. David Churchill, *Crime Control in Everyday Life in the Victorian City: The Police and the Public* (Oxford Online 2018) 60-61. See, for example: Licensing (Consolidation) Act 1910, s 81 (10 Edw 7 & 1 Geo 5 c 24 s 81). Search warrants could also be issued under various statutes. See for example: Licensing Act 1902, s 29 (2 Edw 7 c 28 s 29); Larceny Act 1916, s 42 (6 & 7 Geo 5 c 50 s 42); Gaming Act 1845, s 3 (8 & 9 Vic c 109 s 3); Vagrancy Act 1898, s 1 (61 & 62 Vic c 39 s 1); Licensing (Consolidation) Act 1910, s 82 (10 Edw 7 & 1 Geo 5 c 24 s 82); Forgery Act 1913, s 16 (3 & 4 Geo 5 c 27 s 16).
[25] Stefan Petrow, Policing Morals: The Metropolitan Police and the Home Office 1870-1914 (Oxford University Press 1994) 32.

been acting as spies.[26] An 1834 Select Committee dismissed the concerns.[27] It stated that the new police, which was described as ‘the most valuable of modern institutions,’[28] had proven to be an efficient system not only in crime prevention but also in the detection of crime[29] and provided a platform for a period of consolidation. This opinion may be indicative of later thinking that police investigations appeared satisfactory and required no further legislative regulation. This thesis challenges this position.

The situation was different by the 1840s. Criticism was now levelled at the Metropolitan Police about their lack of investigative expertise.[30] Previously they had relied upon the auspices of the Bow Street Runners for this investigative measure until their demise in 1839.[31] This new criticism resulted in the setting up of a detective branch in 1842.[32] Their duties did involve the investigation of crime, including murder, but officers were predominantly used to patrol the streets in plain clothes, visit criminals in prison and familiarise themselves with their homes

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[26] Report from the Select Committee on Metropolitan Police, 16 August 1833, page 4. See the Popay scandal in Clive Emsley, *The Great British Bobby* (Quercus 2009) 57. The complaints also included matters surrounding crowd control and the expense of the new police.
[27] Report from the Select Committee on the Police of the Metropolis, 13 August 1834, page 134.
[28] Report from the Select Committee on the Police of the Metropolis, 13 August 1834, page 22.
[29] Report from the Select Committee on the Police of the Metropolis, 13 August 1834, pages 4 and 7.
[30] Haia Shpayer-Makov, *The Ascent of the Detective: Police Sleuths in Victorian and Edwardian England* (Oxford Publishing online 2011) 32; Rachael Griffin, ‘Detective Policing and the State in Nineteenth-Century England: The Detective Department of the London Metropolitan Police, 1842-1878’ (DPhil thesis, University of Western Ontario 2016) 43.
[31] Clive Emsley, The Great British Bobby (Quercus 2009) 62 and 166; John Maurice Beattie, The First English Detectives: The Bow Street Runners and the Policing of London 1750-1840 (Oxford University Press 2014) 206.
[32] Report of the Departmental Commission Appointed by the Secretary of State for the Home Department to Inquire into the State, Discipline and Organisation of the Detective Force of the Metropolitan Police 1878, page 34. See JF Moylan, *Scotland Yard and the Metropolitan Police* (G P Putnam’s Sons Ltd 1929) 95; Judith Flanders, The *Invention of Murder* (HarperPress 2011) 147; RM Morris, *‘Crime Does Not Pay’: Thinking Again About Detectives in the First Century of the Metropolitan Police* cited in Chris A Williams*, Police and Policing in the Twentieth Century* (Ashgate 2011) 165; Haia Shpayer-Makov, *The Ascent of the Detective: Police Sleuths in Victorian and Edwardian England* (Oxford Publishing online 2011) 13.

and places they frequented.[33] There was no emphasis on developing investigative skills.[34]

Detective policing was a developing concept and one that was recognised from within as something which was viewed sceptically from the outside.[35] The Metropolitan Commissioner recognised that the detective system continued to be viewed with great suspicion and was entirely foreign to the habits and feelings of the nation.[36] This was compounded by a significant corruption scandal in the 1860s which undermined public confidence[37]and resulted in a wholesale reorganisation.[38] Concerns continued, though,[39] with allegations of corruption,[40] specifically over perceived abuse of police powers. Some of this involved the aggressive treatment of witnesses to crimes; this would feature through into the inter-war period.[41] Corruption had become an issue which was not easily tackled

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[33] Report of the Departmental Commission Appointed by the Secretary of State for the Home Department to Inquire into the State, Discipline and Organisation of the Detective Force of the Metropolitan Police 1878, page 36.
[34] Clive Emsley, The English Police: A Political and Social History (2nd edn, Longman 1991) 72; Haia Shpayer-Makov, The Ascent of the Detective: Police Sleuths in Victorian and Edwardian England (Oxford Publishing online 2011) 34.
[35] Report of the Commissioner of Police of the Metropolis 1870, page 3. See also Haia Shpayer-Makov, 'From Menace to Celebrity: the English Police Detective and the Press, c.1842-1914' (2010) 83 Historical Research 672, 673.
[36] Report of the Commissioner of Police of the Metropolis 1870, page3. Clive Emsley, *The English Police: A Political and Social History* (2nd edn, Longman 1991) 72.
[37] JF Moylan, *Scotland Yard and the Metropolitan Police* (G P Putnam's Sons Ltd 1929) 155.
[38] Report of the Departmental Commission Appointed by the Secretary of State for the Home Department to Inquire into the State, Discipline and Organisation of the Detective Force of the Metropolitan Police 1878, page 50.
[39] See Report of the Departmental Commission Appointed by the Secretary of State for the Home Department to Inquire into the State, Discipline and Organisation of the Detective Force of the Metropolitan Police 1878.
[40] Corruption was defined in law as a person in public office receiving or agreeing to receive any gift or reward as an inducement to act in a certain way. It was also an offence to make false statements in any proceedings. Public Bodies Corrupt Practices Act 1898 (52 & 53 Vic c 69); Prevention of Corruption Act 1906 (6 Edw 7 c 34); Prevention. Of Corruption Act 1916 (6 and 7 Geo 5 c 64); Perjury Act 1911 (1 & 2 Geo 5 c 6).
[41] Most literature cites the arrest of Sergeant Goddard, Major Shepperd and the mistreatment by police of female witnesses, Irene Savidge and Helen Adele. See for example Andrew Boyle, *Trenchard* (Collins 1962) 585, 603 and 608-609; AJP Taylor, *English History 1914-1945* (Clarendon Press 1965) 261; Jerry White, 'Police and People in London in the 1930s' (1983)

and was considered rife within the CID,[42] particularly in the fabrication of evidence. There were concerns also about the unlawful use of force.[43] However, instances of corruption were routinely dismissed as the actions of a small minority, despite another high-profile case in 1928 which suggested that it was most likely not in itself an isolated incident.[44] Concerns about corruption had held back the development of the notion of a detective with an investigative mandate.[45] This is a key point and is examined in greater detail in chapters 4 and 6 as to how they translated to the inter-war period. It will be argued that the actions of police officers may be described as a variation on the theme of noble cause corruption.[46] The thesis will argue that a practice of selective application of the laws was

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11(2) Oral History and Labour History 34; Williams J, *Byng of Vimy: General and Governor General* (Pen & Sword 1992) 342; Weinberger B, *The Best Police in the World: An Oral History of English Policing* (Scolar Press 1995) 16 and 67; Tim Newburn et al, *Handbook of Criminal Investigation* (Cullompton 2007) 27; Clive Emsley, *The Great British Bobby* (Quercus 2009) 203-207; ; Stefan Slater, 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 556-557; John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 78 < www.jstor.org/stable/42708852 > accessed 8 November 2020; Heather Shore, 'Constable dances with instructress: the police and the Queen of nightclubs in inter-war London' (2013) 38 (2) Social History 183, 185-186 and 202; Clive Emsley, *The English Police: A Political and Social History* (2nd ed, Routledge 2014) 144; John Carter Wood, 'The Constables and the 'Garage Girl'' (2014) 20 (4) Media History 384, 385; John Carter Wood, Watching the Detectives (and the Constables): Fearing the Police in the 1920s in Sian Nicholas and Tom O'Malley, *Moral Panics, Social Fears and the Media: Historical Perspectives* (Routledge 2018) 147-161.

[42] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 52-53.

[43] D Ascoli, The Queen's Peace: The Origins and Development of the Metropolitan Police 1829-1979 (Hamish Hamilton 1979) 93; B Weinberger, Best Police in the World: Oral History of English Policing From the 1930s to the 1960s (Scolar Press 1995) 75-89.

[44] The Goddard incident related to a police officer sent to prison for conspiring to pervert the course of justice. Heather Shore, 'Constable dances with instructress: The police and the Queen of Nightclubs in inter-war London' (2013) 38 (2) Social History 186 < https://www.tandfonline.com/loi/rshi20 > accessed 25 October 2020; Clive Emsley, *The Great British Bobby* (Quercus 2009) 203-7; Neil Davie, 'Law Enforcement: Policies and Perspectives' in David Nash and Ann-Marie Kilday, *Murder and Mayhem: Crime in 20th Century Britain* (Palgrave 2018) 276.

[45] Clive Emsley, *The Great British Bobby* (Quercus 2009) 59-60.

[46] A concept that comprises actions carried out by individuals for no personal gain but with a misguided idea that it contributes to the greater good. Strict interpretation of the law inhibited justice and non-observance of the rules was morally acceptable. For a critique of police corruption see Graeme McLagan, *Bent Coppers: The Inside Story of Scotland Yard's Battle Against Police Corruption* (Orion 2007); Maurice Punch, *Police Corruption: Exploring Police Deviance and Crime* (Willan 2009).

apparent in order to bring an offender to justice and this was seen as a morally acceptable position.

A new investigative approach was adopted under the new leadership of Howard Vincent.[47] He restructured the existing department, as he realised that many errors were being committed by officers, due to their ignorance of the law. In 1881 he compiled an instruction booklet[48] which would be reissued on numerous occasions until finally being replaced by an alternative in 1929.[49] The booklet was designed to be a one-stop legal book for day-to-day maintenance of the urban order and dealing with crime. It was, in part, a scenario-based manual which gave guidance to constables on how to deal with incidents but appears to have lacked detail on the legal authority of police powers. Two entries relating specifically to murder gave direction to the constable in matters of scene preservation but no guidance on investigative measures.[50] This appears to be the extent of the powers and rules relating to murder investigations at that time. A later publication[51] contained far more legal substance and became the preferred instruction manual. It is significant that Williams argues that, given the bureaucratic nature of the police service, there is no indication that the assemblage of this type of tacit knowledge was ever written down.[52] He further argues that the way that police should respond to unforeseen situations could

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[47] TA Critchley, *A History of Police in England and Wales* (Constable 1967) 160; Clive Emsley, *The Great British Bobby* (Quercus 2009) 166.
[48] 'A Police Code and General Manual of the Criminal Law for the British Empire.
[49] Cecil Moriarty, '*Police Law'* (Butterworth 1929).
[50] Howard Vincent, *Police Code* (Butterworth 1889) 59 and 117-9.
[51] Moriarty's Police Law.
[52] Chris A Williams, Police Control Systems in Britain, 1775-1975 (Manchester University Press 2014) 89.

never be programmed into manuals or standing orders.[53] He cites an example of an instruction manual where the suggested course of action was likely to contradict case law.[54] However, the existence of these manual indicates that greater emphasis needed to be placed on police procedure rather than simple enforcement.

Towards the end of the nineteenth century, police commissioners remained concerned that corruption was concomitant with specialist departments.[55] Newspapers alleged that the CID was thoroughly adept at lying and being deceitful,[56] Corruption, Petrow argues, was unavoidable[57] as arrests and convictions became the measure of a department's success, and the methods employed in pursuing these goals became of secondary importance to the outcome. An Assistant Commissioner commented that some of the methods employed became 'utterly unlawful.'[58] The suggestion that police practices had become unwarranted is a central characteristic of this thesis.

It is significant to identify that in 1873, the Commissioner had secured the services of a legal adviser[59] to advise on complicated matters. This indicates that

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[53] Chris A Williams, Police Control Systems in Britain, 1775-1975 (Manchester University Press 2014) 72.
[54] This was advice concerning how to determine whether someone was in possession of stolen goods. See Chris A Williams, Police Control Systems in Britain, 1775-1975 (Manchester University Press 2014) 72.
[55] See the 1880 Thomas Titley agent provocateur case in Clive Emsley, *The English Police: A Political and Social History* (2nd edn, Longman 1991) 72; Clive Emsley, *The Great British Bobby* (Quercus 2009) 165.
[56] Clive Emsley, *The Great British Bobby* (Quercus 2009) 165.
[57] Stefan Petrow, Policing Morals: The Metropolitan Police and the Home Office 1870-1914 (Oxford University Press 1994) 45.
[58] Stefan Petrow, Policing Morals: The Metropolitan Police and the Home Office 1870-1914 (Oxford University Press 1994) 45.
[59] Stefan Petrow, *Policing Morals: The Metropolitan Police and the Home Office 1870-1914* (Oxford University Press 1994) 39. The office was established by the Prosecution of Offences

it was recognised that crime investigations were more than simple enforcement and that the methods of gathering evidence were important. The legality of the police investigation itself became the subject of closer scrutiny in parliament and newspapers in the early part of the twentieth century.[60] This thesis argues that this presented as the juncture where the issue of police powers became blurred and the joint positions of the police, the Home Office and the courts adopted a confusing position.[61] This paved the way for a period of legislative uncertainty and would become a tacit contributor to the issue of the efficiency of murder investigations in the inter-war period. The significance of this issue is now explained.

The disparate Forces which had grown in numbers since their mandatory introduction[62] dealt with crime matters by way of independently drafted manuals of guidance which varied between the constabularies giving broad instructions on routine policing procedures.[63] Matters of law were limited to powers of arrest and other established common-law principles, but guidance offered to police officers

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Act 1879, s 2 (42 & 43 Vic c 22 s 2) and gave power to its director to institute criminal proceedings and to give advice to chief officers of police and clerks to the justices. It was the forerunner to the Director of Public Prosecutions. Today, the DPP is the head of the Crown Prosecution Service.

[60] See for example HC Deb 19 February 1917, vol 90, col 2480; HC Deb 10 December 1906, vol 166, cols 1661-2 and 1664; Aberdeen Press and Journal 19 December 1928. See also D Ascoli, *The Queen's Peace: The Origins and Development of the Metropolitan Police 1829-1979* (Hamish Hamilton 1979) 210.

[61] Mike McConville and Luke Marsh, *The Myth of Judicial Independence* (Oxford University Press 2020) 33-53.

[62] Borough and county forces were prescribed under later legislation. See County Police Act 1839 (2 & 3 Vic c 93); County and Borough Police Act 1856 (19 & 20 Vic c 69); See also Evelyn Carmichael, *The County and Borough Police Acts 1831-1900* (William Clowes and Sons 1900) 113-129; TA Critchley, *A History of Police in England and Wales* (Constable 1967) 99.

[63] Rachael Griffin, 'Detective Policing and the State in Nineteenth-Century England: The Detective Department of the London Metropolitan Police, 1842-1878' (DPhil thesis, University of Western Ontario 2016) 96.

was, as McConville points out, 'at best, unhelpful.'[64] This particularly manifested itself over the issue of whether arrested persons should be questioned. Anything a person said to the police had always the potential to provide evidence supporting an allegation of crime, but the issue of its admissibility before the courts would be something which occupied the minds of the authorities, particularly the Home Office and the police themselves, for the first couple of decades of the new century.[65]

At its heart was the common-law principle that no-one should be compelled to incriminate themselves, but its legal authority was a source of ambiguity. As early as 1843, Lord Justice Denman had said, in response to a question asked by the Royal Commission on Criminal Law and Procedure,[66] that a prisoner shall be allowed to freely speak, and constables were wrongly interpreting this as cautioning him against this.[67] Conversely, in 1882, Sir Henry Hawkins stated that it was quite wrong for a constable to press any accused person to say anything, a maxim characterised by his conclusion that a constable 'should keep [his] eyes and ears open and [his] mouth shut.'[68] In light of this, chief constables, in their local instruction books, issued different instructions, some directing that no questions without a caution first being administered should be asked while others specifically stated that prisoners should not be cautioned.[69]

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[64] Mike McConville and Luke Marsh, *The Myth of Judicial Independence* (Oxford University Press 2020) 35.
[65] Mike McConville and Luke Marsh, *The Myth of Judicial Independence* (Oxford University Press 2020) 33-63.
[66] Seventh Report from Her Majesty's Commissioners on Criminal Law, 11 March 1843.
[67] Mike McConville and Luke Marsh, *The Myth of Judicial Independence* (Oxford University Press 2020) 36.
[68] Reproduced in Howard Vincent, *Police Code* (Butterworth 1924) xv.
[69] Reproduced in Howard Vincent, *Police Code* (Butterworth 1924) 37.

It was this confusing position which existed at the beginning of the inter-war period in which the police were expected to carry out effective and lawful murder investigations. The thesis argues that this was an impossible position, and parliament and the Home Office failed to recognise the legal and practical uncertainties. This manifested itself in inconsistencies in police practice and the thesis puts forward the argument that this could have been avoided had legislation been introduced. It also examines why no such legislation measures were taken and identifies that there were several reasons which contributed to this position. The significance of these arguments is that this was the position upon which police practice would be based in the future and would continue throughout the following decades. It was this unstable position which presented itself at the beginning of the inter-war period.

1.2 Thesis outline

This section now outlines the contents of each of the following chapters and the contribution each makes to the development of the thesis' arguments and conclusions.

The existing literature relating to the legal basis of police powers and its relationship to the practical application of the law in criminal investigations has been examined. It is important to highlight that this specific aspect has received

relatively little academic treatment.[70] The thesis has developed this aspect and in turn has generated new knowledge.

Chapter 2 initially acknowledges that there was a significant investigative element of policing before the introduction of the Metropolitan Police in 1829 in the form of the Bow Street police offices. The thesis does not examine the detailed police practices of this discrete period and the literature contains scant details of the actual procedures adopted. Its inclusion in the thesis is to demonstrate that investigative policing was a necessary part of policing, but its emphasis was lost due to overriding concerns about preventing crime from occurring in the first instance. The most significant point this part of the chapter addresses, is that there was little social or political interest in the concept and practices of investigation. This was the position which extended into the early part of the 20th century.

The relationship between the law and its practical application in criminal investigations has received little academic and historical attention. The chapter highlights areas which have previously been examined and have a direct bearing on the arguments developed in this thesis. Firstly, the Home Office was the government body required to oversee police policy, and the chapter identifies how civil servants functioned to either support or frustrate the introduction of new legislation. This is a key point developed in later chapters and it is argued that the Home Office was instrumental in blocking necessary investigative legislation.

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[70] Richard Ireland has recently argued that legal history has been, relatively, unexamined. See Richard Ireland, 'A Legal History of Legal History in England and Wales' (2022) *Acta Universitatis Lodziensis. Folia iuridica* 99 – 111.

Secondly, the appointment of the Royal Commission on Police Powers and Procedure (RCPPP) in 1928 provided the perfect opportunity to examine the law and make judgements about whether it needed amending. The thesis examines this aspect specifically and concludes that the Commission failed to understand the concept and the importance of a criminal investigation. It also failed to take advantage of its terms of reference and powers to recommend new legislation. Thirdly, attention has been paid to the meaning of the Judges' Rules introduced in 1912 which were intended as judicial guidance to the police in the arrest and questioning of suspected offenders. This goes to the heart of the thesis' analysis and is a key component of the critical elements of a criminal investigation. It was recognised that these rules were confusing and contradictory and rather than introducing clarity, only fuelled further ambiguous interpretations of them. They had no basis in law but would remain in place throughout the inter-war period. These were the rules which were critically described as 'judicial utterances', and it is the implications of these utterances which are the focus of this thesis. It is an important argument in the thesis that throughout this period, the courts took the view that the role of the police was restricted to merely arresting suspected offenders and taking them before the courts. They had no investigative role. Later academic treatment of this relationship between the law and its practical application extended throughout the 20th century, and the literature identifies that the issues relating directly to the inter-war period continued through until the 1980s.

Finally, the chapter examines the literature relating to the role of the coroner. There has been significant academic attention paid to the subject but it has

focused on its origins, terms of reference and how its function has developed over time. It is a recurring feature that the role has its roots in medieval times and had the primary responsibility for inquiring into deaths. This thesis offers a significant new argument that this impacted negatively on the police ability to carry out effective and efficient murder investigations. The coroner's office existed before the implementation of the Metropolitan Police in 1829 and the thesis argues that the developing investigative role of the police had not been recognised by either the courts or parliament; the coroner's office remained the primary body responsible for investigating murder. By the time of the inter-war period, the police service had become competent as investigators yet existing legislation retained the power for the coroner to carry out this role. This added a further layer of obstruction and contributed to a position where the law did not allow lawful and effective investigations.

Examination of earlier academic and historical treatment of the legal basis of criminal investigations has identified a gap in this area of knowledge. The thesis therefore examines two discrete perspectives of the evidential and procedural law of the period. Firstly, it analyses the operative law at that time and identifies which bodies influenced and created that position. Secondly, it demonstrates how the police interpreted that legal position and adopted certain practices during murder investigations.

Chapter 3 identifies that a qualitative research approach has been used by examining the primary source material created at the time. It is considered that this is the most appropriate means through which relevant information may be

identified and the means through which credible historical knowledge can be established. Firstly, it examines the archival material and draws reasonable and defendable inferences and secondly, it applies theoretical frameworks to the data examined, to create a deeper understanding of the actions of actors at the time and offers explanations of that behaviour.

The research question applied to the primary source material is to examine whether the procedural and evidential law of the inter-war period [1919 – 1939], through either socio-political resistance or oversight, did not allow the police to carry out lawful and effective murder investigations.

Chapter 4 outlines the theoretical frameworks which have been applied throughout the later analyses in chapters 5, 6 and 7 as well as using them in the thesis' conclusions detailed in chapter 8. The theories applied are criminal investigation, social contract, bureaucracy, legal consciousness and noble cause corruption. This is an important element of the thesis as it is designed to offer a mechanism through which an additional layer of analysis may be made rather than simply allowing inferences to stand alone. The chapter signposts the reader to how each theory relates to the initial findings within the material examined and offers explanations of behaviours identified in the analysis.

Chapter 5 presents the first level of data analysis and relies on information contained within the primary source archived material. Its importance is that it provides the basis of new knowledge presented in the thesis. It identifies that there was a mixed view about the efficiency of police murder investigations,

though overall, it was recognised that the standard of investigations was poor. Criticisms about police practice were aired and it was considered that the police were operating within an archaic legal structure and this was leading to an increase in the number of unsolved murders. The police were generally not regarded by the courts as an investigative body.

The chapter specifically analyses the role of influencers in the key components of a criminal investigation: arrest, search and the procedural treatment of suspected offenders. The influencers examined are parliament, the Home Office, the judiciary, the police and newspaper editorials. It makes specific reference to the role played by the Royal Commission on Police Powers and Procedure (RCPPP) in 1928 and 1929. The chapter argues that none of the bodies involved in the examination of police procedures fully recognised the complexities of an investigation, did not appreciate the legal ramifications of an arrest, could not agree about whether an arrested person could be questioned and was confused over whether any powers to search premises existed. The publishing of the Judges' Rules did not clarify the uncertainties in the law and no legislation was considered that may have brought clarity to the process. The RCPPP did not understand the concept of an investigation and stated that it was neither competent nor required to examine the law. There was disagreement about the interpretation of police procedures between the RCPPP, the Home Office, the judiciary and the police. The chapter argues that this confusing position was the result of no single body recognising that the police had become the competent body to investigate murder, and no department of government considered it

necessary to recommend and implement legislation. It was this unstable position within which the police were expected to operate.

The practice of implementing this legal uncertainty is examined in chapter 6 which outlines the significance and ramifications of operating within a confusing environment. It takes the unstable legal framework identified in chapter 5 and examines how that translated into police practice. The chapter initially identifies the legal definition of murder and provides an interpretation of what may be assumed to be an investigative standard. A series of case studies is used to highlight the specific compliances, breaches and circumventions of case law and guidance identified in investigations.

The chapter identifies that there was complete compliance in many of the case papers examined. This is indicative that the police were aware of the legal constraints in which they operated. It is argued, however, that this level of compliance is apparent in investigations where there was an overwhelming amount of direct evidence and the guilt of the offender was clear. Nevertheless, breaches or circumventions of the standard were routine. This includes illegal detention of suspected offenders, no caution being given to an arrested person and in some cases no caution administered at all throughout the entire investigative process. The chapter also identifies that there were compliances and breaches in the same investigation which indicates a selective use of the assumed standard of investigation. It is argued that breaches and circumventions are apparent in investigations where circumstantial evidence indicates the guilt of a particular individual but no direct evidence existed upon which to bring a

formal charge. In these cases, the police flexibly interpreted the rules to allow them to search premises and question suspected offenders.

The thesis argues that there was an additional layer of legal obstruction to the efficiency of murder investigations. Chapter 7 examines the legislation which governed the conduct of coroners and inquests and argues that the existence of this legislation and the powers it gave to coroners impeded police investigations and compromised the gathering of evidence. This is an important contribution to the existing level of knowledge which has previously escaped meaningful academic and historical attention.

The chapter examines the historical development of the coroner’s office and identifies that the duty of a coroner to investigate deaths has its roots in medieval times. That responsibility remained through to the inter-war years but without any cognisance of the development of the new police which had been established in 1829. The police were now better placed and more competent to carry out murder investigations but the legislation gave primacy to the coroner. Criticisms were levelled at the coroner’s office and it was recognised in legal and social commentary that the coroner’s function in murder investigations was now outdated. The Home Office initially rejected the calls for a reform in the legislation, but the Coroner’s (Amendment) Act introduced in 1926 partially recognised the police as the most competent body. However, the legislation allowed the coroner to continue to investigate cases of murder where no suspect had yet been arrested.

The chapter argues that before the introduction of the legislation, a duality of process existed where an arrested suspected offender would feature in both a coroner's inquiry and a police investigation which was processed through the magistrate's courts. This presented the possibility that police investigations could be compromised due to evidence being placed in the public arena before the individual was tried in the criminal courts. To a lesser degree, the duality of process continued after the introduction of the new legislation and criticism continued to be levelled against the coroner for effectively trying a person for murder without the protection of the rules which governed the admissibility of evidence in the criminal courts. A departmental committee in 1936 recognised that this presented a threat to the criminal justice system and recommended that further legislation should be introduced to remove the responsibility away from the coroner. No legislation was introduced.

The chapter's major contribution is to argue that this legislative position created an additional layer of obstruction to the police in murder investigations. The legal framework which governed investigations generally was unclear and the legislation relating to coroners made an already difficult position, even more challenging.

Finally, chapter 8 outlines the importance of the research carried out in this thesis, sets out its conclusions and outlines how it has made an original contribution to the subject area. The emphasis on policing had changed from being an organisation responsible for the prevention of crime to one which had an increasing responsibility within the conduct of its investigations. The law failed to

recognise this development and while the police were, in practice, conducting murder investigations, there was little legal and Home Office understanding of the evolving process and little recognition that the police were even required to carry out the task. Social, legal and political attention to this area began to emerge in the early part of the 20th century and the period may be seen as the birth of the concept of a criminal investigation. The administrative guidance issued was so unclear that it created an environment which allowed the police to flexibly interpret its meaning and adopt a series of behaviours which they considered to be lawful and justified. The addition of coroner's legislation added further impediments to the landscape and the thesis' overriding conclusion is that the criminal law of the inter-war period did not allow the police to conduct lawful and effective investigations due directly to government bodies failing to recognise the complexities involved.

The chapter concludes by suggesting that this research offers a basis upon which it may be argued that societal concerns about police procedures in criminal investigations today, have their roots in inter-war legal, political and police discourse. Many of the issues criticised in more recent times were debated throughout the 1920s and 1930s but no legislation was introduced to address the concerns. The inter-war dialogue may be seen as a small part of a bigger picture in the evolution of policing, which would include Royal Commission reviews and debates about the need to amend the law. Its focus would be to find a better balance between the requirement to properly investigate and the need to protect the liberty of the individual. The importance of this thesis is to argue that a much better understanding of modern police practices can be achieved through a

greater appreciation of the historical and legal chronology of events and the challenges they presented.

Chapter 2: The criminal investigation of the inter-war period: its historical, political and social context

The objective of the thesis is to examine the functionality of the law on criminal evidence and procedure during the inter-war period and to determine the extent to which it was capable of supporting lawful and effective murder investigations. It further seeks to explain the influences which shaped the development of this law and to identify those factors which were the most significant. The purpose of this chapter is to examine the literature to establish where existing research has explored the subject area and to indicate how and where this thesis has expanded upon this knowledge.

The thesis does not suggest that criminal investigations were not a characteristic of policing before the inter-war period. This important point is acknowledged but it is distinct from the arguments later set down that the concept and the realities of a criminal investigation were not recognised in practice or in law by the Home Office or the courts. Little academic attention has been paid to the legal basis of the earlier roles and behaviours of the police during the course of an investigation. The thesis specifically tackles the question of whether police practices ought to have been governed by legislation. It is later argued that an absence of suitable legislation was a source of great concern in legal, social and political arenas but no action was taken to address the anomaly.

The chapter begins by outlining how detective work and investigations were a feature before the inception of the New Police in 1829, throughout the entire Victorian period and into the twentieth century. The literature reveals, however, that the investigation phase between an initial arrest and a suspected offender's appearance before the courts was not recognised as an important aspect. The thesis examines this conceptual element of an investigation and introduces a new and innovative layer of knowledge to the subject area by outlining the integral elements of an investigation and its evidential importance in the investigation of crime. It develops the relationship between the law and criminal investigations. It is a factor which today is expected and accepted in modern policing but its importance was not recognised throughout the 1920s and 1930s.

The chapter then analyses the extent to which the literature has examined the critical link between investigations and the criminal law. This demonstrates that the area has received little attention and it has not explored the practical application of the extant law of the period. This chapter examines three crucial aspects which defined the relationship. Firstly, the role of the Home Office was a critical factor in deciding whether investigative legislation ought to have been introduced. The chapter establishes the inter-war operating practices of the civil service and is later used in the thesis to show how that helped to shape debate when considering the need for any new powers. Secondly, the role and effect of the 1928 Royal Commission on Police Powers and Procedure (RCPPP) is examined which forms the basis of the thesis' argument that the concept of a criminal investigation was not fully understood which led directly to legislative inertia. Thirdly, the chapter examines how the literature had interpreted the

application of the Judges' Rules. This forms the basis of a central argument in the thesis that the law was conflicting and ambiguous. Finally, this part of the chapter considers the more recent academic treatment of the subject and is used to demonstrate that the complexities of the inter-war period continued through to the 1980s when legislation was finally introduced to clarify and formalise procedures. The thesis' major contribution is understanding the application of police procedures throughout the period and the extent to which they complied, circumvented or breached established guidance and law. The significance of this is to expose the practical realities of policing and move away from the more generic understanding of the term 'investigation' used throughout the existing literature.

The chapter concludes by examining the role and function of the coroner's office. It is argued in chapter seven that legislation governing its function militated against police efficiency. It establishes the historical development of the coroner's office and why such legislation existed at the beginning of the inter-war period. The thesis builds on this position and argues in chapter 7 that it was a lack of recognition by parliament and the courts that the modernising police service of the 1920s and 1930s had overtaken the coroner's abilities and effectiveness in crime investigation. The police service had still not been recognised as the competent authority to carry out murder investigations. Its effect was to constrain police efficiency and effectiveness, and when combined with a legislative framework which did not fully facilitate investigations, acts as another contributor to the police being unable to carry out lawful and effective investigations.

2.1 Early detective work and investigations

One of the principal arguments put forward throughout this thesis is that at the outset of the inter-war period, the concept and realities of an investigation were not recognised either in practice or in law. Operationally, investigations were a routine characteristic of policing but the police behaviours involved were not subject to meaningful scrutiny in either the courts or the newspapers. The police forces created in Britain during the Victorian period were seen as preventative agencies rather than investigative ones;[1] detection was seen as being of little value.[2] A consequence of this was that a need for investigative legislation to govern this particular aspect was not recognised. This is an important missing element as it helps to explain why more rigorous scrutiny of investigations did not become apparent until the early twentieth century. It is significant that before the introduction of these forces, the reverse had been the priority and policing had focused on detecting crime rather than its prevention. The formation of the Bow Steet Runners in 1748[3] saw its Principal Officers fundamentally detectives in nature[4] and it was widely considered that certainty of apprehension and

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[1] R M Morris, 'Crime Does Not Pay': Thinking Again About Detectives in the First Century of the Metropolitan Police cited in Chris A Williams, Police and Policing in the Twentieth Century (Ashgate 2011) 163.
[2] Beattie J M, *The First English Detectives: The Bow Street Runners and the Policing of London 1750-1840* (Oxford University Press 2014) 253-254. See also Judith Flanders, The *Invention of Murder* (HarperPress 2011) 140.
[3] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 1.
[4] Elaine A Reynolds, Before the Bobbies: The Night Watch and Police Reform in Metropolitan London, 1720-1830 (Macmillan Press 1998) 46; David J Cox, A Certain Share of Low Cunning (Willan Publishing 2010) 36; RM Morris, 'Crime Does Not Pay': Thinking Again About Detectives in the First Century of the Metropolitan Police cited in Chris A Williams, Police and Policing in the Twentieth Century (Ashgate 2011) 163; Beattie J M, The First English Detectives: The Bow Street Runners and the Policing of London 1750-1840 (Oxford University Press 2014) 46 and 61.

punishment would act as a deterrent.[5] The Principal Officers demonstrated the importance of and need for a detective element to policing and their innovative approach to crime investigation, and also helped define the role of the detective in the popular psyche.[6] Until 1839, Principal Officers were a national investigative resource[7] and were called upon to investigate crimes that were beyond the capabilities of provincial forces.[8] Their role as national investigators increased after 1792.[9]

It is a significant issue that the Middlesex Justices Act 1792 created further police offices along similar lines as the Bow Street Office which answered to stipendiary magistrates.[10] The status of Bow Street was not, though, encapsulated in law[11] and there appears never to have been any written legal framework for either its formation or its duties.[12] Bow Street personnel were only empowered within the City and Liberty of Westminster and if they needed to operate outside of those boundaries, they would need to apply to a local magistrate for a warrant to enable them to arrest suspects; and then only to be effected by local constables.[13] This long-winded and impractical requirement continued through to 1829, though it is argued that there is some circumstantial evidence to suggest that Bow Street personnel did not allow a lack of legal authority to stand in their way of making an

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[5] Beattie J M, The First English Detectives: The Bow Street Runners and the Policing of London 1750-1840 (Oxford University Press 2014) 46.
[6] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 232.
[7] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 145.
[8] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 222.
[9] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 183.
[10] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 31.
[11] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 31.
[12] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 225. See also Judith Flanders, *The Invention of Murder* (HarperPress 2011) 21.
[13] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 34.

arrest.[14] As the thesis demonstrates, this remained a distinct feature of policing a century later. This inefficiency would compromise Bow Street investigations and increased contemporary perception of an ill-organised and disparate policing model throughout London and the provinces.[15] There was, though, no appetite for any system which would reduce the power and authority of local magistrates.[16] This resulted in a process which meant that the prosecution case began at court where examining magistrates[17] would take depositions from witnesses.[18] Over time, this process expanded in a more extensive search for evidence than the law required.[19] In effect, the Bow Street offices derived its power under the auspices of magistrates.[20] The corollary to this is that there was no perceived need for further legislation.

Cox identifies that the most significant number of offences investigated by the Bow Street officers was murder.[21] Bow Street personnel were capable of carrying out detailed and complex investigations involving a range of skills and a tenacity which other law enforcement agencies could not have achieved.[22] Beattie identifies that the officers were frequently engaged in the gathering of evidence through the processes of searching, circulation of wanted persons, use of informers and arrests.[23] They had become a stable group of experienced

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[14] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 35.
[15] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 36.
[16] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 146.
[17] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 91.
[18] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 77.
[19] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 96.
[20] Beattie J M, The First English Detectives: The Bow Street Runners and the Policing of London 1750-1840 (Oxford University Press 2014) 129.
[21] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 105.
[22] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 230.
[23] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 52-69.

investigators who made detection an acceptable element in policing.[24] However, people were often stopped and questioned on dubious grounds and confessions obtained.[25] There were significant concerns about the integrity of investigations.[26] There were allegations of violence and intimidation in the obtaining of confessions[27] and the officers were susceptible to financial rewards from government funds.[28] No legislation was introduced to address this perceived area of concern.

Beattie summarises the investigations as ‘the collected evidence to be produced at court’.[29] An arrest would be followed by a suspect being taken to a magistrate or a nearby house where he could be searched and interrogated.[30] This is a most basic description of an investigative process; the later analysis in chapters 5 and 6 expands on this. Beattie argues that this was perhaps the most important contribution to the prosecution function but argues that the authority for these functions was ‘cloudy, to say the least.’[31] His observations echo a central argument in this thesis that the laws governing murder investigations were insufficient and this extended into the inter-war period.

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[24] Beattie J M, The First English Detectives: The Bow Street Runners and the Policing of London 1750-1840 (Oxford University Press 2014) 138.
[25] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 75-77.
[26] Judith Flanders, The *Invention of Murder* (HarperPress 2011) 164.
[27] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 106.
[28] This was known as blood money authorised by statute. See Apprehension of Highwaymen Act 1692, s 2 (4 & 5 Wm & M c 8 s 2). See also M Clayton and R Shoemaker, ‘Blood money and the Bloody Code: The impact of financial rewards on criminal justice in eighteenth-century England’ (2002) 37 (11) Continuity and Change 97-125.
[29] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 103.
[30] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 103.
[31] David J Cox, *A Certain Share of Low Cunning* (Willan Publishing 2010) 105.

Criminal investigations throughout the Victorian period are comprehensively documented[32] but only very recently has the issue of their legal basis been raised.[33] Historians have frequently referred to police taking in suspects for questioning but this has not been more deeply examined nor have they put forward evidence to explain the realities and the legal basis behind it.[34] This thesis challenges the legality of this particular element of the investigation and is explored in detail in chapters 5 and 6. Post-Victorian detectives had to break away from being associated with earlier practices and achieved this by redefining themselves as reactive crime solvers.[35] There was no reform to Victorian legislation[36] and efforts to improve efficiency were restricted to previous experience, practical work, patience and intuition.[37] Police forces were reluctant to take advantage of technological and scientific advances[38] and most provincial forces had failed to create criminal investigation departments.[39] Where detectives

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[32] See for example Donald Rumbelow, *The Complete Jack the Ripper* (Penguin Books 1988); Kate Summerscale, *The Suspicions of Mr Whicher* (Bloomsbury 2009); Judith Flanders, The *Invention of Murder* (HarperPress 2011); Kate Colquhoun, *Mr Briggs' Hat* (Abacus 2012); Kirsty Wark, *Did she Kill Him?* (Little, Brown 2014); Angela Buckley, *Real Sherlock Holmes: The Hidden Story of Jerome Caminada* (Pen & Sword 2014); Angela Buckley, *Amelia Dyer and the Baby Farm Murders* (Manor Vale Associates 2016).

[33] John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012).

[34] Judith Flanders, The *Invention of Murder* (HarperPress 2011) 145, 152. See also Robin Odell, *Ripperology* (Kent State University Press 2006) who refers frequently to people being taken in for questioning during the Jack the Ripper investigation.

[35] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 187. See also Howard Taylor, 'Forging the Job: A Crisis of Modernization or Redundancy for the Police in England and Wales 1900-1939' (1999) 39 (1) British Journal of Criminology 113, 118; See also Clive Emsley, A Short History of Police and Policing (Oxford university Press 2021) 113-121 for a history of the development of the detective.

[36] TA Critchley, *A History of Police in England and Wales* (Constable 1967) 214; David Ascoli, *The Queen's Peace* (Hamish Hamilton 1979) 221.

[37] TA Critchley, *A History of Police in England and Wales* (Constable 1967) 214; David Ascoli, *The Queen's Peace* (Hamish Hamilton 1979) 239.

[38] Clive Emsley, The English Police: A Political and Social History (2nd edn, Longman 1991) 148-150.

[39] Clive Emsley, *The English Police: A Political and Social History* (2nd edn, Longman 1991 151. In many instances, provincial forces called in the services of the Metropolitan Police to investigate case of murder. See Gerry Rubin, 'Calling in the Met: serious crime investigation involving Scotland Yard and provincial police forces in England and Wales 1906-1939' (2011) Legal Studies 31 (3) 411-441.

had been established they were sent out to initiate themselves into the tricks and subterfuges of the criminal classes.[40] Significant concerns were raised throughout this period about police practice,[41] including suggestions in newspapers that the police had forgotten how to investigate,[42] but none suggested that the problems were caused by a lack of effective legislation. Taylor refers to this period as changing from policing drunks and vagrants to managing motorists and indictable offenders.[43] Morris refines this definition by referring to the period as one which developed central leadership and oversight of criminal investigation.[44] Shpayer-Makov goes further and identifies the commendable detective officer constrained by rules and procedure.[45] This thesis is clear that this period may be more specifically described as the development and recognition of the concept of criminal investigation in which detectives were operating. This is a new and innovative idea developed throughout the thesis and adds a new dimension to the operational reality of detective policing.[46]

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[40] M Brogden, On the Mersey Beat: Policing Liverpool Between the Wars (Oxford University Press 1991) 131.

[41] Clive Emsley, The English Police: A Political and Social History (2nd edn, Longman 1991) 72.

[42] Andrew Boyle, Trenchard (Collins 1962) 613. See also R M Morris, 'Crime Does Not Pay': Thinking Again About Detectives in the First Century of the Metropolitan Police cited in Chris A Williams, Police and Policing in the Twentieth Century (Ashgate 2011) 164.

[43] Howard Taylor, 'Forging the Job: A Crisis of Modernization or Redundancy for the Police in England and Wales 1900-1939' (1999) 39(1) British Journal of Criminology 113.

[44] In Tim Newburn, Tom Williamson and Alan Wright, *Handbook of Criminal Investigation* (Routledge 2007) 11.

[45] Haia Shpayer-Makov, 'From Menace to Celebrity: the English Police Detective and the Press, c.1842-1914' (2010) 83 Historical Research 672, 688; Haia Shpayer-Makov, *The Ascent of the Detective: Police Sleuths in Victorian and Edwardian England* (Oxford Publishing online 2011) 49-52.

[46] Chris Williams argues that there is a need to further examine the function and role of detectives. See Chris Williams, *Police and Policing in the Twentieth Century* (Ashgate 2011) xxi.

2.2 Policing the inter-war society

There is no universal agreement about how the police were perceived throughout the period though there are some broad, common observations. Policing was carried out in the face of a recession and social dislocation caused by war.[47] Earlier historians such as Graves, Hodge and Blythe relied heavily on the use of newspaper archives[48] to conclude that the police response to hunger marches and the General Strike was characterised by the use of unnecessary violence and disproportionate use of powers.[49] The aggressive stance adopted was a deliberate strategy employed by the government who interpreted strikers' behaviour as an attack on the State.[50] Furthermore, the police response was seen as a State force which had become conditioned by a government to believe that threats to law and order only came from the Left.[51] This conclusion portrays the police in a negative light, and it is significant that this interpretation is derived from contemporary newspaper reports which would have shaped opinion at that time, and not just by later commentators.

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[47] Clayton H F, 'A frisky, tiresome colt?': Sir William Joynson-Hicks, the Home Office and the roaring twenties 1924-1929' (2009) DPhil thesis, Aberystwyth University 247.
[48] For example, see Daily Mail 4 May 1926 which cited the often-used description of police baton charges. See also William McElwee, *Britain's Locust Years 1918-1940* (Faber and Faber 1962) 130; Ronald Blythe, *The Age of Illusion: England in the Twenties and Thirties 1919-40* (Penguin 1963) 184; Charles Loch Mowat, *Britain Between the Wars 1918-1940* (Methuen and Co 1968) 316; Noreen Branson and Margot Heinemann, *Britain in the Nineteen Thirties: The History of British Society* (Weidenfeld and Nicolson 1971) 108; Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 258.
[49] Ronald Blythe, *The Age of Illusion: England in the Twenties and Thirties 1919-40* (Penguin 1963) 184; Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 258; See also William McElwee, *Britain's Locust Years 1918-1940* (Faber and Faber 1962) 130; Charles Loch Mowat, *Britain Between the Wars 1918-1940* (Methuen and Co 1968) 316; Noreen Branson and Margot Heinemann, *Britain in the Nineteen Thirties: The History of British Society* (Weidenfeld and Nicolson 1971) 108.
[50] Charles Loch Mowat, *Britain Between the Wars 1918-1940* (Methuen and Co 1968) 318. See also TA Critchley, *The Conquest of Violence: Order and Liberty in Britain* (Constable 1970) 189.
[51] Noreen Branson and Margot Heinemann, *Britain in the Nineteen Thirties: The History of British Society* (Weidenfeld and Nicolson 1971) 286.

It is important to note that this particular period of the early 1920s witnessed a significant development in the provision of State powers generally, The Emergency Powers Act 1920 was specifically introduced to address concerns about growing unrest caused by a wave of strikes throughout Britain.[52] The Act specifically stated that the government could take direct interventionist action where they considered the disruption to the supply and distribution of food, water, fuel or light would deprive the community of the essentials in life.[53] In the same manner in which emergency regulations had been put in place during the First World War,[54] Orders in Council could be issued without the need to consult parliament.[55] The police were considered to be a primary enforcer of these new regulations.[56] However, the Act's powers were invoked on only 3 occasions during the inter-war period.[57]

A later study of life in north London between the wars reveals that negative attitudes were prevalent among its residents, with accusations of illegal searching and detention and with a widespread fear of violence both in and out of the police station.[58] These latter views are based on a small survey sample and cannot be

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[52] Ben Anderson, 'Scenes of Emergency: Dis/re-assembling the promise of the UK emergency state' (2021) 39 (7) Environment and Planning C: Politics and Space 1363.
[53] S.1 Emergency Powers Act 1920 (10 & 11 Geo 5 c 55).
[54] Many new police powers were granted to the police under the Defence of the Realm Act 1914 (4 & 5 Geo 5 c 29). See A Kiel, 'A Very British Dictatorship: The Defence of the Realm Act in Britain 1914-1920' (2023) First World War Studies 14 (1) 51-70 for a discussion about its effect.
[55] S.2 Emergency Powers Act 1920 (10 & 11 Geo 5 c 55).
[56] See Alexander Pulling, *Defence of the Realm Manual* (4th edn, HMSO 1917) 676-678 for a full list of the additional powers. See also Keith Jeffrey and Peter Hennessy, *States of Emergency: British Governments and Strikebreaking since 1919* (1983 Routledge & Kegan Paul) 17-19 for an outline of how this impacted the resourcing of police constabularies.
[57] HC Debate 12 June 1979 vol 968 col 169W.
[58] J White, Campbell Bunk: The Worst Street in North London Between the Wars (Pimlico 2003) 116.

regarded as necessarily representative of wider opinion, but it highlights some of the concerns which existed. The specific impact on the issue of police powers is that it refers to a deep mistrust of the police, their elephantine intelligence systems and their almost limitless powers.[59] The extent of these perceived powers is examined in greater detail in chapter 5.

An alternative school of thought was developed by later academics and historians such as Emsley, Ascoli and Critchley, who had access to police archival material and government papers not available to earlier critics.[60] At the beginning of the inter-war period, the police service had emerged from a radical review of its working practices[61] and benefited from legislation[62] which professionalised the service. The industrial strikes immediately after the war had tested a reformed service whose numbers had been reduced as a result of the government cuts and whose role was to maintain peace in difficult circumstances.[63] Despite these constraints, the police service had emerged from the General Strike as highly regarded by the public.[64] Earlier historians' assertions of excessive use of

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[59] J White, Campbell Bunk: The Worst Street in North London Between the Wars (Pimlico 2003) 116.
[60] See also Patrick Renshaw, *The General Strike* (Eyre Metheun 1975) 18.
[61] Minutes of the Committee on the Police Service Appointed to Consider and Report Whether Any and What Changes Should be Made in the Method of Recruiting For, the Conditions of Service of, and the Rates of Pay, Pensions and Allowances of the Police Forces of England Wales and Scotland (Cmd 874, 1920) – known commonly as the Desborough Report.
[62] Police Act 1919 (9 & 10 Geo 5 c 46). See also Mike McConville and Luke Marsh, *The Myth of Judicial Independence* (Oxford University Press 2020) 34.
[63] Committees on National Expenditure Reports (Cmd 1581, 1582 and 1589, 1922).
[64] Andrew Boyle, *Trenchard* (Collins 1962) 201, 585; TA Critchley, *A History of Police in England and Wales* (Constable 1967) 133, 219; TA Critchley, *The Conquest of Violence: Order and Liberty in Britain* (Constable 1970) 193; David Ascoli, *The Queen's Peace* (Hamish Hamilton 1979) 212 and 233; Jeffrey Williams, *Byng of Vimy: General and Governor General* (Pen & Sword 1992) 332; Clive Emsley, *The Great British Bobby* (Quercus 2009) 224; See also G A Minto, *The Thin Blue Line* (Hodder and Stoughton 1965) 160-172; Pike M, *The Principles of Policing* (MacMillan Press 1985) 20.

violence have been over-stated[65] and rather than a government-driven force, police forces were consensually policing communities from which they had been drawn.[66]

These opposing views are perhaps symptomatic of either police activity being examined from a specific, narrow perspective or considering only those police behaviours which were visible to the public eye. It suggests an absence of a deeper understanding of some of the constraints and pressures which underpinned and directed contemporary practice. Reiner would later criticise this approach to police history of not attempting to understand particular police behaviours.[67] In this regard, this thesis specifically tackles the presence and absence of underlying legislation which forced or allowed the police to operate in the manner in which they did.

The inter-war period is seen as an embryonic stage of criminal investigation with emphasis placed on management of criminal investigations through centralisation of expertise and improved training.[68] It was not until near the end of the inter-war period in 1938, that a government committee formally examined detective expertise which concluded that there were profound deficiencies in existing practice and recommended a detailed syllabus of detective training.[69]

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[65] Charles Loch Mowat, *Britain Between the Wars 1918-1940* (Methuen and Co 1968) 315; Martin Pugh, *We Danced All Night* (Vintage 2009) 117.
[66] Clive Emsley, 'Policing the Empire: Policing the Metropole: some thoughts on models and types' (2014) 18 (2) Crime, Histories and Societies 2, 5.
[67] See below. Robert Reiner R, 'Police Research in the United Kingdom: A Critical Review' (1992) 15 Modern Policing 439.
[68] Tim Newburn et al, *Handbook of Criminal Investigation* Cullompton 2007) 67.
[69] Report of the Departmental Committee on Detective Work and Procedure 1938 cited in Tim Newburn et al, *Handbook of Criminal Investigation* Cullompton 2007) 28. CID training was largely abandoned due to the outbreak of the second world war – Report of the Commissioner

Hobbs points out that this was not the result of any perceptions formed through newspaper analysis but a response from government to reflect contemporary operational concerns.[70] The report was regarded as the most important contribution to the development of policing techniques since the publication of the Desborough Committee report in 1919[71] but it rarely made a connection between police performance and supporting legislation. This is examined in the analysis which follows in chapters 5, 6 and 7.

2.3 The influences on shaping public attitudes towards police powers

The analyses carried out in chapters 5, 6 and 7 examine the role of public opinion in shaping attitudes towards the police and the development of policy and legislation. Its impact is examined in chapter 4 through the prism of social contract theory but it is important to establish the opportunities through which public opinion may have been formed during the inter-war years.

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of the Metropolis for the Year 1939, page 24. See also TA Critchley, *A History of Police in England and Wales* (Constable 1967) 210; Weinberger B, *The Best Police in the World: An Oral History of English Policing* (Scolar Press 1995) 77.

[70] Dick Hobbs, *Doing the Business* (Oxford University Press 2001) 45; Weinberger B, *The Best Police in the World: An Oral History of English Policing* (Scolar Press 1995) 77; P Rawlings, *Policing: A Short History* (Willan Publishing 2002) 179.

[71] Minutes of the Committee on the Police Service Appointed to Consider and Report Whether Any and What Changes Should be Made in the Method of Recruiting For, the Conditions of Service of, and the Rates of Pay, Pensions and Allowances of the Police Forces of England Wales and Scotland (Cmd 874, 1920) – known commonly as the Desborough Report. See TA Critchley, *A History of Police in England and Wales* (Constable 1967) 210 and 214; David Ascoli, *The Queen's Peace* (Hamish Hamilton 1979) 238-239.

2.3.1 Newspapers and broadcasting

The thesis has examined the role of newspapers and broadcasting as a means of shaping public opinion and the extent to which it affected the issue of investigative powers. It is significant that historians and academics identify that the turn of the twentieth century, and the inter-war period itself, represents a period of newspaper modernisation, professionalisation and a reach which spanned the political spectrum.[72] Some publications[73] represented working class or anti-government perspectives,[74] though there is agreement that the market was dominated by right-wing editors;[75] one frequently aired topic was the role of government, the extent to which it should intervene and its responsibilities towards its citizens.[76] It is a recurring theme from both earlier and later historians that newspapers routinely engaged in airing disagreements between proprietors

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[72] Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 57-59; AJP Taylor, *English History 1914-1945* (Clarendon Press 1965) 310-311; Charles Loch Mowat, *Britain Between the Wars 1918-1940* (Methuen and Co 1968) 244-245; Noreen Branson and Margot Heinemann, *Britain in the Nineteen Thirties: The History of British Society* (Weidenfeld and Nicolson 1971) 250; John Stevenson, *Social History of Britain: British Society 1914-1945* (Penguin 1984) 406; Peter Clarke, *Hope and Glory: Britain 1900-2000* (Penguin 2004) 116; Adrian Bingham and Martin Conboy, *Tabloid Century: The Popular Press in Britain, 1896 to the present* (Peter Lang 2015) 69-77.
[73] For example, Daily Herald and News Chronicle. The Daily Herald was a left-wing paper, its policy guided by Labour Party policy. See AJP Taylor, The English History 1914-1945 (Clarendon Press 1945) 251 fn 1.
[74] AJP Taylor, *English History 1914-1945* (Clarendon Press 1965) 310; Noreen Branson and Margot Heinemann, *Britain in the Nineteen Thirties: The History of British Society* (Weidenfeld and Nicolson 1971) 250; Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 59.
[75] AJP Taylor, *English History 1914-1945* (Clarendon Press 1965) 309-311; Charles Loch Mowat, *Britain Between the Wars 1918-1940* (Methuen and Co 1968) 244; Noreen Branson and Margot Heinemann, *Britain in the Nineteen Thirties: The History of British Society* (Weidenfeld and Nicolson 1971) 250; John Stevenson, *Social History of Britain: British Society 1914-1945* (Penguin 1984) 402; Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 57-59; Roy Hattersley, *Borrowed Time: The Story of Britain Between the Wars* (Abacus 2009) 363; Adrian Bingham and Martin Conboy, *Tabloid Century: The Popular Press in Britain, 1896 to the present* (Peter Lang 2015) 69.
[76] Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the present (Peter Lang 2015) 70.

and politicians about which the readership held no interest.[77] There is disagreement among critics about the extent to which newspapers influenced public thinking. One position is that they played an important role,[78] but a counter-position is that only half the population read a newspaper and none voiced the opinion of the masses.[79] This position conflicts with the fact that newspapers also published readers' letters expressing their views on a wide range of subjects.[80] This is a key point in determining the extent to which public opinion influenced thinking about the provision of police investigative powers. It is outlined in chapter 5 that there is clear evidence that newspapers were voicing concerns, but the extent to which it influenced law-makers is more difficult to determine.

Earlier historians claim that crime rarely featured in newspapers other than sensationalist accounts of murder[81] but a later, contrary view is that lurid crime stories were the main feature of the inter-war press.[82] Newspapers approached crime as a source of popular entertainment and as a stimulus to circulation rather than offering a balanced picture of society.[83] There was regular reporting of murder cases and it gave the impression that it was a routine part of inter-war life despite commission rates decreasing since the turn of the century.[84]

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[77] Roy Hattersley, Borrowed Time: The Story of Britain Between the Wars (Abacus 2009) 366-367; Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the present (Peter Lang 2015) 72.
[78] Martin Pugh, *We Danced All Night* (Vintage 2009) 110.
[79] AJP Taylor, *English History 1914-1945* (Clarendon Press 1965) 172.
[80] See for example The Sunday Times 25 November 1923.
[81] Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 59.
[82] Martin Pugh, *We Danced All Night* (Vintage 2009) 102.
[83] Martin Pugh, *We Danced All Night* (Vintage 2009) 102.
[84] Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 58. In fact, there is no discernible difference in the murder rate between 1900 and 1938 – on average, 300 murders a year. See https://www.gov.uk/government/statistics/historical-crime-data.

Newspapers formed the dominant medium through which opinions were aired although there is no agreement over the extent to which they voiced the concerns of the wider public. They contributed to shaping people's attitudes towards the police and have been used by historians and academics as one of the tools to create a narrative of the period.[85] Wood argues that the inter-war period was characterised by specific worries about the reliability of police evidence.[86] It is significant that in 1932 the press claimed that the police had forgotten how to investigate.[87] The literature identifies that there are three areas of social and political commentary during the period which had a direct bearing on police powers generally and indirectly on the specific issue of police investigative powers. These have received academic attention. The three areas are concerns about police corruption, the development of the motor car and growing concerns about political violence associated with the growth of fascism. The central theme in each of these areas was the issue of the perceived need for further police powers. However, none impacted on the specific issue of investigative powers. These concerns are now examined.

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[85] See for example AJP Taylor, *English History 1914-1945* (Clarendon Press 1965) 309-311; Charles Loch Mowat, *Britain Between the Wars 1918-1940* (Methuen and Co 1968) 244; Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 57-59; Noreen Branson and Margot Heinemann, *Britain in the Nineteen Thirties: The History of British Society* (Weidenfeld and Nicolson 1971) 250; John Stevenson, *Social History of Britain: British Society 1914-1945* (Penguin 1984) 402; M Pike, *The Principles of Policing* (MacMillan Press 1985) 20; Roy Hattersley, *Borrowed Time: The Story of Britain Between the Wars* (Abacus 2009) 363; Clive Emsley, *The Great British Bobby* (Quercus 2009) 224.

[86] John Carter Wood, Watching the Detectives (and the Constables): Fearing the Police in 1920s Britain in Sian Nicholas and Tom O'Malley, Moral Panics, Social Fears and the Media (Routledge 2013) 148.

[87] Andrew Boyle, *Trenchard* (Collins 1962) 613.

2.3.2 Concerns about police corruption

Academics and historians such as Wood, Weinberger[88] and Ascoli conclude that police corruption was embedded within the police service from the Victorian period and extended into the inter-war years.[89] By the late 1920s, there was a series of incidents, comprehensively catalogued by academics and historians,[90] which brought to the surface the issue of police abuse of powers and which led to the appointment of a Royal Commission on Police Powers and Procedure (RCPPP).[91] The terms of reference of the Commission is examined in greater detail in chapter 5, but in broadest terms it was required to consider the general powers and duties of police in England and Wales in the investigation of crime and offences.[92] Its conclusion, though, broadly sanctioned existing police practices.[93] This conclusion is critically examined in chapter 5.

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[88] Weinberger's research was based on oral interviews of police officers employed between 1930 and 1960.

[89] David Ascoli, *The Queen's Peace* (Hamish Hamilton 1979) 210 and 228-230; Weinberger B, *The Best Police in the World: An Oral History of English Policing* (Scolar Press 1995) 75; John Carter Wood, 'The Constables and the 'Garage Girl'' (2014) 20 (4) Media History 384, 388. See also Dick Hobbs, *Doing the Business: Entrepreneurship, Detectives and the Working Class* (Oxford University Press 2001) 41 for his analysis of police internal concerns about levels of corruption.

[90] See for example Ronald Blythe, *The Age of Illusion: England in the Twenties and Thirties 1919-40* (Penguin 1963) 45-49; AJP Taylor, *English History 1914-1945* (Clarendon Press 1965) 261; David Ascoli, *The Queen's Peace* (Hamish Hamilton 1979); Clive Emsley, *The English Police: A Political and Social History* (First published 1991, 2nd ed, Routledge 2014)144; Clive Emsley, *The Great British Bobby* (Quercus 2009) 207 and 216-217; J C Wood, ''The Third Degree': Press reporting, crime fiction and police powers in 1920s Britain (2010) 21 (4) Twentieth Century British History 464-485; Stefan Slater, 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533-574; Heather Shore, 'Constable dances with instructress: the police and the Queen of nightclubs in inter-war London' (2013) 38 (2) Social History 183-202; John Carter Wood, 'The Constables and the 'Garage Girl'' (2014) 20 (4) Media History 384, 388.

[91] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929).

[92] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page ii.

[93] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 111, para 297. See also Heather Shore, 'Constable dances with instructress: the police and the Queen of nightclubs in inter-war London' (2013) 38 (2) Social History 183, 202.

Roberts' and Brogden's analysis[94] supports the position that corruption was a problem and identifies that police officers would always find something in the law which could justify their actions.[95] This is a crucial point which underpins the argument in this thesis that due to the deficiency in legislation to enable effective murder investigations, the police manipulated the existing law to achieve its purpose. This position that corrupt practices were institutionally embedded, is tempered by a recognition that the Press was always looking for negative police stories.[96] Later historians such as Ascoli, Williams and Emsley conclude that the suggestion that they were institutionally corrupt is exaggerated,[97] though Emsley acknowledges that corruption was entrenched within the Metropolitan Police.[98] Clayton argues that many books written about the inter-war period create or repeat myths which have little or no foundation such as incompetence, corruption and autocratic behaviour.[99] It is argued in this thesis, however, that negative press reporting throughout the inter-war period was a contributor to amplifying the prevalence and impact of poor police practice which in turn had the potential to influence public opinion on the need for any review of existing investigative powers. It was a factor which marked a deteriorating relationship between the

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[94] Brogden's research was based on a series of interviews with police officers serving at the time. M Brogden, '*On the Mersey Beat: Policing Liverpool Between the Wars* (Oxford University Press 1991).
[95] M Brogden, '*On the Mersey Beat: Policing Liverpool Between the Wars* (Oxford University Press 1991) 88-89; Paul Roberts, Law and Criminal Investigation in Tim Newburn et al, *Handbook of Criminal Investigation* Cullompton 2007) 122.
[96] See for example Daily Mail, 15 November 1928.
[97] David Ascoli, *The Queen's Peace* (Hamish Hamilton 1979) 212-214; Jeffrey Williams, *Byng of Vimy: General and Governor General* (Pen & Sword 1992) 332; Clive Emsley, *The English Police: A Political and Social History* (First published 1991, 2nd ed, Routledge 2014).
[98] See Clive Emsley, 'Sergeant Goddard: the story of a rotten apple or a diseased orchard' in A Gilman Srebnick and R Levy (eds), Crime and Culture: An Historical Perspective (Aldershot 2005) 85-88.
[99] Clayton H F, 'A frisky, tiresome colt?': Sir William Joynson-Hicks, the Home Office and the roaring twenties 1924-1929' (2009) DPhil thesis, Aberystwyth University 16.

police and the newspapers.[100] Taylor concludes, however, that the general concensus in the literature has been that 'in the inter-war period … if the British police were not quite the best in the world, they were exceedingly well adapted for much of the period, and within its own terms, to the policing demands made of them.'[101] There is clearly a mixed view about the integrity of police practices during the period. This thesis examines this particular aspect by understanding and explaining some of the underlying factors which may have determined police behaviours.

2.3.3 The development of the motor car

Historians such as Taylor and Pugh, highlight the significance of the development of the motor car in the inter-war period and its impact upon the provision of police powers.[102] Advancing technology had brought the car into the realms of a middle-

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[100] TA Critchley, *A History of Police in England and Wales* (Constable 1967) 201; Stefan Slater, 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 557-560; John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75-98.

[101] Howard Taylor, 'Forging the Job: A Crisis of Modernization or Redundancy for the Police in England and Wales 1900-1939' (1999) 39(1) British Journal of Criminology 113.

[102] AJP Taylor, English History 1914-1945 (Clarendon Press 1965) 303; TA Critchley, The Conquest of Violence: Order and Liberty in Britain (Constable 1970) 175; Noreen Branson and Margot Heinemann, Britain in the Nineteen Thirties: The History of British Society (Weidenfeld and Nicolson 1971) 240-241; Noreen Branson, Britain in the Nineteen Twenties: The History of British Society (Weidenfeld and Nicolson 1975) 222-224; David Ascoli, The Queen's Peace (Hamish Hamilton 1979) 220; John Stevenson, Social History of Britain: British Society 1914-1945 (Penguin 1984) 374; Peter Clarke, Hope and Glory: Britain 1900-2000 (Penguin 2004) 147; Martin Pugh, We Danced All Night (Vintage 2009) 105-6, 112, 246, 248, 259. See also Robert Graves and Alan Hodge, The Long Weekend (Hutchinson and Co first published 1940, 1985) 181, 183, 378-80; Clive Emsley, 'Mother, what did policemen do when there weren't any motors? The Law, the police and the regulation of motor traffic in England, 1900-1939' (1993) 36 (2) The Historical Journal 357, 368; Weinberger B, The Best Police in the World: An Oral History of English Policing (Scolar Press 1995) 65; Clive Emsley, The Great British Bobby (Quercus 2009) 13; Keith Laybourn and David Taylor, *Policing in England and Wales 1918-1939* (palgrave macmillan 2011) 105-185.

class hobby[103] with a consequence of a significant increase in road fatalities.[104] A peak was reached in 1933 and public concern was high.[105] Government reaction was to introduce legislation which restricted speeds and placed upon the police the responsibility to enforce the new laws.[106] The move was unpopular, and the methods employed raised the notion that police evidence was unreliable and it became subject to claims of falsifying evidence.[107] It was preferred that the police be relinquished of its motoring responsibilities and passed to other motoring organisations.[108] Attempts to address the issue resulted in further criticism of the police as being unreliable in their ability to interpret the law.[109] This middle-class, public concern swayed the government to withdraw certain measures but the relationship between the police and the public had been significantly damaged and fuelled views that the provision of police powers should be restricted.[110]

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[103] AJP Taylor, *English History 1914-1945* (Clarendon Press 1965) 303; Noreen Branson and Margot Heinemann, *Britain in the Nineteen Thirties: The History of British Society* (Weidenfeld and Nicolson 1971) 240-241; Noreen Branson, *Britain in the Nineteen Twenties: The History of British Society* (Weidenfeld and Nicolson 1975) 222; Peter Clarke, *Hope and Glory: Britain 1900-2000* (Penguin 2004) 147; Martin Pugh, *We Danced All Night* (Vintage 2009) 248.
[104] Martin Pugh, *We Danced All Night* (Vintage 2009) 259. See also Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 181.
[105] The number of people killed on the roads in 1934 was 7125 and 216,401 injured. HC Debate 7 February 1934 vol 285, col 1219. See also Noreen Branson and Margot Heinemann, *Britain in the Nineteen Thirties: The History of British Society* (Weidenfeld and Nicolson 1971) 241.
[106] Noreen Branson and Margot Heinemann, *Britain in the Nineteen Thirties: The History of British Society* (Weidenfeld and Nicolson 1971) 241; Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 183. See also Emsley C, 'Mother, what did policemen do when there weren't any motors? The Law, the police and the regulation of motor traffic in England, 1900-1939' (1993) 36 (2) The Historical Journal 368.
[107] Clive Emsley, 'Mother, what did policemen do when there weren't any motors? The Law, the police and the regulation of motor traffic in England, 1900-1939' (1993) 36 (2) The Historical Journal 357, 368; Martin Pugh, *We Danced All Night* (Vintage 2009) 105-106.
[108] Weinberger B, The Best Police in the World: An Oral History of English Policing (Scolar Press 1995) 64.
[109] Weinberger B, *The Best Police in the World: An Oral History of English Policing* (Scolar Press 1995) 65; Martin Pugh, *We Danced All Night* (Vintage 2009) 65 and 105-106.
[110] This was a point reinforced in 1962. See Royal Commission on the Police (Cmnd 1728, 1962) pages 114-7. See also Weinberger B, *The Best Police in the World: An Oral History of English Policing* (Scolar Press 1995) 65; Martin Pugh, *We Danced All Night* (Vintage 2009) 105-106.

2.3.4 The growth of fascism

There is agreement in the academic literature that the growth of fascism in Britain in the early 1930s gave rise to a further debate on the issue of police powers.[111] There was equally a developing concern about the rise of communism and the perceived threat it represented to Brtiain, but it was considered that the powers brought in under the Defence of the Realm Act 1914 were capable of policing any threat it presented.[112] A particular feature of BUF activity was a series of indoor political rallies which were routinely accompanied by outbreaks of extreme violence used against dissenting political opponents.[113] Such tactics threatened the political stability of the country and were met with a general attitude of intolerance.[114] There was, though, a refusal by the public to condemn the practice of opponents voicing dissent at rallies and reticence on the part of the police to intervene.[115] Politicians balked at the idea of granting additional measures to deal with the new threat[116] as concerns had previously been voiced in parliament

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[111] Charles Loch Mowat, *Britain Between the Wars 1918-1940* (Methuen and Co 1968) 475; Graves R and Hodge A, *The Long Weekend: A Social History of Great Britain 1918-1939* (Hutchinson 1985) 113; J Lawrence, 'Fascist violence and the politics of public order in inter-war Britain: The Olympia debate revisited' (2003) 76 (192) Historical Research 240-241.
[112] Jennifer Lush, 'Covert and Overt Operations: :Inter-War Political Policing in the United States and the United Kingdom' (2017) The American Historical Review 122 (3) 742-743. See also Jack Grimley Ward, 'Bolshevik Bogies: Red Scares in Britain 1919-1924 (2024) Contemporary British History 146-175.
[113] See for example Charles Loch Mowat, *Britain Between the Wars 1918-1940* (Methuen and Co 1968) 474; Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 312; J Lawrence, 'Fascist violence and the politics of public order in inter-war Britain: The Olympia debate revisited' (2003) 76 (192) Historical Research 238-267.
[114] J Lawrence, 'Fascist violence and the politics of public order in inter-war Britain: The Olympia debate revisited' (2003) 76 (192) Historical Research 238, 242; Martin Pugh, *We Danced All Night* (Vintage 2009) 118.
[115] J Lawrence, 'Fascist violence and the politics of public order in inter-war Britain: The Olympia debate revisited' (2003) 76 (192) Historical Research 238, 240-243, 262.
[116] HC Debate 16 April 1934 vol 288, col 807. Earlier legislation which had attracted criticism was the Incitement to Disaffection Act 1934 c.56 s.2 (24 & 5 Geo 5 c 56 s 2) which enabled the

about any extension of police powers for political reasons. Continued violence, though, resulted in the passing of the Public Order Act 1936[117] which gave the police new powers to regulate political marches and rallies. The Act was a cross-party compromise to find a balance between the right to exercise dissent and the need to maintain public order.[118] However, use of the new powers was criticised by the Home Office for exercising them in circumstances for which they were not intended.[119] Other criticism was levelled by protestors that excessive force had been used in the policing of rallies.[120] Critics have adopted opposing positions on the new powers. One school of thought was that the measures were necessary to deal with a real threat and the price paid in curtailing individual liberty was negligible.[121] The counter-position was that the legislation amounted to an attack on the liberty of the person.[122] The amount of police time dealing with subversive political threats, though, was significant.[123]

High Court to authorise the police to search any premises where it was suspected there may be evidence of an offence having been committed and to seize that evidence. See also J Lawrence, 'Fascist violence and the politics of public order in inter-war Britain: The Olympia debate revisited' (2003) 76 (192) Historical Research 238, 240, 250.

[117] Public Order Act 1936 (1 Edw 8 & Geo 6 c 6).

[118] J Lawrence, 'Fascist violence and the politics of public order in inter-war Britain: The Olympia debate revisited' (2003) 76 (192) Historical Research 238, 263. See also T A Critchley, *The Conquest of Violence: Order and Liberty in Britain* (Constable 1970) 196-197.

[119] Mowat C L, Britain Between the Wars 1918-1940 (Methuen and Co 1968) 475; Noreen Branson and Margot Heinemann, Britain in the Nineteen Thirties: The History of British Society (Weidenfeld and Nicolson 1971) 291; Clarke P, Hope and Glory: Britain 1900-2000 (Penguin 2004) 244. The converse was also true and allegations were also made that the police failed on occasions to use their powers and failed to intervene when necessary. See J Lawrence, 'Fascist violence and the politics of public order in inter-war Britain: The Olympia debate revisited' (2003) 76 (192) Historical Research 238, 264; Clive Emsley, The Great British Bobby (Quercus 2009) 219.

[120] Noreen Branson and Margot Heinemann, *Britain in the Nineteen Thirties: The History of British Society* (Weidenfeld and Nicolson 1971) 291.

[121] TA Critchley, The Conquest of Violence: Order and Liberty in Britain (Constable 1970) 197.

[122] Charles Loch Mowat, *Britain Between the Wars 1918-1940* (Methuen and Co 1968) 475.

[123] Clive Emsley, *The English Police: A Political and Social History* (First published 1991, 2nd edn, Routledge 2014 38.

The three areas identified above are indicative of a society and parliament mindful of the need to ensure that police powers were restricted to a minimum.[124] They were prevalent throughout the 1920s and 1930s and would have a been an influence when considering any review of investigative powers.

2.4 Investigations and the law

The relationship between a criminal investigation and the laws governing its practicalities has received little academic attention.[125] This part of the chapter first examines the commentary specifically relating to the key, contributing and influencing factors of the period: the role of the Home Office, the 1928 Royal Commission on Police Powers and Procedure (RCPPP) and the recognised guidance at the time which became known as the Judges' Rules. It then examines more recent academic treatment of the subject to emphasise the critical aspects of a criminal investigation and the importance of it being governed by legislation.

2.5 The Home Office

The role of the Home Office presents as a significant element of the thesis' analysis and it is important to identify arguments about its function during the

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[124] See David Ascoli, *The Queen's Peace* (Hamish Hamilton 1979) 205 who argues that there was a general resistance to increasing police powers since the failure of a police strike in 1919 which failed to gain support.
[125] This is also a view expressed by Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 536.

inter-war period. Slater has identified that changes in the law of the inter-war period were generally resisted.[126] His research centred on the contents and findings of the 1928 Street Offences Report.[127] It specifically concentrated on the law relating to prostitution but has a direct bearing on the arguments put forward in chapters 5, 6 and 7 about the need for further investigative powers generally. Slater argues that the Committee was established to tackle the issue of uncorroborated police evidence.[128] Wood suggests that concerns were more focused on the use by police of what he describes as third-degree tactics.[129] The report itself states that suggestions had been made that the police acted wrongfully under existing law and practice.[130] The recommendations by the Committee[131] to repeal and update the law were rejected by the police.[132] Slater argues that this was a case of the police pursuing its own agenda and had done

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[126] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533-574.
[127] Report of the Street Offences Committee (Cmd 3231, 1928).
[128] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 542. The exact terms of reference were to enquire into the law and practice regarding offences against the criminal law in connection with prostitution and solicitation for immoral purposes in streets and public places and other offences against decency and good order, and to report what changes, if any, are in their opinion desirable. See also Stefan Slater, 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-1928' (2012) 30 (2) Law and History Review 533-574. See also Report of the Street Offences Committee (Cmd 3231, 1928) page 4.
[129] John Carter Wood, ''The Third Degree': Press reporting, crime fiction and police powers in 1920s Britain (2010) 21 (4) Twentieth Century British History 464-485; John Carter Wood, 'The Constables and the 'Garage Girl'' (2014) 20 (4) Media History 384, 385. See also Clive Emsley, *The Great British Bobby* (Quercus 2009) 208; John Carter Wood, Watching the Detectives (and the Constables): Fearing the Police in the 1920s cited in Sian Nicholas and Tom O'Malley, *Moral Panics, Social Fears and the Media: Historical Perspectives* (Routledge 2018) 147-161.
[130] Report of the Street Offences Committee (Cmd 3231, 1928) page 7. See also letter from Alison Neilans, The Association for Moral and Social Hygiene to the House of Commons, June 1928 in London School of Economics (LSE) 3AMS/B/04/10.
[131] Report of the Street Offences Committee (Cmd 3231, 1928) pages 28-29.
[132] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 566.

so since the Victorian period when they had selectively policed prostitution.[133] In 1923, the police had adopted a go-slow attitude towards prostitutes in the light of the problems of securing prosecutions.[134]

No legislative change followed despite the groundswell of public opinion and the recommendations made by the Committee.[135] Slater identifies a number of reasons for this. He identified that extant law caused friction between the police and magistrates about the interpretation of the law[136] but argued that there were practical and legal difficulties in implementing reform. Parliamentary counsel found it difficult to translate the Committee's recommendations into practice, and strong characters[137] within the Home Office ensured that legislation remained as it was.[138] It was considered that such matters as implementation of the law were best left with the experts: the police.[139] They kept the Home Secretary informed of what was needed to police the streets.[140] Slater concludes by arguing that the

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[133] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 566.
[134] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 540.
[135] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 569.
[136] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 555.
[137] Ernley Blackwell.
[138] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 550-551.
[139] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 552.
[140] Clayton H F, 'A frisky, tiresome colt?': Sir William Joynson-Hicks, the Home Office and the roaring twenties 1924-1929' (2009) DPhil thesis, Aberystwyth University 246.

evidence suggests that although the Home Office and Scotland Yard were not oblivious to the need for reform, they had their own agenda to pursue.[141]

There were a number of divisions among and within the various reform groups and the authors of the report which resulted in the specifics of prostitution law reform being cast aside. An official noted that the report 'falls rather short of the measure of conviction that is usually behind any Departmental proposal for a Bill'.[142] This statement has a direct parallel with commentary made about the Report of the Royal Commission on Police Powers and Procedure published in 1929,[143] which is outlined below and analysed in greater detail in chapter 5; the Home Office effectively dismissed the Commission's recommendation as they considered them flawed. Slater states that by early 1930, a Bill along the lines of the recommendations of the Committee had been quashed and three years later, it was decided that parliamentary conditions were too difficult to push for reform. Reform groups[144] embarked instead upon an educational campaign.[145] It was not until 1931/2 that the formalising and tightening of police operations and procedures were made in an attempt to stem public and official concern about discretionary police powers.[146]

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[141] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 571.
[142] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 572.
[143] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929).
[144] The Association for Moral and Social Hygiene was the major reform group.
[145] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 572.
[146] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 568.

Slater summarises the reasons for failing to introduce legislation in the following manner: examining the failure of [prostitution] law reform serves as a salutary lesson in understanding the intricacies of practical politics during the 1920s. Bureaucratic aversion does not suffice as an explanation for this failure. Despite a general assumption as to the need for law reform, the main agents for change themselves were divided as to how this should be achieved. Moreover, reform groups' interests in matters moral failed to address official and police responsibilities for maintaining public order. With crime rising and politicians prioritising more pressing matters such as rising unemployment, the Metropolitan Police emerged from a period of intense and often negative public scrutiny relatively unscathed.[147] In this context of weak police accountability, the Home Office and Scotland Yard were able to pursue their own agenda of administrative reform untroubled by the wider considerations of parliamentary politics.[148] This position statement echoes the findings in chapters 5, 6 and 7. However, it is significant to point out that it is argued in this thesis that this conclusion ought to have been applied across the wider criminal law spectrum and not limited to the specific issue of prostitution. Hobbs offers a similar view to this but suggests that this practice of the police working in harmony with the Home Office was a feature of the earlier Victorian period. Police hierarchy was sufficiently politically astute to recognise the need to balance governmental interests with the prerogatives of policing practice.[149]

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[147] See below.
[148] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 572.
[149] Dick Hobbs, *Doing the Business* (Oxford University Press 2001) 41.

The role of the civil service in developing or witholding legislation is examined in chapter 4 through the prism of bureaucracy theory and chapter 5 demonstrates that its role in shaping legislation in relation to the provision of investigative powers was significant. Academic commentary has also commented upon its role and function. Critchley argues that the Home Office should be praised for its efforts in 1919 for trying to shape out-of-date laws to address the needs of a nation rather than individual parishes.[150] Savage, however, argues that civil servants' powers to translate judgements into action depended upon their having a sympathetic and active Minister to press the department's views upon the cabinet. Lacking such a minister, the power of the civil service could only be negative. They could block the introduction of policies they opposed or they could put their stamp on the administration of policies already in place. They could not, however, independently implement any new departures in policy.[151] They enjoyed the tactical advantage of continuity in office and rapid ministerial turnover could generate the illusion that the servants of state were actually in command. Savage argues that sometimes, even civil servants themselves fell victim to this illusion.[152] The research carried out for this thesis will later demonstrate that the Home Office positively blocked the development of legislation which may have created a far-improved legislative framework in which to carry out criminal investigations. It failed to reform archaic laws and deferred to legal opinion which was based on ambiguous and conflicting guidance. This is a critical component

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[150] TA Critchley, The Conquest of Violence: Order and Liberty in Britain (Constable 1970) 20.
[151] G Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 183-184.
[152] G Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 184.

of the thesis' argument that the absence of effective legislation to govern criminal investigations during the inter-war period was due, in part, to civil service intervention.

2.6 The Royal Commission on Police Powers and Procedure (1928) (RCPPP)

Slater's reference to the negative scrutiny of police practice is likely to refer to a series of concerns about police practice and behaviour[153] in the late 1920s which led to the appointment of the Royal Commission on Police Powers and Procedure in 1928 (RCPPP).[154] Its terms of reference stated that it was to consider the general powers and duties of police in England and Wales in the investigation of crime and offences.[155] Specific allegations were being made of third-degree

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[153] Most literature cites the arrest of Sergeant Goddard, Major Shepperd and the mistreatment by police of female witnesses, Irene Savidge and Helen Adele. See for example Andrew Boyle, *Trenchard* (Collins 1962) 585, 603 and 608-609; AJP Taylor, *English History 1914-1945* (Clarendon Press 1965) 261; Jerry White, 'Police and People in London in the 1930s' (1983) 11(2) Oral History and Labour History 34; Williams J, *Byng of Vimy: General and Governor General* (Pen & Sword 1992) 342; Clive Emsley, *The Great British Bobby* (Quercus 2009) 203-207; Clive Emsley, *The English Police: A Political and Social History* (First published 1991, 2nd ed, Routledge 2014) 144; Weinberger B, *The Best Police in the World: An Oral History of English Policing* (Scolar Press 1995) 16 and 67; Tim Newburn et al, *Handbook of Criminal Investigation* (Cullompton 2007) 27; Stefan Slater, 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 556-557; John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 76 < www.jstor.org/stable/42708852 > accessed 8 November 2020; Heather Shore, 'Constable dances with instructress: the police and the Queen of nightclubs in inter-war London' (2013) 38 (2) Social History 183, 185-186 and 202; John Carter Wood, 'The Constables and the 'Garage Girl'' (2014) 20 (4) Media History 385; John Carter Wood, Watching the Detectives (and the Constables): Fearing the Police in the 1920s in Sian Nicholas and Tom O'Malley, Moral Panics, Social Fears and the Media: Historical Perspectives (Routledge 2018) 147-161.

[154] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929).

[155] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page ii.

tactics being used by police on witnesses and suspects[156] and it became a regular story for newspapers. Third-degree tactics may be described as the oppressive and illegal questioning of suspects, in a manner designed to extract confessions from people who were susceptible to making false statements, due to the pressure of being in police custody. These allegations resulted in the police being portrayed in a negative light.[157] The findings of the Commission form a significant element of the thesis' later analysis but existing literature is consistent with the view that the police received a clean bill of health.[158] A small number of recommendations were made[159] but none so material that were to impact on existing police practice. Chapters 5 and 6 challenge the Commission's process and argues that more detailed probing of police investigations would have demonstrated that its conclusion was flawed. The thesis also draws the conclusion that the issue of third-degree tactics being employed may be directly related to the inadequacies of the law at that time; the rules about the questioning of suspects was unclear. These arguments in chapters 5 and 6 present as a unique contribution to the existing body of knowledge.

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[156] See for example Audrey Davies, 'Police, The Law and the Individual' (1954) 291 (1) The Annals of the American Academy of Political and Social Science 1-211; Clive Emsley, *The Great British Bobby* (Quercus 2009) 208; J C Wood, 'The third degree: press reporting, crime fiction and police powers in 1920s Britain' (2010) 21 (4) Twentieth Century British History 464, 474 < https://0-doi-org.serlibO.essex.ac.uk/10.1093/tcbh/hwq032> accessed 25 October 2020.
[157] John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 92 < www.jstor.org/stable/42708852 > accessed 8 November 2020; Heather Shore, 'Constable dances with instructress: the police and the Queen of nightclubs in inter-war London' (2013) 38 (2) Social History 183, 202.
[158] JF Moylan, *Scotland Yard and the Metropolitan Police* (G P Putnam's Sons Ltd 1929) 180-184; Audrey Davies, 'Police, The Law and the Individual' (1954) The Annals of the American Academy of Political and Social Science (1954) 291(1) 1, 143-150; M Pike, *The Principles of Policing* (MacMillan Press 1985) 20; P Rawlings, *Policing: A Short History* (Willan Publishing 2002) 177; Clive Emsley, *The Great British Bobby* (Quercus 2009) 211; John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 76 < www.jstor.org/stable/42708852 > accessed 8 November 2020.
[159] A recommendation was made that all witnesses should be cautioned and that a power of search should be enshrined in legislation.

The Commission’s conclusion that the police were operating in a satisfactory manner does not have universal support and has produced a variety of interpretations. Wood suggests that faith in policing increased as a consequence of the Commission’s findings.[160] Ascoli argues that the appointment of the Commission in the first instance was a ‘sledgehammer to crack a nut.’[161] His inference is that the details of the cases which sparked the Commission, were less complex and profound than the public and parliament considered them to be, and was an act of desperation to quieten dissenters from earlier reviews.[162] The newspapers reported the thoughts of a popular crime novelist[163] who expressed the view that the police should be left alone and condemned the ‘mischievous nagging of the press.’[164] Some blamed the Commission itself for attempting to place further constraints on the police and were directly responsible for a recent increase in unsolved murders.[165] This was not a view shared by the police.[166] The thesis puts forward that these observations are superficial arguments which mask the reality that police investigations were based on an unstable legal platform resulting in the application of inconsistent standards.

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[160] John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012 162.
[161] David Ascoli, *The Queen’s Peace* (Hamish Hamilton 1979) 214.
[162] The Savidge inquiry.
[163] Edgar Wallace.
[164] John Carter Wood, ‘Press, Politics and the 'Police and Public' Debates in Late 1920s Britain’ (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 76 < www.jstor.org/stable/42708852 > accessed 8 November 2020.
[165] John Carter Wood, ‘Press, Politics and the 'Police and Public' Debates in Late 1920s Britain’ (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 92 < www.jstor.org/stable/42708852 > accessed 8 November 2020.
[166] John Carter Wood, ‘Press, Politics and the 'Police and Public' Debates in Late 1920s Britain’ (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 126 < www.jstor.org/stable/42708852 > accessed 8 November 2020.

Contrary views argue that despite the RCPPP's findings there remained a call to condemn what was labelled 'police excesses.'[167] The Commission was again criticised for its tardiness in reporting and that by the time it published its report, public interest had lost the temporary energy it needed to overcome official inertia. The Commission was critical of the nature of unpopular, existing laws[168] but newspapers[169] highlighted the failure of the Commission to recognise poor practice, thus neglecting reality in this area of policing.[170] This thesis builds on these position statements and argues that new legislation was required but that it was a combination of a basic lack of understanding of the criminal investigation process itself and a confused and ambiguous legal landscape which resulted in no reforming legislation being introduced.

2.7 The Judges' Rules

A significant element of the analysis in the following chapters is the application of the Judges' Rules which were initially drafted in 1912 and 1918 and which were intended as the basis upon which police practice would be governed. It is an important point that the thesis highlights that these rules were the only guidance

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[167] John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 87 < www.jstor.org/stable/42708852 > accessed 8 November 2020. See also Martin Pugh, *We Danced All Night* (Vintage 2009) 116-117. It can be reasonably assumed that these police excesses refer to the suspected employment of third degree tactics.
[168] David Ascoli, *The Queen's Peace* (Hamish Hamilton 1979) 223.
[169] Daily Chronicle 21 July 1928.
[170] John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 95 < www.jstor.org/stable/42708852 > accessed 8 November 2020.

in existence and did not have the force of law;[171] they were not enshrined in legislation or case law and could not be enforced absolutely in the courts. Effectively, these were the only rules governing criminal investigations. This point is developed in chapter 5. The rules were specifically intended to clarify when an arrested person should be cautioned that he need not say anything but it is clear from existing literature that it failed to afford the arrested person the protection he needed from police questioning. The specific issue of the Judges' Rules and the role of the Home Office and the courts is intrinsically linked. It is examined in detail in chapter 5 where it is argued that there was a blanket misunderstanding and multi-interpretation of the rules.

It is significant that the inter-war practices of the police were commented upon in 1948 and it was recognised that the application of the caution was causing operational difficulties.[172] Police officers were unsure whether, when and to whom a caution should be administered and trial judges disagreed about the admissibility or otherwise of police evidence where a caution had not been given.[173] St Johnston remarks that the police were tempted to delay cautioning a suspected offender in the hope that he would say something which would incriminate himself.[174] This is a key argument in the thesis, that this was a conscious and preferred tactic of the police and one which was tacitly sanctioned by the courts due to the lack of clarity in guidance and law. It is also linked to the

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[171] Geoffrey Marshall, Police and Government: The Status and Accountability of the English Constable (Methuen & Co Ltd 1965) 121.
[172] TE St Johnston, 'The Legal Limitation of Interrogation of Suspects and Prisoners in England and Wales' (1948) 39 (1) Journal of Criminal Law and Criminology (1931-1951) 89-98.
[173] TE St Johnston, 'The Legal Limitation of Interrogation of Suspects and Prisoners in England and Wales' (1948) 39 (1) Journal of Criminal Law and Criminology (1931-1951) 89, 92-95.
[174] TE St Johnston, 'The Legal Limitation of Interrogation of Suspects and Prisoners in England and Wales' (1948) 39 (1) Journal of Criminal Law and Criminology (1931-1951) 89, 95.

issue of the use of third-degree tactics which is examined in chapters 5 and 6. St Johnston also argues that although there was a school of thought which considered that the caution should be abolished altogether, it was better in the interests of justice that the police should have some rules and they should stick to them.[175] He concludes by arguing that generally speaking, the spirit of the Judges' Rules is faithfully observed but the letter is producing frequent misunderstandings.[176] This may be interpreted as the original rules being poorly expressed, but in practice, they worked.[177] The thesis challenges this position and argues that the rules were being frequently breached and these transgressions were sanctioned by the courts.

McConville and Marsh have more recently undertaken a comprehensive examination of the development of the Judges' Rules but did not explore the practical ramifications of them being implemented by the police. Importantly, they agree that the Judges' Rules were effectively uncarefully drafted administrative guidance and, as identified above, did not have the force of law since they were not enshrined in statute nor had they been determined through a judicial process.[178] Interpretation of the rules was far from clear and they did not feature in case law for a number of years after their initial introduction.[179] They concluded

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[175] TE St Johnston, 'The Legal Limitation of Interrogation of Suspects and Prisoners in England and Wales' (1948) 39 (1) Journal of Criminal Law and Criminology (1931-1951) 89, 97-98.
[176] TE St Johnston, 'The Legal Limitation of Interrogation of Suspects and Prisoners in England and Wales' (1948) 39 (1) Journal of Criminal Law and Criminology (1931-1951) 89, 98. See also J F Moylan, *Scotland Yard and the Metropolitan Police* (G P Putnam's Sons Ltd 1929) 36.
[177] TE St Johnston, 'The Legal Limitation of Interrogation of Suspects and Prisoners in England and Wales' (1948) 39 (1) Journal of Criminal Law and Criminology (1931-1951) 89, 98.
[178] The rules were initially introduced in 1912 and amended in 1918 which resulted in further confusion. Mike McConville and Luke Marsh, *The Myth of Judicial Independence* (Oxford University Press 2020) 50.
[179] Mike McConville and Luke Marsh, *The Myth of Judicial Independence* (Oxford University Press 2020) 42. See for example R v Grayson (1921) 16 Cr App Rep 7. See also Geoffrey

that it was a clearly ambiguous position[180] and that it was detective officers of the CID which appeared to be taking advantage of the situation.[181] These issues are at the core of the arguments which follow and the thesis has then built on this position. Firstly, it expands the understanding of why this position was more widely regarded us unacceptable through the analysis of independent legal and public opinion. Secondly, it introduces a different perspective on the Royal Commission on Police Powers and Procedure (RCPPP) and argues that it could have adopted a more probing role. Thirdly, it offers a potential explanation of why the Home Office did not put forward the option of considering legislation which may have introduced greater clarity to the investigative process. This point is specifically addressed in chapters 4 and 5. Fourthly, it examines the police role in greater detail and identifies where other points of procedure were similarly unclear and that overall, the nature of an investigation was tacitly developing and its ramifications were not being fully recognised. Finally, the thesis examines how this unsettled position translated into operational police practice.

The police became more circumspect in their application after the RCPPP investigation,[182] but did not adopt the recommendation by the RCPPP to caution

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Marshall, *Police and Government: The Status and Accountability of the English Constable* (Methuen & Co Ltd 1965) 127; Tim Newburn et al, *Handbook of Criminal Investigation* Cullompton 2007) 27.

[180] Mike McConville and Luke Marsh, *The Myth of Judicial Independence* (Oxford University Press 2020) 33-63.

[181] Mike McConville and Luke Marsh, *The Myth of Judicial Independence* (Oxford University Press 2020)) 63-67.

[182] John Carter Wood, ‘Press, Politics and the 'Police and Public' Debates in Late 1920s Britain’ (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 127 < www.jstor.org/stable/42708852 > accessed 8 November 2020.

every witness they interviewed in the course of an investigation.[183] Chapter 5 identifies that this was a position supported by the Home Office.

The limited number of recommendations[184] by the RCPPP meant that the questioning of arrested people was largely unaffected.[185] Wood identifies that it was the view of both the police and parliament that there had been no change in police practice.[186] The thesis builds on these position statements and examines the continuing practical application of the rules. Chapter 5 argues that despite suggestions that the police and parliament had examined the issue, little attention was paid to the rules since the courts did not recognise the police as the competent body to question arrested people and that it remained the responsibility of the courts. This argument builds upon the assertion by McInerney that the police were not a sufficiently competent body to conduct interviews[187] and the courts' view remained that it was simply their role to bring suspected offenders before the courts.

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[183] John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 128 < www.jstor.org/stable/42708852 > accessed 8 November 2020. See also TE St Johnston, 'The Legal Limitation of Interrogation of Suspects and Prisoners in England and Wales' (1948) 39 (1) Journal of Criminal Law and Criminology (1931-1951) 89, 97.

[184] The report combined recommendations and conclusions. See Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) pages 113-125. Each of the relevant recommendations and conclusions are examined in chapter 5.

[185] John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 129 < www.jstor.org/stable/42708852 > accessed 8 November 2020.

[186] John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 130 < www.jstor.org/stable/42708852 > accessed 8 November 2020.

[187] Pat McInerney, 'The privilege against self-incrimination from early origins to Judges' Rules: challenging the orthodox view' (2014) 18 (2) International Journal of Evidence and Proof 101, 132.

2.8 Recent academic treatment of the relationship between investigations and the law

Roberts has recently made the point that in criminal investigations, the law specifies the legal points to be proven and regulates their conduct.[188] He states that investigative powers to enable effective investigations are fundamental to the process[189] and are found primarily in both legislation and case law.[190] This is a key point in the following analysis and the thesis' wider argument that inter-war investigations had little legal basis. Roberts' more recent analysis of police powers[191] highlighted the concept of investigative powers to include such measures as arrest, search and seizure of evidence.[192] This is significant commentary as it is the lack of legal powers governing these areas in the inter-war period which undermined the ability to carry out effective and lawful investigations. This is further examined in chapters 4,5 and 6 through Innes' analysis of the theory of criminal investigations.[193] He also argued that policing since 1829 had developed as a limited, gradualist experiment in policing by consent[194] which resulted in the principle that a constable was entitled to ask

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[188] Paul Roberts, Law and Criminal Investigation in Tim Newburn et al, *Handbook of Criminal Investigation* (Cullompton 2007) 95. See also HC Debate 7 December 1936 vol 318, col 1712.
[189] Paul Roberts, Law and Criminal Investigation cited in Tim Newburn et al, *Handbook of Criminal Investigation* (Cullompton 2007) 102-103.
[190] Paul Roberts, Law and Criminal Investigation in Tim Newburn et al, *Handbook of Criminal Investigation* (Cullompton 2007) 94. Subsidiary powers may also be found in delegated legislation, codes of practice and administrative regulations.
[191] Roberts' analysis was after the introduction of the Police and Criminal Evidence Act 1984 c 60. Paul Roberts, Law and Criminal Investigation in Tim Newburn et al, *Handbook of Criminal Investigation* (Cullompton 2007) 92-95.
[192] Paul Roberts, Law and Criminal Investigation in Tim Newburn et al, *Handbook of Criminal Investigation* (Cullompton 2007) 102-105.
[193] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003).
[194] Paul Roberts, Law and Criminal Investigation in Tim Newburn et al, *Handbook of Criminal Investigation* (Cullompton 2007) 97. For a summary of the principles of policing by consent see Jonathan Jackson et al, *Policing by consent: understanding the dynamics of police power and*

questions of anyone, though there was no requirement to answer.[195] McInerney argues that there had been a long-standing, inherent distrust of the police in their competence and suitability to question suspects.[196] Both these aspects are examined in chapters 5 and 6.

Newburn supports Roberts' arguments by stating that modern policing investigative methods are a historical legacy of much of what investigators do on a day-to-day basis. It requires no explicit legal authorisation[197] and rather than reaching for the statute books, the police can often achieve their investigative objectives 'simply by asking nicely or paying attention to their environment'.[198] Police activity is permitted under the law unless it is strictly forbidden.[199] This is a key point which is developed further in chapter 4 when outlining criminal investigation theory and also throughout chapter 6 when examining police practice. Newburn adds that given the criminal's propensity to cheat and lie, the courts are prepared to tolerate a certain amount of deception in law enforcement as a necessary evil in the service of the greater good.[200] This presents as problematic since the flexibility inherent in such a position creates a lack of clarity and makes it more difficult for the police to apply consistent practices. The thesis develops this point in chapters 5, 6 and 7 and argues that recent observations of

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legitimacy (2012) European Social Survey < http://eprints.lse.ac.uk/47220/> accessed 21 May 2021.

[195] Paul Roberts, Law and Criminal Investigation cited in Tim Newburn et al, *Handbook of Criminal Investigation* (Cullompton 2007) 97.

[196] *R v Toole* (1856) 7 Cox CC 245; *R v Johnston* (1864) 15 ICLR 60, 1 WLUK 259. See also Pat McInerney, 'The privilege against self-incrimination from early origins to Judges' Rules: challenging the orthodox view' (2014) 18 (2) International Journal of Evidence and Proof 132.

[197] Tim Newburn et al, *Handbook of Criminal Investigation* Cullompton 2007) 97.

[198] Tim Newburn et al, *Handbook of Criminal Investigation* Cullompton 2007) 97.

[199] Tim Newburn et al, *Handbook of Criminal Investigation* Cullompton 2007) 97.

[200] Tim Newburn et al, *Handbook of Criminal Investigation* Cullompton 2007) 100.

the operating practices of modern policing has a direct link back to the inter-war period. Chapter 6 specifically argues that a lack of understanding of the import of the criminal investigation process led to a position where the police needed to operate outside of an established legal framework. Newburn argues that the notion that parliament could ever micro-manage policing through legislation is a mirage. The overall conclusion in this thesis is that not introducing legislation until 1984,[201] which comprehensively tackled the uncertainties of the law, was a flawed position to adopt.

This thesis has considered the academic treatment of much later policing periods and it has identified that the issues raised in the literature, which were prevalent in the inter-war period, had considerable longevity throughout the twentieth century. Its significance is that it tends to demonstrate that the ostensible simple concept of an investigation is more complicated than appears on face-value. Scholars such as Baldwin and Kinsey argue that it was once the emphasis of the courts to control the police,[202] but more recent case law[203] had shifted this position holding that it is no part of a judge's function to discipline the police in respect of the manner in which evidence was produced at court. Except for admissions and confessions, the judge has no discretion to refuse evidence on the ground that it was obtained by improper means.[204] This position has since changed with the introduction of the Police and Criminal Evidence Act 1984 which

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[201] The Police and Criminal Evidence Act 1984.
[202] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 163. They specifically cited *Callis v Gunn* (1964) 1 QB 495, 3 WLR 931, 3 All ER 677, 10 WLUK 40, 48 CAR 36 and *Jeffrey v Black* (1978) 1 QB 49 as evidence for this assertion.
[203] *R v Sang* (1979) AC 402, 3 WLR 263, 2 All ER 1222, 7 WLUK 200, 69 CAR 282.
[204] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 164. See also M Brogden, '*On the Mersey Beat: Policing Liverpool Between the Wars* (Oxford University Press 1991) 137.

allows for trial judges to exclude unfairly obtained evidence.[205] Baldwin and Kinsey's observations relate to a period after the inter-war, but it echoes the issues identified in this thesis relevant to the inter-war period and is a key factor examined in chapters 5 and 6. Baldwin and Kinsey argue that the law in the 1970s and 1980s was a mess[206] and that there is a distinction between the rules that the courts say the police must operate, and the rules they allow the police to operate.[207] Two arguments flow from this: a tendency had developed to construe the rules more liberally in order to allow scope for police enquiries[208] and that the law had become confused and had been used to veil police powers.[209] Brogden argues that officers knew the law well, with all its tortuous semantics, convoluted clauses and hazards for clumsy implementation.[210] This is a strong theme identified within the analysis carried out in chapters 5 and 6 and demonstrates that the problems associated with the questioning of arrested suspects in investigations continued after the inter-war period up until the introduction of the Police and Criminal Evidence Act 1984.

Baldwin and Kinsey argue that by the late 1970s, debates on police powers had become fruitless exchanges from entrenched positions and nobody seemed to be looking at what was happening to police officers or to suspects on the ground.[211] They argued that what was needed was an approach which looked at

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[205] Police and Criminal Evidence Act 1984, s 78.
[206] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 146.
[207] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 146.
[208] L H Leigh, *Police Powers in England and Wales* (Butterworths 1975) 75; Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 163.
[209] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 163.
[210] M Brogden, 'On the Mersey Beat: Policing Liverpool Between the Wars (Oxford University Press 1991) 88.
[211] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 170.

the daily realities of policing.[212] The establishment of the Royal Commission on Criminal Procedure in 1977[213] focused on the confusion over the law and practice relating to investigation and prosecution processes, discontent about the constraints on criminal procedure and the use made by police of their powers;[214] it was of cross-party concern.[215] It was acknowledged that police officers had learned to use methods bordering on trickery or stealth in investigations[216] but it emphasised the point that in assessing whether powers should be made available to the police, account must be taken of the effectiveness of the power in investigating the offence and the importance society placed upon bringing those suspected of it to trial.[217] This is a key point which is examined in chapters 4 and 6.

Newspapers and civil liberty groups were critical of the 1977 Commission's report[218] but these criticisms were dismissed on the grounds that it was childish to expect new safeguards without more police powers and urged implementation of new powers being recommended.[219] Baldwin and Kinsey concluded their

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[212] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 170.
[213] This led to the publication of The Royal Commission on Criminal Procedure (Cmnd 8092, 1981).
[214] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 193. See also JF Moylan, *Scotland Yard and the Metropolitan Police* (G P Putnam's Sons Ltd 1929) 180-184; Pike M, *The Principles of Policing* (MacMillan Press 1985) 20; Clive Emsley, *The English Police: A Political and Social History* (First published 1991, 2nd edn, Routledge 2014) 144; P Rawlings, *Policing: A Short History* (Willan Publishing 2002) 177.
[215] Stefan Slater, 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 560; Wood J C, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75-98.
[216] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 195.
[217] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 204. See The Royal Commission on Criminal Procedure, (Cmnd 8092, 1981) page 23.
[218] See The Times 9 January 1981; The New Statesman 2 January 1981.
[219] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 211. The new powers included stop, search and arrest. See Report of the Royal Commission on Criminal Procedure (Cmnd 8092, 1981) pages 190-196.

assessment of the Commission's report by arguing that it had failed to come up with a balance of powers and protection that would work in practice and had failed to ask what type of police force society wanted.[220] They argued that the role of law is diminished and all faith is placed in police integrity.[221] The role of the police is not the focus of this research, but it is significant that these more recent views echo the arguments put forward in the thesis, and which indicate that the issue of police powers during the inter-war years extended to more recent times. This demonstrates that the complexities involved in criminal investigations were not fully understood for a prolonged period.

Chapter 5 examines the issue of arrest and specifically that its importance and significance during the inter-war period was not fully recognised. This remained a key issue in the 1970s and 1980s. The question of whether a person had in fact been deprived of their liberty remained unclear.[222] The courts did not draw a distinction between arrest and detention and failed to lay down the criteria necessary for lawful, rather than factual, arrest.[223] The courts encouraged police officers to detain a suspect for so long as might be necessary to confirm their general suspicion or to show them unfounded.[224] The court shut its eyes for the convenience of officers involved in the case.[225] This was despite it being clear in case law that there was no power to detain while evidence to create reasonable

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[220] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 214.
[221] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 214.
[222] See Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 149 who cite R v Brown (1976) 64 Cr App R 231.
[223] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 149.
[224] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 149.
[225] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 149.

suspicion was being collected[226] and no power to detain for the purpose of questioning.[227] Further, individuals had been detained for questioning and force had been used to prevent people from leaving police stations.[228] This was an issue identified by the 1981 Royal Commission.[229] These are also issues identified in the inter-war years and examined in chapters 5 and 6 of this thesis.

Confusion still remained over the interpretation of the Judges' Rules which had first been introduced in 1912 to govern the cautioning and questioning of arrested people,[230] and it remained clear that the rules still had no legal force.[231] This was a significant issue since it was argued that the police placed a disproportionate premium on evidence generated within a police station.[232] The administrative rules[233] had been changed in 1964 to reflect the need to caution an individual when there was reasonable grounds to suspect he had committed a crime, but it remained an issue which had no foundation in legislation. It is a central argument throughout this thesis that placing this operating practice on a legislative footing could have removed any ambiguity over whether such practice was preferable or mandatory.

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[226] *Rice v Connolly* (1966) 2 QB 414, 3 WLR 17, 2 All ER 649, 5 WLUK 3, 130 JP 322, 110 SJ 371.
[227] *Kenlin v Gardiner* 1967 2 QB 510, 2 WLR 129, 3 All ER 931, 11 WLUK 1, 131 JP 191, 110 SJ 848. Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 152.
[228] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 164.
[229] Report of the Royal Commission on Criminal Procedure, (Cmnd 8092, 1981) page 53. Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 166.
[230] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 155.
[231] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 156.
[232] Robert Baldwin and Richard Kinsey, *Police Powers and Politics* (Quartet 1982) 154.
[233] Home Office Circular 45/64 - Judges' Rules and Administrative Directions to the Police 1964.

Finally, more recent analysis has highlighted that concerns about the legal basis associated with the search of premises and the questioning of prisoners existed until the 1980s. The police had not been provided with any general power to search premises in the course of a murder investigation[234] and the power to enter premises to arrest someone for an 'arrestable offence'[235] only came into force in 1967.[236] An understanding of the rules pertaining to 1967 is not relevant to the thesis' arguments, but its inclusion serves the purpose of demonstrating that legislation added clarity to the investigative process. The issue of searching premises for evidence during the inter-war years arose only when debating the need to enforce licensing legislation[237] but it was not as sensitive an issue as the arrest and cautioning of suspected offenders. Occasional criticisms were levelled about the police searching without any authority[238] but no legislation was introduced to address the anomaly. This thesis builds on that position and argues that despite parliament being aware of a need for new legislation, the Home Office purposely took no action.

2.9 Coroners

It is argued in chapter 7 that coroners' legislation had an adverse impact on the ability of the police to efficiently and effectively investigate murder. The office of

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[234] JF Moylan, *Scotland Yard and the Metropolitan Police* (G P Putnam's Sons Ltd 1929) 31.
[235] Some offences were deemed automatically arrestable by virtue of the term of imprisonment attached to a particular offence.
[236] Criminal Law Act 1967, s 2 (6).
[237] Heather Shore, 'Constable dances with instructress: the police and the Queen of nightclubs in inter-war London' (2013) 38 (2) Social History 183, 194.
[238] Jerry White, 'Police and People in London in the 1930s' (1983) 11(2) Oral History and Labour History 34, 36.

coroner and its function during the inter-war period represents as an important element of the thesis' argument that contemporary legislation acted as a barrier to effective police investigations. The legislation governing the role and responsibilities of the coroner impacted adversely on the effectiveness of the police. The existing literature does not tackle this issue and the thesis presents a new argument that the legal relationship between the office of coroner and the police impeded, and potentially compromised police investigations.

The history and the origins of the office of coroner are examined in much of the existing academic and historical literature.[239] Its early role included the investigation of violent or unexplained death,[240] but up to the period before the middle of the nineteenth century, the office was seen as an unstructured and ill-disciplined environment.[241] The coroner was regarded as a law unto himself,[242] and the inquest had become more of a place of gossip and scandal rather than a forensic and structured inquisitorial process.[243] Its purpose and effect was questioned which led to regular proposals for radical changes including its

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[239] See for example Rudolph E Melsheimer, The Coroners Acts 1887 and 1892: Being the Fifth Edition of the Treatise by Sir John Jervis on the Office and Duties of Coroners (Sweet and Maxwell Ltd 1898) 1; Caraker G E, 'The Coroners Court in England and Wales: An Ancient Office that is still vigorous (1951) 37 (5) American Bar Association Journal 361-363; Gavin Thurston et al, The law and practice on coroners: Thurston's Coronership (3rd edn, Barry Rose 1985) 1-18; Christopher P Dorries, Coroner's Courts (John Wiley 1999) 1-7; Milroy C and Whitwell H, 'Reforming the coroners' service' (2003) 327 (7408) British Medical Journal 175-176; William Cornish et al, The Oxford History of the Laws of England: Volume XI 1820-1914 (Oxford On Line 2010) 934-955; John Cooper, Inquests (Hart 2011) 5-11; Pitman A, 'Reform of the Coroners service in England and Wales; policy making and politics' (2012) The Psychiatrist 36 1-5; Leslie Thomas et al, Inquests: A Practitioner's Guide (Legal Action Group 2014) 13-27; Boldt D, 'The coroner as judge and jury' (2020) 7 New Zealand Law Journal 246-250; Kirton-Darling E, Death, Family and the Law (Bristol University Press 2022).
[240] Christopher P Dorries, *Coroner's Courts* (John Wiley 1999) 3.
[241] John Cooper, *Inquests* (Hart 2011) 7; Judith Flanders, The *Invention of Murder* (HarperPress 2011) 81.
[242] John Cooper, *Inquests* (Hart 2011) 7.
[243] John Cooper, *Inquests* (Hart 2011) 7; William Cornish et al, *The Oxford History of the Laws of England: Volume XI 1820-1914* (Oxford On Line 2010) 934.

complete abolition.[244] However, the middle to late Victorian period is widely recognised as the period which codified coroners' legislation and brought a more defined purpose and structure to its functionality.[245] The recommendation by the 1860 Select Committee on the Office of Coroner[246] recommended that inquests should be held where the cause of death is unknown and also where reasonable suspicion of criminality exists.[247] This was later enshrined in legislation by the Coroner's Act 1887.[248] Criticism of the coroner's office and its function continued and was reviewed by a parliamentary commission in 1910[249] which considered the issue of the police being responsible for the initial investigation of murders.[250] The police service had developed sufficiently to take full responsibility for investigating homicides.[251] This specific issue is examined in detail in chapter 7. The police were not accountable to the coroner and friction developed over their respective roles; frequently the police did not refer sudden deaths to the coroner.[252]

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[244] William Cornish et al, The Oxford History of the Laws of England: Volume XI 1820-1914 (Oxford On Line 2010) 934.
[245] Christopher P Dorries, *Coroner's Courts* (John Wiley 1999) 6; William Cornish et al, *The Oxford History of the Laws of England: Volume XI 1820-1914* (Oxford On Line 2010) 934; Leslie Thomas et al, *Inquests: A Practitioner's Guide* (Legal Action Group 2014) 16.
[246] Report from the Select Committee on the Office of Coroner, 30 March 1860 Paper 1193. See William Cornish et al, *The Oxford History of the Laws of England: Volume XI 1820-1914* (Oxford On Line 2010) 945.
[247] William Cornish et al, The Oxford History of the Laws of England: Volume XI 1820-1914 (Oxford On Line 2010) 945.
[248] Coroner's Act 1877, s 3 (50 & 51 Vic c 71 s 3). See Gavin Thurston et al, *The law and practice on coroners: Thurston's Coronership* (3rd edn, Barry Rose 1985) 10; Christopher P Dorries, *Coroner's Courts* (John Wiley 1999) 6; William Cornish et al, *The Oxford History of the Laws of England: Volume XI 1820-1914* (Oxford On Line 2010) 935; John Cooper, *Inquests* (Hart 2011) 7.
[249] William Cornish et al, *The Oxford History of the Laws of England: Volume XI 1820-1914* (Oxford On Line 2010) 936; Leslie Thomas et al, *Inquests: A Practitioner's Guide* (Legal Action Group 2014) 18. See Second Report of the Departmental Committee Appointed to Inquire into the Law Relating to Coroners (Cmd 5139, 1910).
[250] Leslie Thomas et al, *Inquests: A Practitioner's Guide* (Legal Action Group 2014) 18.
[251] Christopher P Dorries, *Coroner's Courts* (John Wiley 1999) 6; William Cornish et al, *The Oxford History of the Laws of England: Volume XI 1820-1914* (Oxford On Line 2010) 947.
[252] William Cornish et al, The Oxford History of the Laws of England: Volume XI 1820-1914 (Oxford On Line 2010) 947.

There is general agreement in the literature that the Coroner's (Amendment) Act 1926 was the most significant piece of legislation affecting coroners.[253] Police forces were now recognised as being competent to investigate murders[254] and the Act removed the responsibility of the coroner to investigate such cases when criminal proceedings had already been instituted by the police.[255] This is a significant issue examined in this thesis and is a central part of the analysis outlined in chapter 7. It argues that cases which had not identified an immediate suspect remained with the coroner, and consequently, the legislation only partially recognised the developing competency of the police.

A Departmental Committee in 1936[256] further weakened the coroner's inquisitorial process[257] by recommending that the police should have the power to request adjournment of an inquest if criminal proceedings were being considered.[258] The Committee stated that coroners tended to go beyond the mere investigation of facts and should no longer have the power to indict someone for murder.[259] It also

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[253] G E Caraker, 'The Coroners Court in England and Wales: An Ancient Office that is still vigorous (1951) 37 (5) American Bar Association Journal 361-363; Gavin Thurston et al, *The law and practice on coroners: Thurston's Coronership* 3rd edn, (Barry Rose 1985) 11; William Cornish et al, *The Oxford History of the Laws of England: Volume XI 1820-1914* (Oxford On Line 2010) 936; John Cooper, *Inquests* (Hart 2011) 8.
[254] Christopher P Dorries, *Coroner's Courts* (John Wiley 1999) 6; William Cornish et al, *The Oxford History of the Laws of England: Volume XI 1820-1914* (Oxford On Line 2010) 947. See also William A, 'The Necessity for Amendment of the Law Relating to Coroners and Inquests (1913) Transactions of the Medico Legal Society 10 (1) 162-164 which identified that the medical profession recognised the police as a competent investigative body and that a dual process of coroners' and magistrates' hearings was outdated.
[255] William Cornish et al, *The Oxford History of the Laws of England: Volume XI 1820-1914* (Oxford On Line 2010) 936; John Cooper, *Inquests* (Hart 2011) 8.
[256] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936)
[257] John Cooper, *Inquests* (Hart 2011) 8.
[258] Leslie Thomas et al, *Inquests: A Practitioner's Guide* (Legal Action Group 2014) 19.
[259] Leslie Thomas et al, *Inquests: A Practitioner's Guide* (Legal Action Group 2014) 19.

made several structural and administrative changes.[260] The Director of Public Prosecutions initially controlled the amount of evidence placed before a coroner's jury[261] but ultimately the inquest heard all the evidence in public.[262] The inquest process was described as protracted and torturous[263] and which culminated in a person being named as the murderer.[264] There was significant criticism that a coroner's jury was able to return a guilty verdict based on evidence that was not allowed in the criminal courts.[265]It was argued that had the police taken primacy the case would never have been prosecuted.[266]

Recent literature has emphasised the effect of the Brodrick Committee on Death Certification and Coroners.[267] It acted as an endorsement of the need for coroners to withdraw from the criminal investigation element of violent or unexplained deaths and specifically recommended restricting its role to other functions.[268]

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[260] Christopher P Dorries, *Coroner's Courts* (John Wiley 1999) 6.
[261] John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012) 35.
[262] John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012) 37.
[263] John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012) 58.
[264] John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012) 66.
[265] John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012) 166.
[266] John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012) 167.
[267] Report of the Committee on Death Certification and Coroners (Cmnd 4810, 1971).
[268] John Cooper, *Inquests* (Hart 2011) 8-9. The recommendations were to determine the medical cause of death, to ally rumours or suspicions, to draw attention to the exercise of circumstances which, if unremedied, might lead to further deaths, to advance medical knowledge and to preserve the legal interests of the deceased person's family, heirs or other interested parties. See also Gavin Thurston et al, *The law and practice on coroners: Thurston's Coronership* (3rd edn, Barry Rose 1985) 14-15; Leslie Thomas et al, *Inquests: A Practitioner's Guide* (Legal Action Group 2014) 23.

Chapter 7 raises the issue of the purpose of a coroner's inquisition and inquest. The recent literature examining the modern day function identifies that parliament repeatedly does not make clear its purpose and its absence enables very different misunderstandings of the inquest process.[269] It may be seen as a back-up for the criminal process,[270] as a forum for providing an opportunity for bereaved kin to seek some form of justice[271] and also as shaping social policy as well as determining how and where a death was caused.[272] Current concerns about the role of the coroner include intimidating experiences in the coroner's court,[273] unanticipated verdicts, lack of accountability, the system being outdated, inconsistent and unsympathetic approaches to families and that it should be more policy-focused.[274] All these issues are a feature of the inter-war coroner's process.

2.10 Conclusion

The literature reveals that the legal basis of murder investigations during the inter-war years has received little academic attention and that there has been no examination of the practical application of the rules as they existed at that time. It is an important acknowledgement that criminal investigation work had been a feature of policing before the inter-war period. However, society became

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[269] Edward Kirton-Darling, *Death, Family and the Law* (Bristol University Press 2022) 26.
[270] Edward Kirton-Darling, *Death, Family and the Law* (Bristol University Press 2022) 26.
[271] Edward Kirton-Darling, *Death, Family and the Law* (Bristol University Press 2022) 26.
[272] Edward Kirton-Darling, *Death, Family and the Law* (Bristol University Press 2022) 28-31.
[273] Alexandra Pitman, 'Reform of the Coroners service in England and Wales; policy making and politics' (2012) 36 (2) The Pyschiatrist 1-5.
[274] Alexandra Pitman, 'Reform of the Coroners service in England and Wales; policy making and politics' (2012) 36 (2) The Pyschiatrist 1-5. See also Christopher Milroy and Helen Whitwell, 'Reforming the coroners' service' (2003) 327 (7408) British Medical Journal 175-176.

increasingly aware of the significance of its constituent elements and the important legal role it performed in bringing suspected offenders before the courts. Prior to the inception of the New Police in 1829, police practice had been to arrest suspected offenders, question them and take them before a magistrate. There was no legal basis upon which specific actions were taken. Concerns were raised about some of the police tactics employed but no steps were taken to address these concerns through legislation. These practices continued throughout the Victorian era and into the inter-war period.

The investigative aspect of policing continued to escape significant social, political and legal attention throughout the inter-war years due to more pressing social concerns. Politicians were focused on re-building an economy after a world war, high unemployment, strikes, political violence and a global financial crisis. Policing was relatively of less concern. Throughout the period there were notable events which required a police response but there is no universal agreement about how their actions were perceived. Much of the literature which has examined these particular aspects regard policing as aggressive and violent. A counter-argument suggests that the police in the 1920s and 1930s were favourably received and were generally well regarded by the public.

Newspapers were the primary means through which people's opinions and attitudes were shaped. It was a time when the industry was modernising and professionalising its approach in a battle to secure the highest circulation figures. There is universal agreement that the market was dominated by right-wing editorials though there were increasing outlets for left-wing opinion. A regular

theme in both, was the role of government and the necessary levels of intervention; this is a topic fundamental to the issue of police powers. Many newspapers used their national reach to air disagreements between newspaper proprietors and politicians, and the extent to which public opinion was reflected is a source of disagreement between commentators. The extent to which newspapers demonstrably influenced contemporary public opinion remains unclear, but they remained the dominant source of information and many historical and academic narratives have been created using these records.

Commentary on how public opinion influenced police powers is limited[275] but there are three emerging themes which give a clear indication that there was a general reticence to increase them. These themes are unconnected and occur at different times of the period suggesting that it was not the specific issue which created the resistance, but an overall unwillingness by parliament and society to grant additional powers. By the beginning of the 1920s there was already an engrained perception that elements of the police service were corrupt and were abusing their existing powers. Several notable incidents have been cited as evidence of corruption though others have argued the situation had been exaggerated by the press. The matter attracted sufficient concern for a Royal Commission to be appointed to examine police powers, though its outcome was overwhelmingly an endorsement of existing police practice. The inter-war Commission, though, was a marker that there was a continual reminder that police powers should not be abused or liberally granted.

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[275] See for example R M Morris, 'Crime Does Not Pay': Thinking Again About Detectives in the First Century of the Metropolitan Police cited in Chris A Williams, Police and Policing in the Twentieth Century (Ashgate 2011) 182.

By the late 1920s and early 1930s, the middle classes voiced a strong opposition to the use of police powers being used to enforce unpopular speed legislation. The legislation disproportionately affected the middle classes and it was perceived that all police effort was being put into road traffic enforcement which took them away from their primary role. It further raised the issue of police integrity and their use of subjective assessments of whether particular actions amounted to a criminal offence. The laws were amended and gradually people became more accepting of them. It was another example of society standing up to the use of police powers which were perceived as being used to the unnecessary detriment of particular segments of society.

The rise of fascism in the 1930s sparked an unprecedented outbreak of violence between opposing political groups. The BUF tactic of using extreme violence to suppress its opponents had the hallmark of fascism witnessed in other countries and this new type of political rally was seen as an unwelcome trend. It raised the issue of police powers in two respects: police were not empowered to intervene at indoor meetings and they had limited powers to manage public protests on the street. There was strong public opinion that police should not be granted new powers but growing violence persuaded parliament otherwise. Subsequent use of the new powers was criticised by the Home Office and complaints were levelled about excessive use of police force. It was another reminder that the granting of new police powers should be the exception rather than the rule.

The thesis later sets out in chapter 6 the constituent elements of a criminal investigation and identifies what it assumes to be the investigative standard to have been applied throughout the inter-war period. The chapter argues that legislation was needed to govern this series of activities as it involves more than a simple arrest of a suspect and bringing him before the courts; this is regarded as investigative legislation. No legislation appeared on the statute books throughout the inter-war period and rarely does its function feature in the existing literature. Debate on existing law relating to criminal investigations surfaced occasionally when specific pieces of legislation were proposed in parliament but this related specifically to what amounted to a new criminal offence and the associated police powers of arrest. It is argued in this thesis that the inter-war courts expressed reservations about the ability of the police to carry out some aspects of investigations and the law controlling criminal investigations was confusing and restrictive. A consequence was to tacitly encourage police officers to find alternative tactics of introducing evidence by unlawful means. Not introducing legislation compounded the problem. The constituent elements of a criminal investigation are also analysed in chapter 5 but the principal components include the arrest and questioning of a suspected offender, and the searching of premises. These issues are intrinsically linked and each featured in the examinations carried out at the time by the Home Office and the Royal Commission on Police Powers and Procedure.

The Home Office adopted the broad view that legislative change was not necessary. It rejected proposals to introduce stricter powers to control prostitution and similarly rejected calls to introduce new powers to govern criminal

investigations more generally. It is argued in the literature that this was a collusion between the police and the Home Office to drive their own agendas; both had a role to play in shaping the development of the law. This is an aspect which is developed in chapter 5. It expands on this position and argues that the Home Office failed to understand the complexities of a criminal investigation and consequently failed to recognise the need for further legislation. The Royal Commission on Police Powers and Procedure was specifically appointed to address concerns about perceived police abuses of power but effectively concluded that the concerns were unjustified. Chapter 5 develops this particular point and argues that the Commission also failed to recognise the complexities of an investigation and purposely side-stepped the decision to examine it in more detail and potentially recommend new legislation.

The single component which connects the debates between the Home Office and the Royal Commission were the Judges' Rules introduced in 1912, updated in 1918 and which were designed to bring clarity to the investigative process. The literature identifies that the opposite was true. There is disagreement about the interpretation of the rules but there is nothing in the literature which examined the operational reality of applying them in criminal investigations. The thesis has developed this in detail in chapters 5 and 6 and argues that the rules were routinely breached but with tacit approval from the courts. The reasons for this are explored in chapter 6.

Finally, the role and function of the coroner has been considered within the literature but little attention has been paid to its impact upon the realities of police

investigations. This presents as a significant gap in knowledge and chapter 7 argues that contemporary coroners' legislation impacted adversely upon the police to investigate murder effectively. The chapter develops this particular aspect and demonstrates that it is an important contributor to the argument that the police were not fully, legally recognised as the primary and competent body to investigate murder.

The chapter has been used to set down the limits of current research in this area. The following chapter formally sets out the research question being examined, the methodology employed to answer it and how it has been used to identify new information through which a new contribution to knowledge has been achieved.

Chapter 3: Methodology

This chapter outlines the methodology employed to examine the central research question of the thesis and sets down the justification for the approach adopted. Chapter 2 identified that there is a gap in the existing knowledge relating to the legal basis of murder investigations and the practical application by the police of the extant rules which ostensibly governed them. The principal research question is to establish the extent to which the law allowed for lawful and effective murder investigations. The chapter also establishes a number of subsidiary questions designed to determine the reasons how and why contemporary legislation and case law developed and the extent to which the police complied with, breached or circumvented its requirements.

The thesis is a blend of historical and legal analyses and has undertaken a qualitative empirical approach.[1] The chapter outlines the qualitative approach to research and identifies the specific archival records which have been examined, how the level of sampling was justified, and how it was gathered, coded and analysed. The information has been drawn from a range of sources which has identified that the factors which shaped and administered the law had multiple roots and that there were a number of influencers which shaped the legal landscape. The chapter identifies the limitations of the research approach but argues that the design model remains as the best option to produce the most

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[1] Mike McConville M and Wing Hong Chui W H, *Research methods for law* (Edinburg University Press 2017) 22.

accurate interpretation of events and provide the best opportunity to answer the research question.[2]

3.1 Qualitative research approach

Qualitative research has been selected as it is considered the most effective means of determining credible evidence[3] to answer the research question outlined above. It explains aspects of human behaviours which increases our understanding of the lived experience of different groups of people.[4] This approach seeks to add meaning to events for those who experienced them and it is generally accepted that qualitative research adds understanding and interpretation to simple descriptions.[5] It allows for multiple interpretations to be made to gain a greater sense of the wider picture of society.[6] Quantitative analysis is dismissed as a means of understanding human dynamics within society as it employs an objective approach more suited to statistical analysis and trying to understand wider patterns of behaviours.[7] A limited use of statistical analysis has been employed in the examination of coroners in chapter 7 but the data is

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[2] For clarity, the words 'he/him' are used throughout rather than differentiating between genders.
[3] Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 81.
[4] Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 82.
[5] Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 640-641.
[6] Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 644.
[7] Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 18.

vulnerable to being unreliable[8] and has been used only as a means to support a wider point.

Examination of contemporary archived public, private and State documents[9] forms the central plank of the analysis in the thesis research and their content can be used to find evidence to answer the research question.[10] The generic types of documents used for the research in this analysis are detailed below but there are some over-riding principles which govern this particular approach to analysis. The study of recorded human communications is a method of drawing inferences from text.[11] The documents examined can operate as windows onto social and organisational realities[12] and can be used to interpret underlying messages.[13] This analysis is strengthened by a process of triangulation by cross-referencing one source of data with another to increase the vision of the research and to cross-validate findings.[14] Other documents form part of the context or background to the creation of the document under examination.[15] Where the research finds correspondence among different sources of data there can be

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[8] For an analysis of the accuracy of historical data see Howard Taylor, 'Rationing Crime: the political economy of criminal statistics since the 1850s' (1998) 3 Economic History Review 569-590; Robert M Morris, 'Lies, damned lies and criminal statistics: Reinterpreting the criminal statistics in England and Wales' (2001) 5 (1) Crime Histories and Societies 111-127.
[9] For a description of what is considered State or archived material see Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 499, 507-508.
[10] See for example Patricia Leavy, The *Oxford handbook of qualitative research* (Oxford University Press 2014) 361 who argues that underlying messages may be interpreted from documents' contents.
[11] Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 360.
[12] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 514.
[13] Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 361.
[14] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 364.
[15] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 514; Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 376.

greater confidence in the results.[16] It is a means to develop a more robust and meaningful assessment of the social world.[17]

State documents are considered authentic and in a format which makes its content clear and comprehensible.[18] Their contents are genuine and of unquestionable origin.[19] The credibility of the documents rests upon the researcher's ability to recognise any bias contained within the document and to set that within the context of the research question.[20] Privately sourced documents such as newspapers and magazines require the researcher to have considerable awareness of contextual factors[21] and be guarded against any propensity of authors to invent issues and to question the ability to provide an accurate account.[22] Interpreting documents is about the extent to which documents reflect reality.[23] Documents have been examined for the ways that their creators use language to convey certain messages and the context in which they were produced and their implied readership.[24] For both public and private documents, it is important to identify the frequency of concepts or ideas that arise and to recognise time spans over which these emerge.[25] Tracing the roots of an

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[16] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 364.
[17] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 364.
[18] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 498.
[19] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 498.
[20] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 507-508.
[21] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 509.
[22] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 509.
[23] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 514.
[24] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 514.
[25] Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 366-368.

emerging theme or concept allows the documents to be set within the context in which they were created.[26]

3.2 Source documents used for research

The research has selected documents which create the greatest opportunity to provide an insight into policing and the law of the inter-war period. They have been drawn from different sources in order to identify recurring themes and to be able to demonstrate that the thesis' conclusions are based upon multiple perspectives rather than any one single point of view. The discrete perspectives identified are the police, social commentary, Home Office and political discourse, legal commentary, judicial opinion and coroners.

It is expanded upon in chapter 6, but the level of detail contained within the sources has enabled some recurring themes to be identified from which reasonable inferences may be drawn. The availability of data has also created a deeper understanding of attitudes towards the police more generally. A significant amount of data relating to murder investigations and police powers is available in police and government archives which has allowed for deeper development of the analysis. Data for less serious offences is generally not available and would result in an analysis which would not withstand scrutiny: its data set would be too small.

[26] Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 373-375.

3.2.1 Police

The thesis has examined police procedures and practices when carrying out murder investigations during the inter-war period in order to establish the relationship between those procedures and the extant law which governed them. The research undertook an examination of Metropolitan Police (MEPO) and Director of Public Prosecutions (DPP) murder files held by the National Archives (TNA). These are publicly accessible files and 71 have been identified which contain detailed information, statements of evidence, and police, DPP and Home Office opinion relating to discrete investigations between 11 November 1918 and 3 September 1939. These documents have been selected as they provide a high degree of authenticity and certainty about their origin and have been selected from across the date range from November 1918 to September 1939. It was important to examine police practices across the entire timeline in order to discern any change in police operating procedures. The limitation of these sources is that it is recognised that the files held by the archives are not an exhaustive catalogue of police murder investigations and cannot therefore be described as a comprehensive and definitive data set. It is also recognised that the files retained by the National Archives may have been redacted before submission to the archives and may not contain information relevant to the research question. Many have also gone missing.[27] However, the large volume of files available presents as a probable position that the data is indicative of police practice throughout the period.

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[27] Paul Lawrence, *New Police in the Nineteenth Century* (Ashgate 2011) 55-6.

It was important to establish whether investigative legislation being in place was a concern for the police service. The Metropolitan Commissioner's Annual Reports between 1919 and 1939 have been examined which offer a cosmetic outline of police activity including crime operations.[28] They are public documents which are designed to address police accountability and transparency of practice. The authorship is selective in its contents and cannot be regarded as a comprehensive overview of all policing matters. The Police Review was a weekly periodical aimed at police officers and available for public consumption.[29] There were 1032 editions published during the inter-war period. It acted as a forum for the sharing of opinions and a supporter of various campaigns to improve standards in policing. Several police memoirs were published during the period which detailed police operations and the thoughts and opinions of police officers, judges, barristers and journalists about individual cases. Many detailed practices and expressed opinions about police powers governing murder investigations. It is important, however, to acknowledge that these accounts may include fictionalised or embellished accounts.[30]

The specific documents examined are identified in Appendix 1.

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[28] Accessible through https://0-parlipapers-proquest-com.serlib0.essex.ac.uk/profiles/hcpp/search/basic/hcppbasicsearch.
[29] Available through the British Library.
[30] See Haia Shpayer-Makov, The Ascent of the Detective: Police Sleuths in Victorian and Edwardian England (Oxford Publishing online 2011) 282-283 for an analysis of police use of language in memoirs. See also P Lawrence, 'Scoundrels and scallywags, and some honest men…Memoirs and the self-image of French and English policemen' in Barry Godfrey et al, *Comparative histories of crime* (Willan 2003) 129-130.

3.2.2 Social commentary

One of the principal aims of the thesis has been to establish those influences which helped shape inter-war criminal law. One of the areas examined has been the extent to which public opinion had a bearing on its development or restriction. Newspapers have been used as a source of both social and political discourse though their use is approached with some caution. The inter-war period witnessed a dramatic increase in readership with sales increasing from 4.7 million to 10.6 million.[31] There were concerns about newspaper proprietors using their position as a means of managing public discourse and moulding popular taste.[32] Routinely, newspapers collaborated in political campaigns.[33] Newspaper proprietors regarded themselves as the fourth estate in their ability to frame political issues.[34] This was heightened due to the existence of social unrest and political and economic instability[35] and newspapers shifted from reporting on public affairs to issues of human interest stories to escape the reality of the social world.[36] Newspapers faced competition from cinema and radio[37] and it became a newspaper trait to peddle optimism rather than the harsh reality of politics.[38]

Newspapers targeted audiences of a particular social class or gender and their content is analysed in recognition that the satisfaction of the readership was a

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[31] Kevin Williams, Read All About it: A History of the British Newspaper (Routledge 2010) 153.
[32] Kevin Williams, Read All About it: A History of the British Newspaper (Routledge 2010) 153.
[33] Kevin Williams, Read All About it: A History of the British Newspaper (Routledge 2010) 153.
[34] Kevin Williams, Read All About it: A History of the British Newspaper (Routledge 2010) 106-110.
[35] Kevin Williams, *Read All About it: A History of the British Newspaper* (Routledge 2010) 153. See chapter 1 for the analysis of the political and economic unrest of the inter-war period.
[36] Kevin Williams, Read All About it: A History of the British Newspaper (Routledge 2010) 151.
[37] Kevin Williams, Read All About it: A History of the British Newspaper (Routledge 2010) 152.
[38] Kevin Williams, Read All About it: A History of the British Newspaper (Routledge 2010) 152.

major influence behind news content.[39] One of the objectives of this thesis has been to understand and explain public opinion towards the criminal law and to identify its drivers. The approach was to identify common or conflicting themes and their sources, and to arrive at a credible conclusion which has embraced alternative perspectives. Four national newspapers have been selected to give the greatest chance of achieving this balanced view: the Mail, the Daily Herald, the Times and the Manchester Guardian.[40] Their contents have been examined between the published dates of 11 November 1918 and 3 September 1939 using the keywords 'police' and 'powers'. The reasons for their selection are now identified.

The Mail had a daily circulation of almost 2 million[41] which targeted a mass market of female,[42] lower middle classes.[43] It was the first national paper with separate editions for the north of England.[44] Its proprietors recognised that there was a need for an increased entertainment value, though it was used to launch campaigns on a wide range of issues.[45] The Daily Herald was dedicated to a workers' perspective and was opposed to the content of other 'capitalist'

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[39] Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the present (Peter Lang 2015) 131.
[40] Available through the British Library.
[41] Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the Present (Peter Lang 2015) 7.
[42] Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the Present (Peter Lang 2015) 8.
[43] Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the Present (Peter Lang 2015) 12.
[44] Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the Present (Peter Lang 2015) 8.
[45] Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the Present (Peter Lang 2015) 7.

newspapers.[46] Its political left-wing stance resulted in a lower circulation than the Mail but it sought to be an educational newspaper designed to provoke thought and to stimulate ideas.[47] It reorientated its news values[48] during the inter-war period to increase its circulation figures[49] which increased to 2 million.[50] The Times' editors socialised with the rich, famous and powerful and the newspaper expressed the political views of a small, educated body of readers.[51] The Manchester Guardian established a position where its editors were free from proprietors' influence and had editorial freedom from government and other commercial influences.[52] The thesis has adopted the approach that where views were expressed that had a bearing on the development of the criminal law relating to murder investigations, their import has been triangulated with identical or similar opinions expressed from alternative perspectives.

The specific documents examined are identified in Appendix 1.

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[46] Kevin Williams, Read All About it: A History of the British Newspaper (Routledge 2010) 153; Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the Present (Peter Lang 2015) 11.
[47] Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the Present (Peter Lang 2015) 11.
[48] More human interest stories were written, there was greater use of photographs and feature stories, advertising was increased and more attention was paid to the women's market.
[49] Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the Present (Peter Lang 2015) 11.
[50] Iain Reeves and Richard Lance Keeble, *The Newspapers Handbook* (Routledge 2015).
[51] Kevin Williams, Read All About it: A History of the British Newspaper (Routledge 2010) 106.
[52] Kevin Williams, Read All About it: A History of the British Newspaper (Routledge 2010) 112.

3.2.3 Home Office

The Home Office was the government department which oversaw and developed matters of police policy. Home Office files from the National Archives have been examined between the beginning of the twentieth century and the end of the inter-war period in order to establish the extent to which civil service intervention impacted on the development of the criminal law. These files relate to both police and coroner investigations. The files were identified through the key words of ‘police’ and ‘powers’.

The specific documents examined are identified in Appendix 1.

3.2.4 Political commentary

Reports and correspondence emanating from parliamentary committees and Royal Commissions have been examined to determine the extent to which these bodies affected the development of legislation relating to investigative powers. The official record of all parliamentary debates in Hansard has been examined from 11 August 1918 to 3 September 1939.[53] The keyword search criteria designed to identify relevant political debate included ‘police’ and ‘powers.’ Each of the conservative and labour party manifestos between 1922 and 1935 has also

[53] Available on-line through https://hansard.parliament.uk/search.

been examined.[54] These have been used to determine whether criminal legislative reform presented itself as a significant political issue of the period.

The specific documents examined are identified in Appendix 1.

3.2.5 Legal commentary and judicial opinion

The relevant criminal law of the period has been identified through legal databases available through the University of Essex: Westlaw, Lexis and JustisOne.[55] Commentary on changes in the law has been identified through Stones' Justice manuals 1919-1939 and Archbold: Criminal Pleading and Practice manuals 1919-1939.[56] Commentary relating to the development of the relevant law has been identified in Halsbury's Laws of England, All England Law Reports[57] and the Justice of the Peace manual.[58] The most significant element of the criminal law governing investigations was the Judges' Rules published immediately before the inter-war period which sought to set down an operational basis upon which the police should have operated and against which their practices could be assessed. It is a central argument in this thesis that these rules fundamentally prevented the ability of the police and the courts to operate effectively and are therefore the principal cause behind the reasons why the law

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[54] Available on-line through https://en.wikipedia.org/wiki/List_of_Conservative_Party_(UK)_general_election_manifestoshttps://en.wikipedia.org/wiki/List_of_Conservative_Party_(UK)_general_election_manifestos and https://en.wikipedia.org/wiki/List_of_Labour_Party_(UK)_general_election_manifestos.
[55] Now called vLex.
[56] Available through the British Library.
[57] Both are available through University of Essex library.
[58] Now called Criminal Law and Justice Weekly and available through the British Library.

was ambiguous and confusing. The application of these rules in police murder investigations presents as the major plank of analysis in chapter 6. They are reproduced as Appendix 3.

The specific documents examined are identified in Appendix 1.

3.2.6 Coroners

The thesis argues that police ability to lawfully and effectively investigate murder was hampered by the operational activities of the Coroner's office. The office was strictly controlled by legislation which changed throughout the period and the thesis has examined its chronological development and the nature of the influences which helped shape the legal landscape. The research approach adopted is identical to the examination of police practice outlined above. Files within the National Archives outlining police investigations and coroners' inquiries have been examined to demonstrate the tangible link between the two independent practices. The law governing these procedures has been identified in the identical manner outlined above to establish the legal framework in which the two offices operated. Home Office files were then examined to understand civil service decision-making and how that affected this specific area of criminal law. Additional influences which helped shape the development of coroners' law have been assessed through the examination of newspapers, Home Office correspondence and professional journals.

The specific documents examined are identified in Appendix 1.

3.3 Content analysis, sampling and coding

The focus of the thesis has been to examine police practice and procedure in murder investigations and has restricted its analysis to offences of the period which have a victim aged one year or over. This was selected to achieve a consistency of investigation and has specifically excluded infanticide[59] to avoid the research becoming embroiled in complicated medical assessments relating to cause of death and which may have had a bearing on police behaviours.[60]

Selecting the sample sizes of primary source documents is based upon the recognition that a sample should not be so small that the opportunity to identify key themes cannot be achieved and not so large that it is difficult to undertake a deep, case-oriented analysis.[61] Approaches to identifying the most appropriate sample of documents vary depending on the purpose of the research.[62] This chapter identifies that data has been strategically selected to produce the most relevant information.[63]

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[59] Infanticide Act 1922 (12 & 13 Geo 5 c 18). Infanticide was defined as where a woman by any wilful actor omission causes the death of her newly-born child, but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child, and by reason thereof the balance of her mind was then disturbed, she shall, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of such child. The relevant age of the child subject to the death was increased to 12 months by the Infanticide Act 1938, s 1 (1 & 2 Geo 6 c 36 s 1).

[60] Investigation of infanticide may serve as a useful additional research project. See Karen Brennan and Emma Milne, *100 years of the Infanticide Act: legacy, impact and future directions* (Hart 2023) for a detailed explanation of the range of potential causes of death in infants under the age of 12 months.

[61] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 386.

[62] Extreme or deviant case, maximum variation, criterion, theoretical, snowball, opportunistic and stratified. See Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 379 for detailed explanations.

[63] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 377.

Critical case sampling has been engaged on the basis that the selected documents display features which are central to the research question and most likely to reveal critical information.[64] The documents identified and the reasons for the selection are outlined above and are considered suitable for the empirical/analytical approach also identified above. Through analysis of case law, legislation and Home Office guidance the thesis has determined an assumed investigative standard against which police behaviours have been analysed. This is outlined and examined in detail in chapter 6.

3.4 Substantive research question

The research question is to examine whether the criminal law of the inter-war period [1919 – 1939], through either socio-political resistance or oversight, did not allow the police to carry out lawful and effective murder investigations. The principal focus is to examine the operative law and guidance which governed investigations of the period and establish the legal framework within which the police operated. The secondary focus is to identify how and why that framework developed and the extent to which it was a consequence of social, governmental and political discourse, or the result of any unconscious omissions by influencers[65] to recognise the requirements of a criminal investigation.

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[64] Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 379.
[65] Influencers include parliament, the Home Office, the police, the judiciary, and legal and social opinion.

The data identified above has been examined by asking the following set of subsidiary questions designed to inform the overarching research question:

1. Is there any evidence that extant law prevented effective and lawful investigations?
2. Is there any evidence that influencers encouraged the development of the criminal law to allow for more effective and lawful investigations?
3. Is there any evidence that influencers discouraged or prevented the development of the criminal law to allow for more effective and lawful investigations?
4. Is there any evidence that the police complied with the requirements of the legal framework in which they operated?
5. Is there any evidence that the police breached the requirements of the legal framework in which they operated?
6. Is there any evidence that the police circumvented the requirements of the legal framework in which they operated?

This analysis has adopted the Framework Analysis Method (FAM) by creating a series of codes designed to classify information from the range of data sets.[66] These codes emanate directly from the specific questions posed at the data and which are outlined above. The framework is a systematic and rigorous approach to the analysis of qualitative data characterized by the series of key steps

[66] Will Mason, Nughmana Mirza and Calum Webb, *Using the Framework Method to Analyze Mixed-Methods Case Studies* (SAGE Publications Ltd 2018) 5-10. See also Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 584-594.

identified above that produce highly structured outputs of summarised data.[67] The information captured has been reproduced in Appendix 2. It provides a summary of the extracted information, identifies each of the source references, the subsidiary question addressed and the evidence to support the answer. Examples of information being identified and cross-referenced to one of the subsidiary questions is identified below.

3.5 Examples of question identifying evidence

Question	Year	Source	Information
Is there any evidence that extant law prevented effective and lawful investigations? **(Code: prevent)**	1923	Coroners Bill Clause 11 (2) 14 Geo 5 (1923)	Despite the opinion that coroners' courts should not be used to bring offenders to justice, proposed legislation retained the coroner's ability to do so
Is there any evidence that influencers encouraged the development of the criminal law to allow for more effective	1928	Report of the Street Offences Committee 1928, Cmd 3231 p.23	Police processes ought to be clear and enshrined in legislation

[67] Gale N et al., 'Using the Framework Method for the Analysis of Qualitative Data in Multi-Disciplinary Health Research' (2013) 13 (117) BMC Medical Research Methodology; Will Mason, Nughmana Mirza and Calum Webb, *Using the Framework Method to Analyze Mixed-Methods Case Studies* (SAGE Publications Ltd 2018) 3.

and lawful investigations? **(Code: encourage)**			
Is there any evidence that influencers discouraged or prevented the development of the criminal law to allow for more effective and lawful investigations? **(Code: discourage)**	1929	MEPO 2/7953 - letter from Home Office dated 3 December 1929, p.1	Despite a lack of clarity about the practice of arrest the Home Office decided that there was no need to clarify the position by the introduction of legislation
Is there any evidence that the police complied with the requirements of the legal framework in which they operated? **(Code: compliance)**	1919	MEPO 3/262B Statement of Supt Frederick James Underwood dated 9 July 1919	Cautioned upon arrest
Is there any evidence that the police breached the	1928	HO 144/11143 deposition	Questioning of suspects against Home Office instructions

requirements of the legal framework in which they operated? **(Code: breach)**		of DS Clayton Whittaker dated 1 November 1928	
Is there any evidence that the police circumvented the requirements of the legal framework in which they operated? **(Code: circumvent)**	1919	MEPO 3/260 Report of DCI Wensley 15 February 1919 p 29	Suspect not arrested but 'taken to police station'

Examination of the 71 files has produced patterns of behaviour, for example how many breaches were identified, and which appear representative of the investigative procedures employed. 260 separate entries in the files have been cited as evidence to support the thesis' overall argument. These collective entries covering all aspects of a murder investigation form the basis for the subsequent analyses carried out in chapters 5, 6 and 7.

The thesis then offers a series of explanations for the behaviours identified and has applied five distinct, existing explanatory frameworks to its analysis:

1. Criminal investigation – the framework is used to identify the constituent elements of an investigation and relate that to the argument later in the thesis that inter-war parliamentarians and government officials neither recognised the operating practices of the police nor the ramifications of their behaviours.

2. Social contract - the framework is used to identify the relationship between a society and its government and to contribute to the argument that there was a perceived unnecessity for the wider public to become involved in shaping the development of legislation.

3. Bureaucracy – the framework is used to understand the role of the Home Office in influencing and shaping legislation and assess the extent to which it either encouraged or discouraged legislative reform.

4. Legal consciousness – the framework is used to identify that the relationship between the law and its citizens varies depending on the circumstances of individuals or institutions. It is specifically used to argue that inter-war police were prepared to adopt a course of action outside of the law.

5. Noble cause corruption – the framework is used to build on the legal consciousness position and argues that inter-war police took advantage of an unstable legal landscape and adopted behaviours which they

considered to be a common sense approach and of benefit to the wider community.

Each of these explanatory frameworks is developed in chapter 4.

3.6 Case studies

The analysis has highlighted those areas where the assumed investigative standard referred to above has been complied with, breached, circumvented or where extant law is considered to impede an effective police investigation. In each of the instances a series of case studies has been used to bring out the detail of the compliances/transgressions/impediments. The case studies are representative only and are designed to provide examples of the practical application of the law in order that the constituent elements of an investigation may be clearly understood. The case studies feature in the analysis of police investigations (chapter 6) and coroners' investigations (chapter 7).

3.7 Ethical considerations

The primary ethical considerations in research relate to a fundamental need to minimise harm to people and respecting a person's privacy.[68] The methodology employed in this research is content analysis of historical, publicly-available

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[68] Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 62.

documents. All documents analysed are publicly available documents. Historical law is available in printed publications and through online databases. Political and social commentary is available through archived newspapers and online political databases.[69] Historical personal information held by the National Archives has been disclosed under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018. This is supplemented by the National Archives guide to archiving personal data published online.[70]

The research has not accessed information from any living person or from any material which falls within the definition of a protected person under the Data Protection Act 2018. Any personal, injurious information obtained from lawfully disclosed historical documents is excluded from the analysis. All the information contained within this thesis is publicly available and there is an exceptionally low risk of anyone suffering significant harm or reputational damage.[71] No application has been made to the university's committee for ethical approval of research involving human participants.

3.8 Conclusion

The principal question aimed at the research is whether any perceived weakness in the law was caused by social/political influence or whether that position was

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[69] For example, Hansard and UK Parliamentary Papers.
[70] This can be found at https://cdn.nationalarchives.gov.uk/documents/information-management/guide-to-archiving-personal-data.pdf.
[71] See Patricia Leavy, *The Oxford handbook of qualitative research* (Oxford University Press 2014) 63 for a description of what amounts to significant harm or reputational analysis.

created by other factors at play which caused the issue to fall below the social, political and legal radars. The research has adopted the position that a qualitative and blended reconstructionist/constructionist analysis of contemporary documents presents as the best strategy to determine the answer. A large sample of relevant primary material was available both in the National Archives, the British Library and a range of internet sources. A pre-determined set of questions designed to address the research question was established and has been used to examine the data contained within the selected documents. The sample of documents identified has been strategically selected as they present as sources which appear to be the most capable of providing credible answers to the questions. The large amount of material available has allowed for a broad range of inferences and conclusions to be drawn. These are outlined in chapter 8.

The thesis was designed to examine and assess the operational reality of policing and make judgements about the extent to which police behaviours operated within the assumed standard. The research approach outlined presents as the best opportunity to produce a credible and defendable basis upon which the deeper analysis has been carried out. The results of the analysis have been subsequently examined through the prism of a selection of theoretical frameworks. The selected theories of criminal investigation, social contract, bureaucracy, legal consciousness and noble cause corruption offer an explanation of the political context and police operational behaviours in addition to the basic reconstructionist analysis. Collectively, the analysis has created a rich picture of activities of the inter-war period and offers a series of explanations for the behaviours identified. It is recognised that alternative explanations may be

offered; such is the nature of qualitative research. No ethical issues have been identified and the research is capable of publication without any risk of people suffering from any significant or reputational damage.

The following chapter now details the theoretical frameworks outlined above and how they relate to the activities identified in the subsequent analyses in chapters 5, 6 and 7. They offer a series of ideas which may be used to greater understand the development and application of the law throughout the inter-war period.

Chapter 4: Explanatory Frameworks

The chapter sets out a series of explanatory frameworks through which the development of the law and police operational behaviours may be viewed. It is argued in chapter 5 that during the inter-war period, neither parliament nor the courts fully recognised the concept and realities of a police investigation. This chapter begins by outlining that more recent academic thinking has conceptualised this process and emphasises the importance and status of the gathering of evidence. This is later used to support the argument that serious consideration ought to have been given to governing this significant element of a police process by legislation. Research in this area has been largely neglected by academics[1] and this thesis therefore makes a significant and novel contribution to this area of knowledge.

The chapter then seeks to understand the reasons why evidential and procedural law appeared deficient in its ability to facilitate criminal investigations. Firstly, it explores the social contract framework as a means of understanding whether

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[1] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 185; Martin O'Neill, *Key Challenges in Criminal Investigation* (Policy Press 2018) 5. The subject matter of murder itself has been subject of much research but not specifically the concept of the investigation supporting it. See for example Francis Camps, *The Investigation of Murder* (Michael Joseph 1966); Martin Daly and Marg Wilson, *Homicide* (Aldine de Gruyter 1988); Kenneth Poll, *When Men Kill* (Cambridge University Press 1994); Sara Knox, Murder: *A Tale of American Modern Life* (Duke University Press 1998). See also Michael McConville and John Baldwin, 'The Role of Interrogation in Crime Discovery and Conviction (1982) 22(1) British Journal of Criminology 165-175 and Tim Newburn et al, *Handbook of Criminal Investigation* (Willan 2007) 68-92 for the role for an examination in more recent times of the role of interrogations in investigations. Further studies of American practices of reactive policing have been carried out but they do not offer any insight into UK practices in the inter-war period. See for example Gary Marx, *Undercover: Police Surveillance in America* (University of California Press 1988); Peter Manning, *The Narcs Game: Organizational and Informational Limits on Drug Law Enforcement* (2nd edn, Waveland 2004).

public opinion could, or was expected, to influence the development of the law. Parliament was the recognised mechanism through which law ought to be developed and there was an expectation that it would discharge this responsibility. This is a key feature of chapter 5 which argues that inter-war public opinion had little influence on the development of investigative powers for the police. Secondly, the chapter examines the function of the administrative arm of parliament and government by using the bureaucracy framework to argue that the implementation of government directives was administered through such an inflexible system that it allowed little appetite for legislative weaknesses to be addressed. The theory is used to argue that inter-war Home Office practice contributed to suppressing the practice of legislative development.

The chapter then seeks to explain the individual actions of police officers in their application of the law. Chapter 6 argues that the police recognised constraints within the law but found a means and a justification to operate outside of it. Initially, a frameowrk of legal consciousness is outlined which identifies opposing ideas about the extent to which law was consciously operative on the human mind in day to day life. It examines the idea that people often consciously stepped outside of the law and operated in a manner more consistent with their own ideas of the world. This approach extended to officialdom, and the theory is used to suggest that inter-war police felt that extant law militated against an efficient service and felt justified in adopting alternative approaches. The chapter then develops this argument through the framework of noble cause corruption which has been used to offer the explanation that police operating outside of the law was interpreted as a common sense approach and a practice accepted by the

courts. It is recognised that alternative ideas may be put forward if the circumstances were viewed through different frameworks.

4.1 Criminal investigation

The concept of the criminal investigation presents as the central theme of the thesis. Chapter 5 argues that parliaments of the inter-war years either failed to fully recognise the critical elements of an investigation or attached little importance to them. The thesis puts forward the argument that the practices involved in an investigation had such a significant bearing on its course and had such a human impact on the arrested person, that more serious consideration ought to have been given to it being governed by legislation. This argument is developed in chapters 5 and 6. An investigation and its integral components are readily accepted and expected in twenty-first-century policing and are subject to routine examination and criticism by the courts and through the medium of public opinion. Its inter-war absence is indicative of a lack of understanding of the detail and practical realities of the criminal investigation process and acts as a contributor to the absence of supporting legislation.

Criminal investigation theory places the investigative process on a theoretical footing and compartmentalises its constituent elements. It emphasises that the evidence-gathering process is a fundamental component of an investigation which is utilised to build prosecution cases and secure convictions.[2] This section

[2] Martin O'Neill, *Key Challenges in Criminal Investigation* (Policy Press 2018) 5.

firstly outlines the epistemic[3] approach to criminal investigation which argues that evidence gathering is a process of assessing data which can be meaningfully translated into formal evidence capable of being presented to a court. It then identifies the pragmatic translation of this, which argues that investigations are more centred on post-arrest issues such as case management and presentation of evidence at court. This latter aspect forms a major element of the analysis which follows.

Brodeur identifies nine typologies of investigation[4] which fall under the categories of proactive, retrospective and reactive investigations.[5] Proactive investigations are typically triggered by police action before a criminal event has taken place.[6] Retrospective investigations are the revisiting of a past incident.[7] Reactive investigations respond to a complaint or crime being committed and presents as the most visible form of investigative policing.[8] Any of these types of investigation may be event- or suspect-centred.[9] Murder investigations are predominantly reactive and event-based. Brodeur posits that this is the stereotypical criminal investigation which follows a standard direction of enquiry: a crime is reported; police attend the scene to secure evidence; a suspect is arrested and

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[3] Epistemic logic is a subfield of epistemology concerned with logical approaches to knowledge, belief and related notions.
[4] The typologies identified by Brodeur are proactive and suspect-centred, proactive and event-centred, proactive and hybrid, reactive and suspect-centred, reactive and event-centred, reactive and hybrid, retrospective and suspect-centred, retrospective and event-centred and retrospective and hybrid.
[5] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 199-203. See also Martin O'Neill, *Key Challenges in Criminal Investigation* (Policy Press 2018) 7.
[6] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 199.
[7] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 202.
[8] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 199.
[9] Martin O'Neill, *Key Challenges in Criminal Investigation* (Policy Press 2018) 7. See also Jack KuyKendall, 'The Criminal Investigative Process: Toward a Conceptual Framework' (1982) 10 (2) Journal of Criminal Justice 138.

interviewed.[10] This is a highly cosmetic description of an otherwise complex and detailed investigation process. This process is expanded upon in chapter 5 which outlines the process in detail together with the legislation which supported it.

The epistemic approach was built on Innes's earlier ideas about the development of knowledge within a criminal investigation.[11] Data received during a police murder investigation[12] must be selected and interpreted if it is to have meaning to the investigation.[13] It needs to be categorised and acted upon.[14] Meaningless or non-relevant information is regarded as 'noise' and is distinct from information.[15] Information is data which is capable of producing multiple interpretations.[16] Innes argued that the difference between the two was socially produced according to the interests of particular officers.[17] This idea links with Newburn's view outlined in chapter 2, that police information is often gathered through means which are not necessarily governed by legislative control but by the notion that no police activity is illegal unless it is expressly prohibited by law.

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[10] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 201.
[11] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 113-143. See also Richard Ericson and Kevin Haggerty, *Policing the Risk Society* (University of Toronto Press 1997).
[12] Data includes statements, messages, personal descriptive forms, questionnaires, officers reports, house to house forms and other documents.
[13] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 113. See also JP Brodeur, *The Policing Web* (Oxford University Press 2010) 212-213; Martin O'Neill, *Key Challenges in Criminal Investigation* (Policy Press 2018) 4.
[14] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 113; JP Brodeur, *The Policing Web* (Oxford University Press 2010) 212-213.
[15] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 113; JP Brodeur, *The Policing Web* (Oxford University Press 2010) 212-213.
[16] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 113; JP Brodeur, *The Policing Web* (Oxford University Press 2010) 212-213.
[17] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 113; JP Brodeur, *The Policing Web* (Oxford University Press 2010) 212-213.

Newburn described it as 'simply by asking nicely or paying attention to their environment'.[18] Chapter 6 develops and supports this idea where it is identified that it was routine practice for the police to gather information through the 'detention' of suspected offenders and the searching of their premises.

Information which has been interpreted and classified in such a way that it makes a positive contribution to the investigator's understanding of the crime is categorised as knowledge.[19] Knowledge is constructed in such a way that that social actors act towards it and use it in the belief that it has 'factual status'.[20] Knowledge is regarded as being reliable, objective and valid and can be used to constitute the basis of future police actions.[21] Other data may be categorised as intelligence which may be acted upon to generate further knowledge.[22] The final categorisation of data is evidence. Evidence has developed information into a format which accords with legal discourse and is suitable for presentation at court.[23] It may be direct, circumstantial, corroborative or indicative.[24]

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[18] Tim Newburn et al, *Handbook of Criminal Investigation* Cullompton 2007) 97.
[19] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 113; JP Brodeur, *The Policing Web* (Oxford University Press 2010) 212-213.
[20] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 113; JP Brodeur, *The Policing Web* (Oxford University Press 2010) 212-213.
[21] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 113; JP Brodeur, *The Policing Web* (Oxford University Press 2010) 212-213.
[22] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 113; JP Brodeur, *The Policing Web* (Oxford University Press 2010) 212-213.
[23] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 113; JP Brodeur, *The Policing Web* (Oxford University Press 2010) 212-213.
[24] Martin Innes, *Investigating Murder: Detective Work and the Police Response to Criminal Homicide* (Oxford University Press 2003) 114-115. Direct evidence is evidence which points directly at an accused person, circumstantial is evidence that cumulatively can only lead to one conclusion, corroborative evidence is supporting another piece of direct evidence and indicative evidence which strongly points to an individual.

This investigative model of information processing forms the basis of epistemic theory which dovetails with earlier work analysing the 'policing of knowledge'.[25] It is critical in this thesis' analysis since it provides the springboard for immediate or deferred police activity such as searching of premises, seizing evidence and arrests of suspects. Chapters 5 and 6 argue that these activities require supporting legislation for the investigation to be lawful otherwise it provides the option to pursue evidence outside of any regulated framework. This is a prominent feature in inter-war policing as premises were searched and arrested people interviewed without the authority of law.[26]

Pragmatic theory is a result-oriented theory of criminal investigation and focuses on the consequences of the investigation process.[27] Brodeur concentrates on the post-arrest element of the investigative process and argues that detectives saw their principal role as the presentation and management of courtroom evidence.[28] Its emphasis is on detection rates, obtaining of confessions and post-case processing.[29] Obtaining a confession involves good psychological acumen, manipulation, deception and coercion.[30] The thesis' interpretation of police files

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[25] See for example Richard Ericson and Kevin Haggerty, *Policing the Risk Society* (University of Toronto Press 1997).
[26] See for example the trial of R v Healey 1919 (not cited), R v Voisin 1918 1 KB 531.
[27] See Carl Klockars, '*The Idea of Police'* (1985) Law and Criminal Justice Series 3 85-86 in JP Brodeur, *The Policing Web* (Oxford University Press 2010) 215; Jack Kuykendall, 'The Municipal Police Detective: An Historical Analysis' 24 (1) Criminology 191.
[28] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 215. See also Hobbs D, *Doing the Business* (Oxford University Press 2001) 186; Mike McConville et al, *The Case for the Prosecution* (Routledge 1991); Andrew Sanders and Richard Young, 'From Suspect to Trial' (2002) in M Maguire et al, *The Oxford Handbook of Criminology* (3rd edn, Clarendon 2017).
[29] Post-case processing is the work immediately following an arrest and the evidence presented in court.[29] See JP Brodeur, *The Policing Web* (Oxford University Press 2010) 216; Sally Lloyd-Bostock, *Psychology in Legal Context; Applications and limitations* (The Macmillan Press Ltd 1981) 45.
[30] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 217.

examined in this research indicates that police interviews of the period were routinely carried out unlawfully alongside the unlawful searching of premises and seizure of evidence. This part of the investigation, carried out once a suspect has been arrested and charged, forms a significant part of the investigative process which allows the police to gather more evidence to present at court. For the purpose of this thesis, it allowed inter-war detectives to construct the evidence in a way that seemingly withstood scrutiny at court. There was no legislation regulating this activity.

Both epistemic and pragmatic theory can explain and help to understand the investigative process of the inter-war period. All the characteristics outlined in the approaches were practical features of inter-war investigations. The theory's weakness is that it makes no reference to the effect that law has upon the practical application of a criminal investigation. It assumes that the gathering of evidence is on a legislative footing. The theory places undue significance on an arrest by a patrol officer and implies that the investigation requires no further investigation.[31] This is a significant flaw since the majority of evidence gathering takes place after an arrest has been affected and evidence which does not appear to be significant at the beginning of an investigation, may later become important.[32] Even where a strong case has been built, much investigative work remains to be carried out to be able to present it in evidential format at court.[33]

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[31] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 198. See also Richard Ericson, *Making Crime: A Study of Detection Work* (2nd edn, Toronto University Press 1993).
[32] Martin O'Neill, *Key Challenges in Criminal Investigation* (Policy Press 2018) 2.
[33] Martin O'Neill, Key Challenges in Criminal Investigation (Policy Press 2018) 5. See also Martin Innes, Investigating Murder: Detective Work and the Police Response to Criminal Homicide (Oxford University Press 2003) 3-12.

The epistemic approach specifically does not recognise the ability of a police investigation to revisit information throughout the investigation process thereby reducing the opportunity to make errors in assessing the validity of information.

All these aspects again have a bearing on one of the central arguments in this thesis that inter-war police did not see lack of legislation as a bar to investigating and prosecuting suspected offenders. The thesis' interpretation of the police files indicates that interviews of the period were routinely carried out unlawfully.

The chapter now sets down some theoretical approaches to understanding and offering an explanation for the the absence of investigative legislation in the inter-war period, and the critical factors which influenced this.

4.2 Social contract

Chapters 5 and 6 focus on the existence of, and the argument for further legislation to govern police investigations. One of the potential contributors to identifying and introducing new legislation is weight of public opinion and its ability to influence parliament in either the introduction of or resistance to new laws. Chapter 5 argues that public opinion had relatively little influence over the need for any new laws. In part, this may be due to the issues being too complicated and it relied upon those in parliament and government to resolve any identified weaknesses in existing frameworks. Social contract theory outlines the relationship between society and its government and offers an explanation why public opinion appears not to have been a significant influencer at the time.

Society felt justifiably reassured that government was well placed to understand legislative issues and capable of introducing new measures where required.

Analysis of social contract theory begins with an assertion about how and why laws needed to govern a society were first created. It outlines how a sovereign body or government was appointed to act as a collective for society to implement and administer those laws. The chapter explores alternative views about the extent to which individuals within that society could express opinion and influence the shape of new law. The theory is used to explain the necessity of certain laws and to offer an explanation of why inter-war opinion about policing and associated legislation may have been suppressed or ignored.

Hobbes and Locke argued that a modern democratic society's system for establishing laws has its roots in a period before any formal system of government was established.[34] Hobbes argued that this pre-societal status was governed by laws of nature which provided a moral framework to support a man's right to secure peace through mutual agreement with others.[35] There was no duty to obey these laws[36] nor did any man have any legitimate authority over any other.[37] Man's basic requirements increased as society developed materialistically which created a powerful need for more than just simple

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[34] Michael Lessnoff, *Social Contract* (Macmillan 1986) 49-50, 60.
[35] *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 86;. See also John Locke, *The First and Second Treatises of Government* (1689) 62-65; Michael Lessnoff, *Social Contract* (Macmillan 1986) 53.
[36] Claire Finkelstein, *Hobbes on Law* (Ashgate 2005) 77.
[37] John Locke, *The First and Second Treatises of Government* (1689) 63; Michael Lessnoff, *Social Contract* (Macmillan 1986) 76; David Dyzenhaus and Thomas Poole, *Hobbes and the Law* (Cambridge University Press 2012) 49.

possession of goods.[38] Hobbes developed the argument by suggesting that as competition for resources increased a state of war developed and the extant laws of nature failed to control behaviours.[39] Theorists agree that every man was free to do whatever they felt was right to preserve and protect themselves.[40] Hobbes argues that a system of enforceable laws was necessary to achieve this.[41] He argued that it was an ability to think rationally which influenced man to move to a position where there was a need for a system of commands which needed to be obeyed if man was to protect himself.[42] It was the necessity and the ability to enforce these commands with an associated requirement to punish wrongdoers which constitutes the rational contractarian view of law and forms the basis of social contractarian theory.[43] This is a wider, more philosophical perspective about the need for laws but it is the basis upon which the notion of government would be based.

Hobbes' view about the natural development towards a state of war meant that man must give up their right of self-preservation to one author of command

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[38] Michael Lessnoff, *Social Contract* (Macmillan 1986) 76-77.
[39] *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 83. See also John Locke, *The First and Second Treatises of Government* (1689) 66-67; Claire Finkelstein, *Hobbes on Law* (Ashgate 2005) 69. Locke rejects this notion of a state of war caused by a competition for resources. He argued that it was a breakdown of respect for the natural laws which led to a state of war. See Michael Lessnoff, *Social Contract* (Macmillan 1986) 60-61.
[40] John Locke, *The First and Second Treatises of Government* (1689) 88; Michael Lessnoff, *Social Contract* (Macmillan 1986) 53; Claire Finkelstein, *Hobbes on Law* (Ashgate 2005) 69; *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 139.
[41] Michael Lessnoff, *Social Contract* (Macmillan 1986) 49-50. See Michael Lessnoff, *Social Contract* (Macmillan 1986) 75 for Rousseau, a later social contractarian, who offered no theory on the historical origin of government, though acknowledges the existence of an earlier non-governmental society.
[42] Claire Finkelstein, *Hobbes on Law* (Ashgate 2005) 65; David Dyzenhaus and Thomas Poole, *Hobbes and the Law* (Cambridge University Press 2012) 64-65.
[43] *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 95; Claire Finkelstein, *Hobbes on Law* (Ashgate 2005) 72, 85; David Dyzenhaus and Thomas Poole, *Hobbes and the Law* (Cambridge University Press 2012) 51.

(government) to preserve the peace.[44] This poses an obligation to leave the state of nature and man could not decline to be a party to the agreement by which this 'commonwealth'[45] had been established; it was both a moral obligation and a necessity.[46] Hobbes' model of sovereignty is an artificial person as authored by the subjects and creates a united body politic.[47] A person is bound to the actions of the sovereign but not to the sovereign himself.[48] Fundamentally, the sovereign body's words and actions are the voice of everyone[49] and it has the right to declare what someone else must do.[50] The subject gives up the right to govern himself and has a duty to obey the command of the sovereign body.[51] He has no right to revoke or revise the constitution[52] otherwise man would return to a state of war.[53] This presents as the root of the thesis' argument that inter-war society had an expectation that its government was responsible for the development of

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[44] John Locke, *The First and Second Treatises of Government* (1689) 85; Michael Lessnoff, *Social Contract* (Macmillan 1986) 53; Claire Finkelstein, *Hobbes on Law* (Ashgate 2005) 69; *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 89.

[45] Christopher W Morris, *The Social Contract Theorists: Critical Essays by Hobbes, Locke and Rousseau* (Rowman and Littlefield Publishers 1999) 23; *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 115.

[46] Michael Lessnoff, *Social Contract* (Macmillan 1986) 53-54.

[47] John Locke, The First and Second Treatises of Government (1689) 85; Christopher W Morris, The Social Contract Theorists: Critical Essays by Hobbes, Locke and Rousseau (Rowman and Littlefield Publishers 1999) 23; Leviathan (1651) reproduced in JCA Gaskin, Thomas Hobbes: Leviathan (Oxford University Press 2008) 115, 149.

[48] Claire Finkelstein, *Hobbes on Law* (Ashgate 2005) 69; *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 117.

[49] Michael Lessnoff, *Social Contract* (Macmillan 1986) 80; Claire Finkelstein, *Hobbes on Law* (Ashgate 2005) 69.

[50] Michael Lessnoff, *Social Contract* (Macmillan 1986) 55; Claire Finkelstein, *Hobbes on Law* (Ashgate 2005) 67.

[51] Michael Lessnoff, *Social Contract* (Macmillan 1986) 53-54; Christopher W Morris, *The Social Contract Theorists: Critical Essays by Hobbes, Locke and Rousseau* (Rowman and Littlefield Publishers 1999) 23; Claire Finkelstein, *Hobbes on Law* (Ashgate 2005) 68-70; *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008 117.

[52] Christopher W Morris, *The Social Contract Theorists: Critical Essays by Hobbes, Locke and Rousseau* (Rowman and Littlefield Publishers 1999) 24; *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 116.

[53] Michael Lessnoff, *Social Contract* (Macmillan 1986) 53.

necessary laws. Chapter 5 argues that the inter-war government fell short of this expectation.

This social contract was seen primarily and exclusively as the stepping-stone towards the creation of a political body capable of meeting man's practical and political needs.[54] Social contractarians argue that this is the basis of modern government and provides a relationship framework between the individual and government. It was the foundation of a body held together by a pact made by all the constituent individuals to establish rule among equals.[55] The sovereign's function is to decide opinions and doctrines which are of benefit to its community and to make their decisions known by prescribing rules. It formed a judiciary power to arbitrate over controversies in these laws and appointed officials to administer its machinery.[56] The social contract was the voice of the collective people and any laws created were enforceable through the collective duty to obey.[57]

The argument for a necessity to create laws to control and manage human behaviour represents as a cornerstone in establishing that society recognises and accepts the authority of law. It can be linked to the examination of inter-war society as a framework that argues that only a government can create laws and

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[54] David Boucher and Paul Kelly, *The Social Contract from Hobbes to Rawls* (Routledge 1994) 39.
[55] See *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 82 and David Boucher and Paul Kelly, *The Social Contract from Hobbes to Rawls* (Routledge 1994) 37 for argument about all men being equal.
[56] Christopher W Morris, *The Social Contract Theorists: Critical Essays by Hobbes, Locke and Rousseau* (Rowman and Littlefield Publishers 1999) 24-25; *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 118-120, 161.
[57] *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 117.

they must be accepted by the society it governs. Hobbes' basic theory of society's relationship with law offers a limited opportunity for people to express opinion as power has transferred to the elected government. By extension, it may be argued there was a tacit implication during the inter-war period that there was little or no role for society to play in influencing its development. Chapter 1 established that the inter-war period was dominated by an image of a public acceptance of the economic and political crises and what few objections were expressed were suppressed or ignored. Hobbes' position is that it was not expected that opinion should influence law-making and this is a fundamental point in later assessing how public opinion integrated with such a premise.

Locke developed this model of social contract and offers an alternative perspective of the role of public opinion. Locke argued that the sovereign's power was not absolute and there existed an ability for the people to resist political mandate.[58] The transfer of rights is not as rigid as Hobbes claims and asserts that political authority is strictly limited.[59] Political authority is restricted to enforcing the laws of nature, life and liberty and to defending these natural rights of individuals and the public good.[60] Locke agrees that a sovereign requires a legislature to define its supreme powers[61] but this authority is limited as it has been entrusted by its members to defend the rights and welfare of the

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[58] John Locke, *The First and Second Treatises of Government* (1689) 126; (Michael Lessnoff, *Social Contract* (Macmillan 1986) 63.
[59] John Locke, *The First and Second Treatises of Government* (1689) 99; Michael Lessnoff, *Social Contract* (Macmillan 1986) 62.
[60] John Locke, *The First and Second Treatises of Government* (1689) 99; Michael Lessnoff, *Social Contract* (Macmillan 1986) 62.
[61] John Locke, The First and Second Treatises of Government (1689) 85.

commonwealth's subjects.[62] This definition paves the way for the ability of citizens to resist government.

Inter-war government reflected the constituent elements of the contractarian model:[63] it was self-governing in the sense that it had final control over its political agenda and was not answerable to some higher authority; its collective choices determined key elements of political and social structure including an ability to determine criminal law; it operated to the principle of political equality in that members of the collective governmental body had an equal say in making decisions; and its members were capable of rational decision-making in solving collective problems.[64] It satisfied the basic legitimate demands that a government must demonstrate if it is to justify authority over its subjects.[65] Inter-war government was a democratic system of people's representatives elected to a parliament designed to act in the interests of the people. Social contractarian theory argues that only those laws designed to protect the interests of citizens could be implemented. The thesis' argument is that investigative legislation is designed fundamentally to protect individuals from arbitrary and unlawful police interventions and consequently fell within the purview of inter-war governments.

Hobbes' view was that people had effectively surrendered their right to voice opinion and relied upon its sovereign body to determine law.[66] The citizenry had

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[62] Michael Lessnoff, *Social Contract* (Macmillan 1986) 62.
[63] Albert Weale, *Modern Social Contract Theory* (Oxford University Press 2020) 40.
[64] Albert Weale, *Modern Social Contract Theory* (Oxford University Press 2020) 40.
[65] D Dyzenhaus, 'The Inevitable Social Contract' (2020) 27 Res Publica 187.
[66] *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 115.

empowered its government to make decisions for the common good on behalf of the collective and they had no right to challenge or resist political authority. This position would translate to an inter-war society whose opinion was subsidiary to those in power and unlikely to influence political direction. Extrapolation of Hobbes' theory, in the context of inter-war Britain, would mean that if society rejected its government's direction, it would have no choice but to return to a state of nature and war. Locke's position is different. Locke argues that a sovereign body only has legitimacy if it is acting in the interests of society and is seeking to protect its welfare.[67] If it fails to adhere to these principles, the citizenry has a right to resist and remove its government.[68] This position would translate to an inter-war society whose opinion would be an influential factor in government thinking. Society was entitled to express opinion if it thought that the government was not acting in the interest of its subjects or acting with any detrimental effect. Locke's view would be that popular opinion about the development of legislation in the inter-war period would be considered or government was at risk of being rejected.

Chapter 5 uses social contract theory to suggest why there was an absence of effective investigative legislation in the inter-war period. It was the role of government to introduce effective laws and the tacit agreement, implied through social contract theory, between the ruling body and its citizenry, left little or no margin for society to express a view which would be translated into law. The chapter now expands on this position and examines the role of government in introducing new laws.

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[67] John Locke, The First and Second Treatises of Government (1689) 99.
[68] John Locke, The First and Second Treatises of Government (1689) 126.

4.3 Bureaucracy

Chapter 5 argues that the Home Office had a crucial role in influencing the state of the law throughout the inter-war period. It was key to deciding which matters would proceed to legislation and those that would not. It acted as a channel through which parliamentary recommendations and legal opinion passed and was the arbiter over which proposals and ideas would progress to Cabinet. It was a highly bureaucratised process and the extent to which this was a factor in blocking progressive legislation is analysed in chapters 5 and 7.

This chapter now examines the constituent elements of bureaucracy theory which outlines how the concept was a contributor to government inertia in developing and implementing legislation. It provides a framework which argues that the separate mechanisms of government operate in isolation of wider concerns and effectively suppresses public opinion. It sets out the principles of bureaucracy and argues that it was the rigidity of an established and efficient system which diluted civil service opportunity to influence government direction. It is ultimately argued that it became a key contributor to the absence of investigative legislation during the inter-war period.

Weber argued that in any society, domination was the most important element of social action and has been an integral part of society from the middle-ages

through to modern capitalist societies.[69] Domination empowered a ruling body with the legitimacy to rule and was based on the premise that the ruler had the right to rule and those governed were expected to obey in the belief that such power was legitimate.[70] His view of the State paralleled social contractarian theory as it was characterised by a body of law which had compulsory jurisdiction over a territory.[71] His ideas mirrored Locke's model of political legitimacy that the people had influence over a ruling body with the power to dismiss them.[72] He was primarily concerned with the concept of domination in its combination with administration and argued that the two concepts were symbiotic: one required the other.[73]

Rationally organised administration within a structure of domination is typically expressed through the concept of bureaucracy.[74] It is the means of transforming

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[69] Talcott Parsons, Max Weber: The Theory of Social and Economic Organisation (The Free Press of Glencoe 1947) 328; Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 941, 1002.

[70] Brian Fry and Jos Raadschelders, *Mastering Public Administration; From Max Weber to Dwight Waldo* (Sage 2014) 30, 36. Weber put forward two other models of domination. Charismatic domination was relatively rare, was driven by a character of specific quality and is a force for revolution. It is a personal relationship with no formal method of adjudication, and which resulted in unstable rule with no protection against the arbitrary exercise of power. Traditional domination is also based on personal rule though not driven by crises or enthusiasm but out of respect for the eternal past. Unlike social contract legitimacy and domination by authority, a person is obeyed, not the impersonal order. See Talcott Parsons, *Max Weber: The Theory of Social and Economic Organisation* (The Free Press of Glencoe 1947) 328; Guenther Roth and Claus Wittich, *Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3* (Bedminster Press 1968) 954; Mommsen W, *The Age of Bureaucracy: Perspectives on the Political Sociology of Max Weber* (Basil Blackwell 1974) 73; Brian Fry and Jos Raadschelders, *Mastering Public Administration; From Max Weber to Dwight Waldo* (Sage 2014) 30-35.

[71] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (Sage 2014) 37.

[72] Tony Waters and Dagmar Waters, Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy and Social Stratification (Palgrave Macmillan 2015) 115.

[73] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 948.

[74] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 954.

social action into a rationally organised action and Weber argued that where an administration has become completely bureaucratised, it is practically indestructible.[75] It is the most rational and efficient form of organisation devised by man[76] and indispensable.[77] Such administrative functions are demanded by capitalist societies.[78] This highly organised and inflexible piece of government apparatus makes it impenetrable to public opinion.

The constituent elements of bureaucracy are examined below but a key principle which underlines administrative organisation is the separation of functionality between the elected body and its administrative office. Weber's theory specifically refers to the civil service[79] and asserts that an elected government derives its power from an electorate.[80] Elected officials are not judged by technical competence but by loyalty to a political head.[81] Politicians act as an indispensable counter-weight to bureaucracy to ensure it is subject to the law rather than being

[75] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 956, 987; Tony Waters and Dagmar Waters, Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy and Social Stratification (Palgrave Macmillan 2015) 110. Weber argued that bureaucracy theory was just as valid in the private sector. See Talcott Parsons, Max Weber: The Theory of Social and Economic Organisation (The Free Press of Glencoe 1947) 334; Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (Sage 2014) 3-5, 41-42; Tony Waters and Dagmar Waters, Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy and Social Stratification (Palgrave Macmillan 2015) 77.
[76] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (Sage 2014) 22.
[77] Tony Waters and Dagmar Waters, Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy and Social Stratification (Palgrave Macmillan 2015) 112.
[78] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 974.
[79] Tony Waters and Dagmar Waters, Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy and Social Stratification (Palgrave Macmillan 2015) 84.
[80] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 956; Tony Waters and Dagmar Waters, Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy and Social Stratification (Palgrave Macmillan 2015) 82.
[81] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 961.

a creator of it.[82] Conversely, the appointed bureaucrat derives his power from the head of the administrative organisation[83] and should remain out of politics.[84] Recent critics of Weber's theory have argued that in more modern, complex societies, the power of bureaucracy has grown to an extent that it develops policy rather than administering it.[85] This is a key point developed in chapter 5.

4.3.1 Characteristics of bureaucracy

Weber's key characteristics of bureaucracy identify an inflexible structure and a rigidity of purpose. It was the role of bureaucratic organisations to administer in an abstract sense and not to become involved in shaping the law based on individual cases.[86] This defined the characteristics of Weber's pure model of bureaucracy.[87] They were administered by qualified officials[88] whose only job[89]

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[82] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (Sage 2014) 47.
[83] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 956; Tony Waters and Dagmar Waters, Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy and Social Stratification (Palgrave Macmillan 2015) 82.
[84] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (Sage 2014) 23.
[85] See for example Terry M Roe, '*Regulatory Performance and Presidential Administration'* (1982) 26 (2) American Journal of Political Science 197-224; John T Scholz, Jim Twombly and Barbara Headrick, 'Street-Level Political Controls Over Federal Bureaucracy (1991) 85 (3) The American Political Science Review 829-850 in Brian Fry and Jos Raadschelders, *Mastering Public Administration; From Max Weber to Dwight Waldo* (Sage 2014) 53, 68.
[86] Tony Waters and Dagmar Waters, Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy and Social Stratification (Palgrave Macmillan 2015) 78.
[87] A M Henderson and Talcott Parsons, Max Weber: The Theory of Social and Economic Organisation (The Free Press of Glencoe 1947) 333; Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 954; Wolfgang J Mommsen, The Age of Bureaucracy: Perspectives on the Political Sociology of Max Weber (Basil Blackwell 1974) 82.
[88] A M Henderson and Talcott Parsons, Max Weber: The Theory of Social and Economic Organisation (The Free Press of Glencoe 1947) 331; Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 958.
[89] A M Henderson and Talcott Parsons, *Max Weber: The Theory of Social and Economic Organisation* (The Free Press of Glencoe 1947) 336; Brian Fry and Jos Raadschelders,

was to carry out the instructions of those in authority.[90] They are divorced from owning any part of the process but are accountable in its use.[91] The authority to give commands required that the discharge of these duties was distributed in a stable and methodical manner.[92] The management of the office is based on written documents and it is these documents which constitute the 'bureau'.[93] Knowledge of these rules of bureaucracy represents a special technical expertise which has been acquired by the official,[94] they are indispensable and of primary importance in its function.[95] This controlled structure results in what Weber labels a 'jurisdictional competence'[96] with orders flowing from a higher office; authority rests with the office not the person.[97] Critics have focused on its dysfunctional elements and it has been described as red tape, buck-passing and inflexibility.[98]

Mastering Public Administration; From Max Weber to Dwight Waldo (Sage 2014) 39; Tony Waters and Dagmar Waters, *Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy and Social Stratification* (Palgrave Macmillan 2015) 78.

[90] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 956-957.

[91] A M Henderson and Talcott Parsons, *Max Weber: The Theory of Social and Economic Organisation* (The Free Press of Glencoe 1947) 331-332,336.

[92] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 956.

[93] A M Henderson and Talcott Parsons, Max Weber: The Theory of Social and Economic Organisation (The Free Press of Glencoe 1947) 332; Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 957.

[94] A M Henderson and Talcott Parsons, Max Weber: The Theory of Social and Economic Organisation (The Free Press of Glencoe 1947) 330; Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 958.

[95] A M Henderson and Talcott Parsons, Max Weber: The Theory of Social and Economic Organisation (The Free Press of Glencoe 1947) 337; Tony Waters and Dagmar Waters, Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy and Social Stratification (Palgrave Macmillan 2015) 98.

[96] A M Henderson and Talcott Parsons, Max Weber: The Theory of Social and Economic Organisation (The Free Press of Glencoe 1947) 330; Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 957.

[97] A M Henderson and Talcott Parsons, Max Weber: The Theory of Social and Economic Organisation (The Free Press of Glencoe 1947) 330-332; Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 956.

[98] Ferrel Heady, *Public Administration* (6th edn, Marcel Dekker 2001) 72-73.

Merton described it as 'trained incapacity, occupational psychosis and professional deformation'.[99] The thesis' interpretation of the files examined, suggests that the civil service of the inter-war period mirrored these characteristics and represented as an inflexible organisation, but was not as impervious to any outside influence or demands as Weber suggests.[100]

Those employed within the structured system display similar characteristics. The staff are not elected but appointed on a free contractual relationship based on technical qualifications.[101] They are required to carry out mandated political orders in an impartial manner[102] and its depersonalised nature allowed them to function regardless of the body in political control.[103] They are subject to the authority of the regime in respect of their official obligations and are organised in a clearly defined hierarchy of offices.[104]

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[99] Robert Merton et al, *Reader in Bureaucracy* (The Free Press 1960) 364.
[100] See Chris A Williams, *Police Control Systems in Britain 1775-1975* (Manchester University Press 2014) 85-113 for an argument that the police service is a bureaucracy. Williams' argument is that the organisation was governed by internally-devised policies to ensure efficiency. See also Susan Sibley, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323, 325 which argues that the operative law sits within Weber's iron cage of bureaucracy. See also Geoffrey K Fry, *The Changing Civil Service* (George Allen and Unwin 1985) and Gail Savage, *The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939* (University of Pittsburgh 1996) for their interpretations of the bureaucracy of the civil service.
[101] A M Henderson and Talcott Parsons, Max Weber: The Theory of Social and Economic Organisation (The Free Press of Glencoe 1947) 333; Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 960; Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (Sage 2014) 39.
[102] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 960; Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (3rd edn, Sage 2014) 46.
[103] Tony Waters and Dagmar Waters, Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy and Social Stratification (Palgrave Macmillan 2015) 112. See also Gail Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 184.
[104] A M Henderson and Talcott Parsons, *Max Weber: The Theory of Social and Economic Organisation* (The Free Press of Glencoe 1947) 333.

Weber argued that civil servants identify themselves with their way of life[105] and it becomes a social position which is preserved through a strong demand for administration by trained experts.[106] This structured formality turned human beings into machines almost avoiding public discussion, operating in secret and outside of the context of the social environment in which it was situated.[107] It excluded irrational feelings and sentiment in favour of the detached professional expert.[108] The devotion to the pursuit of rational objectives constituted the norm and which was justified through reason of State.[109] Weber was concerned that bureaucracy would become an 'iron cage' in which to operate and would eliminate all elements of human feelings and values;[110] effectively the individual within an organisation has no influence.[111] This assertion is later challenged in chapter 5 but recognises that the individual actions within the Home Office were constrained by precedent.

Weber argued that the bureaucratic machine which developed was the means for achieving a rationally ordered execution of the wishes of elected officials.[112] It

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[105] A M Henderson and Talcott Parsons, *Max Weber: The Theory of Social and Economic Organisation* (The Free Press of Glencoe 1947) 367.
[106] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 959.
[107] A M Henderson and Talcott Parsons, *Max Weber: The Theory of Social and Economic Organisation* (The Free Press of Glencoe 1947) 340; Robert Merton et al, *Reader in Bureaucracy* (The Free Press 1960) 363; Guenther Roth and Claus Wittich, *Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3* (Bedminster Press 1968) 975.
[108] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (3rd edn, Sage 2014) 40.
[109] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 979.
[110] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (3rd edn, Sage 2014) 42.
[111] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 988.
[112] Brian Fry and Jos Raadschelders, *Mastering Public Administration; From Max Weber to Dwight Waldo* (3rd edn, Sage 2014)) 46, 52.

invoked a controlled base of knowledge, had clearly defined spheres of competence and operated within clearly defined rules.[113] It is efficient because of its speed, precision, consistency, availability of records, continuity and operating with minimal inter-personal friction.[114] A key aspect is that the neutral competence and technical superiority of bureaucrats result in a very high level of expertise and a higher quality of government.[115] Conversely, he recognised that officials being appointed for lifetime security deprives organisations of the ability to achieve optimum technical efficiency[116] and staff become unresponsive and mediocre.[117] His overriding conclusion though is that the more complicated and specialised society became, the more the need for a detached and strictly objective expert.[118] The ruled classes were unable to dispense with the system since it relied upon the 'crippled personality of the specialist'[119] and if it collapsed, chaos would follow.[120]

These ideas may be translated to the civil service of the inter-war period. Later analysts have argued that during the 1920s and 1930s the English grappled with

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[113] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (3rd edn, Sage 2014) 40.
[114] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (3rd edn, Sage 2014) 40.
[115] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (3rd edn, Sage 2014) 52.
[116] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 962.
[117] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (3rd edn, Sage 2014) 55.
[118] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 975.
[119] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (3rd edn, Sage 2014) 41-42.
[120] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 988.

increasing problems of social complexity.[121] The General Strike and mass unemployment traumatised those who experienced them but this did not lead to any radical reordering of the social system. The civil service's contribution to the resolution of controversy was its capacity to absorb such conflict without undergoing great social change.[122] The Labour Party of the period saw this as a social failure caused by the civil service.[123] Critics have argued that the service was unrepresentative of the population as a whole and could not be trusted to serve the people's interests.[124] This advances the hypotheses that the civil service had too much power and they used that power to further their own interests.[125] To a degree this position is challenged by the idea that civil servants were simply more inclined to listen to expert, rather than parliamentary opinion.[126] This is a crucial point in the later analysis which argues that it was the civil service which made the ultimate decision about restricting the development of investigative legislation based on advice received from experts in the field: the police.

The reorganisation of the civil service at the end of the first world war made the upper levels of government administration both more centralised and more

[121] Gail Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 2.
[122] Gail Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 3.
[123] Gail Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 3.
[124] Gail Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 3.
[125] Gail Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 3.
[126] Stefan Slater in 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) (2) Law and History Review 533, 549.

homogenous than ever before.[127] Civil servants could only pass judgement on a limited range of issues that affected their department.[128] Their power to translate these judgements into action depended upon their having a sympathetic and active minister to press the department's views upon the Cabinet[129] Savage's more recent analysis asserts that it was a vicious circle of civil service entrenchment and political inertia which resulted in an inability to implement change.[130] It is significant that her detailed analysis of the civil service of the inter-war period omits any reference to policing and the Home Office. This may be indicative of policing not being seen as a prominent feature at a time of heightened social and political unrest.

This dehumanised and dispassionate system of government control is a significant contributor to a weak link between the voice of the people and the development of legislation. Inter-war society was able to express opinion through newspapers and elected officials but the professional mechanisms of policing, the courts and the civil service were largely divorced from that debate. It was identified in chapter 1 that the police had shifted to a more centralised model of policing and adopted a more distanced approach to its communities.[131] Bureaucracy theory argues that it was not the role of the police or the Home Office to intervene where they recognised that law was insufficient or dysfunctional; by

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[127] Gail Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 4.
[128] Gail Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 183.
[129] Gail Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 183.
[130] Gail Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 183-184.
[131] Report from the Select Committee on the Police of the Metropolis, 11 July 1828, page 30; Clive Emsley, *The Great British Bobby* (Quercus 2009) 40.

implication, this means that this was the function of parliament. Chapter 5 argues that the professional bodies best placed to recommend change, a Royal Commission and parliament itself, remained passive. The additional factor of a dispassionate civil service further blocked the development of investigative legislation.

Social contract theory argues that there may have been little opportunity for wider public opinion to influence government thinking and bureaucracy theory supplements this by arguing that any opinion put forward would meet with justified inertia. It was not the role of the police or the Home Office to argue for changes in the law but to administer and implement existing legislation. Chapter 5 demonstrates that the inter-war judiciary and civil service considered that the introduction of any new legislation was a function of parliament.

Social contract and bureaucracy frameworks offer an explanation of behaviours at the societal and institutional level which shaped the development of the law. The chapter now puts forward two theories which offer an explanation of behaviours at the individual level, particularly the actions of inter-war police officers employed to investigate murder.

4.4 Legal consciousness

The actions of individuals within the law-making and -enforcement arenas are subsidiary to the issues operating at the macro level within social contract, and mesa level within bureaucracy theories. Legal consciousness is a theoretical

concept which can be used to explain why inter-war policing was able to operate outside the confines of the law. It may also be used as a supplement to understand why public opinion on policing issues was effectively silent. This section firstly outlines that the conventional approach to legal consciousness argues that law in society was all pervasive despite there being a persistent gap between the law on the books and the law in action. It then outlines an alternative approach, which argues that law is not as prevalent in society as many would suggest and that individuals operate outside of its control.[132] It builds on earlier social contract theory that societies were controlled by a strict regime of laws but that the police had public support for their actions despite there being no legislation to support such a position.

The conventional view of legal consciousness is that law in society is omnipresent.[133] It is a durable and powerful human invention which suffuses and saturates everyday life.[134] It rules everyday life because its constructions are uncontroversial and have become normalised and habitual.[135] Human consciousness entails both thinking and carrying out daily activities[136] though the operation of the law is rarely sensed.[137] Social actors are therefore constrained

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[132] Susan Silbey, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323.
[133] Susan Silbey, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323, 331.
[134] Ewick P and Silbey S, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998) 231; Susan Silbey, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323, 331.
[135] Susan Silbey, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323, 332.
[136] Susan Silbey, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323, 334.
[137] Susan Silbey, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323, 332.

without knowing from where or whom the constraint derives.[138] Its cumulative and aggregated effect contributes to a society's culture and structures of power.[139] Pitkin argued that its operation in society confirmed Weber's iron-cage theory of bureaucracy that the law acted independently of other organisations with no one body responsible for the overall direction of society.[140] This position supports the thesis' acknowledgement that the law and the operational arms of government operated as separate, bureaucratic machines independent of other influences.

More recent critics have argued that there has been a shift in thinking about the nature of legal consciousness.[141] The conventional approach of acceptance of a legal hegemony and society's tacit compliance has become increasingly problematic and limits understanding.[142] It is criticised for its presumption that law dominates all lives[143] and fails to recognise that other non-state laws operate on the sub-consciousness of people and how they relate to their own 'legal sources.'[144] It excludes the importance of other quasi legal structures that operate

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[138] Susan Silbey, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323, 331; Austin Sarat, 'The Law Is All Over: Power, Resistance and the Legal Consciousness of the Welfare Poor' (1990) 2 (2) Yale Journal of Law and the Humanities 343, 346.
[139] Susan Silbey, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323, 324.
[140] Hanna Pitkin, *Wittgenstein and Justice* (University of California Press 1993) xiv; Susan Silbey, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323, 325. See also J Comaroff and J L Comaroff, *Of revelation and Revolution: Christianity, Colonialism and Consciousness in South Africa* (Chicago Press 1991) 23-24.
[141] Marc Hertogh, *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* (palgrave MacMillan 2018). This also acknowledged by Silbey though she argues that legal consciousness research should return to capturing the critical sociological project of explaining the durability and ideological power of law. See Susan Silbey, 'After Legal Consciousness' (2005) 1 Annual Review of Law and Social Science 323, 358.
[142] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 6.
[143] Kay Levine and Virginia Mellema, 'Strategizing the Street: How Law Matters in the Lives of Women in the Street-Level Drugs Economy' (2010) 26 (1) Law and Social Enquiry 169, 180.
[144] Michael McCann, 'On Legal Rights Consciousness: A Challenging Analytical Tradition' (2006) in Benjamin Fleury-Steiner and Laura Nielsen Eds, The New Civil Rights Research: A Conservative Approach (Ashgate 2006) ix-xxx.

in a person's life and consciousness.[145] Hertogh argues that a different approach should be adopted to recognise these factors and that many criticise the justice system and feel alienated from it.[146] Its fundamental premise is to analyse both if, and how, law matters in everyday life.[147] Many studies[148] have been conducted which are concerned with individuals' experience with the law, concern decisions about legal compliance and the subtle ways that law affects the everyday life of individuals.[149] This conceptual framework is now outlined and how it can be used to explain why police organisations operated outside of legislative support and perhaps why public opinion did not engage more rigorously.

Law does not play a central, but secondary role in everyday lives and there is a decline of official law in the consciousness of ordinary people.[150] Studies are sceptical of claims that official laws are highly effective in organising social behaviour or in controlling the production of social meaning.[151] There is a sense

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[145] Kay Levine and Virginia Mellema, 'Strategizing the Street: How Law Matters in the Lives of Women in the Street-Level Drugs Economy' (2010) 26 (1) Law and Social Enquiry 169, 174.
[146] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 1, 6.
[147] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 12.
[148] See for example Sally Merry, Getting Justice and Getting Even: Legal Consciousness Among Working Class Americans (University of Chicago Press 1990); P Ewick and S Silbey, The Common Place of Law: Stories from Everyday Life (University of Chicago Press 1998); Laura Nielsen, 'Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment' (2000) 34 (4) Law and Society Review 1055-1090); Dave Cowan, 'Legal Consciousness: Some Observations' (2004) 67 (6) The Modern Law Review 928-958; Rosie Harding, Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives (Routledge 2010); Simon Halliday and Bronwen Morgan, 'I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination' (2013) 66 (1) Current Legal Problems 1-32.
[149] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 7.
[150] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 13.
[151] David Engel, '*How Does Law Matter in the Constitution of Legal Consciousness?* in Bryant Garth and Austin Sarat, *How Does Law Matter?* (Northwestern University Press 1998) 140. See also Sally Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study' (1973) 7 (4) Law and Society Review 719-746); Robert Ellickson,

of a higher transcendent law above State law or the making of 'law from below'.[152] It signals the isolation or alienation of law[153] within society and illustrates the erosion of legal legitimacy.[154] This non-State law has been described as 'living law' or 'law in action.'[155] It is the notion that lives in people's heads and which can be identified on the basis of people's attitudes.[156]

Hertogh identifies four types of alienation: meaningless, powerlessness, cynicism and value-isolation.[157] Meaningless is the sensed inability to understand the law and to predict the outcome of legal processes; proceedings appear alien and inappropriate.[158] Powerlessness is the sensed inability to control the outcome of legal processes.[159] Cynicism is that there is an expectancy that socially unapproved rules are required to achieve given goals and that the law no longer matters.[160] Value-isolation is when there is a perceived gap between the values

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Order Without Law: Neighbours Settle Disputes (Harvard University Press 1991); Marc Hertogh, *Living Law: Reconsidering Eugen Ehrlich ed* (Hart Publishing 2008).

[152] Simon Halliday and Bronwen Morgan, 'I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination' (2013) 66 (1) Current Legal Problems 1, 29.

[153]Hertogh focuses on subjective alienation and not structural circumstances discussed in Marxism below.

[154] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 14.

[155] See for example Roscoe Pound, *'Law in Books and Law in Action'* (1910) 44 American Law Review 12-36; Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (Harvard University Press 1936).

[156] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 71.

[157] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 51-56.

[158] Marc Hertogh, *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* (palgrave MacMillan 2018) 52-55. See also Melvin Seemen, '*On the Meaning of Alienation'* (1959) 24 (6) American Sociological Review 783; Hazel Genn, *Paths to Justice: What People Do and Think About Going to Law* (Hart Publishing 1999) 24.

[159] Marc Hertogh, *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* (palgrave MacMillan 2018) 55; Melvin Seemen, '*On the Meaning of Alienation'* (1959) 24 (6) American Sociological Review 783, 786.

[160] Marc Hertogh, *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* (palgrave MacMillan 2018) 56; Melvin Seemen, '*On the Meaning of Alienation'* (1959) 24 (6) American Sociological Review 783, 788.

of the law and one's personal values. The rules of civil law have been broken by the 'code of the street.'[161]

These differences represent a widening gap between internal[162] and external[163] understanding of the law and Hertogh identifies four separate profiles of people within that spectrum. Legalists are acutely aware of the law and identify with it.[164] Loyalists identify with the law but their awareness of it is limited.[165] Cynics are aware of the law but the degree to which they identify with it is much lower. They are critical of it and do not feel the norms and values which they consider important are reflected in the law.[166] Outsiders' awareness of the law is limited and do not identify with it: they have turned their back on it.[167]

Alienation is represented across a wide range of groups but case studies have demonstrated that legal alienation can feature in the actions of public officials.[168] Hertogh's study of this group presents as officialdom moving away from their public responsibilities due to their perception that the law militates against an

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[161] Elijah Anderson, Code of the Street: Democracy, Violence and the Moral Life of the Inner City (Norton 1999) 9; Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 56.
[162] Judges, lawyers etc.
[163] Ordinary members of the public.
[164] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 57-58.
[165] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 58.
[166] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 59.
[167] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 59.
[168] See for example Sally Richards, 'Unearthing Bureaucratic Legal Consciousness: Government Officials' Legal Identification and Moral Ideals' (2015) 11 (3) International Journal of Law in Context 299-319; Caroline Hunter et al, 'Legal Compliance in Street-Level Bureaucracy: A Study of UK Housing Officers' (2016) 38 (1) Law and Policy 81-95.

efficient service.[169] This specific aspect may be used to examine the extent to which inter-war police moved away from the letter of the law and to implant their own street rules to create a more efficient service during the gathering of evidence in investigations.

Hertogh identified that public officials considered that the law did not produce fair and equitable results and replaced regulations of policy with their own set of rules. This position was supported by political leaders arguing that it was for the greater good.[170] The police specifically argued that it was sometimes better to bend the rules and reversed the rule of law with the rule of means.[171] This was despite it being enshrined in legislation. Officials considered that their authority derived from a need of close cooperation in the neighbourhood and its citizens.[172] This implies that legality and equality in public law do not play a significant role. Rules and regulations are put aside in favour of more informal solutions.[173] It was not the officers' intent but the results of their actions which promoted equality.[174] It is this position which has been applied in chapter 6 and offers an explanation why inter-war police felt justified in operating outside of the legal framework.

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[169] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 131.
[170] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 135.
[171] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 136.
[172] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 137.
[173] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 137.
[174] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 139.

Lipsky argues that street level bureaucrats who comply with regulations reduce the extent to which they can respond to society's needs. They also devote a lot of energy to concealing a lack of service and generating appearances of effectiveness.[175] Front line officials demonstrate a low level of legal identification: most are cynical and are critical of public law.[176] This argument may be directly applied to murder investigations of the inter-war period. Public law did not afford the full range of powers to police to search for and secure direct evidence.[177] Front-line police officers did not see this as a bar to gathering evidence and routinely operated outside of the law to achieve what they and the courts considered to be a fair outcome.[178] Courts sanctioned these actions which provided the police with a tacit level of power which was not enshrined in legislation or case law;[179] they exercised a moral and pragmatic authority without legal authority. This is examined in greater detail in chapter 6.

Legal consciousness theory helps to offer a constructive explanation of why inter-war policing operated without the full support of legislation. It further explains why public opinion about police powers was limited. Fragments of inter-war society would have felt disenfranchised from the complex apparatus of law with little or no understanding of its practice. To use Hertogh's classifications, the law pertaining to criminal investigations would have been meaningless to loyalists.

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[175] Michael Lipsky, Street-Level Bureaucracy: Dilemmas of the Individual in Public Services (Russell Sage Foundation 1980) 75.
[176] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 140-141.
[177] See chapter five on inter-war legislation.
[178] See for example *R v Voisin* (1918) 1 KB 531 34 TLR 263 82 JP 96. See also trial of R v Healey (1919) in MEPO 3/260.
[179] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 14.

Legalists were powerless to change it. Cynics would have seen that legislation had given way to a set of street rules introduced by the police which were designed to achieve a particular outcome. The theory's weakness is that its reference to an absence of law is minimal. Conventional legal consciousness theory argues that an absence of law is an example of its dominance; its silence implies that alternative actions should be taken.[180] An extrapolation of this idea has been used in chapter 6 to argue that inter-war police felt that they had moral authority to operate due to the absence of law in specific areas of investigation.

4.5 Noble cause corruption

The analysis in chapter 6 indicates that there was an ambiguous legal landscape within which the police operated. They consequently took advantage of the situation and pursued courses of conduct which appear to have operated outside the legal framework. Noble cause theory builds on legal consciousness and argues that inter-war police behaviours amounted to a viable variation of the theme. There remains, though, an absence of a clear and common definition of the wider understanding of corruption with the associated problem of operationalising the concept.[181] The existing literature offers a range of definitions which are guided by an overriding principle that noble cause is a moral commitment by some person or group of people who perceive it as their

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[180] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 178.

[181] Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public Integrity 274.

responsibility to make the world a safer world in which to live,[182] or using illegitimate means to secure or improve society's well-being.[183] It is a means by which police officers sometimes cope with the dilemma of the means justifying the end,[184] but its justification is questioned.[185] It is widely asserted that what has been labelled noble cause corruption is routinely accompanied by the use of violence or other intentionally caused harms[186] as a justified means to a desired end.[187] Others suggest that it is also accompanied by officers receiving a significant advantage or reward[188] or engaged in 'slippery slope corruption'[189] indicative of more serious types of corruption to come. It is acknowledged that this type of corrupt behaviour may have been present during the inter-war period[190] but it is not a characteristic which features in the data examined and cannot be used to explain the behaviours observed.

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[182] Seumas Miller, *Institutional Corruption* (Cambridge University Press 2017) 89; Michael Caldero et al, *Police Ethics: The Corruption of Noble Cause* (Taylor and Francis 2018) 24.

[183] Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public Integrity 274.

[184] Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public Integrity 274; John Kleinig, *Ends and Means in Policing* (Routledge 2019) 3. See also Tom Barker and David Carter (1999), 'Fluffing up the evidence and covering your ass: Some conceptual notes on police lying (1999) in Larry Gaines and Gary Cordner, *Police perspectives: An anthology* (Oxford University Press 1998) 342–350; John Crank, Dan Flaherty and Andrew Giacomazzi, 'The noble cause: An empirical assessment' (2007) 35 Journal of Criminal Justice 103-104.

[185] Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public Integrity 274, 276.

[186] John Kleinig, Ends and Means in Policing (Routledge 2019) 75-82; James F Albrecht, Police Brutality, Misconduct and Corruption (Criminological Explanations and Policy Implications (Springer 2017) 27.

[187] See for example C B Klockars, 'The Dirty Harry Problem' (1980) 452 (1) The Annals of the American Academy of Political and Social Science 33-47; Dean G et al, 'Conceptual framework for managing knowledge of police deviance' (2010) 20 (2) Policing and Society 204–222; Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public Integrity 289.

[188] Maurice Punch, Conduct unbecoming: The social construction of police deviance and control (Tavistock 1985) 14; Michael Caldero et al, Police Ethics: The Corruption of Noble Cause (Taylor and Francis 2018) 111.

[189] Michael Caldero et al, *Police Ethics: The Corruption of Noble Cause* (Taylor and Francis 2018) 111.

[190] See for example Andrew Boyle, *Trenchard* (Collins 1962) 585, 609, 637; David Ascoli, *The Queen's Peace* (Hamish Hamilton 1979) 210, 228-230; Weinberger B, *The Best Police in the World: An Oral History of English Policing* (Scolar Press 1995) 75; Clive Emsley, *The Great*

The literature identifies alternative interpretations of this behaviour. Cooper argues that police officers operating outside of the rules may be more closely aligned to ideas about conflict within a police officer's role.[191] Their primary role of identifying and dealing with criminals may conflict with their duty to comply with State law.[192] On the one hand they are required to protect the public from criminality but on the other they are required to comply with procedural law.[193] Noble cause corruption is a function by which the police may secure both objectives through the use of illegitimate means to secure or improve society's well-being;[194] the police feel justified in their actions.[195]

Brogden identified that experience taught police officers how to exploit the law while steering clear of its pitfalls when faced with high authority.[196] He cited

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British Bobby (Quercus 2009) 203-207, 216-217; Stefan Slater, 'Lady Astor and the Ladies of the Night: The Home Office, the Metropolitan Police and the Politics of the Street Offences Committee, 1927-28' (2012) 30 (2) Law and History Review 533, 557; Heather Shore, 'Constable dances with instructress: the police and the Queen of nightclubs in inter-war London' (2013) 38 (2) Social History 183, 185; John Carter Wood, 'The Constables and the 'Garage Girl'' (2014) 20 (4) Media 384-399. Also see Report of the Tribunal appointed under the Tribunals of Inquiry (Evidence) Act 1921 – Inquiry in regard to the interrogation by the police of Miss Savidge, July 1928, (Cmd 3147) for specific allegations of police practice.

[191] Jonathon A Cooper, 'Noble cause corruption as a consequence of role conflict in the police organisation (2012) 22 (2) Policing and Society 169, 170.

[192] Jonathon A Cooper, 'Noble cause corruption as a consequence of role conflict in the police organisation (2012) 22 (2) Policing and Society 169, 170. See also Kim Loyens, 'Rule bending by morally disengaged detectives: an ethnographic study' (2014) 15 (1) Police Practice and Research 62, 63.

[193] Jonathon A Cooper, 'Noble cause corruption as a consequence of role conflict in the police organisation (2012) 22 (2) Policing and Society 169, 170.

[194] Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public 274. See also Seumas Miller, *Institutional Corruption* (Cambridge University Press 2017) 89.

[195] Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public 274. See also Kim Loyens, 'Rule bending by morally disengaged detectives: an ethnographic study' (2014) 15 (1) Police Practice and Research (2014) 62-65.

[196] Brogden M, On the Mersey Beat: Policing Liverpool Between the Wars (Oxford University Press 1991) 89.

evidence where police officers stated that 'everything we did, we could find justification for. We could always find something in the law to help us. It was up to you to see that you were justified'.[197] Offering no caution to an arrested person or detention for the purpose of interview are cited as examples of noble cause behaviour;[198] it is often referred to as 'rule-bending.'[199] Miller argues that acting for the sake of good acts as a motive for noble cause corruption. It is morally wrong but done out of a desire to achieve good.[200] The thesis argues that these were routine characteristics of inter-war policing and are examined in detail in chapter 6. Finally, Hobbs argues that from the early days,[201] the detective was caught between the demands of the job and the official version of his practice and it was this ambiguity which resulted in the detective branch being pilloried for its inability to solve major crimes.[202]

De Graaf's ideas about noble cause corruption step outside the approach of trying to specifically identify why corrupt acts take place and situates the behaviour in a wider social context.[203] This different approach may help to explain behaviours whether they are operating at the individual, organisational or societal level; it is recognised that noble cause corruption operating at the organisational level is

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[197] Brogden M, On the Mersey Beat: Policing Liverpool Between the Wars (Oxford University Press 1991) 88.
[198] JRT Wood, Royal commission into the New South Wales Police Service: Interim Report, Police Integrity Commission (1996) 277.
[199] Maurice Punch, '*Police corruption and its prevention'* (2000) 8 (3) European Journal on Criminal Policy and 301, 303; Kim Loyens, 'Rule bending by morally disengaged detectives: an ethnographic study' (2014) 15 (1) Police Practice and Research (2014) 62.
[200] Seumas Miller, *Institutional Corruption* (Cambridge University Press 2017) 89.
[201] He does not define the period.
[202] Dick Hobbs, Doing the Business: Entrepreneurship, Detectives and the Working Class in East London (Oxford University Press 2001) 41.
[203] Gjalt De Graaf, 'Causes of Corruption: Towards a Contextual theory of Corruption' (2007) 31 (1/2) Public Administration Quarterly 39-86.

largely unexamined.[204] De Graaf's ideas would suggest that the actions of investigating officers arise not from any individual incidence of a corrupt act for personal gain but as a result of the wider organisation's culture. Neither the organisation nor the individual officers perceived its actions to be corrupt and flexible interpretation of the rules was seen as a means to achieve a benefit to the community.[205]

These ideas are supplemented by Bourdieu's theory of social action which operates as an alternative contextually-based causal theory. His notion of habitus[206] acts as a means of linking social structures to the actions of individuals. The lived experience of people provides them with a perception that structures their actions from inside.[207] It is this inherited[208] disposition which affects their behaviours.[209] It is a system of schemes of perception, thought, appreciation and action by people.[210] Bourdieu argued that there exists a correspondence between social structures and mental structures, between objective divisions of the social world and the vision and division that agents apply to it.[211] A person's habitus of having certain dispositions and predispositions triggers the individual into a particular course of behaviour. These dispositions may operate at the sub-

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[204] See for example Donald Palmer, Normal organizational wrongdoing: A critical analysis of theories of misconduct in and by organizations (Oxford University Press 2012).
[205] See also James Detert et al, 'Moral disengagement in ethical decision making: A study of antecedents and outcomes' (2008) 93 Journal of Applied Psychology 374, 375.
[206] Gjalt De Graaf, 'Causes of Corruption: Towards a Contextual theory of Corruption' (2007) 31 (1/2) Public Administration Quarterly 39, 69.
[207] Pierre Bourdieu and Loïc Waquant, *An Invitation to Reflexive Sociology* (Chicago University Press 1992) 1; Gjalt De Graaf, 'Causes of Corruption: Towards a Contextual theory of Corruption' (2007) 31 (1/2) Public Administration Quarterly 39, 69.
[208] Rob Stones, *Key Sociological Thinkers* (palgrave 2017) 232.
[209] Gjalt De Graaf, 'Causes of Corruption: Towards a Contextual theory of Corruption' (2007) 31 (1/2) Public Administration Quarterly 39, 80.
[210] Bridget Fowler, *Pierre Bourdieu and Cultural Theory* (Sage Publications 1997) 18.
[211] Gjalt De Graaf, 'Causes of Corruption: Towards a Contextual theory of Corruption' (2007) 31 (1/2) Public Administration Quarterly 39, 70-71.

conscious level[212] but may also involve a person's own knowledge and understanding of the world.[213]

The cumulative effect of continued exposure to certain social conditions instils in individuals a system of durable and transposable dispositions that internalise the necessities of the extant social environment;[214] it functions as the generative basis of structured, objectively unified practices.[215] Dispositions can be so strongly determined by the social context that it is hard to escape the behaviour of that context. When consistently reinforced in certain ideas and acts, it is difficult for an agent to step outside that culture.[216] Jenkins describes this as a power which derives from the thoughtlessness of habit and habituation rather than consciously learned rules and principles.[217] Socially competent performances are produced as a matter of routine, without explicit reference to a body of codified knowledge and without the actors necessarily knowing what they are doing.[218]

Bourdieu argued that a person's habitus interacts within fields of social forces, different social spaces, which are defined by a system of objective relations of power between social positions.[219] It is a structured arrangement of social

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[212] Pierre Bourdieu, *Distinction: a Social Critique of the* Judgement of Taste (Harvard University Press 1984) 466; Richard Harker et al, *An Introduction to the Work of Pierre Bourdieu* (MacMillan 1990) 11.
[213] Pierre Bourdieu, *Distinction: a Social Critique of the* Judgement of Taste (Harvard University Press 1984) 467; Richard Harker et al, *An Introduction to the Work of Pierre Bourdieu* (MacMillan 1990) 11.
[214] Gjalt De Graaf, 'Causes of Corruption: Towards a Contextual theory of Corruption' (2007) 31 (1/2) Public Administration Quarterly 39, 71.
[215] Richard Harker et al, An Introduction to the Work of Pierre Bourdieu (MacMillan 1990) 10.
[216] Gjalt De Graaf, 'Causes of Corruption: Towards a Contextual theory of Corruption' (2007) 31 (1/2) Public Administration Quarterly 39, 72.
[217] Richard Jenkins, *Pierre Bourdieu (3rd edn,* Routledge 1992) 76.
[218] Richard Jenkins, *Pierre Bourdieu (3rd edn,* Routledge 1992) 76-78.
[219] Richard Harker et al, *An Introduction to the Work of Pierre Bourdieu* (MacMillan 1990) 8. See also Rob Stones, *Key Sociological Thinkers* (palgrave 2017) 234.

positions occupied either by individuals or institutions governed by its own sets of rules.[220] He argued that people within these fields are vying for power and this interacts with the habitus to produce different postures.[221] The same habitus can produce very different practices depending on what is going on in the field.[222] Chapter 6 argues that this may be used to understand the operating practices of the inter-war police. The police service represents as a field at the meso level, a social force designed to prevent and investigate crime. This interacts with a different field: society itself.[223] Chapter 6 argues that society's desire and implicit pressure to solve murders was a factor which the individual police officer internalised and which led to a wide interpretation of the rules governing investigations. The police field was seeking to impose its own interpretation of what was required to carry out its objectives. Bourdieu stated that by studying more cases, a greater understanding will be made of what dispositions and under what specific circumstances, an individual may pursue a course of conduct which may be viewed as corrupt.[224] This thesis acts as a contributing case study to Bourdieu's school of thought.

Hobbs supplements this specific argument specifically in cases of murder. He argues that sub-cultural rules are dispensed with as public, media and organisational pressure dictates a successful arrest and conviction.[225] Murder

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[220] Richard Jenkins, *Pierre Bourdieu (3rd edn,* Routledge 1992) 85.
[221] Richard Harker et al, *An Introduction to the Work of Pierre Bourdieu* (MacMillan 1990) 8. See also Richard Jenkins, *Pierre Bourdieu (3rd edn,* Routledge 1992) 84.
[222] Richard Jenkins, *Pierre Bourdieu (3rd edn,* Routledge 1992) 82.
[223] Bourdieu described society as a social space consisting of inter-related fields. See for example Richard Jenkins, *Pierre Bourdieu (3rd edn,* Routledge 1992) 87.
[224] Gjalt De Graaf, 'Causes of Corruption: Towards a Contextual theory of Corruption' (2007) 31 (1/2) Public Administration Quarterly 39, 74.
[225] Dick Hobbs, *Doing the Business* (Oxford University Press 2001) 205.

incites demands for action that coincide with the unambiguous implementation of police power in response to society's wrath.[226] It is a pure crime and is a step beyond the parameters of day to day urban life. It consequently represents an opportunity for the detective to respond in a manner that stresses and enhances his police role, while licensing the officer to apply his entrepreneurial skills in a manner that may appear clumsy and heavy-handed. It provides the detective with a license for action that would prove awkward and unprofitable if implemented during the investigation of a normal crime.[227]

Finally, Caless argues that the presence of what may be perceived as poor law features as being a causative factor in police officers' behaviours.[228] This is reflected in the thesis' analysis of inter-war legislation, that the legal framework in which the police operated was governed by seemingly contradictory and confusing law and guidelines. An absence of law does not feature in the literature and to that extent the thesis offers a further dimension to what may be categorised as noble cause corruption.

4.6 Conclusion

The chapter has put forward a number of theoretical frameworks through which the behaviours of inter-war police may be better understood and explained. Significantly, the theory of a criminal investigation has been outlined as it is the

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[226] Dick Hobbs, *Doing the Business* (Oxford University Press 2001) 205.
[227] Dick Hobbs, *Doing the Business* (Oxford University Press 2001) 206.
[228] Bryn Caless, 'Corruption in the Police: The Reality of the 'Dark Side'' (2008) 81 The Police Journal 3, 10.

specific integral elements of an investigation which are the subject to detailed analysis in chapters 5, 6 and 7. It is argued that these elements were active throughout the period but were not fully recognised or governed by law. It is a building block to the wider argument developed in the thesis that the police were not recognised as the primary, competent body to undertake such investigations. Identifying the concept of investigation is a crucial element of the analysis.

The influences on the development of the law of the period may be viewed through the prism of social contract and bureaucracy theories. The former is put forward as an argument that the relationship which exists between a society and its governing body is one which effectively suppresses the ability of individuals to offer an opinion as it has vested that responsibility into parliament and its government. There is no need to intervene and it is expected that successive governments are competent bodies to wrestle with complex issues and to introduce legislation to provide remedies. The latter has been used to argue that the administrative arm of the government which was required to design and implement necessary legislation, was one that was hampered by a rigidity of structure and purpose and was not best placed to recognise and act upon specific needs and requirements. The thesis challenges some of the strict interpretations made about bureaucracy theory but the following chapters argue that its mechanics manifested itself in the Home Office selecting a safe and non-controversial position when considering the need for investigative legislation.

The chapter has then explored individual behaviours and how they operate within a society. It has used the theories of legal consciousness and noble cause

corruption as a means to understand and explain the behaviours of the police officers of the period. Legal consciousness offers the explanation that many people do not wholly conform to State laws as they feel alienated from the governing process. This attitude can extend to officialdom which has the duty to comply with State law but often operated outside of it as it considered that wholesale compliance did not bring about the best benefits to communities. It was a justified course of action to operate outside of the law, to bring about improved benefits and consequences for the society they served. This position is supplemented by the notion of noble cause corruption which offers a similar argument that operating outside of the law was not only acceptable but was also tacitly expected by a society which viewed officialdom as having a requirement to provide the best service to its communities. This has been used in the following analysis to argue that inter-war police operated outside of the law in an effort to satisfy public expectations that cases of murder should be satisfactorily investigated and not remain unresolved.

The following chapters now analyse the influences placed upon the development of investigative law of the inter-war period, the practical application of it by police during murder investigations and how the identified behaviours may be explained through the prism of the theoretical frameworks outlined in this chapter.

Chapter 5: Influences on police practice

This chapter builds on the existing body of knowledge outlined in chapter 2 and uses the primary source material identified in chapter 3 to build the argument that the inter-war period witnessed the developing concept, and reality, of what now amounted to a more involved process of investigation. The interpretation of the archival papers examined in this research indicates that there was little or no appreciation by the courts or parliament that an investigation amounted to more than a simple arrest. There was no recognition, or at least an indifference, to the nature of an arrest, its effect on the subsequent procedural treatment of the person in custody, the importance and significance of evidence being obtained through the searching of premises and the manner and timing of a person being charged with an offence. This chapter brings greater clarity to the meaning and effect of an investigation.

Negligible attention was paid to the varying police practices which were developing, and the legal basis upon which they were operating was rarely subject to scrutiny. The chapter argues that a significant contributor to this position was that the courts did not see the police as having an investigative responsibility over and above the act of arrest; detailed scrutiny was therefore unnecessary. Similarly, neither parliament nor the Home Office recognised the need for any meaningful review. This was due, in part, to a lack of recognition that the process had become more complicated and an unawareness of the degree to which the police were involved. The effect of this, was that existing

legislation and informal attempts to give practical guidance, resulted in an ambiguous and confusing legal landscape in which the police were expected to operate. It is these arguments which offer a new contribution to knowledge.

Part 1 builds on the existing literature and uses the sources from the period to highlight the continuing theme of a general resistance to police powers and how this was reflected in attitudes towards investigative policing. It serves as a link from the existing body of knowledge and how it may be transferred across to the specific issue of investigative powers. Part 2 then analyses the specific issue of attitudes towards police murder investigations and identifies the political, social and legal influences which would shape police operational behaviours. It develops the new argument that police service was not recognised in law, and practice, as an investigative body and that its role in criminal investigation was still seen as marginal. It also sets out the argument that there was a lack of understanding about the developing concept of investigation which resulted in murder investigations being governed by guidance and law which was ambiguous and contradictory. The chapter puts forward the idea that new legislation could have provided the clarity and direction needed but none was introduced. It concludes by arguing that a combination of political, governmental and judicial frictions created a dysfunctional legal framework within which police investigations were expected to operate.

5.1 General attitudes towards police investigative powers

Chapters 1 and 2 outlined that it had been the preferred political position to restrict police powers to a minimum. This chapter identifies where that political thinking may be directly transferred across to the specific issue of investigative powers. The issue of the granting of police powers was a recurring theme throughout the 1920s and 1930s across a broad spectrum of subjects.[1] These themes did not emanate directly from investigations of murder but there was a growing emphasis on examining the powers necessary to investigate particular offences.

An early concern about investigative powers focused on the means by which evidence could be gathered to support prosecutions relating to licensing legislation. These were not single criminal acts attributable to a particular person, but a more complex set of circumstances which overall amounted to a criminal

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[1] The range of subjects included enforcement of road traffic legislation, the curbing of prostitution, the ability to obtain search warrants, emergency legislation to deal with striking workers and increased activity in public order and political agitation. See for example, HL Debate 14 May 1924, vol 57, col 423; HC Debate 11 May 1925, vol 183, cols 1602-1605; HC Debate 16 November 1925, vol 188, cols 155-170; HC Debate 20 November 1925, vol 188, cols 802 -804; HC Debate 20 November 1925, vol 188 col 860-861; HC Debate 5 May 1926, vol 195, col 295; HC Debate 5 May 1926, vol 195, col 387; HC Debate 6 May 1926, vol 195, cols 527-530; HC Debate 5 July 1926, vol 197, col 1825; HC Debate 29 November 1926, vol 200, cols 905-915; HL Debate 9 December 1926, vol 65, cols 1394-1402; HC Deb 17 May 1928, vol 217, cols 1303-39; HC Debate 18 February 1932, vol 261, col 1804; HC Debate 10 April 1934, vol 288, cols 258-259; HC Deb 31 May 1934, vol 92, cols 756-757; HC Debate 30 Oct 1934, vol 293, col 90; HL Debate 8 November 1934, vol 94, col 208. HL Debate 8 November 1934, vol 94, col 329; HC Debate 20 March 1935, vol 299 cols 1200-1201; HC Deb 16 November 1936 vol 317, cols 1349-1410; HL Debate 16 December 1936, vol 103 col 965; HC Deb 7 December 1936, vol 318, cols 1697-1712; HC Debate 28 July 1939, vol 350 col 1866. Also see Daily Mail 6 May 1919; Daily Herald 23 June 1919 and 6 April 1921; Daily Herald 4 May 1926; Daily Herald 3 June 1926; Manchester Guardian 26 August 1926; Daily Herald 8 June1934; Daily Herald 20 June 1934; The Times 29 June 1934; Daily Herald 17 July1934: Manchester Guardian 3 August 1934 and 19 September 1934; Daily Herald 19 October 1934: Daily Herald 31 October 1934; The Times 5 October 1936; Daily Herald 17 October 1936; Manchester Guardian 11 November 1936; Daily Mail 19 November 1936.

offence.[2] Concern had been expressed in many newspapers that registered clubs were habitually flouting the licensing laws and it provided a platform upon which the argument about police powers was voiced. The police had argued that it was not their responsibility to police clubs since they had no powers to enter and inspect the premises.[3] Newspapers challenged this assertion and argued that the police had all the necessary powers to 'suppress irregular clubs'.[4] A later court case supported the police argument and demonstrated that powers were insufficient to combat the 'scourge of nightclubs'.[5]

Newspapers were clear that this was a political issue and a matter for parliament to resolve.[6] This indicates, that from this particular perspective, the issue of whether the police had sufficient powers should not be attempted to be resolved in the courts and that parliament had a responsibility to address the concerns. The inference from this is that there was a recognition that new investigative legislation may be required. No legislation was introduced and public debate re-emerged when the nightclub scene in London seemed to be again getting out of control.[7] The police reiterated that they were fighting the problem with one hand tied behind their back.[8] The Home Secretary considered introducing new powers[9]

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[2] For example, allowing premises to be used for immoral purposes or the illicit serving of customers with alcohol.
[3] The Times 1 February 1924.
[4] Daily Mail 13 March 1922.
[5] Daily Mail and Manchester Guardian 30 January 1924. See also Daily Mail 25 July 1925 and The Times and Guardian 27 January 1925.
[6] Daily Mail and Manchester Guardian 30 January 1924.
[7] Daily Mail 27 January and 18 November 1925; Manchester Guardian 11 February 1925.
[8] Daily Mail 27 January and 18 November 1925; Daily Mail 6 May 1936.
[9] The Times 7 and 18 November 1925; See also Manchester Guardian 22 May 1936 for a later debate.

but a Home Affairs Committee[10] opposed the idea on the basis that sufficient powers already existed.[11] This debate is at the core of this thesis's argument that sometimes, there was no clear understanding in parliamentary and government circles about the powers which already existed, and that any new powers would be vehemently resisted. The evidence for this lack of understanding is detailed in Part 2 below through the examination of correspondence between parliament, government and the courts which attempted to tackle the issue. It will be seen that the confusion over the existence, or otherwise, of a sufficiency of police powers may be transferred across to the later debate about police powers in murder investigations. It presents as a greater appreciation of why legislation to control and regularise police behaviours was perhaps not introduced.

Similar criticism was levelled in 1934 when the Incitement to Disaffection Act[12] provided new investigative powers for the police to search premises for seditious literature. They were described as 'outrageous',[13] repugnant to the British tradition[14] and the measure had 'Hitlerised' the law.[15] It also described the legislative developments as an attack upon the principle that an Englishman's home is his castle':[16] people had a right to expect privacy and non-interference from the State. This view is symptomatic of a resistance to provide any further investigative powers and indicative of a position which failed to recognise the realities of policing and what procedural steps were necessary to lawfully gather

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[10] The newspaper quoted a Home Affairs Committee as the source of this point but no record has been found of such a comment in committees or reports of the time.
[11] Daily Mail 23 February, 17 March and 2 April 1925.
[12] Incitement to Disaffection Act 1934 (24 & 25 Geo 5 c 56).
[13] The Times 29 June 1934.
[14] Daily Herald 19 October 1934.
[15] Daily Herald 17 July 1934.
[16] Daily Herald 8 June and 31 October 1934.

sufficient evidence for the courts. In this instance, the police were clear that they had insufficient powers but their calls were rejected.

A parallel argument focused not on the fact that police investigative powers must be restricted, but far better controlled. It was argued that 'a police force immediately becomes corrupt if it becomes the instrument of a corrupt government. The whole essence of democracy is that when you give people power you surround that power with all sorts of restrictions and safeguards in order that that power may not be abused'.[17] This appears to be a lone and unique comment and is not representative of the wider view that powers should be restricted. Its import, however, is significant. It indicates that a minority view existed that where additional powers were thought necessary, parliament must enshrine in legislation a series of checks and balances to ensure that their use is not open to interpretation. This view fundamentally supports the thesis' argument overall that providing power to the police, accompanied by controlling measures, was the essence of ensuring that police action was fair but meaningful. In this context, it is argued in Part 2 below that clarity about police investigations was being sought throughout the inter-war period, and powers ought to have been introduced to allow police to carry out searches and questioning of suspects in circumstances which supported the interests of justice.

The above generates a new perspective to the analysis of policing inter-war Britain and which has attracted little academic attention.[18] Examination of political

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[17] Manchester Guardian 31 October 1934.
[18] Much attention has been paid to abuse of police powers but not that the issue was not properly understood. For allegations of abuse of powers and assault upon Irene Savidge, see

debates in the houses of parliament and commentary in newspapers indicates that policing was debated, but the overwhelming position throughout the inter-war period was that the issue of police powers did not represent as the most significant political issue; the period was dominated by economic and political crises. This contributes to the position that when the issue of police powers arose there was relatively little understanding of the operational realities and often no agreement about whether sufficient powers existed to deal with a particular issue.

This paucity of debate and confusion about powers which already existed may be transferred directly to the specific issue of the powers required to investigate murder effectively. This is now analysed in Part 2 which identifies that a lack of informed debate led to a position where the criminal investigative process was not fully understood. Section 1 examines general attitudes towards the efficiency of murder investigations. Section 2 analyses each of the principal elements of a police investigation and how that process was consequently shaped by governmental, parliamentary, social and legal opinion.

TA Critchley, *A History of Police in England and Wales* (Constable 1967) 201-2; Clive Emsley, *The Great British Bobby* (Quercus 2009) 209-10. See Heather Shore, ‘Constable dances with instructress: The police and the Queen of Nightclubs in inter-war London’ (2013) 38 (2) Social History 183, 186 < https://www.tandfonline.com/loi/rshi20 > accessed 25 October 2020 for a high-profile case involving a corrupt police sergeant. Sergeant Goddard was sent to prison for conspiring to pervert the course of justice. See Clive Emsley, *The Great British Bobby* (Quercus 2009) 203-7; Neil Davie, ‘Law Enforcement: Policies and Perspectives’ in David Nash and Ann-Marie Kilday, *Murder and Mayhem: Crime in 20th Century Britain* (Palgrave 2018) 276.

5.2 General attitudes towards police murder investigations

5.2.1 Efficiency of murder investigations

It is significant that in the decade before the inter-war period, the Home Office was critical of police murder investigations outside of the Metropolitan area of London and considered that provincial and rural forces 'invariably muddled it'.[19] It preferred that the Metropolitan Police was called upon in special instances of murder[20] and issued a Home Office circular to chief constables.[21] However, it regarded the introduction of legislation to make a formal request compulsory as 'undesirable'.[22] This broad criticism of police murder investigations is implied in some later literature[23] though it escapes detailed academic attention in other key sources.[24]

Public opinion about police investigations at the beginning of the inter-war period was less critical and more focused on the integrity of the investigation. The Daily Mail had expressed a strong opinion of the role of the police in 1924 and its editorial argued that 'it is only solid hard work that will get a prisoner into the dock

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[19] HO 45/19921 Internal memorandum to Secretary of State (5 February 1906).
[20] HO 45/19921 Internal memorandum to Secretary of State (5 February 1906).
[21] HO 45/19921 HO Circular (2 July 1909).
[22] HO 45/19921 Internal memorandum to Home Secretary (20 February 1922). This position is not further outlined in the memorandum.
[23] GR Rubin, 'Calling in the Met: serious crime investigation involving Scotland Yard and provincial police forces in England and Wales 1906-1939' (2011) 31 (3) Legal Studies 411-441.
[24] See for example TA Critchley, *A History of Police in England and Wales* (Constable 1967); David Ascoli, The Queen's Peace (Hamish Hamilton 1979); Clive Emsley, *The English Police: A Political and Social History* (Longman 1996) 73; Clive Emsley, *The Great British Bobby* (Quercus 2009); John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 93 < www.jstor.org/stable/42708852 > accessed 25 October 2022.

and then only incontrovertible facts offered in irrefutable evidence will secure his conviction. The judge and jury do not want to know what the detective thinks but what he knows and can prove to the utmost of the rigorous requirements of the law'.[25] This was a prophetic statement as it was the detail underpinning the 'rigorous requirements of the law' which would become the focus of attention later in the decade. This is analysed in greater detail in Section 2 below.

Towards the end of the 1920s there was an increasing interest in the integrity of investigations[26] and public attitudes were changing. Police treatment of prosecution witnesses[27] and a trial involving the arrest of two police officers[28] had led to an undermining of confidence in the Metropolitan Police.[29] The Manchester Guardian was explicit in its criticism and stated that the situation had created 'a thoroughly bad state of affairs, a state that few would have thought possible'.[30] A contrary, though minor view, was that this was a situation being exploited in the newspapers by 'certain socialist quarters'.[31] The treatment of witnesses had little connection with the specific issue of police powers but it led to the creation of a

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[25] Daily Mail 24 April 1924.

[26] The appointment of the Royal Commission on Police Powers and Procedure in 1928 was as a result of concerns expressed about police practice. Its terms of reference stated that it was to consider the general powers and duties of police In England and Wales in the investigation of crime and offences. Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page ii.

[27] Irene Savidge. See Daily Herald 19 May 1928 and 27 November 1928; Daily Mail 21 May 1928. There was also concern about treatment of Major Sheppard in 1925 who had been arrested for an offence and his basic rights had been denied to him – The Times 30 July 1925 and 30 August 1925; Report of J F P Rawlinson of Enquiry held under Tribunals of Enquiry (Evidence) Act 1921 (Cmd 2947, 1925) page 7. See also The Times 25 May 1928 and 4 June 1928; Manchester Guardian 13 and 14 June 1928 for an investigation concerning Beatrice Pace and the methods used by the police.

[28] The Times 12 September 1928.

[29] The Times 27 July 1928, 26 and 29 January 1929.

[30] Manchester Guardian 15 September 28.

[31] The Times 19 May 1928. See also The Times 11 October 1928.

Royal Commission on Police Powers (RCPPP) to examine the concerns.[32] Its inquiry would feature regularly and comprehensively in the newspapers and this likely established a degree of public concern about the perceived abuse of existing powers.

Challenges were also made in parliament about the methods already employed by the police and fears were reignited about a police service with too many powers.[33] The legality of the police investigation itself became the subject of closer scrutiny in parliament and in the newspapers.[34] Parliament had already rejected a suggestion that further powers of search were necessary in the investigation of crime.[35] Sensitivities were heightened by the details being openly discussed in the House of Commons[36] including allegations that there were numerous cases where people suspected of murder were not given a fair trial due to police practice.[37] Any suggestions that the police needed further powers were strongly resisted.[38] This follows the earlier arguments set down above and reinforces the political landscape within which the RCPPP would operate.

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[32] The committee was required to report whether, in their opinion, such powers and duties were properly exercised and discharged with due regard to the rights and liberties of the subject, the interests of justice and the observance of the Judges' Rules, both in the letter and the spirit. See Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page ii. See also Manchester Guardian 22 November 1928 over concerns about police corruption in nightclub management.
[33] HC Deb 11 May 1925, vol 183, col 1602; HC Deb 17 May 1928, vol 217, cols 1303-39.
[34] See for example HC Deb 10 December 1906, vol 166, col 1661-2 and 1664; HC Deb 19 February 1917, vol 90, col 2480; Aberdeen Press and Journal 19 December 1928. See also D Ascoli, *The Queen's Peace: The Origins and Development of the Metropolitan Police 1829-1979* (Hamish Hamilton 1979) 210.
[35] HC Deb 11 May 1925, vol 183, col 1605; HC Deb 20 November 1925 vol 188 col 160-171. Objections raised in parliament relating to further powers to search related to the provision based on 'reasonable grounds' for suspicion and concerns that the provision would be used for the furtherance of prosecuting political offences.
[36] HC Deb 17 May 1928, vol 217, cols 1303-39.
[37] The practice specifically cited was one of questioning people for hours on end resulting in suspected people becoming terrified and unable to give a proper account of themselves. See HC Deb 11 May 1925, vol 183, col 1602.
[38] HC Deb 20 November 1925, vol 188, col 861.

It began its inquiry in September 1928[39] and newspaper coverage was frequent and detailed.[40] This is an important point. This suggests that, accepting the limitations of newspaper coverage outlined in chapter 3, the public were broadly aware of the issues under discussion. Independent commentary, however, was rare, though the Daily Mail specifically stated that it hoped that the Commission's conclusion 'will be properly defined powers and instructions'.[41] This statement is a hint that both legislation and further Home Office guidance were necessary. This rarity of independent commentary may be the result of the model of government earlier outlined in social contract theory. Inter-war government reflected the constituent elements of the contractarian model[42] in that its responsibility was to exercise judgement about those rules which would be a benefit to the community.[43] It may be argued that society had placed its faith in parliament and government to identify and implement any measures required to deal with any concerns about police practices. Consequently, public opinion expressed through the newspaper was largely unnecessary even though the social contractarian model of government recognises that it had a role to play in ensuring government acted in the interests of society.[44] This assertion, however,

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[39] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929); John Carter Wood, 'The third degree: press reporting, crime fiction and police powers in 1920s Britain' (2010) 21 (4) Twentieth Century British History 464, 481 < https://0-doi-org.serlibO.essex.ac.uk/10.1093/tcbh/hwq032> accessed 25 October 2020; Clive Emsley, *The Great British Bobby* (Quercus 2009) 181.
[40] Reporting of the evidence given at the Commission enquiry was a regular feature between September 1928 and March 1929. See for example The Times 14 October 1928, 4 November 1928; Manchester Guardian 19 September 1928, 10 and 11 October 1928; Daily Herald 11 October 1928; Daily Mail 15 October 1928 and 23 October 1928.
[41] Daily Mail 15 October 1928.
[42] Albert Weale, *Modern Social Contract Theory* (Oxford University Press 2020) 40.
[43] Christopher W Morris, *The Social Contract Theorists: Critical Essays by Hobbes, Locke and Rousseau* (Rowman and Littlefield Publishers 1999) 24-25; *Leviathan* (1651) reproduced in JCA Gaskin, *Thomas Hobbes: Leviathan* (Oxford University Press 2008) 118-120, 161.
[44] Michael Lessnoff, *Social Contract* (Macmillan 1986) 62.

is tempered by the wider recognition that newspapers routinely engaged in airing disagreements between proprietors and politicians about which the readership held no interest.[45] As the literature indicated, one position is that newspapers played an important role[46] but a counter position is that only half the population read a newspaper and none voiced the opinion of the masses.[47] The purpose of this thesis has not been to microscopically examine the role of society in influencing the development of law. However, in the context of the relationship between the newspapers and the RCPPP, the data examined indicates that there is negligible evidence of any meaningful attempt by the wider society to influence the outcome of the Commission's findings. This is developed below when considering its role after the publication of the Commission's report.

Its report was published in 1929. This is analysed in detail in Section 2 below, but it made a number of general observations about its attitudes towards police powers. It highlighted that there was much resistance to any introduction of new rules which increased benefits to those suspected of committing crime.[48] This is a significant statement. The catalyst for the RCPPP was a growing concern about police abuse of existing powers. The position statement that it was also concerned about giving an unfair advantage to the criminal indicates that there was support for the police not to have too many constraints placed upon them. It indicates that the Commission was seeking to strike a balance between proper

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[45] Roy Hattersley, Borrowed Time: The Story of Britain Between the Wars (Abacus 2009) 366-367; Adrian Bingham and Martin Conboy, Tabloid Century: The Popular Press in Britain, 1896 to the present (Peter Lang 2015) 72.
[46] Martin Pugh, *We Danced All Night* (Vintage 2009) 110.
[47] AJP Taylor, *English History 1914-1945* (Clarendon Press 1965) 172.
[48] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 26, para 65.

control of the police but not to make them toothless. It went further and stated that police powers to support the investigative process were a legacy of common law powers of arrest, search, entry and inspection.[49] These powers are specifically set down in chapter 6 when examining the practical application of the rules in murder investigations.

The Commission emphasised the point that the laws of felonies[50] now represented an archaic category of offences[51] and that the powers of the constable were a legacy of a police body before the inception of the new police in 1829;[52] policing of the 1920s was now much more organised.[53] Specifically it stated that chief constables had a duty to coordinate and direct their staff including the creation of detective and specialised departments.[54] This statement indicates that the Royal Commission recognised the current and more modern function of an investigative police organisation. It also supports this thesis's argument that the law was in need of review.

Powers which had been granted to the Home Secretary under the Police Act 1919[55] did not extend to regulating the methods and procedures in crime investigation and it had become the practice of the Home Office to issue circulars

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[49] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 12, para 28.
[50] This includes murder.
[51] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 12, para 29.
[52] Additional police powers of entry and inspection had been granted under various statutes but none applied to the investigation of murder.
[53] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 15, para 35.
[54] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 15, para 37.
[55] Police Act 1919 (9 & 10 Geo 5 c 46).

which had effectively attracted the status of a direct instruction.[56] Police practice had been further consolidated through the issue of instruction manuals which varied in scope and practice but its continuance was encouraged by the Commission.[57] This was a point which could have triggered a review of existing legislation but the Commission made no such recommendation and preferred a national instruction manual to be developed.[58]

The Commission forcibly made the point that it did not think it helpful to lay down precise instructions and it would be a wholly mistaken policy to endeavour to limit by too hard and fast regulations the discretionary powers vested in the office of constable.[59] This indicates that internal instructions provided the police with a wider interpretation of their powers rather than a constraint which would be placed upon them by legislation; it appears as though this was the preferred position. The Commission specifically rejected a former Metropolitan Police Commissioner's advice that a constable will always follow the letter of the law rather than its spirit and emphasised that rules must be set down very definitely.[60] The implication of this statement is that the police would operate more effectively if provided with clear, written instructions in the form of Home Office guidance or legislation. It can be inferred from the Commission's reluctance to follow this advice that there was a conscious decision not to recommend legislative change.

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[56] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 16, para 40.
[57] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 17, paras 44-45.
[58] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 17, para 45.
[59] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 18, para 47.
[60] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 18, para 47.

This is an important point. It was identified above that there had, historically, always been an emphasis on restricting police powers to a minimum and the need to protect citizens from unnecessary State intrusion. It will be argued below that failing to introduce legislation had the opposite effect, and adversely impacted on an arrested person's ability to be protected from police procedures.

In the years which followed the Commission's report, counter-arguments were extended that extant law directly led to a large number of unsolved murders;[61] this is a view which is reflected in more recent academic attention.[62] The newspapers argued that the police were now afraid to carry out investigations unless they had a cast-iron case[63] and this had led to an increase in undetected crime generally.[64] Detectives themselves voiced opinions that their ability to solve murders was undoubtedly handicapped by the Commission's findings.[65] This particular point is expanded upon in Part 2 below.

The government declined to set up an inquiry to take evidence from serving officers who were supposedly experiencing these difficulties[66] and this was followed by further demands to control their powers;[67] it was considered that

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[61] HC Deb 17 February 1932, vol 261, col 1645. A high-profile case cited was the murder of Vera Page in December 1931.
[62] John Carter Wood, 'Press, Politics and the 'Police and Public' Debates in Late 1920s Britain' (2012) 16 (1) Crime, Histoire & Sociétés / Crime, History & Societies 75, 93 < www.jstor.org/stable/42708852 > accessed 25 October 2022.
[63] HC Deb 17 February 1932, vol 261, col 1645.
[64] HC Deb 18 February 1932, vol 261, col 1803.
[65] Lancashire Evening Post 31 December 1929. See also Fife Free Press and Kirkcaldy Guardian 26 October 1929. The articles were not clear about which specific findings but it was likely to be connected to the Commission's view that arrested people should not be questioned by the police. This is discussed in section 2 below.
[66] HC Deb 10 March, vol 262, col 1959.
[67] HC Deb 31 May 1934, vol 92, cols 756-757; HC Deb 16 November 1936, vol 317, cols 1349-1410; HC Deb 7 December 1936, vol 318, cols 1697-1712.

sufficient legislation already existed and the extant powers were already dangerous.[68] The debates being voiced in newspapers and by the police themselves indicate, however, that there was now a growing recognition that the police role had moved from a simply reactive function to one that contained an investigative element; the means by which they gathered evidence was being debated.[69] This may be seen as an increase in society's influence in shaping the future of any legislation but it is identified below that any groundswell of opinion appears to have been largely ignored.

The findings of the Commission are analysed in Section 2 below but the overall report identifies that the Commission's references to the concept of investigation was not fully developed nor any significant importance attached to it. It echoed legal opinion that the police arrest is merely the mechanism through which a suspected person is brought before the magistrates[70] and seems to support the established view that the procedures involved in an arrest were irrelevant,[71] and had no meaningful bearing on the investigation process. This indicates that this element of the investigative function of the police was seen as unimportant by the Commission and not considered a crucial element of a criminal investigation.

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[68] HC Deb 31 May 1934, vol 92, col 757.
[69] See for example Daily Herald 6 April 1923, Manchester Guardian 16 October 1928, Daily Herald 17 and 18 October 1928, Manchester Guardian 17 and 18 October 1928, Daily Mail 23 October 1928, Daily Herald 24 October 1928, Manchester Guardian 30 October 1928, Manchester Guardian 27 November 1928, Daily Herald 20 November 1928, Daily Herald 15 January 1929, Daily Mail 13 February 1929, Manchester Guardian 18 March 1929, Daily Mail 23 March 1929, Daily Mail 18 May 1929, The Times 25 May 1929, Daily Mail 19 September 1929, Daily Herald and Manchester Guardian 23 July 1930, Daily Express 28 October 1930, Daily Herald 19 February 1932 and Manchester Guardian 4 March 1936, These are discussed in detail below.
[70] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 57, para 153.
[71] *R v Hughes* (1879) 4 QBD 614, 43 JP 556, 6 WLUK 58; Justice of the Peace and Local Government Review 4 May 1929 page 280.

This position, combined with the wider general attitude towards police powers, is a key element of the thesis's argument in two regards. Firstly, the component elements of an investigation and their effect on gathering important evidence were not recognised. The constituent elements of an investigation outlined in chapter 4 may be transferred to this particular point: the commission had little cognisance of the grounds for an arrest, the consequent effect upon the duty to caution an arrested person and the inability to lawfully search premises for evidence. Consequently, the police were not recognised as a meaninful investigative body and that they were perceived as merely a means to bring suspected offenders before the courts. Secondly, the corollary to this is that because the true effect of an investigation was not recognised, it was thought that there was already a sufficiency of powers. The police already had a power of arrest and all that was now needed was to take the suspected offender before the courts. The result was that it was thought that any further additional measures to help solve crime were unnecessary.

Existing literature argues that it was the late nineteenth century which saw a Criminal Investigation Department (CID) owning the core elements of the identification of suspects[72] and which developed a series of practices and techniques to gather evidence.[73] However, detective policing was still not regarded as a priority and training remained rudimentary.[74] This thesis develops this position and argues that while investigative policing was being carried out, its

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[72] Tim Newburn, *Handbook of Policing* (Willan Publishing 2008) 432.
[73] Tim Newburn, *Handbook of Policing* (Willan Publishing 2008) 431.
[74] Clive Emsley, The English Police: A Political and Social History (Longman 1996) 73.

function was not fully recognised by the RCPPP and the courts. This is a significant factor in the lack of introduction of any legislation which could have made investigations more efficient.

The chapter has set the context in which investigative policing operated during the inter-war years and Section 2 now analyses the role of parliament, government and social and legal opinion which shaped the police investigation process.

5.2.2 Influences on the principal elements of investigation

This section now examines the three principal elements of an investigation: arrest, search and the procedural treatment of suspected offenders. It is these specific elements which had emerged as the developing concept of an investigation at the beginning of the twentieth century. Each of the influences is analysed using the combined perspectives of the Royal Commission on Police Powers and Procedure (RCPPP), the Home Office, the judiciary, independent legal opinion and public opinion aired in newspapers. The data indicates that it was these influences which shaped or determined the operational framework in which the police were expected to operate. The chapter which follows (chapter 6) analyses how that translated into practice but establishing how that framework developed is key to understanding police behaviours of the period.

5.2.2.1 Arrest

The practice of arrest did not constitute a significant debating point in social and political circles; it was simply considered that it was the role of the police to bring offenders before the courts.[75] The practical application of the process was a matter of interpretation and did not always amount to someone being informed that he was being taken into custody. The ramifications of this fluid position have only been recently touched upon in more recent literature.[76] This omission in social and political discourse is significant and is indicative of its importance and meaning not being fully recognised. The RCPPP stated that police powers of arrest were neither excessive nor inadequate[77] indicating that they concluded that the arrest function did not need any further review. It did, however, criticise the police practice of informally 'detaining' suspects rather than formally arresting them. This was also adversely commented upon by the Home Office which indicated that it condemned this police tactic, though it also expressed the view that the courts appeared to be ignoring or sanctioning the illegal practice:[78] a memorandum issued from the Royal Courts of Justice commented that 'a person

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[75] *R v Hughes* (1879) 4 QBD 614, 43 JP 556, 6 WLUK 58; Justice of the Peace and Local Government Review, 4 May 1929 page 280.
[76] John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012).
[77] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 51, para 136. Every citizen as well as every constable had the right to arrest any person who is committing or has committed a treason or a felony. In addition, a constable can arrest anyone on reasonable suspicion of committing a felony - Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 12, para 29. Murder was a felony.
[78] HO 45/22971 - Letter to Royal Courts of Justice from the Home Office (23 April 1929). The Home Office specifically cited S.22 Criminal Justice Act 1914 in support of their argument. This appears an incorrect entry since there is no S.22 Criminal Justice Act 1914.

detained for enquiries who is allowed to go after the enquiries have been made cannot be regarded as in custody'.[79]

The data indicates that the courts did not always accept this position. The view was contradicted in an earlier trial when a police officer maintained that a person had been detained pending enquiries. He was rebuked by the judge who made it clear that the person was in custody.[80] It is an example of the judiciary making different interpretations but generally the courts appeared to attach little importance to the police arrest. Its significance is that informal detentions did not afford the person the protection of the caution as prescribed in law.[81] There was a clear police practice of differentiating between 'arrest' and 'detention'.[82] This is examined in greater detail in the following chapter. The Commission was clear that any detention amounted to imprisonment and the person should be considered in custody; it amounts to an arrest.[83] This represents as a clear difference of opinion between the Home Office and the RCPPP and that of the courts. The case law which provided the power expressly used the word 'arrest'[84] but judges also freely used the term 'detained for enquiries'.[85] It is representative of a lack of clarity in the legal interpretation of the process.

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[79] HO 45/22971 Memorandum from Royal Courts of Justice signed by Justices Avory and Hewart (18 March 1929).
[80] HO 144/20991 - Transcript of trial 24 October 1919 page 20.
[81] HO 45/22971 Memorandum from Royal Courts of Justice signed by Justices Avory and Hewart (18 March 1929).
[82] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) pages 55-57, paras 148-152.
[83] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) pages 55-57, paras 148-152.
[84] *Hogg v Ward* (1858) 157 ER 533.
[85] HO 45/22971 Memorandum from Royal Courts of Justice signed by Justices Avory and Hewart (18 March 1929).

The report specifically separated out murder as an investigation which frequently 'detained' people for questioning[86] and cited a case where a murder suspect was detained for four days before being brought before a magistrate.[87] It was argued that this was a common practice designed to elicit evidence which would later be produced in court. The RCPPP specifically criticised this as a routine procedure adopted by the Metropolitan Police.[88] They considered the practice undesirable and unnecessary[89] as it was liable to serious abuse and it left the police open to the charge of exceeding their strict powers.[90] The inference is that the practice was unnecessary because a lawful power of arrest already existed.

It was identified above that the courts saw the arrest process as merely a mechanism through which offenders were brought to court and appeared disinterested in the detailed treatment of the prisoner. Consequently, the practice was not subject to scrutiny. Legal commentary, however, argued that because a particular practice was not condemned [by the courts] that did not mean it was therefore approved.[91] It was argued that the legality of an arrest was never tested.[92]

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[86] Chapter 6 outlines how the data gathered throughout the research demonstrates that a detained person was routinely questioned about a murder offence without being afforded the protection of the caution which advises that they need not say anything.
[87] *R v Voisin* (1918) 1 KB 531 34 TLR 263 82 JP 96. Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 56, para 151.
[88] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 58, para 157.
[89] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 59, paras 157-158.
[90] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 59, paras 157-158.
[91] Justice of the Peace and Local Government Review, 4 May 1929 page 279.
[92] Justice of the Peace and Local Government Review, 4 May 1929 page 279.

The Home Office consulted with the Metropolitan Police[93] over whether it had any views on the different interpretations placed upon the practice of detaining someone for enquiries.[94] The Metropolitan Police responded by stating that they did not share the RCPPP's concerns about the interpretation of the rules and were content with HM Judges continuing to sanction the practice of detention on suspicion.[95] This is a strong indication that the police were not arguing for any reform; a possible explanation for this is examined in chapter 6. The courts' position was that any illegality would be addressed at trial by a proper cross examination of the evidence before a jury.

The Home Office was concerned about this position. It questioned whether it was desirable to now issue a direction that when a person had been detained 'on suspicion', that a caution ought to be administered when the point is reached that the suspected offender would not be allowed to go if he wished to do so.[96] They considered that 'the question obviously presents some difficulty.'[97] Despite this clear opinion being put forward, it concluded that such a direction was neither necessary nor advisable and that the Judges' Rules were sufficiently practical.[98] They justified this position by stating that rules were clearly understood by the police and attracted only rare criticism from the courts.[99] It ignored criticism from

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[93] HO 45/22971 File 536053/11 Memorandum from Home Office to Metropolitan Police Commissioner (5 July 1929) page 5.
[94] The Home Office disagreed with a committee of judges about the interpretation of the rules relating to the treatment of arrested persons. This is discussed below. See HO 45/22971 File 536053/11 Memorandum from Home Office to Metropolitan Police Commissioner (5 July 1929) page 5.
[95] HO 45/22971 File 536053/18 Letter from Commissioner of Metropolitan Police to Home Office (3 December 1929). See also MEPO 2/7953 - report from Home Office (5 July 1929).
[96] MEPO 2/7953 - minute sheet (19 November 1929).
[97] MEPO 2/7953 - letter from Home Office (3 December 1929) page 2.
[98] MEPO 2/7953 - letter from Home Office (3 December 1929) page 2.
[99] MEPO 2/7953 - letter from Home Office (3 December 1929) page 1.

the RCPPP. It is the thesis's assertion that this omission to clarify an important aspect of police procedure further cemented a perceived flaw in the practice of police arrest and subsequent treatment of suspects. It could have been addressed through the implementation of carefully drafted legislation.

The police practice of 'detaining' people rather than effecting an arrest became a matter of scrutiny in the newspapers. It is significant that the right-leaning press reported that the Director of Public Prosecutions sided with the police in the practice which had developed.[100] However, a solicitor giving evidence at the Royal Commission argued that the practice of the police 'detaining people in comfortable rooms' was an abuse of the process and was rapidly going unchecked.[101] The left-leaning press identified this as a significant issue and reported that Her Majesty's Inspector of Constabulary[102] recognised that the public generally thought the police had more powers than they actually possessed.[103] This is a significant statement and led to a position where the police were able to operate in a manner which attracted little criticism: general ignorance of the law prevented informed debate. The Daily Mail was relying heavily on the Commission to resolve the issue.[104] The Commission made its recommendation that the practice should cease but it failed to take effect; it continued throughout the remainder of the inter-war period.[105] This also indicates

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[100] Daily Mail 23 October 1928.
[101] Manchester Guardian 27 November 1928.
[102] Sir Leonard Dunning.
[103] Daily Herald 24 October 1928.
[104] Daily Mail 13 February 1929.
[105] See chapter 6 for a detailed examination of police practice.

that despite increasing concerns being aired in newspapers about the practice of arrest, they were continued to be ignored.

The significance of the commentary contained in newspapers, legal articles and the recommendations of the RCPPP, is that it demonstrates that there were a number of influences trying to shape the arrest aspect of a criminal investigation. The RCPPP and the Home Office adopted one position and the police and the Director of Public Prosecutions took a contrary view. The judiciary reflected the established tradition that the police were merely required to bring a suspected offender before the courts and they were content to resolve any perceived irregularities at trial. The introduction of new legislation could have provided an unequivocal position by stating that an arrest was the only lawful means of detention and that once a person was deprived of his liberty, then he was under arrest. The subject was discussed in non-legally-binding correspondence between the RCPPP, the Home Office, a selection of judges and the police but this left room for continuing multi-interpretations of the rules. Properly drafted legislation could have prescribed the rules and put in place the requisite controlling measures to stipulate the exact mechanics of how an arrest should take place, with its consequent protections accorded to the prisoner. Legislation would have enabled the police to be held more accountable for their performance. None was introduced. There is nothing in the existing literature which identifies this as an issue and consequently this thesis identifies it as a controversial aspect of law which was not meaningfully tackled by contemporaries. It serves as a contributor to the arguments that the nature and the developing complexity of a

criminal investigation were not fully understood and the reality of the police function was not recognised.

5.2.2.2 Search

It was identified in chapter 2[106] that police powers in the inter-war years did not extend to searching an arrested person's premises. The practice of searching as part of an investigation did not feature significantly in parliamentary, social or legal discourse; neither has it since received any academic attention.[107] Its relevance, though, featured in the final report from the RCPPP. The report acknowledged for a second time that the law supporting criminal investigations was inadequate.[108] It stated that searching of premises was necessary and proper in the interests of justice and cannot in any way be considered an undue infringement of the rights and liberties of the subject.[109] This was in direct opposition to many opinions voiced in newspapers. This is significant. Criticism of police powers of search examined in Part 1 above focussed on the regulations of nightclubs or the seizing of seditious literature. It did not consider the issue of effective murder investigations. The RCPPP now made it clear that search was a necessary and

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[106] This is further explored in chapter 6.
[107] Commentary relating to the powers of search have been restricted to aspects of licensing laws. See for example David Ascoli, The Queen's Peace (Hamish Hamilton 1979) 214-215; Clive Emsley, *The Great British Bobby* (Quercus 2009) 205-206; Heather Shore, 'Constable dances with instructress: The police and the Queen of Nightclubs in inter-war London' (2013) 38 (2) Social History 183, 186 < https://www.tandfonline.com/loi/rshi20 > accessed 25 October 2022.
[108] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 45, para 121.
[109] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 45, para 121.

justified tactic of investigation[110] and stated that the police should not have to rely on powers of which the legality seemed doubtful or obscure.[111] It recommended that the practice of searching premises should be regularised by statute authorising the police to search the premises of persons who have been arrested.[112]

Despite its recommendation, the Commission acknowledged that the searching of premises was carried out in 'serious cases' with the consent of the owner.[113] It stated that if consent was refused then the police would risk an 'action for trespass'.[114] The former statement implies that the Commission considered searching premises by consent to be acceptable and lawful. The Home Office erroneously understood the searching of premises to be part of the common law.[115] Legal opinion vehemently rejected the legality of such measures.[116] There was no legislation or case law which authorised the police to search premises. There was no law which dealt with the searching of premises by consent and how that consent could be demonstrated to have been obtained fairly. This position from the RCPPP of a tacit unofficial approval of police practice is contradicted

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[110] The comment appears linked to the issue of 'serious crime' but offers no definition. See Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 45, para 121.
[111] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 45, para 121.
[112] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 45, para 121.
[113] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 14, para 32.
[114] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 14, para 33.
[115] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 14, para 33. The implication is that the Home Office believed that non-statutory, case law already provided a power.
[116] Justice of the Peace and Local Government Review, 6 April 1929 page 215; 27 April 1929 page 266.

later in the report. The commissioners stated that, as a matter of principle, the police should never exceed their legal powers and the powers necessary to investigate crime should be clearly defined and should rest against unimpeachable authority.[117] This term is not expanded upon but it is indicative of the view that powers should only be provided by enforceable legislation.

Legal commentary recognised that the law needed amending 'even if it only involved a consolidation of decided cases in a careful modern drafting of a Bill.'[118] It anticipated no resistance in parliament to such a measure[119] though it was thought that parliament was so overborne that any hope of legislative reform was unlikely.[120] However, it argued that due to conflicting attitudes about police powers, the RCPPP seemed to consider it 'easier to adopt the British method of handling a difficulty by seeking a compromise rather than legislative reform'.[121] This comment is indicative of a view that it was easier to avoid introducing potentially controversial legislation rather than upsetting some of the political sensitivities involved with the suggestion of any new police powers. This indicates, though, that the legal profession appears to be supportive of the view that legislation was seen as necessary and were critical of the Commission's omission to address the issue.

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[117] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 45, para 121.
[118] Justice of the Peace and Local Government Review, 12 January 1929 page 19.
[119] Justice of the Peace and Local Government Review, 12 January 1929 page 19.
[120] Justice of the Peace and Local Government Review, 4 May 1929 page 279.
[121] Justice of the Peace and Local Government Review ,5 January 1929 page 4.

The Commission erroneously stated that there was no power to search an arrested person which they also saw as a necessary and obvious precaution to obtain evidence.[122] The law did allow for the searching of prisoners by the police to secure evidence relating to the charge.[123] This error is significant. It was argued in Part 1 above that the issue of police powers was debated infrequently and consequently the extent to which powers were available, appears to have been unknown. This statement by the Commission demonstrates a lack of knowledge on the part of a politically appointed body specifically tasked to examine police powers.[124] It is symptomatic of a State which failed to fully appreciate the complexity of investigations and the legislation necessary to regulate it.

Newspapers publicly aired this confusion. They informed its readership that there was no general power to search premises but the police regularly manipulated the situation and managed to put evidence of search before the courts. This had been an issue which had exercised the minds of magistrates for many years.[125] The newspapers highlighted the fact that the Chairman of the Commission had asked whether the police were exceeding their powers and was informed that the courts tacitly accepted such practice.[126] The newspaper reported that the police had wanted this situation regularised.[127] The Manchester Guardian cited one of

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[122] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 14, para 32.
[123] *Bessell v Wilson* (1853) 17 JP 567, 1 E & B 489, 118 ER; *Agnew v Jobson* (1877) 13 Cox CC 625, 42 JP 424, 47 LJMC 67; *Dillon v O'Brien* (1887) 1 WL UK, 16 Cox CC 245, 20 LR Ir 300.
[124] Lord Lee of Fareham, George Rowland, Sir Howard Frank, Dame Meriel Talbot, Sir Reginald Poole, James Brownlie, Margaret Beavan and Frank Pick.
[125] Daily Herald 6 April 1923.
[126] Daily Herald 15 January 1929.
[127] Daily Herald 15 January 1929. A significant part of the RCPPP report commented on a lack of police powers relating to the search of registered clubs. This is a separate issue to general

its correspondents who argued that powers of search for the police had not been properly codified in parliamentary legislation: 'It was typical of our attitudes towards the law that we shrank from the laying down of general principles if that could be avoided but preferred to decide each case on its own facts'.[128] It represents one view but its significance is that it warranted attention and public discussion in a national newspaper.

The debate about the lack of police powers to search premises would extend throughout the remainder of the inter-war period. A recommendation by the later Departmental Committee on Detective Work and Procedure in 1938[129] to introduce such a power was again not acted upon. Two parliamentary recommendations and repeated newspaper articles about the anomaly failed to bring about legislative reform. There is nothing in the existing literature which identifies this as an issue and consequently this thesis identifies it as another aspect of law which was not meaningfully tackled by contemporaries.

5.2.2.3 Treatment of suspected offenders

The questioning and cautioning of persons suspected of committing murder represents as a large body of evidence demonstrating a lack of clarity in the law

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powers of search to secure evidence and was subject to strong opposition. See Manchester Guardian 3 April 1929; Daily Herald 9 January 1930; The Times 22 January 1930.

[128] Manchester Guardian 4 March 1936.

[129] Report of the Departmental Committee on Detective Work and Procedure Vol 5 1938 para 180. The report was widely recommended in police circles as an 'indispensable guide' and newspapers welcomed the idea that science could help in solving crimes. See Daily Telegraph, Daily Herald, Daily Mail, Daily Mirror, Daily Sketch, Manchester Guardian, Yorkshire Post and Liverpool Post 24 September 1938; Police Review 30 September 1938.

and which occupied a great deal of judicial, police and Home Office time. It is a further contribution to the arguments that the nature of the developing investigation was not fully appreciated and that the role of the police within it was not fully understood. It was the varying degrees of interpretation of this discrete area of the law by the courts, the Home Office and the police which strongly indicates that the legal position was unclear. The treatment of suspects in the inter-war period is a strong theme in Wood's[130] recent examination of a high-profile murder investigation in 1928[131] though it stops short of examining the detail of the law. Before this, the subject has received little academic attention.[132]

The development of the inter-war regulation relating to the treatment of arrested people is discussed below from the perspectives of the Royal Commission on Police Powers, the Home Office, the judiciary and the police. It is important to provide context to that analysis. The admissibility of confessions made by defendants had featured in nineteenth- and early twentieth-century case law which focused on ensuring that anything said by an arrested person was not the result of an inducement.[133] One of these cases offered the principle that 'a

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[130] John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012). His research is based largely on TNA file MEPO 3/1638.
[131] MEPO 3/1638.
[132] For example, see AA S Zuckerman, 'Reports of Committees: Criminal Law Revision Committee 11th Report, Right of Silence' (1973) 36 (5) The Modern Law Review 509-518 which analyses the concept of the right of silence. The research was based on Criminal Law Revision Committee, Eleventh Report, Evidence (General) (Cmnd 4991, 1972).
[133] See for example *R v Fennell* (1881) 7 QBD 147 5 WLUK 51; *R v Gavin* (1885) 15 CC 656; *R v Male and Cooper* (1893) 17 Cox CC 689; *R v Miller* (1895) 18 Cox CC 54; *Rogers v Hawken* (1898) LJQB 526; *R v Histead* (1898) 19 Cox CC 16; *R v Brackenbury* (1903) 17 Cox CC 628; *R v Knight and Thayre* (1905) 20 Cox CC 711; *R v Best* (1909) I KB 692; *R v Booth and Jones* (1910) 5 CAR 177; *R v Ibrahim* (1914) 1 AC 599, 24 Cox CC, 30 TLR 383, All ER 874; *R v Crowe and Myerscough* (1917) 81 JP 288. See also extract from The Police Review 13 December 1895 in HO 144/10066 - 52392/6 (21 May 1903). The principle that a person should not say anything which may incriminate himself was established in R v *Fitzpatrick* (1631) 3 ST TR 420.

policeman should keep his mouth shut and his ears open'.[134] Concerns about the uncertainty of whether arrested people could be spoken to by the police were expressed by the police and the Home Office in the following decades before the inter-war period.[135] Chief constables gave opposing directions to their respective forces about whether an arrested person should be cautioned.[136] The Home Office sought judicial opinion which concluded with no unanimously agreed position and refused to intervene or issue any guidance which may clarify the matter.[137] The prosecution of murder trials were collapsing due to the police being seen as carrying out unnecessary questioning[138] and a further chief constable sought clarity from the Home Office.[139]

Advice was eventually provided in the form of a set of informally agreed Judges' Rules issued by the King's Bench Division in 1912.[140] These rules did not satisfactorily clarify the position and confusion remained.[141] They were amended and re-issued in 1918.[142] These rules derived from opinions of a limited number of judges. They were not determined by a specific case at trial or on appeal and consequently did not have the force of law[143] and remained open to interpretation.[144] This is a key strategic point in this thesis's analysis: the rules

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[134] *R v Male and Cooper* (1893) 17 Cox CC 689. See Justice of the Peace, 19 January 1918, page 27.
[135] See for example HO 144/10066 - 52392/9, 10 May 1904.
[136] HO 144/10066 - 52392/6, 21 May 1903; HO 144/10066 - 52392/12, 25 July 1912.
[137] HO 144/10066 - 52392/9, 10 May 1904.
[138] HO 144/10066 - 52392/10, 29 June 1912. See also The Times 20 June 1912.
[139] HO 144/10066 - 52392/12, 25 July 1912.
[140] HO 144/10066. See app 3.
[141] HO 144/10066 - 52392/15, 7 November 1912; HO 144/10066 - 52392/17, 15 July 1915; HO 144/10066 - A52392/21, 23 March 1918.
[142] HO 144/10066 - A52392/22, 5 August 1918.
[143] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 69, para 181.
[144] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 69, para 182.

concerning a central element of a police investigation were governed by flexible guidance and not legislation. This is a significant contributor to ineffective investigations: the power to regulate police practices should only emanate from statutory legislation or case law and overrides any guidance which may be issued by any single body.

Legal commentary stated that this lack of clarity had resulted in an unsettled position in law.[145] It argued that laws of evidence were almost entirely the creation of judges[146] and this position was aggravated as it was felt that judges did not consider that it was their function to settle these uncertainties.[147] The commentary does not state what the judges considered their role to be but commentators considered this to be an erratic and inconsistent position.[148] On the face of it, this indicates that there was concern that decisions settled by way of case law resulted in piecemeal development and the law needed reform through statute.[149] However, it is important to highlight that the judges were not in a position to determine a definitive outcome since the matter did not arise from judicial process; the matter was contained only in non-legally-binding correspondence. However, the comments are significant. They are contained within a professional periodical and by implication it indicates that identified weaknesses in the law were the responsibility of parliament and not a matter for the courts to remedy. The significance in this case is that it suggests that seeking informal advice from a body of judges had not been a suitable position to adopt in the first instance.

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[145] Justice of the Peace and Local Government Review, 17 November 1928 page 744.
[146] See Justice of the Peace and Local Government Review, 17 November 1928 page 743.
[147] Justice of the Peace and Local Government Review, 17 November 1928 pages 743-744.
[148] Justice of the Peace and Local Government Review, 17 November 1928 page 744.
[149] See Justice of the Peace and Local Government Review, 17 November 1928 page 743.

The informal opinion of the courts appeared unequivocal when stating that prisoners should not be questioned as this was an investigative matter which could be properly dealt with at trial by the magistrates.[150] This is an important point and one which appears to be supported by a Royal Commission report.[151] It specifically stated that once a constable had taken an arrested person to a police station, once the inspector or station sergeant has accepted the charge, the constable has ‘no further immediate duty to perform in regard the case, but ought to return to his beat or to the performance of his duty upon which he was engaged when the arrest had to be made’.[152] There was no room for further investigation and the prisoner was required to be taken before a court of summary jurisdiction.[153] This assertion is examined in greater detail in chapter 6. However, the Judges’ Rules appear to contradict this position by stating that ‘whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or any further questions, as the case may be.’[154] They further stated that ‘persons in custody should not be questioned without the usual caution being first administered.’[155] This ambiguity led legal commentary to dismiss the Judges’ Rules as ‘judicial utterances’.[156] The use of this phrase implies that anything not enshrined in legislation or case law was not valid.

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[150] Justice of the Peace and Local Government Review, 4 May 1929 page 280.
[151] Royal Commission on the Duties of the Metropolitan Police 1906-1908 (Cmd 4156, 1908).
[152] Royal Commission on the Duties of the Metropolitan Police 1906-1908 (Cmd 4156, 1908) page 38.
[153] Summary Jurisdiction Act 1879, s 38 (42 & 43 Vic c 49 s 38).
[154] See app 3.
[155] See app 3.
[156] Justice of the Peace and Local Government Review, 17 November 1928 page 743.

The appointment of the RCPPP in 1928 presented as an opportunity to address these concerns. Judges initially refused to be part of the Commission's consultation process as it would present 'serious difficulties.'[157] It is not clear what was meant by this phrase but it indicates that they wished to maintain the separation of powers between executive and the judiciary[158] and did not wish their office to be compromised by working in unison with parliament. The Commission's Chair[159] was firmly of the view that judges did not wish to be associated with giving oral evidence to the Commission but he indicated that the judges would welcome a private meeting.[160] A meeting date was set but it never materialised ostensibly due to the illness of the Chair.[161]

This is a significant chronology of events. It indicates that judges wanted to remain separate from any parliamentary enquiry and goes to support the point made above that they did not, on this occasion, see it as their role to resolve perceived weaknesses in the law. This practice would agree with the general principles of the separation of powers between the legislative, the executive and the judiciary and that any interference by one branch of government with the functions or activities of another would undermine the ability to ensure that no one single body controls the State.[162]

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[157] HO 45/22971 - Letter from RCPPP to Home Office (4 April 1929).
[158] Roger Masterman, *The Separation of Powers in the Contemporary Constitution* (Cambridge University Press 2011) 11.
[159] Lord Lee of Fareham.
[160] HO 45/22971 Letter from RCPPP to Home Office (4 April 1929).
[161] HO 45/22971 Letter from RCPPP to Home Office (4 April 1929).
[162] Roger Masterman, *The Separation of Powers in the Contemporary Constitution* (Cambridge University Press 2011) p.11.

A further significant point is that only after the publication of the Commission's final report in 1929, it became apparent that judges had earlier issued a memorandum which argued their position but which was never seen by the RCPPP.[163] The memorandum emphasised that the courts recognised the treatment of suspected offenders as an important issue.[164] The effect of this document was to firmly establish that the Judges' Rules never intended to encourage or authorise the questioning of a person in custody and this had been the position even before their introduction.[165] This position is supported by the report of the Royal Commission on the Duties of the Metropolitan Police (1906-1908) which stated that upon arrest, any statement made by a person 'should be carefully listened to … although no question must be asked as to the offence…'.[166] This contradicts the strict letter of the Judges' Rules outlined above[167] and this would become a central point of misinterpretation for the remainder of the inter-war period.

The wording contained within the Judges' Rules was carelessly drafted. On three occasions it uses the phrase 'usual caution' without being clear what it means.[168] A Home Office memorandum[169] identified this was a fundamental error and stated that there was no clarity as to its wording and cited an example where a police

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[163] HO 45/22971 Letter from RCPPP to Home Office (4 April 1929); HO 45/22971 Letter from Royal Courts of Justice (Hewart) to Home Secretary (2 May 1929).
[164] HO 45/22971 Letter from Royal Courts of Justice (26 April 1929).
[165] HO 45/22971 Memorandum from Royal Courts of Justice signed by Justices Avory and Hewart (18 March 1929).
[166] Royal Commission on the Duties of the Metropolitan Police 1906-1908 (Cmd 4156, 1908) page 37.
[167] See app 3 for a detailed outlining of the rules.
[168] App 3, Rules 3, 4 and 8.
[169] HO 45/22971 Memorandum attached to letter from Chair of RCPPP to Home Office (6 March 1929).

constable merely said, 'I caution you.'[170] It afforded no protection to the prisoner. The wording of the rules clearly implied that questioning of prisoners was permitted by stating that 'whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or any further questions'[171] and 'persons in custody should not be questioned without the usual caution being first administered'.[172] This interpretation was denied by the courts which argued that the purpose of the caution was to prevent questions being asked.[173] The Home Office pointed out that four separate interpretations had been made on this point.[174] The RCPPP regarded it as an 'undesirable position'[175] and that it created embarrassment for the police.[176] It had itself stated that it was never the Commission's intention to revise the codes but merely to give advice to police officers about their interpretation.[177] This confusing position is central to the analysis carried out in the following chapter. Multiple interpretations were carried out by the police in the operational environment which led to controversial practices and on occasion, direct breaches of some of the unambiguous provisions contained within the guidance.

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[170] HO 45/22971 Memorandum attached to letter from Chair of RCPPP to Home Office (6 March 1929).
[171] App 3, Rule 2.
[172] App 3, Rule 3.
[173] HO 45/22971 Memorandum from Royal Courts of Justice signed by Justices Avory and Hewart (18 March 1929).
[174] The letter does not record the specific interpretations but the data identified in app 2 indicates that different interpretations were made on the definition of when a police officer decides to charge a person and the actual wording of the caution. There are many instances of an arrested person never being told that he need not say anything. See HO 45/22971 Memorandum attached to letter from Chair of RCPPP to Home Office (6 March 1929).
[175] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 26, para 66.
[176] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 25, para 63.
[177] HO 45/22971 Memorandum attached to letter from Chair of RCPPP to Home Office (6 March 1929).

The Commission stated that it was neither competent nor required to deal with the complicated law surrounding the issue.[178] It had been convinced that the police acted correctly in their approach to witnesses and suspects.[179] This is a key point and its assertion is challenged on two grounds. Firstly, the terms of reference for the Commission were to consider the general powers and duties of police in England and Wales in the investigation of crime and offences. By implication, it was being required to deal with the law. Secondly, it was identified in chapter 2 that running in parallel to this Commission was a parliamentary committee examining the law and police practice relating to the policing of street prostitution.[180] It is significant and important to identify that the Street Offences Committee did consider themselves competent to address defects in the law.[181] It recommended that the time had come for a reconsideration by parliament of the whole law on the subject (prostitution).[182] Its rationale for this was that while no evidence had been presented that the defective law had led to any injustice, and has worked reasonably well in practice, the examination of the law discloses defects, partly theoretical and partly practical, which it is difficult to justify.[183] This may be directly transferred across to the argument in this chapter that existing guidance and law relating to general investigations was unclear and ambiguous. The same argument applies that such a situation cannot be justified.

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[178] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 24, para 61.
[179] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 25, para 62. App A to the report was a detailed chronology of the historical development of the caution. See App A, Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) pages 596-601.
[180] Report of the Street Offences Committee (Cmd 3231, 1928).
[181] Report of the Street Offences Committee (Cmd 3231, 1928) page 6, para 4.
[182] Report of the Street Offences Committee (Cmd 3231, 1928) page 21, para 48.
[183] Report of the Street Offences Committee (Cmd 3231, 1928) pages 20-21, para 46.

The Street Offences Committee dedicated 12 pages of its concluding report to the law governing the matter.[184] It made two significant statements which impact directly on this thesis' analysis and conclusions. Firstly, it made the observation that it recognised that there may be irregularities on the part of the police even in bringing a guilty person to justice. The fact that a person is convicted does not necessarily mean that all the actions of the police have been justified.[185] This may be translated into saying that police processes ought to be clear and enshrined in legislation as currently it forced the police to operate outside of the law even when charging people who are inevitably found guilty.[186] It further stated that the effect of its report should be to get rid of anything that will jeopardise the alliance between the police and the public upon which so much of our personal liberty and order depends.[187] This goes to the heart of the thesis' analysis in underlining that police practice and procedure must be transparent and accountable in law. Secondly, it stated that they did not regard it as within their province to deal with police methods in general as these are now undergoing a separate investigation.[188] This is highly likely to be referring to the Royal Commission on Police Powers and Procedure (RCPPP) which was simultaneously arguing that they were neither competent nor required to deal with the matter. It supports the thesis's argument that the RCPPP failed to take the opportunity to address fundamental defects in investigative and procedural law.

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[184] Report of the Street Offences Committee (Cmd 3231, 1928) pages 38-49.
[185] Report of the Street Offences Committee (Cmd 3231, 1928) page 23, para 53.
[186] Report of the Street Offences Committee (Cmd 3231, 1928) page 23, para 53.
[187] Report of the Street Offences Committee (Cmd 3231, 1928) page 35.
[188] Report of the Street Offences Committee (Cmd 3231, 1928) page 24, para 55.

Legal commentary later criticised the RCPPP for not grasping the difficulties of the admissibility of statements.[189] It was also critical of the wider issue of the Commission not taking the opportunity to do away with archaic laws.[190] It specifically stated that ‘one of the greatest defects of the English mind is a tendency to leave lumber lying about in the world with hampering effects upon the practical efficiency upon which we pride ourselves.’[191] The commentary contradicts itself, though, when in the same article it argues that further training of the police is the panacea to the problem.[192] This indicates that the authors of the commentary themselves remain unclear as to the cause of the confusion. Its implication is that if the police were properly trained in the detail of the law, the problems would resolve themselves. This is a flawed argument since it had already been established that the law was archaic, had not been more recently interpreted and consequently was unclear. Further training in defective law would not bring the necessary clarity.

The RCPPP report largely vindicated the police from any malpractice and was more critical of the law itself.[193] It exempted itself from closely examining the law relating to investigations.[194] A more rigorous probing of individual cases would have revealed a lack of clarity in the law alongside inconsistent and poor police practice; these are examined in detail in the following chapter. Legal commentary

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[189] Justice of the Peace and Local Government Review, 20 April 1929 page 248.
[190] Justice of the Peace and Local Government Review, 6 April 1929 page 215.
[191] Justice of the Peace and Local Government Review, 6 April 1929 page 215.
[192] Justice of the Peace and Local Government Review, 20 April 1929 page 248. See also MEPO 2/4481 minute sheet 1 May 1925 in file GR 52/C/866.
[193] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 113, para 301 (i) and (ii).
[194] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 24, para 61.

was critical of the RCPPP's standpoint and argued that for the Commission to leave the matter with the judges represented a misleading situation in the development of law. It argued that such a position was typical of the English temperament that rather than lay down procedure by strict authority it was 'better to stick with a working arrangement, however theoretically unsymmetrical, ever ready to compromise so long as the job gets done'.[195]

The findings of the RCPPP are indicative of a parliamentary body which did not fully understand the complexities of an evolving criminal investigation process: they had not grasped the developing concept of investigation and that the component elements of arrest, search and questioning of suspected offenders were now a regular feature. This position extended to the government department responsible for developing police practice, policy and procedure. The following analysis sets down the actions and interventions of the Home Office and applies the bureaucracy theory outlined in chapter 4 to offer an explanation of its behaviours and its consequent impact on the development of the law. It specifically addresses the extent to which the civil service operated as Weber's dispassionate iron cage,[196] acted only on the authority of its political masters[197] and generally kept out of politics.[198]

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[195] Justice of the Peace and Local Government Review, 11 May 1929 page 295.
[196] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (3rd edn, Sage 2014) 42.
[197] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 956-957.
[198] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (Sage 2014) 23.

After the publication of the Royal Commission's report, the Home Office sought to clarify the issues relating to the procedural treatment of suspected offenders.[199] It made the observation that some of the recommendations would require legislation and others would require an Order from the Home Secretary.[200] Only 15 of the 101 recommendations and conclusions of the Commission had a direct bearing on the criminal investigative process.[201] One was pursued by the Home Office[202] and one was specifically rejected.[203] These are discussed below. Nothing in the archival material indicates that the others were actively considered.

The Permanent Secretary was influential in what reached the Home Secretary as the former considered some of the comments made by the Commission were inaccurate and not well-founded.[204] This may equally be regarded as symptomatic of a government official timing his proposals to ensure it met with a sympathetic and active minister to press home selected recommendations.[205] These comments by the Permanent Secretary,[206] though, went to the core of the arguments about the questioning of people in custody which would persist in the Home Office until after the Second World War.[207] The Home Office adopted an

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[199] HO 45/22971 Letter to Royal Courts of Justice from Home Office (23 April 1929).
[200] HO 45/22971 Memorandum from Home Office official (28 March 1929).
[201] Recommendations 11, 12, 30, 37, 38, 40-42, 46, 48, 51-54 and 59 Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) pages 113-124.
[202] Recommendation 59. An instruction should be issued by the Home Office as to the police taking of statements from suspects.
[203] Recommendation 48. A rigid instruction should be given to the police that no questioning of an arrested person should take place.
[204] HO 45/22971 Front of file cover 536053 handwritten annotation - EB signature.
[205] Gail Savage, The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939 (University of Pittsburgh 1996) 183.
[206] Ernley Blackwell.
[207] See HO 45/22971 File 536053/91. The debate about the interpretation of the Judges' Rules formed a major element of a criminal law review in 1972. It made recommendations which would finally receive legislative support with The Police and Criminal Evidence Act 1984. See Criminal Law Revision Committee, Eleventh Report, Evidence (General) (Cmnd 4991, 1972) pages 16-47.

early view that a clear statement on the RCPPP report was needed by HM Judges[208] and were keen to be 'informed confidentially' of any conversation between the RCPPP and the judiciary.[209]

The influence of the Home Office in the development of legislation is significant in its early interaction between the RCPPP and HM Judges. It argued strongly against one of the report's recommendations that strict instructions should be issued to the police about the questioning of suspects in custody.[210] The Home Office was clearly of the view that the existing rules allowed for the questioning of prisoners and stated that such an instruction would seriously hamper the administration of justice and embarrass the courts.[211] It is unclear why the author of this comment drew this conclusion but it indicates any instruction to direct the police that no questions should be asked of an arrested person would directly contradict the Judges' Rules. The stance adopted by the Home Office reinforces the diametrically opposed views of the interested parties: the RCPPP and the judges were arguing that no questions should be asked; the police and the Home Office were arguing that the rules allowed the opposite.

The Home Office adopted this police-leaning view as they considered that it was in the interests of justice and in the interests of the suspect for them to be asked

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[208] HO 45/22971 Inside of file cover 536053 handwritten annotation. It also suggests that a provisional order relating to the Savidge case should be retained. The Savidge Order was contained in Metropolitan Police General Order (1929) page 693, para 471. This related to the taking of witness statements from vulnerable people and has no bearing on investigative powers. See HO 45/22971 File 536053/63 Police Order 1 August 1928.
[209] HO 45/22971 Letter from RCPPP to Home Office (4 April 1929).
[210] HO 45/22971 Letter to Royal Courts of Justice from Home Office (23 April 1929). See recommendation 48, Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 118.
[211] HO 45/22971 Letter to Royal Courts of Justice from Home Office (23 April 1929).

questions.[212] It challenged the Commission's assertion that it was common practice for the police to arrest an individual on a minor, unrelated charge but question him about the ongoing murder investigation.[213] It went further and said that if this practice was adopted, the Home Secretary[214] considered it proper to carry out investigations in this manner providing the proper caution had been administered.[215]

The Home Office pointedly asked HM Judges whether the existing rules needed amending or whether their interpretation simply needed to be passed onto police officers. The judges responded by stating that it was not within their province to offer any criticism or comment upon the recommendations of the RCPPP[216] but they were content for their earlier published memorandum to be circulated to police forces.[217] This demonstrates strong Home Office involvement in attempting to shape policy and legislation but appearing subservient to legal opinion. The Home Office eventually accepted the interpretation of HM Judges that there was no confusion within the existing rules which made it clear that no questions should be asked of prisoners.[218] No 'rigid' instruction was necessary since the courts'

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[212] HO 45/22971 Letter to Royal Courts of Justice from Home Office (23 April 1929).
[213] HO 45/22971 Letter to Royal Courts of Justice from Home Office (23 April 1929).
[214] William Joynson-Hicks.
[215] HO 45/22971 Letter to Royal Courts of Justice from Home Office (23 April 1929).There is little evidence in the data which indicates that using an alternative charge to secure evidence for a murder investigation was a routine practice. See Chapter 6.
[216] HO 45/22971 (File 536053/8) Letter from Hewart to Home Secretary (28 May 1929).
[217] HO 45/22971 Letter from Royal Courts of Justice to the Home Office (20 June 1929). A later document implies that the Judges were prepared to comment on Home Office proposals and specifically rejected a number of recommendations regarding the timing of cautions. See HO 45/22971 File 536053/11 Memorandum from Home Office to Metropolitan Police Commissioner (5 July 1929).
[218] HO 45/22971 File 536053/11 Memorandum from Home Office to Metropolitan Police Commissioner (5 July 1929).

practice will continue to exclude any unlawfully obtained evidence.[219] This was not the view of the Home Office at the outset but it now deferred to the judiciary. It is contended that this is indicative of at least a partial recognition by the Home Office that the police role in investigations was growing but also indicative of a judiciary which either failed to recognise this development or wished for the status quo to remain.

The following year, the Home Office expressed the view that the lack of clarity in the rules had frustrated a particular murder investigation.[220] It is possible that this view was based upon a letter received from the Metropolitan Police which expressed the view that a trial judge had made an obvious error in the interpretation of the rules.[221] The Home Office sought clarity[222] and received a personal letter from the trial judge offering an apology for any upset caused.[223] The Home Office argued that the rules could be improved but felt that was a matter left to HM Judges;[224] it was not the role of the Home Office to determine points of law.[225] Later in the year the Home Office sought clarity again over

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[219] 45/22971 File 536053/11 Memorandum from Home Office to Metropolitan Police Commissioner (5 July 1929).
[220] HO 45/22971 File 536053/22 Letter from Home Office to Lord Hewart, Royal Courts of Justice (15 May 1930).
[221] HO 45/22971 File 536053/51 Letter from Commissioner of Metropolitan Police to Home Office (10 March 1931).
[222] HO 45/22971 File 536053/51 Letter from Home Office to Justice McCardie (12 March 1931).
[223] HO 45/22971 File 536053/51 Handwritten private letter from Justice McCardie to Sir Ernley Blackwell, Home Office (16 March 1931).
[224] HO 45/22971 File 536053/51 Letter from Home Office (dated 17 March 1931); 45/22971 File 536053/51 Handwritten private letter from Justice McCardie to Sir Ernley Blackwell, Home Office (16 March 1931).
[225] HO 45/20461 Home Office memo (28 November 1930); HO 45/20462 Letter from Chief Constable to Home Office (27 December 1930); file cover 558340 (6 January 1931); file cover 558340 (14 January 1931); file cover 558340 (12 June 1931); letter from Hereford Constabulary to Home Office (dated 12 June 1931) and response dated 4 July 1931.

another misinterpretation.[226] The Home Office drafted a set of rules and sought HM Judges approval in an attempt to clarify the position. This was approved and a Home Office circular was published in June 1930 re-stating the position that no questions should be asked of arrested persons.[227]

The behaviour of the Home Office outlined above indicates that its involvement in the witholding of legislation was a significant contributory factor. It did not wholly mirror Weber's view of a dispassionate service, answering only to its political masters and generally keeping out of politics.[228] It appears more in line with later thinking that the civil service was very much involved in policy-making rather than simply administering it.[229] It was active in rejecting some of the recommendations of the RCPPP and purposely sought advice both from the police and the courts. To that extent it may be argued that it did not refrain from becoming involved in the politics of selectively pursuing, rejecting or ignoring parliamentary recommendations. It was concerned that many appeared to be contrary to natural justice and it was their devotion to the pursuit of rational objectives which justified its reasoning.[230] It is clear, however, that it took a strong lead from the Home Secretary when he stated that he did not feel that the police practice of arresting

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[226] HO 45/22971 File 536053/55 Partial/undated memorandum received in Home Office on 22 December 1931).
[227] HO 45/22971 File 536053/23.
[228] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (Sage 2014) 23, 42; Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 956-957.
[229] See for example Terry M Roe, '*Regulatory Performance and Presidential Administration'* (1982) 26 (2) American Journal of Political Science 197-224; John T Scholz, Jim Twombly and Barbara Headrick, 'Street-Level Political Controls Over Federal Bureaucracy (1991) 85 (3) The American Political Science Review 829-850 in Brian Fry and Jos Raadschelders, *Mastering Public Administration; From Max Weber to Dwight Waldo* (Sage 2014) 12-13, 53, 68.
[230] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 979.

people for minor offences, as a means to interviewing them for a separate and unconnected murder, was unlawful. This was not the view of the Royal Commission and to that extent its action was in line with Weber's view that the civil service was answerable only to its political head.[231] It also successfully fought against Weber's notion that parliament was an indispensable counter-weight to civil service bureaucracy.[232] It continued to be embroiled in an ongoing dialogue with the courts and the police over recurring themes of multi-interpretation of the rules, but ultimately it continued to defer to judicial opinion that no action was necessary. This inertia may either be interpreted as an organisation governed by a red tape culture[233] or one that actively considered wider professional views[234] and concluded that the status quo was satisfactory. An alternative explanation may be that the matter appeared so complex that it favoured not developing the dialogue. However, there is nothing in the data to support that position. Either way, it is apparent that the Home Office blocked the development of legislation.

This had been an opportunity to introduce legislation which would have brought clarity to the issue. More recent academic treatment of this particular issue has argued legislation was not introduced due to 'the Englishman's tolerance and indeed affection for unwritten rules. He has a natural instinct to act according to what he believes to be right and not to be fettered with permitted or prohibited

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[231] Guenther Roth and Claus Wittich, Max Weber: Economy and Society: An Outline of Interpretative Sociology Vol 3 (Bedminster Press 1968) 961.
[232] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (Sage 2014) 47.
[233] Ferrel Heady, *Public Administration* (6th edn, Marcel Dekker 2001) 72-73. See also Gail Savage, *The Social Construction of Expertise: The English Civil Service and Its Influence, 1919-1939* (University of Pittsburgh 1996) 183-184.
[234] Brian Fry and Jos Raadschelders, Mastering Public Administration; From Max Weber to Dwight Waldo (3rd edn, Sage 2014) 40.

rules.'[235] This thesis argues that an alternative view may be put forward that no strategic overview of the criminal investigation process had been carried out and its detail and ramifications had not been fully appreciated. This is a key point: under these circumstances, no meaningful legislation could be proposed. The specific recommendation by the RCPPP[236] that legislation ought to have been introduced to facilitate effective gathering of evidence through the searching of premises was overlooked and did not feature in any Home Office deliberations.[237] Debate focussed on the questioning of arrested people and HM Judges adopted a bullish position that, despite the apparent multi-interpretations and uncertainties, the existing rules were clear and in no need of amendment.

It is significant to point out that this this confusion extended beyond the date of the publication of the Commission's report.[238] This resulted in the Home Office reinforcing the rule again in 1933 about the principle that a person in custody should not be questioned. An absence of legislation created a position of uncertainty for the police and which simultaneously provided the catalyst for criticism of their tactics in the Press.[239] Legislation with clearly identified safeguards for a suspected offender could have provided a clear framework of operations and significantly reduced the criticisms and uncertainties that would

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[235] TE St Johnston, 'Judges' Rules and Police Interrogation in England Today' (1966) 57 (1) Journal of Law and Criminology 89.
[236] Recommendation 30, Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 116.
[237] It remains possible that documentation does exist which covers this aspect but none has been identified.
[238] HO 45/22971 File 536053/22 Letter from Home Office to Lord Hewart, Royal Courts of Justice (15 May 1930).
[239] The Press openly criticised the police (The People 18 March 1928) for employing third degree tactics in R v Pace (MEPO 3/1638). The newspaper was threatened with litigation and it publicly apologised for its comments. See MEPO 3/1638 Report of Chief Inspector Cornish, 1 November 1928 and The People 28 October 1928.

prevail for the remainder of the inter-war period. There were multiple calls for legislation to be introduced and, paradoxically, a lack of legislation failed to offer the protection to citizens which successive governments were so keen to secure.

It was identified above that the public were becoming increasingly aware of the detail involved in the investigation of crime. This now extended to the specific issue of whether the police had any right to question an arrested person.[240] The Manchester Guardian reproduced the words of a police commissioner who had given evidence before the Royal Commission. It cited him as saying that there was a direct conflict between the advice from the courts and the wording of the Judges' Rules.[241] It reported that the Police Commissioner[242] argued, 'After all, were are there to detect crime as well as prevent it.'[243] It was specific in arguing that it was not the duty of the police to interrogate people and reported that the Commission had identified that this was something that was 'not well known among the poorer classes'.[244] It was also an issue not fully understood by the judiciary.[245] It is significant that another left-leaning newspaper recognised that police inability to interrogate suspected offenders made investigations extremely difficult.[246]

This public airing of the confusion surrounding the investigation process is important. It demonstrates that the element of social contractarian theory, which

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[240] See for example Manchester Guardian 16 October 1928 and 5 December 1928; Daily Mail 23 October 1928 and 1 February 1929; Daily Herald 17 and 18 October 1928.
[241] Manchester Guardian 16 October 1928.
[242] Sir William Horwood.
[243] Manchester Guardian 16 October 1928.
[244] Manchester Guardian and Daily Herald 17 and 18 October 1928.
[245] Manchester Guardian 21 November 1928.
[246] Daily Herald 20 November 1928.

argues that citizens could resist any measure which they considered not to be in their interest, was a theoretical reality. The comments cited in the newspapers can be cross-referred directly to the Home Office correspondence with judges outlined above. The readership was being informed that the investigative process was so complex that not even the courts appeared to have a grasp of the issue. A possible inference which may be drawn from this debate is that the public airing of a complicated debate with no obvious solution may have acted as a deterrent to a more active engagement by the wider public. Part of the thesis's hypothesis is that the criminal law was ineffective due to social resistance but in this instance opinions may have been stifled due to the ostensible complexity of the issues. Any suppression of debate would have been further cemented by the attitude that solving complex problems was the role of government and any lay views that could be put forward by the public were unnecessary.

Another viewpoint adds a different dimension to the debate. It was suggested that there existed a 'post-war attitude'[247] in the police which was a legacy of the increased emergency powers given to them during the conflict.[248] The newspapers reported that the Commission had heard evidence that the use of the Judges' Rules had 'expanded' since the war to the detriment of the suspected person.[249] They argued that there was a balance to be struck between the interests of the police in pursuing an investigation and protecting the liberties of an individual.[250] It was far better for an occasional offender to escape justice

[247] Manchester Guardian 16 and 30 October 1928.
[248] These were the Defence of the Realm Act powers introduced to deal with controlling aliens in the country.
[249] See for example Manchester Guardian 30 October 1928.
[250] Manchester Guardian 30 October 1928.

rather than innocent people be convicted.[251] The implication of this statement is that the police had taken advantage of the emergency regulations[252] brought in during the war and were now transferring its principles to the general arrest of suspected offenders. Its criticism seems to imply that the power of the police should be carefully harnessed and supports the judges' views that suspected people should not be questioned.

Public attitudes towards police powers were softened by the Commission's concluding report.[253] It gave broad and overwhelming support for the police.[254] They were the 'envy of the world and a body in which the public had confidence.'[255] Editorials offered no personal comment and merely reported the Commission's conclusions.[256] The report's recommendations that a 'rigid instruction' should be issued to the police about not being allowed to interrogate people was criticised as being 'only of benefit to the criminal'.[257] This reflects the attitude of the Home Office outlined above.

Editorials in newspapers were focussed on the practical issue of whether the rules governing murder investigations had any detrimental impact on the ability to solve cases. The reinforcement of the rule by the Commission that the police should not interrogate people was held up as the reason why murders were no

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[251] Manchester Guardian 30 October 1928.
[252] Defence of the Realm Act 1914 (4 & 5 Geo 5 c 29). These were powers brought in specifically to counter threats from aliens during the war.
[253] See for example Manchester Guardian 18 March 1929; Daily Herald and Daily Mail 23 March 1929; The Times 25 May 1929.
[254] The Times 25 May 1929.
[255] The Times 25 May 1929.
[256] Manchester Guardian 18 March 1929; Daily Mail 23 March 1929.
[257] Daily Mail 18 May 1929.

longer being solved.[258] The Daily Mail claimed that it had been following detectives on murder cases and each time they had been baulked (sic) by the inability to question prisoners. It prevented the securing of vital evidence. The police hoped that the position may stir the public into removing the obstacles that are in their way.[259] One interpretation of this comment is that pressure ought to be brought to bear on parliament to introduce legislation. The correspondence between the Home Office and the judges outlined above indicates that the former sought to seek clarity but ultimately it remained the role of parliament to propose new legislation. One newspaper offered an alternative reason why none had been introduced. It suggested that any new legislation necessary to address the problem would be too thorny an election issue.[260] There is nothing in the Home Office files which would support this position but the idea had been placed into the public domain.

Public debate about police ability to investigate murder continued into the 1930s. The Daily Herald commented on police opinion that the restrictive practice of questioning suspected offenders was hindering investigations but it argued that the public must be guarded against such sentiment.[261] It commented that the Home Office instruction which had been issued effectively cemented the position of non-questioning.[262] A contrary position was adopted by right-leaning newspapers which published a list of recently unsolved murders.[263] They blamed

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[258] Daily Mail 19 September 1929.
[259] Daily Mail 19 September 1929.
[260] Daily Mail 3 April 1929.
[261] Daily Herald 11 March 1930 and 25 June 1930.
[262] Daily Herald and Manchester Guardian 23 July 1930.
[263] Daily Express 17 June 1930.

the Commission and the judges' advice for the underlying cause.[264] The Commission 'had made crime easier and life unsafer'.[265] The Daily Express relied heavily on the views of a highly-regarded former Head of CID at Scotland Yard[266] to support their cause. The police officer was quoted as saying that 'CID has to work in gingerly half-hearted fashion on a safety-first principle and in terror of an official reprimand for having violated the liberty of the subject. Murderers naturally have an easy time of it'.[267] He is further quoted as saying, 'I have known murderers and other criminals escape because detectives have been too cautious.'[268] The newspaper cited 18 unsolved murders in 2 years.[269]

Criticism was levelled at the Home secretary that the 'unpunished murderers who are now at large is proof enough that our methods need changing. It will soon be a national humiliation'.[270] The significance of this commentary, a year after the Commission's report, is that it may infer that there was a public mood that the law needed reform. This view was echoed in 1932 when the Daily Herald argued that the 'rigid' instruction' outlined in the 1930 Home Office circular reinforcing a no-questioning policy was never obeyed and was only a provisional order.[271] Use of the term 'provisional order' is a strong indicator that legislation was required or at least preferred. It offered the opinion that the police 'full well know that by rigid application of the rules, detection rates will drop and the public would only have

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[264] Daily Mail 24 July 1930.
[265] Daily Mail 24 July 1930.
[266] Former Chief Constable Frederick Porter Wensley.
[267] Daily Express 28 October 1930.
[268] Daily Express 28 October 1930.
[269] Daily Express 28 October 1930.
[270] Daily Express 8 November 1930.
[271] Daily Herald 19 February 1932.

themselves to blame'.[272] This was a view previously expressed by the Daily Mail which stated that it had long been the effect of the caution to deter people from saying anything.[273]

It was identified above that the existing literature has paid little attention to the issue of investigative procedure. It is significant, however, that more recent academic attention[274] was paid to the amended Judges' Rules in 1964[275] which replaced those published in 1912 and 1918.[276] By this time interrogation of suspected offenders was accepted and expected.[277] A later Criminal Law Revision Committee made a number of recommendations to further clarify the rules but which still remained outside the scope of legislation.[278] However, a recommendation it made to abolish the right of silence made the report effectively still-born.[279] This demonstrates that the issues relating to the treatment of persons in custody were complex and it took 72 years for the details to be eventually enshrined in legislation by the Police and Criminal Evidence Act 1984.

There is one final key feature contained within the procedural treatment of suspected offenders which appears to have escaped attention at the time and

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[272] Daily Herald 19 February 1932. See also Daily Mail 17 February 1932.
[273] Daily Mail 28 April 1926.
[274] Paul Roberts and Adrian Zuckerman, *Criminal Evidence* (3rd edn, Oxford University Press 2022) 586 and 595.
[275] Government Circular 45/64, Judges' Rules and Administrative Directions to Police, 24 June 1964.
[276] Criminal Law Revision Committee, Eleventh Report, Evidence (General) (Cmnd 4991, 1972) para 45.
[277] Criminal Law Revision Committee, Eleventh Report, Evidence (General) (Cmnd 4991, 1972) paras 28-52. See Tim Newburn, *Handbook of Policing* (2nd edn, Willan 2012) 292-298 for current standards and expectations concerning police interrogations.
[278] Criminal Law Revision Committee, Eleventh Report, Evidence (General) (Cmnd 4991, 1972) paras 28-101.
[279] See Michael Zander, *The Police and Criminal Evidence Act* (5th edn, 2005 Sweet and Maxwell) page xi.

also by subsequent academic and historical analysis. This thesis puts forward the argument that the practical realities of preferring a charge, its understanding and its ramifications were not understood, which led to further confusion and impacted upon the operational realities of policing examined in the following chapter.

The term appears in two key documents: The Royal Commission on the Duties of the Metropolitan Police 1906-1908 (Cmd 4156, 1908) and the Judges' Rules. The former sets down its purpose and operational requirements. It clearly states that it is the duty of the arresting constable to take the prisoner to the charge room to prefer a charge to the inspector or station sergeant.[280] Effectively, this is to allow the constable to outline the evidence available to him. It also mandates witnesses to be present to give the evidence to the station officer in front of the prisoner.[281] The station officer is required to enter the details on a charge sheet and to decide whether to accept or refuse the charge.[282] If accepted, the prisoner is to be taken before a magistrate as soon as practicable or required to enter into a recognisance and appear at a court on a later date.[283] If it is refused the prisoner 'should be allowed to depart'.[284] Rule 2 of Judges' Rules states that a caution should be administered when a police officer has made up his mind to charge a

[280] Royal Commission on the Duties of the Metropolitan Police 1906-1908 (Cmd 4156, 1908) page 38.
[281] Royal Commission on the Duties of the Metropolitan Police 1906-1908 (Cmd 4156, 1908) page 39.
[282] Royal Commission on the Duties of the Metropolitan Police 1906-1908 (Cmd 4156, 1908) page 38, 40.
[283] Royal Commission on the Duties of the Metropolitan Police 1906-1908 (Cmd 4156, 1908) page 41.
[284] Royal Commission on the Duties of the Metropolitan Police 1906-1908 (Cmd 4156, 1908) page 40.

person with a crime.[285] This was examined above. However, Rule 5 adds that a caution must be administered when he is ‘formally charged’.[286]

These documents, taken in combination, create a further ambiguity. It is unclear at what point a person is charged. There are 3 options: at the point the arresting officer decides to make an arrest; at the point the arresting officer prefers the charge to the station officer; at the point the station officer accepts the charge. The Judges’ Rules add a potentially 4th option by introducing the phrase ‘formally charged’. Each has a direct bearing on the timing of the administration of the caution. The following chapter identifies that there was often considerable delay between arrest and the point at which it was argued that a person had been charged. The lack of clarity created an opportunity for the police to not administer a caution at all until it was decided to take the arrested person before the courts. It is an additional contributor to the argument that new legislation governing an important aspect of investigative policing could have provided a more cohesive regulatory framework.

5.3 Conclusion

The concept of a police service developing into a more investigative body was neither fully understood nor readily supported. This led to a position where suitable investigative legislation was not in place to regulate and control murder investigations. The subject had largely been below the political and social radar

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[285] See app 3.
[286] See app 3.

until the appointment of the Royal Commission on Police Powers and Procedure in 1928 which was designed to tackle emerging concerns about police practice. However, it recommended no change in legislation other than recognising a need to regularise powers of search to allow the police to carry out investigations effectively. The effect of this was for newspapers to argue that the Commission had not fully grasped the issues and this had led to an increase in unsolved murders.

The Home Office also largely disagreed with the Commission's report and reacted to only a few of its recommendations. The subject of arrest was highlighted as a cause for concern and criticism was levelled at the police both by the RCPPP and the Home Office that they were failing to arrest suspected murders but instead were 'detaining' them. This was more than a cosmetic issue. This practice obviated the need for the police to caution arrested people and which consequently failed to provide them with the protection afforded by the Judges' Rules. It was an illegal practice which would continue to be carried out by the police for the entire inter-war period.

The RCPPP stated that they were neither competent nor required to deal with the complexities of the law. The most significant element of law which governed investigations were the Judges' Rules which did not have the force of law since they were the creation of a committee of judges, and it became clear that there was general disagreement over their interpretation. The RCPPP and the judiciary were clear that arrested persons should not be questioned. The Home Office and the police were clear that questioning was allowed. Judges had refused to be part

of the RCPPP consultation process and this resulted in the Home Office acting as a conduit between the RCPPP and the judiciary after the publication of the report. No agreement could be reached and the matter was concluded by the Home Office publishing guidance reflecting the judiciary's views. This resulted in further misinterpretations. Newspapers reported the confusion and stated that the matter was so complex that not even the courts fully understood the issue.

The data indicates that the developing investigative process was not fully understood and the role of the police within it was not fully recognised. Consequently, neither the judiciary, the Royal Commission nor the Home Office sought to address the issue by recommending that legislation was necessary. It is clear that the Judges' Rules had been carelessly drafted, had led to confusion and caused operational difficulties. The Home Office seemed to try to resolve the issue by exchange of correspondence between interested parties but this failed to bring about an agreed position. There was a clear need for legislation which could have codified existing law to properly formulate, direct and control the police investigation. None was introduced.

The chapter has argued that there was an unstable legal environment in which the police needed to operate. The following chapter now analyses how this translated into police practice.

Chapter 6: The police investigation - data analysis

This chapter builds on the arguments outlined in chapter 5 and identifies how the ambiguous legal landscape translated into operational police practice. It is divided into two parts: Part 1 places murder investigation in its contemporary context. It begins by outlining why the research is restricted to this category of offence and identifies its definition in law. It then focuses specifically on the police investigative procedure, outlines the interpretation of the law and guidance as it stood at that time, and offers a description of what this thesis has interpreted as an assumed investigative standard. It is against this standard by which judgements are made about whether the police complied with, breached or circumvented the guidance emanating from the political, governmental and legal interpretations identified in the previous chapter. It is a key point that any attempt at defining an investigative standard is hampered by the apparent legal ambiguities and is indicative of a legal framework governed by too vague, and bordering on what could be considered unhelpful, regulations.

Part 2 analyses the information contained within the sources and identifies where both compliance with the law and guidance has been observed and where it is considered that breaches or circumventions have taken place. Case studies are used as examples to highlight the key points. The chapter offers explanations of why compliance, breaches or circumvention may have occurred using the noble cause corruption and legal consciousness theoretical frameworks outlined in chapter 4. It expands on earlier academic attention applied to the issue of police

practice[1] and their powers and demonstrates that an investigative procedure had tacitly developed without any sound legal footing. This is a new contribution to the subject matter. Its core message is that breaches or circumventions of the procedures occurring frequently may be indicative of a criminal justice process operating without clarity in the law and the police service adopting a course of noble cause corruption during their investigations. It builds on the new argument put forward in the previous chapter that a lack of clarity in the law was potentially due to the police service not being recognised by the courts as an investigative body. This was due to a lack of a wider recognition that a concept of investigation was developing. This in turn manifested itself in police behaviours which operated outside of a perceived mandated procedure.

6.1 Murder investigations in context

6.1.1 Research parameters

The research in this thesis is restricted to murder investigations for two specific reasons. Firstly, it was the criminal offence of murder which attracted the highest degree of political attention[2] as well as creating a strong appetite for information

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[1] A recent analysis of police procedure in murder investigations of the inter-war period was made by Wood. It did not, however, examine the particular nuances and legal ramifications of an arrest. See John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012). See also Gerry Rubin and Tony Millan, '*My Harem: It's an Expensive Game'* (Mango Books 2019).

[2] See for example HL Debate 15 May 1924 vol 57, col 460; HL Debate 15 May 1924 vol 57, cols 443-444; HC Debate 11 May 1925 vol 183, col 1602; HC Debate 5 December 1928 vol 223, col 1221; HL Debate 4 June 1930 vol 77, cols 1377-1378; HC Debate 23 July 1931 vol 255 cols 1663-1666; HL Debate 7 April 1938 vol 108 cols 599-600; HC Debate 26 May 1938 vol 336 cols 1375-1376.

to satisfy the popular imagination of the wider public.[3] The offence carried the death penalty and observers[4] were focussed on ensuring that those arrested were subject to a fair criminal investigation process and subsequent trial. This resulted in its detail being closely scrutinised in parliament and newspapers. The thesis specifically examines the legal basis of police powers and the level of detail contained within the sources has enabled some recurring themes to be identified from which reasonable inferences may be drawn. The availability of data has also created a deeper understanding of attitudes towards the police more generally. Secondly, a significant amount of data relating to murder investigations and police powers is available in police and government archives which has allowed for deeper development of the analysis. Data for less serious offences is generally not available and would result in an analysis which would not withstand scrutiny: its data set would be too small.

6.1.2 The offence of murder

The offence of murder was not enshrined in legislation.[5] Its definition and interpretation had been developed through case law. Coke first defined murder as ‘when a man of sound mind and memory, and of the age of discretion, unlawfully killeth within any country of the realm any reasonable creature in rerum

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[3] See for example Robert Graves and Alan Hodge, *The Long Weekend* (Hutchinson and Co first published 1940, 1985) 58 and 59; Martin Pugh, *We Danced All Night* (Vintage 2009) 102.
[4] These observers were members of parliament and newspapers. See for example The Times 2 December 1918; The Times 10 April 1919; Daily Mail 24 April 1924; HL Debate 15 May 1924 vol 57, col 460; HL Debate 15 May 1924 vol 57 cols 443-444; HC Debate 11 May 1925 vol 183 col 1602; HC Debate 5 December 1928 vol 223 col 1221; HL Debate 4 June 1930 vol 77 cols 1377-1378; HC Debate 23 July 1931 vol 255 cols 1663-1666; HL Debate 7 April 1938 vol 108 cols 599-600; HC Debate 26 May 1938 vol 336 cols 1375-1376.
[5] This position remains the same in 2024.

natura (in being) under the King's peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded or hurt die of the wound or hurt within a year and a day after the same'.[6] By the inter-war period, the definition had been refined to unlawful homicide with malice aforethought.[7] If a man by the perpetration of a felonious act brings about the death of a fellow creature he is guilty of murder unless when he committed the felonious act the chance of death resulting therefrom was so remote that no reasonable man would have taken it into his consideration.[8] Interpretation of the specific elements of the definition and its scope were decided in earlier and subsequent stated cases.[9] Murder was a felony at common law and the provision of an arrest was available.[10] The offence and investigation of manslaughter[11] is excluded from this analysis.

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[6] Sir Edward Coke, Co Inst (1644).
[7] *R v Whitmarsh* (1898) 62 JP 711.
[8] *R v Whitmarsh* (1898) 62 JP 711. See also CCH Moriarty, *Police Law* (Butterworth 1929) 64.
[9] See for example *R v Dudley and Stephens* (1884) 14 QBD, 273 ER 61, 1 TLR 118 decided that self-defence is justified providing it does not take away the life of an innocent person; *R v Serné* (1887) 16 Cox CC 311 decided that eminently dangerous acts such as arson and abortion which resulted in death amounted to murder; *R v Stormouth* (1897) 61 JP 729 decided that a surviving person in a suicide pact is guilty of murder; *R v Beard* (1920) AC 479 decided that death following rape amounted to murder; *R v Poulton* (1832) 5 C & P 329, 172 ER 997 decided that a reasonable creature in being does not include an unborn child; it must have an independent existence; The Infanticide Act 1922 introduced the offence of infanticide where a jury could return this verdict where it was satisfied that the woman had not fully recovered from the effects of birth. *R v Hussey* (1924) 12 WLUK 90, 18 CAR 160, 89 JP 28 decided that a man may not need to retreat to defend his house. For a full explanation of case decisions relating to murder see Douglas Aikenhead Stroud. Mens Rea or Imputability Under the Law of England (Sweet and Maxwell 1914).
[10] *R v Keate* (1702) Comb 406, 1 WLUK 602, 90 ER 557.
[11] Manslaughter was defined as unlawful homicide committed without premeditation. See *R v Welsh* (1869) 1 WLUK 13, 11 Cox 336; *R v Alexander* (1913) 9 WLUK 6, 9 CAR 139, 109 LT 745. It is excluded from this analysis due to a lack of sufficient data.

6.1.3 The assumed investigative standard

The thesis earlier identified that the turn of the 20th century was witness to political and social concerns about the procedural treatment of suspected offenders. It has been argued that this period was the birth and recognition of the concept of an investigation and the thesis focuses on the post-arrest element of the investigation.[12] It is important to try to identify an investigative standard relating to the post-arrest element of the process. For this thesis, it is necessary to establish a set of criteria against which the behaviours of police in specific murder cases may be measured. The thesis sets down what it determines to have been the investigative standard, based on an interpretation of the uncertainties of the law and guidance identified in chapter 5. This assumed standard is based on extant legislation, case law and legal opinion before the introduction of the Judges' Rules in 1912 and 1918, how the introduction of those rules affected that,[13] and the legal opinion which followed. A weakness of this approach is that it is impossible to identify a definitive standard due to the multiple interpretations which existed at the time but there are some elements within the guidance which are clear. It is recognised that this lends itself to alternative interpretations but the following assumed standard makes it an identifiable and transparent methodology capable of being reproduced by future researchers.

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[12] Prior to any arrest, the police role in investigations was to gather evidence from witnesses in an effort to identify a suspect. This required no police powers since it was guided by the principle that questions may be asked of anyone if the constable thinks that useful information can be obtained. This aspect is not covered in this thesis.

[13] Rules 2,3,4,5 and 7. There were 9 rules in total but the remainder have no bearing on the arguments put forward in this thesis. See app 3.

Murder was a felony for which there was a power of arrest.[14] Entry to premises to arrest the offender was conditional: a constable could only forcibly enter premises where the offender was known to be present, or he had reasonable grounds to suspect he was present, but only after he had declared himself to be a constable and entry had been requested and denied.[15] Once arrested, the prisoner could be searched where it was likely that he had on him stolen articles or any instrument of violence,[16] any tools connected with the kind of crime he is alleged to have committed[17] or any article which may be useful in evidence against him.[18] Statutory provisions to search premises under specific circumstances had been enacted,[19] but in general there was no power to search premises except under the authority of a magistrates' warrant.[20] There was no power to apply for a search warrant to seek evidence to support a murder investigation.

In 1843, Lord Justice Denman stated that a prisoner shall be allowed to freely speak, and constables were wrongly interpreting this as cautioning him against

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[14] *R v Keate* (1702) Comb 406, 1 WLUK 602, 90 ER 557, *Hogg v Ward* (1858) 3 H&N 417, 1 WLUK 35, 157 ER 533.
[15] Chitty's Constables (1819) 2nd edn, page 59; 2 Hale 95, 1 Hawk c 63, 2 Hawk c 14.
[16] *Bessell v Wilson* (1853) 17 JP 567, 1 E & B 489, 118 ER 518. See also Report of the Royal Commission Upon the Duties of the Metropolitan Police Vol 1 (Cmd 4156, 1908) page 44.
[17] *Agnew v Jobson* (1877) 13 Cox CC 625, 42 JP 424, 47 LJMC 67. This would include any instrument used in the commission of a murder.
[18] *Dillon v O'Brien* (1887) 1 WL UK, 16 Cox CC 245, 20 LR Ir 300 .
[19] See for example, Gaming Act 1845, s 3 (8 & 9 Vic c 109 s 3); Vagrancy Act 1898, s 1 (61 & 62 Vic c 39 s 1); Licensing Act 1902, s 29 (2 Edw 7 c 28 s 29); Licensing (Consolidation) Act 1910, s 82 (10 Edw 7 & 1 Geo 5 c 24 s 82); Forgery Act 1913, s 16 (3 & 4 Geo 5 c 27 s 16); Larceny Act 1916, s 42 (6 & 7 Geo 5 c 50 s 42).
[20] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 13, para 31.

this.[21] The Indictable Offences Act 1848[22] and Evidence Act 1851[23] developed this position and stated that an arrested person should say nothing which could incriminate himself.[24] In 1882, Sir Henry Hawkins - later Lord Brampton - stated in the introduction to Vincent's first edition of his Police Code, that it was quite wrong for a constable to press any accused person to say anything, a maxim characterised by his conclusion that a constable 'should keep [his] eyes and ears open and [his] mouth shut.'[25] The clear implication is that a prisoner should be cautioned against incriminating himself, but may speak freely, though a police officer should neither encourage him to do so nor ask any questions.

This specific aspect of the investigation process received greater attention when the Judges' Rules administrative guidance was issued by the courts in 1912 and 1918 (Appendix 3). They had no force in law[26] and were recognised as guidance to police officers. The application by the police of this guidance is the subject of this chapter. Five of the rules have relevance to the arguments in this thesis but it is the cumulative effect of these rules which introduces ambiguity and confusion.

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[21] Seventh Report from Her Majesty's Commissioners on Criminal Law, 11 March 1843. See also Mike McConville and Luke Marsh, *The Myth of Judicial Independence* (Oxford University Press 2020) 36.
[22] 11 & 12 Vic c 42.
[23] 14 & 15 Vic c 99.
[24] Indictable Offences Act 1848, s 18 (11 & 12 Vic c 42 s 18). See also *R v Baldry* (1852) 16 JP 276, 2 Den 430, 169 ER 560. This principle was first established as a court procedure in *R v Warwickshall* (1783) 1 Leach 263 before a formal police force was established. This principle remains to this day despite amendments and additions to the now accepted principle of a right of silence. See Police and Criminal Evidence Act 1984, Code C, Section 10.
[25] Reproduced in Howard Vincent, *Police Code* (Butterworth 1924) xv.
[26] See for example Mike McConville and Luke Marsh, *The Myth of Judicial Independence* (Oxford University Press 2020) 33-42, 50.

Rule 2 states that whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or any further questions, as the case may be. This statement has significant import on the conduct of an investigation. The guidance is clear that a caution is required at the point the police officer has made up his mind to charge the person with a crime. The implication is that there is now sufficient evidence. This is a subjective test and therefore open to interpretation. Significantly, it suggests that no caution is required up until this point. This indicates that no attention was paid to that part of the investigative process which has informed the police officer in the first instance that there was sufficient evidence to charge. Its effect was to offer no protection to the arrested person and consequently, the first level of protection afforded to the arrested person was only after the evidence had been gathered. This is supportive of the idea that the courts did not recognise the concept and significance of an investigation and that the police had no important role to play within it. This point was outlined in chapter 5. The concluding words in Rule 2 state that the caution should be administered before asking any questions, or further questions. This appears in direct conflict with the earlier guidance that a police officer should neither encourage nor ask any questions. It is unclear whether questions may be asked at all, either with or without a caution being administered, before any decision is taken to charge the person with an offence.

Rule 3 appears to clarify the issue by stating that a person in custody should not be questioned ‘without the usual caution being first administered’. This implies

that any person in custody may be questioned providing a caution has been administered even before a police officer has made up his mind to charge.

Rule 4 stated that any statement (written or otherwise) a prisoner wished to volunteer must be preceded by the caution being administered. Rule 5 was clear about the wording of the caution to be administered once a person had been charged but it was silent on any caution administered at the beginning of the process when the suspected person was first arrested. This appears to be a significant omission from the Judges' Rules and implies a lack of importance attached to the initial guidance provided to police officers. Finally, Rule 7 stated that no cross-examination may be carried out on a statement's content.[27]

Set against these criteria, it is not possible to lay claim to a clear definition of an investigative standard. The point at which a caution was to be administered is not clear as it depended on the individual circumstances of each case, what information was known by the police at the point of arrest and what became known later through other means of gathering evidence. It is a core argument in this thesis that such a position should have been considered as unacceptable. This was a crucial level of protection being afforded to the country's citizens and it should justifiably have been embedded in an unambiguous legally-binding form. Legislation ought to have been introduced to bring clarity to an important aspect

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[27] The exception to this was where it was necessary for the purpose of removing ambiguity in what the prisoner has actually said. For instance, if he had mentioned an hour without saying whether it was morning or evening or had given a day of the week and a day of the month which do not agree or had not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point. This is not a feature of the thesis's analysis.

of investigative policing. The rules had been issued to provide clarity to the role and function of the police, yet their combined meaning may only be regarded as ambiguous and contradictory. This reflects a lack of recognition of the importance of this part of the process.

However, the broad informal message which emerged from the courts was that arrested people should be cautioned, the police should not ask them any questions and they should be formally charged under procedures established by the Royal Commission on the Duties of the Metropolitan Police in 1908.[28] At that point they were to be further cautioned and the Judges' Rules were specific about its wording that the prisoner was not obliged to say anything unless he wished to do so.[29]

Police internal procedure supplemented this pseudo-legal footing by providing operational guidance to police officers about how best to secure evidence. Guidance concerning the investigation of murder focused on the practical elements to try to secure all available evidence.[30] It is important and significant to highlight that none of this guidance concerned the investigative, post-arrest element of the process. It contained detailed practical instructions relating to the gathering of physical evidence at the scene.[31] Guidance included the legal

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[28] Royal Commission on the Duties of the Metropolitan Police 1906-1908 (Cmd 4156, 1908) pages 38, 75.
[29] App 3, Rule 5.
[30] See for example MEPO 8/8 General Orders 1923, Section V, paras 74-79 and 223.; MEPO 8/11 General Orders (1936), Section 13, para 33-44. Also, Sir Howard Vincent, *Police Code* (*16th ed*n, Butterworth 1924) 161-164. For a discussion on police management of administration, see Chris A Williams, *Police Control Systems in Britain 1775-1975: From parish constable to national computer* (Manchester University Press 2014) 85-117.
[31] Sir Howard Vincent, *Police Code* (*16th ed*n, Butterworth 1924) 161-163.

elements to prove in a case of murder.[32] It was limited though to the management of the scene with no reference to any methodology to be employed to identify a suspect and to gather supporting evidence. It did not set down the grounds for arrest, the powers granted to search people and premises or any clear interpretation of the law and guidance regarding the questioning of suspects. Failing to provide police officers with exactly what their powers enabled them to do is indicative of a recognition that there were minimal expectations in an investigation. This omission of guidance is significant. In Part 2 below, the thesis develops the argument that the data indicates that the courts did not fully recognise the police as an investigative body.[33] This is in the context that the concept of investigations had not been fully recognised and consequently a police responsibility could not be attached to it. This is a core argument in the thesis and this position appears to be reflected in the police understanding of its own role.

This police process may be compared to the investigative process outlined in Brodeur's theory of criminal investigation.[34] Murder falls into the category of reactive investigations.[35] Brodeur labels this a stereotypical criminal investigation which follows a standard direction of enquiry: a crime is reported; police attend the scene to secure evidence; a suspect is arrested and interviewed.[36] It is the interview process which appears excluded from inter-war practices but which Brodeur argues acts as an important element of an investigative process. There is particular emphasis on the obtaining of confessions and post-case

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[32] Sir Howard Vincent, *Police Code* (*16th ed*n, Butterworth 1924) 163-164.
[33] Justice of the Peace and Local Government Review, 4 May 1929 page 280.
[34] See JP Brodeur, *The Policing Web* (Oxford University Press 2010).
[35] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 199.
[36] JP Brodeur, *The Policing Web* (Oxford University Press 2010) 201.

processing.[37] Inter-war police similarly recognised this position but were, arguably, constrained by an inability to perform this function.

The chapter has outlined this assumed investigative standard by which the police were expected to comply. Part 2 now examines the police investigations of the inter-war period and makes a judgement about whether the standard was complied with, breached or circumvented. By virtue of the inability to definitively determine the letter of the law and guidance, this process cannot be carried out in absolute terms. However, by adopting the assumed standard, it provides a practical, balanced and transparent method of analysis. Recurring patterns have been identified from which reasonable inferences and judgements have been drawn.

6.2 Analysis of the archived data

6.2.1 Police investigations: compliance and circumvention

It is important to set down the thesis' meanings of compliance, breaches and circumventions. Compliance is applied when there is nothing in the source material to demonstrate that anything was performed in an investigation which falls outside the criteria of the assumed investigation standard. Even the most

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[37] Post-case processing is the work immediately following an arrest and the evidence presented in court.[37] See JP Brodeur, *The Policing Web* (Oxford University Press 2010) 216; Sally Lloyd-Bostock, *Psychology in Legal Context; Applications and limitations* (The Macmillan Press Ltd 1981) 45.

strict interpretation of the rules would conclude that it was a lawful investigation. A breach is applied when there is an act performed or omitted which appears contrary to a rule governing a particular aspect of the investigation. The overarching framework was unclear but within that, there were some unambiguous directives. Circumvention is applied when it is considered that particular rules were intentionally ignored until a later part of the investigative process.

Seventy one police investigation files at the National Archives have been examined (Appendix 1). The detail contained within the files allows for each aspect of the post-arrest investigative process outlined above to be identified.[38] Each file represents a separate and unique investigation and it is significant that compliance, breaches and circumventions of the assumed standard occur in the same investigation. This indicates that either the police were not aware of some of the rules, adopted a wide interpretation of them or were selective in which they applied as they progressed through the investigation continuum. There is, however, a strong body of evidence to indicate that the police routinely complied with the assumed investigative standard. The research recognises the likelihood that the files may not be complete and has adopted the approach that where there is no record of a particular aspect of an investigation, it did not take place. Equally, it adopts the position that if something is recorded, it is presumed to have happened. This is recognised as a weakness but represents a low risk to being

[38] That is arrest, caution, questioning and charging of an arrested offender.

able to draw reasonable inferences and conclusions based on the frequency and consistency of recurring themes across the wide range of data..

6.2.1.1 Legislative compliance

The data indicates that across the 71 files examined, there were 66 instances of compliance. The common factor between each of the files are statements or magistrates' depositions supplied by the arresting officer which details the particular involvement with the arrested person. Each component part of the investigative process is therefore readily identifiable. The significance of these compliances is examined below but the details are now outlined.

The 66 instances are as follows: 43 discrete entries demonstrate compliance with the requirement under the Judges' Rules to caution a person once arrested or when an officer has made up his mind to charge a person with a crime.[39] This rule was formally introduced in 1912 to protect a person suspected of committing a crime from incriminating himself[40] and to establish that the prisoner knew that he was under no obligation to make a statement.[41] The concept of 'suspicion' is a problematic issue[42] but this thesis puts forward that it is a reasonable inference, that if someone has been arrested, he is deemed to be suspected of committing

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[39] App 2, lines 65 -107. See Judges' Rules 2 and 3. It is impossible, however, to determine from the data whether the correct form of wording in the caution was administered. The lack of clarity around the use of the caution is discussed under legislative circumvention.

[40] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 61, para 164.

[41] This is expanded upon in the Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 64, para 167.

[42] It is largely a subjective test followed by an objective assessment by a jury.

an offence.[43] 13 entries demonstrate that no questioning of a suspected person took place once arrested.[44] 10 entries demonstrate that a prisoner was cautioned immediately after being charged.[45] This was a practice introduced by Rule 5 of an updated Judges' Rules in 1918[46] designed to add further protection to a person charged with a criminal offence. These are key components of the assumed investigation outlined above. There is nothing in the data in these specific files to demonstrate any breaches or circumvention of the rules by even the narrowest interpretation. This indicates that the police were aware of their responsibilities.

Figure 1

Legislative compliance – 71 files examined

Suspect cautioned upon arrest or upon forming suspicion	43
No questioning of prisoner in custody	13
Prisoner cautioned after charge	10
Total number of compliances	66

Figure 1 - Summary of legislative compliance

[43] The concept of suspicion is implicit within the Judges' Rules but the word did not appear until a much later iteration of the rules in 1964. See HO Circular 45/64 GO Ref P2506/55 p.4. The police, however, had mandated by 1936 that where any suspicion had been aroused, a caution must be administered. See MEPO 8/11 General Orders (1936), Section 13, para 33.

[44] App 2, lines 108-120. Questioning of an arrested person was specifically prohibited since before the introduction of the Judges' Rules in 1912. See HO 45/22971 Memorandum from Royal Courts of Justice (dated 18 March 1929).

[45] App 2, lines 121-130.

[46] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 71.

The files identify the distinct aspects of the investigative process[47] and establish that they complied absolutely with the assumed investigation identified above: arrests were lawfully executed, cautions were administered, no questions were asked of arrested persons and people were charged and further cautioned. This demonstrates compliance with the law throughout the majority of the cases examined. This indicates that individual police officers regularly operated within the strict confines of investigative guidance and complied with the assumed investigation standard. Compliance is apparent in investigations which do not appear complex; the offenders surrendered themselves to custody or the circumstances were such that the identity of the offender was apparent.[48] This is significant. There was no need to breach or circumvent the rules when a suspect immediately admitted to a crime or where the evidence strongly pointed to his guilt. By that stage there was already sufficient evidence to charge the suspected offender and take him before the court.

A number of illustrative case studies are now outlined below to highlight how compliance with the law was apparent. These are selected examples and are drawn from the wider data set in Appendix 2 which identifies recurring patterns of police behaviour.

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[47] For example, arrest, caution and search etc.
[48] The majority of these were domestic killings or killings of babies by their mothers.

Case Study 1 – The murder of Alice Lawn in Cambridge – 27 July 1921[49]

Alice Lawn was a frail 50-year-old woman who ran a grocer's shop in King Street, Cambridge. She had worked there for 13 years and her premises contained large amounts of cash and jewellery. On 27 July 1921, her body was found inside her shop. She had suffered severe head injuries and it was treated as a murder investigation. Investigating officers concluded that Lawn had been washing up in her scullery at the rear of her premises when someone entered through the back door. It was thought likely that she grabbed hold of a chopper she used to cut firewood and waved it in the intruder's direction. The person managed to wrench it from her hand and struck her across the forehead. Lawn managed to run to the door and started to scream but she was struck about the back of the head on several occasions. The attacker became concerned as she was still conscious and tied some string around her neck to stifle her moans. He then stuffed a rag into her mouth and escaped through the back door. Lawn later died from her injuries.

150 witness statements were taken by the police and enquiries focused on a man who had been seen near the vicinity of the shop at the time of the killing. There was no direct evidence to connect him to the killing and witness statements were taken from him. This accorded with established procedure that the police were entitled to question any person they wished

[49] MEPO 3/1565 Reports of CI Mercer, 1 August 1921 and 1 September 1921.

in the pursuit of their enquiries when no suspicion was aroused.[50] No powers were required for this procedure. As further information was gathered it became apparent that the man came under greater suspicion and on the next occasion he was spoken to by the police he was cautioned and advised that he need not say anything. He elected to make a written statement which he wrote himself.[51]

The actions of the police in this investigation are significant. It demonstrates a thorough understanding of the legal requirements. Suspicion had been raised and the man had been afforded the protection of a caution being administered. The police specifically refused to interview him once a suspicion had been formed and he was given the opportunity to make voluntary statements. This was exactly the correct procedure mandated by the Judges' Rules.[52]

Case Study 2 – The murder of Margery Wren in Ramsgate – 20 September 1930[53]

Margery Wren was an 82-year-old woman who ran a corner shop in Church Road, Ramsgate. On 20 September 1930, a visitor to her shop found her in a dazed state lying on the floor. She had blood on her face and she told the visitor that she had fallen down and hurt herself. Further examination of the shop revealed a bloodstained set of tongs and blood distributed over the

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[50] Judges' Rule 1.
[51] See chapter 7 for how this case was progressed.
[52] Judges' Rules 8 and 9.
[53] MEPO 3/1657 Report of DCI Hambrook dated ~~30 October~~ 10 November 1930.

floor. She was bandaged and sent to hospital and while being examined, she initially repeated her story that she had caused the injuries to herself by falling. However, she then stated she had been attacked by a man and started to name several different and unconnected people. It was unclear whether she was protecting someone or was confused. She later died from her injuries and a post-mortem examination confirmed that she had died as a result of six separate wounds to the scalp some of which had been deep enough to damage the bone.

The police investigation focussed on the names mentioned by the victim and detailed statements were taken from people who were able to confirm their movements at the time of the killing. The investigating officer's report is significant in that it specifically refers to the requirement for a police officer to caution someone who is suspected of committing a crime. One of the suspects was a serving Metropolitan police officer. He was suspected because he was named by the victim before she died, he was in the area at the time of the murder and his mother was a beneficiary of the victim's will. There was no direct evidence to link him to the offence but the investigating officer specifically said to him, "You are a police officer and so am I, and if you say anything, I must caution you." The suspected officer replied, "I know".[54] This is an important statement being made by the investigating officer and its significance is that it is clear that the legal requirements governing an investigation were known. Two other named suspects[55] were

[54] MEPO 3/1657 Report of DCI Hambrook dated ~~30 October~~ 10 November 1930 p.33.
[55] Hope and Warren.

spoken to but were not afforded the protection of the caution. This indicates that despite being aware of the requirement to caution, it was selectively used.[56] This issue of compliance and breaches within the same investigation is examined below. This investigation attracted high levels of press interest[57] but the case remained unsolved and was not subject to scrutiny by the courts.

Case Study 3 – The murders of Wilhemina Davis and Monica Rowe in Tuckingmill – 22 April 1937[58]

Philip Davis was a married man who was a mechanic and rented a garage near his home in Tuckingmill, Cornwall. He lived at home with his wife Wilhemina and on 22 April 1937, his niece, Monica Rowe stayed at their house. At some point in the evening, Davis had an argument with his wife during which he then struck her across the head with a hammer. He then strangled her. Davis then turned his attention on his 15-year-old niece and struck her several blows to the head. He then strangled her. Over the next few days, he buried both bodies under the floor of his garage. Death was due to asphyxiation in both cases. When the women's disappearance aroused suspicion the police established that Davis had been seen moving large quantities of stones and rubble from his garden to his garage. The police subsequently searched the garage and found both the bodies. Davis

[56] See examples in cases studies below where cautions were not administered.
[57] See for example Leicester Evening Mail 27 September 1930; The Guardian 29 September 1930; Daily Mail 30 September 1930; Thanet Advertiser 3 October 1930.
[58] HO 144/20916 Statements of Gerald Rogers and George Stone, 5 May 1937.

was approached as a suspect and immediately confessed to the crime without any questions being asked. He was immediately detained and cautioned. This was not a complicated investigation but it highlights that the police were aware of the need to caution a person once arrested for committing a crime. It is contended that there would have been no concern about telling the suspect that he need not say anything since he had already offered an explanation.

The three case studies identified above are illustrative of the points being argued. They are taken from investigations at different points (1921, 1930 and 1937) and are selected to demonstrate that the police were aware of their legal responsibilities throughout the entire inter-war period. The detail has been obtained directly from witness and deposition statements and little interpretation has taken place.

The following case studies are selected from the investigations identified in Appendix 2 which displayed identical police behaviours. The cases indicate strongly that it was clear that the police at the beginning of the inter-war period were aware of the need to administer a meaningful caution.

Case Study 4 – The murder of Irene Munro in Eastbourne – 19 August 1920[59]

In August 1920, 17-year-old Irene Munro travelled to Eastbourne for a holiday and within a few days had met and befriended two men, Thomas Gray and Jack Field. On 19 August, they agreed to meet and they were last seen walking towards a secluded beach area known as The Crumbles. Once out of view, the two men attacked Munro with a walking stick and attempted to steal her handbag. The violence used was so excessive that some of her teeth were dislodged. One of the men then picked up a heavy rock and bludgeoned Munro's face which resulted in her death. The men stole her handbag and a ring from her finger. They buried her body in a makeshift grave measuring four feet deep though one of her feet remained exposed above the ground.

Both Gray and Field were identified as suspects early in the investigation although an initial arrest resulted in them being released without charge. Further enquiries justified a second arrest. They were cautioned and advised that they need not say anything at all[60] and they made statements to the police. The significance of this case is that it highlights that the police were not only aware they needed to caution people who were arrested and suspected of crime, but that the caution was fundamentally required to

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[59] MEPO 3/275 Report of CI Mercer, 13 September 1920; MEPO 3/274 deposition of George Mercer, 7 October 1920.

[60] MEPO 3/275 Report of CI Mercer, 13 September 1920 page 20; MEPO 3/274 deposition of George Mercer, 7 October 1920.

include that an arrested person need not say anything at all. This indicates strongly that the police were aware of the need to administer a comprehensive caution as mandated by the courts.[61] It was a high-profile investigation and trial where both men were eventually convicted and hanged. It was comprehensively covered in the newspapers.[62] This is an important point since police procedure was being placed into the public domain. In this case the public would have seen that police were complying with their obligations and which may have acted as an influence in shaping their attitudes towards the broader subject of police powers.

Case Study 5 – The murder of Marie Everley in London – 23 March 1920[63]

The data in this case is limited but it provides further evidence that there was a known necessity for the police to warn an arrested person that he need not say anything at all. On 23 March 1920, a man described in the case papers as a Russian Pole called Adolph Hanella was arrested on suspicion of murdering Marie Everley. It is apparent that English was not his first language and the police procedure needed to be explained to him through a translator. His written statement begins with the following words: 'I wish to tell you everything I know about Marie Everley since I first met her in January or February 1918. I have been told by Insp Tanner that I need

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[61] *R v Male and Cooper* (1893) 17 Cox CC 689.
[62] See for example The Times 23 August 1920; Daily Mail 28 August and 7 September 1920; The Guardian 17 December 1920.
[63] CRIM 1/184/2.

> not say anything unless I wish but that anything I do say would be written down and may be given in evidence. The Inspector has explained this caution to me. I understand what it means but I want to tell you everything to get it off my mind'.[64]

This case suggests a strong indication that the prisoner had been advised of his rights accorded by the Judges' Rules.[65] However, it was acknowledged in chapter 3 that there is an inherent weakness in simply accepting what is written in the documents. An alternative explanation is that the police, in this instance, were merely purporting to have given a caution, but the opposite may be true. However, it is indicative of knowing of the requirement to administer it.

All the above cases are based on the data examined in the police files and cannot exclude the possibility that what is recorded in the files is not a true reflection of police behaviours. However, the recurring theme of compliance indicates that the police were aware of their responsibilities.

6.2.1.2 Legislative circumvention and breaches

The National Archive data demonstrates that the formally recognised police process (the assumed investigative standard) outlined in Part 1 above was circumvented or breached by the police in 101 instances (Appendix 2). This is a significant recurrence within the cases examined (71 files) and demonstrates that

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[64] CRIM 1/184/2 statement of Adolph Hanella, 24 March 1920.
[65] Judges' Rule 4.

there were individual investigations which breached or circumvented the assumed investigation standard on multiple occasions. The same approach has been adopted in the interpretation of the files as outlined above. The common factor between each of the files are statements or magistrates' depositions supplied by the arresting officer which details the particular involvement with the arrested person. Each component part of the investigative process is therefore readily identifiable. It appears that in each of these cases, suspicions had been apparent towards a particular individual but there was no direct or circumstantial evidence[66] which could be connected to the suspect; it made the investigation more complex. It is an important point that evidence of both compliance and non-compliance was found in these files. This indicates that police officers were either unaware, unsure or selective in their interpretation of the rules. The reasons why the breaches occurred are examined below but the details are now outlined.

The 101 breaches or circumventions are as follows: five entries show that there was no caution administered until after a formal charge[67] and two entries demonstrate that no caution was administered after a charge.[68] Seven entries demonstrate that no caution was administered at all throughout the entire investigative process from arrest to charge.[69] Four entries demonstrate that there was confusion or contradictory positions adopted as to the status of a person and whether he/she attracted the protection of the caution being administered.[70] One

[66] Circumstantial evidence is evidence not of the actual offence committed but from which the guilt of an offender may be presumed with more or less certainty.
[67] App 2, lines 234-238.
[68] App 2, lines 149-150.
[69] App 2, lines 151-157.
[70] App 2, lines 8-11.

entry demonstrates that a suspect was arrested on a minor, unrelated charge but then questioned about the murder without any caution being administered.[71]

Thirty two entries demonstrate that people suspected of committing murder were not arrested but 'taken to a police station' for further enquiries.[72] This was the practice examined in chapter 5 which was subject to criticism by both the RCPPP and the Home Office. Twelve entries demonstrate that people were arrested/detained for committing murder but no caution was administered.[73] Five entries demonstrate that questions were put to arrested people despite Home Office instructions and legal opinion stating that questioning should not be undertaken.[74] Four entries demonstrate that a written statement was taken from an arrested person without a caution being administered.[75] The significance of this particular point is that written statements should contain an entry to remind the arrested person that he need not say anything.[76] Nine entries demonstrate that the caution administered did not include any reference to the suspect being warned that he/she need not say anything if they chose not to.[77] Five entries demonstrate that written voluntary statements made by arrested people did not contain a caution at its beginning.[78] Eight entries demonstrate that people clearly suspected of committing an offence were not arrested but interviewed without

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[71] App 2, line 239.
[72] Taken to a police station included being 'asked to accompany a police officer to the station' or being detained. App 2, lines 170-201.
[73] App 2, lines 136-147.
[74] App 2, lines 131-135.
[75] App 2, lines 208-211.
[76] Judges' Rule 8.
[77] App 2, lines 212 - 220. This was the practice which concerned the Home Office and was outlined in chapter 5. See HO 45/22971 Memorandum attached to letter from Chair of RCPPP to Home Office (6 March 1929).
[78] App 2, lines 221-225.

being cautioned.[79] The reasons why these multiple breaches occurred are outlined below.

Apparent circumventions relating to the searching of premises can be seen within the data examined. A constable had no power to search premises except for specific offences under the authority of a warrant[80] and these offences were considered a haphazard and illogical collection.[81] More serious offences including murder were not included[82] and police constables had been sued for searching the premises of an arrested person.[83] Legal commentary highlighted this anomaly in 1924[84] which questioned the powers of police to search private premises in a murder investigation.[85] It also highlighted that even though searching of premises was illegal, it did not stop the police from carrying out the practice and the resulting evidence was placed before the courts without rebuke.[86] This opinion is supported to a large degree through analysis of court transcripts which demonstrate that it was rare for police evidence to be challenged.[87] It also

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[79] App 2, lines 226-233.
[80] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 13, para 31.
[81] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 13, para 31.
[82] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 13, para 31.
[83] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 45, para 120.
[84] Justice of the Peace and Local Government Review, 14 June 1924 page 362.
[85] Murder of Emily Kaye by Patrick Mahon, The National Archives DPP 1/78.
[86] Justice of the Peace and Local Government Review, 17 November 1928 page 744.
[87] See, for example, Helena Normanton, *Trial of Alfred Arthur Rouse* (William Hodge and Company 1931); Filson Young, *Trial of Frederick Bywaters and Edith Thompson* (William Hodge and Company 1923); Winifred Duke, *Trial of Field and Gray* (William Hodge and Company 1939; W Teignmouth Shore, *Trial of Frederick Guy Browne and William Henry Kennedy* (William Hodge and Company 1930); F Tennyson Jesse, 'Trial of Alma Victoria Rattenbury and George Percy Stoner (William and Hodge Company Ltd 1935); R H Blundell and R E Seaton, Trial of Jean Paul Vaquier (William Hodge and Co Ltd 1929); Donald Carswell, Trial of Ronald True (William Hodge and Co Ltd 1925); F Tennyson Jesse, Trial of Sidney Harry Fox (William Hodge and Co Ltd 1934); Winifred Duke, Trial of Harold Greenwood (William Hodge and Co Ltd 1930).

accords with Newburn's view that the police felt that they could achieve their investigative objectives by not acting in an authoritative manner and ensuring that whatever action they took was not expressly forbidden in law.[88]

The practice of seizing evidence by search is identified in the data which discloses four entries which demonstrate that suspects' premises were searched despite the person not being arrested.[89] Two entries demonstrate that premises connected to a suspect were searched without authority[90] and one entry demonstrates that a suspect was searched without being arrested.[91]

These breaches concerning the searching of premises reflect two of the issues highlighted in chapter 5. Firstly, it was recognised by the RCPPP that the searching of premises was a necessary and proportionate investigative measure but it was not governed by legislation. They recommended that this should be remedied but no action was taken. Secondly, the courts retained the view that the actions taken by the police were largely irrelevant since they (the courts) were the body responsible for determining whether evidence placed before a jury was admissible or not. It was not the responsibility of the police to exercise judgement about these matters. This may be a contributory factor to the police operating inconsistently and potentially without any authority.

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[88] Tim Newburn et al, *Handbook of Criminal Investigation* Cullompton 2007) 97.
[89] App 2, lines 202-205.
[90] App 2, lines 206-207.
[91] App 2, line 148.

Figure 2

Legislative circumvention and breaches – 71 files examined

Suspect not arrested but 'taken to police station'	32
Suspects' premises searched without being arrested	4
Questioning of arrested/detained people against Home Office advice	5
Statements taken from an arrested person without a caution	4
Use of diluted caution	9
No caution after arrest	12
No caution incorporated within written voluntary statements	5
Suspects being interviewed without a caution	8
Unlawful search of premises	2
Unlawful search of suspect	1
First caution administered only after charge	5
No caution after charge	2
No caution administered throughout entire investigation process	7
Confused or contradicted position concerning status of suspect	4
Person arrested on minor charge but investigated for murder	1
Total number of circumventions	101

Figure 2 - Legislative circumvention and breaches

6.2.1.3 Reasons for breaches and circumventions

There is a significant body of literature which examines particular high-profile incidents of police corruption (committing crime)[92] and concerns about its investigative practices (treatment of witnesses).[93] However, there is nothing in the existing literature which argues that inter-war police appeared to routinely operate outside of the law but attracted little criticism. Consequently, there is no literature which tackles the reasons why this habitual practice occurred. The thesis now offers a potential reason for this.

The data demonstrates that it was a common feature for officers investigating offences of murder to be confronted by people whom they strongly considered to be responsible for the crime. This suspicion was often based on the nature of the

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[92] See for example CB Klockars, 'The Dirty Harry Problem' (1980) 452 (1) The Annals of the American Academy of Political and Social Science 33-47; Maurice Punch, *Conduct unbecoming: The social construction of police deviance and control* (Tavistock 1985); Gjalt De Graaf, 'Causes of Corruption: Towards a Contextual theory of Corruption' (2007) 31 (1/2) Public Administration Quarterly 39-86; Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public Integrity 274; James F Albrecht, *Police Brutality, Misconduct and Corruption (Criminological Explanations and Policy Implications* (Springer 2017); Michael Caldero et al, *Police Ethics: The Corruption of Noble Cause* (Taylor and Francis 2018); John Kleinig, *Ends and Means in Policing* (Routledge 2019) 75-82; Jonathon A Cooper, 'Noble cause corruption as a consequence of role conflict in the police organisation (2012) 22 (2) Policing and Society 169-184; Kim Loyens, 'Rule bending by morally disengaged detectives: an ethnographic study' (2014) 15 (1) Police Practice and Research 62-74.

[93] See for example JF Moylan, Scotland Yard and the Metropolitan Police (G P Putnam's Sons Ltd 1929) 155; TA Critchley, A History of Police in England and Wales (Constable 1967) 201-2; D Ascoli, The Queen's Peace: The Origins and Development of the Metropolitan Police 1829-1979 (Hamish Hamilton 1979) 93; Clive Emsley, The English Police: A Political and Social History (2nd edn Longman 1991) 72; B Weinberger, Best Police in the World: Oral History of English Policing From the 1930s to the 1960s (Scolar Press 1995) 75-89; Clive Emsley, The Great British Bobby (Quercus 2009) 165, 209-210; Heather Shore, 'Constable dances with instructress: The police and the Queen of Nightclubs in inter-war London' (2013) 38 (2) Social History 183, 186 < https://www.tandfonline.com/loi/rshi20 > accessed 25 October 2022. Also see HO 144/6596 and Arrest of Major R O Sheppard DSO RAOC, Report by The Rt Hon J F P Rawlinson: Enquiry Held Under Tribunals of Enquiry (Evidence) Act 1921 (Cmd 2497, 1925).

evidence presented to them by independent witnesses.[94] No confessions had been forthcoming and there was insufficient evidence to prefer a charge. In these cases, the assumed standard of investigation was not followed. The data indicates that officers in these cases were more likely to take advantage of the legal ambiguity and adopt a more flexible interpretation of the rules.[95] This is outlined below in a series of case studies. This was particularly where suspicion lay in a specific direction and specifically where there was no legislation enabling them to investigate effectively through the questioning of suspects and the searching of premises.

Due to the lack of clear legal direction contained within internal police instruction manuals outlined in Part 1 above, it is possible that officers would be unaware of the correct legal rules to be followed. This accords with Wiliiams' assertion identified in chapter 2 that these types of instructions were rarely written down.[96] This position is supported by the probability that clear instructions were absent from manuals due to a lack of clarity in the law itself. This idea, though, is countered to a degree by the high number of compliances outlined above and it is therefore necessary to identify an alternative explanation for the recurring breaches.

The frequency of breaches and circumventions identified in the data set implies that the police felt they were necessary steps to achieve an effective

[94] App 2, lines 170-201.
[95] For example, detaining someone for questioning rather than arresting them.
[96] Chris A Williams, Police Control Systems in Britain, 1775-1975 (Manchester University Press 2014) 89.

investigation. Extrapolation of this argument identifies a viable variation on the broad theme of noble cause corruption. There remains an absence of a clear and common definition in this area, made more difficult by the associated complexity of operationalising the concept.[97] The concept has received scholarly attention but remains in its infancy.[98] This thesis contributes to an increased understanding in this area.

The literature offers a range of definitions guided by an overriding principle that noble cause is a moral commitment by some person or group of people who perceive it as their responsibility to make the world a safer world in which to live.[99] This is routinely accompanied by the use of violence or other intentionally caused harms[100] as a justified means to a desired end.[101] This is not a characteristic which features in the data and can be dismissed. Equally, noble cause is not the same as officers receiving a significant advantage or reward[102] or 'slippery slope corruption'[103] indicative of more serious types of corruption to come. Behaviours of the inter-war police may be more closely aligned to ideas about conflict within

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[97] Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public Integrity 274.
[98] Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public Integrity 274, 289.
[99] Michael Caldero et al, *Police Ethics: The Corruption of Noble Cause* (Taylor and Francis 2018) 24.
[100] John Kleinig, Ends and Means in Policing (Routledge 2019) 75-82; James F Albrecht, Police Brutality, Misconduct and Corruption (Criminological Explanations and Policy Implications (Springer 2017) 27.
[101] See for example CB Klockars, 'The Dirty Harry Problem' (1980) 452 (1) The Annals of the American Academy of Political and Social Science 33-47; G Dean et al 'Conceptual framework for managing knowledge of police deviance' (2010) 20 (2) Policing and Society 204–222; Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public Integrity 274, 289.
[102] Maurice Punch, Conduct unbecoming: The social construction of police deviance and control (Tavistock 1985) 14; Michael Caldero et al, Police Ethics: The Corruption of Noble Cause (Taylor and Francis 2018) 111.
[103] Michael Caldero et al, *Police Ethics: The Corruption of Noble Cause* (Taylor and Francis 2018) 111.

a police officer's role.[104] Their primary role of identifying and dealing with criminals may conflict with their duty to comply with State law.[105] On the one hand they are required to protect the public from criminality but on the other they are required to comply with procedural law.[106] Noble cause corruption is a function by which the police may secure both objectives through the use of illegitimate means to secure or improve society's well-being;[107] the police feel justified in their actions.[108] Offering no caution to an arrested person or detention for the purpose of interview are cited as examples of noble cause behaviour;[109] it is often referred to as 'rule-bending.'[110] This is also reflected in Hertogh's study of public officials moving away from their public responsibilities due to their perception that the law militates against an efficient service.[111] He argued that the police specifically considered that it was sometimes better to bend the rules and replaced the rule of law with the rule of means.[112] They considered that their authority to act in this way derived from a need of close cooperation in the neighbourhoods and its

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[104] Jonathon A Cooper, 'Noble cause corruption as a consequence of role conflict in the police organisation (2012) 22 (2) Policing and Society 169, 170.
[105] Jonathon A Cooper, 'Noble cause corruption as a consequence of role conflict in the police organisation (2012) 22 (2) Policing and Society 169, 170.
[106] Jonathon A Cooper, 'Noble cause corruption as a consequence of role conflict in the police organisation (2012) 22 (2) Policing and Society 169, 170.
[107] Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public Integrity 274; See also Seumas Miller, *Institutional Corruption* (Cambridge University Press 2017) 89.
[108] Robin Christiaan van Halderen & Emile Kolthoff, 'Noble Cause Corruption Revisited: Toward a Structured Research Approach' (2017) 19 (3) Public Integrity 274; See also Kim Loyens, 'Rule bending by morally disengaged detectives: an ethnographic study' (2014) 15 (1) Police Practice and Research 62-74.
[109] JRT Wood, Royal Commission into the New South Wales Police Service: Interim Report, Police Integrity Commission (1996) 277.
[110] Maurice Punch, '*Police corruption and its prevention'* (2000) 8 (3) European Journal on Criminal Policy and 301, 303; Kim Loyens, 'Rule bending by morally disengaged detectives: an ethnographic study' (2014) 15 (1) Police Practice and Research 62-74.
[111] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 131.
[112] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 136.

citizens.[113] This was examined in chapter 4 and the idea may be transferred across to the behaviours of inter-war police who thought that bending the rules was a legitimate means of investigating criminal offences within an unstable and confusing legal environment.[114]

De Graaf's[115] ideas about noble cause corruption step outside the approach of trying to specifically identify why corrupt acts take place and situates the behaviour in a wider social context. This different approach may help to explain behaviours whether they are operating at the individual, organisational or society level. De Graaf's ideas would suggest that the actions of investigating officers in murder investigations arose not from any individual incidence of a corrupt act for personal gain but as a result of the wider police organisation's culture which was shaped by society's view that unsolved murder cases represented an unsatisfactory position.[116] Neither the organisation nor the individual officers perceived its actions to be corrupt and flexible interpretation of the rules was seen as a means to achieve a benefit to the community.[117] The alternative was to heighten concerns about unsolved murders.[118] This was also detailed in chapter 4.

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[113] Marc Hertogh, Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life (palgrave MacMillan 2018) 137.
[114] See also Brogden M, *On the Mersey Beat: Policing Liverpool Between the Wars* (Oxford University Press 1991) 88.
[115] Gjalt De Graaf, 'Causes of Corruption: Towards a Contextual theory of Corruption' (2007) 31 (1/2) Public Administration Quarterly 39-86.
[116] See Bourdieu described society as a social space consisting of inter-related fields. See also Richard Jenkins, *Pierre Bourdieu (3rd edn,* Routledge 1992) 87.
[117] James Detert et al, 'Moral disengagement in ethical decision making: A study of antecedents and outcomes' (2008) 93 Journal of Applied Psychology 374, 375.
[118] Further research may identify other incentives for individual police officers to operate in a particular way. This is identified in chapter 8.

Their actions did not constitute a criminal offence and their official position was that they were expected to solve crime. The flexible interpretation of the rules satisfied society's requirements and due to the apparent lack of clarity in the guidance no law had been breached as a consequence. Hobbs describes this as an entrepreneurial skill.[119] An absence of clear law governing a particular act effectively endorsed that position and their behaviours appeared to go unchecked in the courts.[120] An interpretation of this behaviour may be indicative of a police view that without the flexible interpretation of the rules, they considered that those responsible for murder would otherwise escape justice; there would have been an increase in the number of unsolved murders had a strict interpretation of the rules been applied.[121]

The presence of what may be perceived as poor law features as being a causative factor in police officers' behaviours.[122] This is reflected in the thesis' analysis of inter-war legislation that the legal framework in which the police operated was governed by seemingly contradictory and confusing law and guidelines. An absence of law does not feature in the literature and to that extent the thesis offers a further dimension to what may be categorised as noble cause corruption. The data indicates that the police of the inter-war period habitually circumvented the law, and noble cause behaviour designed to bring about a successful outcome, is a viable inference. Without such circumvention it is

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[119] Dick Hobbs, *Doing the Business* (Oxford University Press 2001) 206.
[120] See Bryn Caless, 'Corruption in the Police: The Reality of the 'Dark Side'' (2008) 81 The Police Journal 3, 10.
[121] See Richard Harker et al, *An Introduction to the Work of Pierre Bourdieu* (MacMillan 1990) 8; Rob Stones, *Key Sociological Thinkers* (palgrave 2017) 234.
[122] Bryn Caless, 'Corruption in the Police: The Reality of the 'Dark Side'' (2008) 81 The Police Journal 3, 10.

possible that the police considered that those responsible for murder would escape justice due to a lack of sufficient evidence to prefer a charge. The data strongly indicates that these practices were sanctioned by the courts.[123]

An alternative explanation would be that officers simply breached the rules out of a sense of indifference and a willingness to breach the rules regardless of the principles of justice. There is no evidence in the data examined to support this proposition. The data demonstrates that where breaches or circumventions were identified at the time, officers defended their actions and argued their position in open court.[124] This was not a routine occurrence and there are only three instances identified in the data[125] to indicate that the evidence obtained in an investigation was challenged as to its integrity and achieved within the parameters of the assumed investigative standard. This is supported through the examination of court transcripts which demonstrate that police tactics were rarely criticised.[126] This indicates that the courts were generally accepting of police

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[123] Procedural irregularities were rarely challenged by the courts. See, for example, Filson Young, *Trial of Frederick Bywaters and Edith Thompson* (William Hodge and Company 1923); Carswell, Trial of Ronald True (William Hodge and Co Ltd 1925); R H Blundell and R E Seaton, Trial of Jean Paul Vaquier (William Hodge and Co Ltd 1929); Donald W Teignmouth Shore, *Trial of Frederick Guy Browne and William Henry Kennedy* (William Hodge and Company 1930); Duke, Trial of Harold Greenwood (William Hodge and Co Ltd 1930); Helena Normanton, *Trial of Alfred Arthur Rouse* (William Hodge and Company 1931); F Tennyson Jesse, Trial of Sidney Harry Fox (William Hodge and Co Ltd 1934); Winifred F Tennyson Jesse, 'Trial of Alma Victoria Rattenbury and George Percy Stoner (William and Hodge Company Ltd 1935); R H Blundell, *Trial of Buck Ruxton* (William Hodge and Co Ltd 1937); Winifred Duke, *Trial of Field and Gray* (William Hodge and Company 1939).

[124] See for example App 2, lines 12-14.

[125] See App 2, lines 12-14.

[126] See, for example, Filson Young, *Trial of Frederick Bywaters and Edith Thompson* (William Hodge and Company 1923); Carswell, *Trial of Ronald True* (William Hodge and Co Ltd 1925); R H Blundell and R E Seaton, *Trial of Jean Paul Vaquier* (William Hodge and Co Ltd 1929); Donald W Teignmouth Shore, *Trial of Frederick Guy Browne and William Henry Kennedy* (William Hodge and Company 1930); Winifred Duke, *Trial of Harold Greenwood* (William Hodge and Co Ltd 1930); Helena Normanton, *Trial of Alfred Arthur Rouse* (William Hodge and Company 1931); F Tennyson Jesse, *Trial of Sidney Harry Fox* (William Hodge and Co Ltd 1934); Tennyson Jesse, *Trial of Alma Victoria Rattenbury and George Percy Stoner* (William

evidence and therefore would not deter the police from habitually employing noble cause corruption tactics.

A series of case studies are now outlined to highlight investigations where breaches or circumventions of the rules occurred and which indicate that they fell short of the assumed investigative standard. They are examples from the larger sample of identical behaviours identified in the data produced as Appendix 2. The significance of these cases is that they are indicative of a police service operating outside of the legal framework. It is impossible to conclusively determine the reasons why these breaches occurred without any evidence to demonstrate the thinking of the investigating officer, but inferences about the willingness or an unawareness of operating outside of the law outlined above may reasonably be drawn based on the frequency of occurrences.

Case Study 6 – The murder of Elizabeth Ridgley in Hitchin – 25 January 1919[127]

This case is significant as it occurred at the beginning of the inter-war period and is representative of a standard of investigation which occurred repeatedly over the next 20 years.[128] The events took place after the

and Hodge Company Ltd 1935); Winifred Duke, *Trial of Field and Gray* (William Hodge and Company 1939).

[127] MEPO 3/260. This case is examined in depth in Paul Stickler, *The Murder That Defeated Whitechapel's Sherlock Holmes: At Mrs Ridgley's Corner* (Pen & Sword 2018). This was the case which left the author with a series of unanswered questions and sparked interest in carrying out this research.

[128] See for example App 2, lines 170-201.

introduction of the Judges' Rules in 1912 and their amendment in 1918[129] and consequently police processes were governed by these principles.

Elizabeth Ridgley owned a corner shop in Nightingale Road, Hitchin and conducted a successful business. Her converted house contained a high volume of cash and it was common knowledge that she lived alone with her pet dog. At 9pm on 25 January 1919, Ridgley was in the process of closing her shop when she disturbed a stranger in the rear living room. A scuffle occurred and the intruder beat her about the head with a four-pound weight taken from the scullery. She received further blows to the head while on the floor and sustained injuries from which she would later die. It was thought that the pet dog attacked the assailant but the attacker struck the animal with the same weight causing fatal fractures to the skull. The killer then ransacked the till in the shop and escaped via the back door. Ridgley's body was not discovered for 2 days. The local police investigated and concluded that Ridgley had died as a result of an accident and the investigation was closed.

The matter was referred to Scotland Yard who reinvestigated. It concluded that Ridgley had been murdered and used the newspapers to advertise the circumstances. Within a few days, an anonymous letter was received stating that the offender was a man called John Healy, who lived nearby and that he was seen in the vicinity of the shop at the time of the murder. He also

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[129] Discussed in detail below.

had injuries to his hand consistent with a dog bite and was not at home at the time of the attack. This is a significant piece of information received by the police and it can be assumed with a high degree of certainty that the investigating officer had formed a suspicion about Healy.

The police went to Healy's house and spoke to him. The police officer said to him, "I want to speak to you. It is inconvenient here. I must ask you to accompany these officers to the station". Healy replied, "What is this all this about?" The officer replied, "I will tell you at the station".[130] Healy was then taken to the police station. At no time was Healy told that he was arrested. It is contended that Healy fell within the definition of being 'in custody' as stated in the Judges' Rules and police activity was now governed by Rule No. 2 that persons in custody should not be questioned without the usual caution being first administered.[131]

The data strongly indicates that had Healy wished to leave the police station he would not have been allowed to do so. Healy was asked a series of questions and gave an account without any measure of a protection of a caution as he had not been formally arrested. Healy made a statement in reply to the questions after which the officer said, "You will be detained until some enquiry has been made regarding your statement."[132] Further statements were then obtained from witnesses and Healy was charged. Only at this point was he cautioned.

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[130] MEPO 3/260 Report of DCI Wensley 15 December 1919 page 29.
[131] See App 3.
[132] MEPO 3/260 Report of DCI Wensley 15 December 1919 page 29.

The case highlights a lack of clarity in two points of law. Firstly, it was open to interpretation about what amounted to an arrest. This was established through the analysis of the data in the previous chapter. The police officer in this case made it clear that Healy was going to be taken to the police station. At the station he was informed that he would be detained. This practice of ‘detention’ was criticised by the later Royal Commission which stated that any detention amounted to imprisonment and the person would be considered to be in custody.[133] By failing to formally arrest, it allowed the police to argue that questions may be asked of the ‘detained’ person. This raises the second point of ambiguous law. Judicial interpretation of the Judges’ Rules stated that it was never intended that questions should be asked of a person in custody; this was the position even before the Judges’ Rules were drafted.[134] However, Judges’ Rule No 3 clearly states that persons in custody should not be questioned without the usual caution being first administered. The two statements appear diametrically opposed.

This case study is a rare case where the officer’s motivation may be identified. In a later memoir, the arresting officer[135] argued that it was against common sense not to be able to ask questions of a suspect.[136] In this case, an explanation of the officer’s behaviour is that he recognised that Healy was the obvious offender but

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[133] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) pages 57, para 152.
[134] HO 45/22971 Memorandum from Royal Courts of Justice, Justices Avory and Hewart (18 March 1929).
[135] Frederick Porter Wensley was writing as a retired chief constable and was highly regarded by the newspapers and his opinion widely respected.
[136] Frederick Porter Wensley, Forty Years of Scotland Yard: A Record of Lifetime’s Service in the Criminal Investigation Department (Garden City 1930) 294.

compliance with the investigative standard would not have produced the necessary evidence. This may be interpreted as an example of noble cause corruption outlined above.

Case Study 7 – The murder of Emily Kaye in Eastbourne – 15 April 1924[137]

This case study identifies the same features in case study 6. Its difference is that it attracted significant public attention due to the extremely macabre nature of the method used by the killer. This would have heightened public awareness and scrutiny of police behaviours. Police behaviour in this case, however, attracted high praise from the judiciary.[138] Despite this, the thesis cites this case as an investigation that breached or circumvented the law on numerous occasions.

On 1 May 1924, police were alerted to a bag containing bloodstained garments which had been found in a left luggage compartment at Waterloo railway station. It was thought that the clothes could be connected to an illegal abortion and observations were carried out on the locker. The following day, Patrick Mahon recovered the bag. He was immediately approached by a police officer who said, "You will have to come with me to Kennington Road police station'. Mahon replied, "Rubbish'. The officer said,

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[137] MEPO 3/1605.
[138] MEPO 3/1605 Report of CI Savage, 5 August 1924 pages 1-8.

“No it is not and you will have to do what I say’. Mahon was then ‘detained’ at the police station. It is argued that these actions amount to an arrest.

At the police station Mahon was asked by a detective to explain how he had come by the bloodstained bag.[139] He gave an account after which he was told that he would ‘be accompanied to Scotland Yard’.[140] He had still not been formally arrested which would have attracted the protection of the Judges’ Rules. At Scotland Yard he was further questioned and shown the contents of the bag.[141] He was then ‘further detained’ and told he would need to give an explanation.[142] He remained silent ‘for several hours’ and then said, “I might as well tell you the truth’. At this point he was cautioned. The 32 instances identified in the data[143] of keeping people at police stations without arresting them indicates that the police regularly used the practice of confinement to induce a suspect to speak.

Mahon then made six separate statements each containing between 500 and 2000 words. In only the first statement was a caution recorded in writing and that did not contain the warning that he need not say anything at all.[144] This was a routine practice.[145] The production of so many statements demonstrates that questions were being repeatedly asked of the arrested

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[139] MEPO 3/1605 Statement of CI Percy Savage, 5 May 1924.
[140] MEPO 3/1605 - Statement of CI Percy Savage, 5 May 1924.
[141] MEPO 3/1605 - Statement of CI Percy Savage, 5 May 1924.
[142] MEPO 3/1605 - Statement of CI Percy Savage, 5 May 1924.
[143] App 2, lines 170-201.
[144] This criticism was mirrored in another trial the same year when a police superintendent was criticised by a trial judge for using a meaningless caution. See HO 144/4093 Evidence of Supt William Davis, transcript of trial 19 June 1924 page 18.
[145] See for example MEPO 3/1641 Report of DDI Hodges, 7 September 1928.

> person. This indicates that the officers were taking advantage of the ambiguity identified in chapter 5 surrounding the legality of questioning people in custody. It also demonstrates that the last five statements were not preceded with a caution indicating that no caution was administered. This was contrary to the Judges' Rules.[146]

The breaches and circumventions in this case are most significant as it is at the core of the thesis's argument that police irregularities were accepted by the courts. The detail provided by Mahon provided a full account of the murder of Emily Kaye. In a later police report, the interviews of Mahon were regarded as 'conspicuous skill, tact and ability in obtaining from [him] what amounted to a confession of a murder that everyone was ignorant of except Mahon himself'.[147] Questioning of arrested people was prohibited by the judges' interpretation of the Judges' Rules. It was only the illegally obtained statements which unearthed the prosecution evidence. The investigation breached many of the rules established by the courts yet the chairman of the Petty Sessional magistrates who sent Mahon for trial congratulated the police 'on the excellent and extremely careful and able manner in which [they] have collected the evidence in this difficult case.'[148] This case presents as another example of noble cause corruption where the courts tacitly accepting police breaches of the law. It is also likely that this is the type of behaviour that Wood was referring to when he referred to the use of

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[146] Judges' Rule 4.
[147] MEPO 3/1605 Report of Superintendent Wensley, 5 August 1924 page 10
[148] MEPO 3/1605 Statement of CI Percy Savage, 5 May 1924 page 1.

third-degree tactics.[149] Pressure was brought to bear upon 'detained' people and confessions were subsequently forthcoming.

6.2.1.4 Power of the police to search premises

Data to support the production of evidence through the searching of premises or prisoners is limited though it is apparent that evidence of this nature was necessary to support a prosecution case.[150] Its absence may be indicative of the fact that the law did not allow for its production, though the RCPPP reported that the searching of premises was carried out in 'serious cases' with the consent of the owner.[151] There was no provision in law for this practice though equally there was no law which prevented it. There are a number of interpretations which may be concluded from this: either it was a legitimate and common-sense approach to the problem of securing evidence or it was a practice which masked a determination by the police to seize evidence outside the provision of case law or legislation. Either way, it was a practice commonly pursued by the police and again appeared to have the tacit approval of the courts.[152] The following case study illustrates the point.

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[149] John Carter Wood, ''The Third Degree': Press reporting, crime fiction and police powers in 1920s Britain (2010) 21 (4) Twentieth Century British History 464-485.ve

[150] App 2, lines 158 - 169. See also MEPO 3/866 where the lack of any provision to search premises prevented a more effective investigation.

[151] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 14, paras 32-33.

[152] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 14, paras 32-33.

Case Study 8 – The murder of Percy Thompson – 4 October 1922[153]

In the early hours of the morning, Thompson was walking home through Ilford with his wife after a night out at the theatre. As they walked along Belgrave Road, a man emerged from bushes and attacked Thompson with a knife causing a fatal injury. Edith Thompson's account of the attack appeared doubtful to the police and it was established very early on in the investigation that Edith had been having an affair with a man called Frederick Bywaters. Bywaters was found to have blood on his raincoat and he was arrested.[154] It was further established that there had been a series of love letters passed between Edith Thompson and Bywaters and this would provide important evidence in determining a motive associated with the killing.

It was established that some of these letters were at a private address of one of Bywater's relations and the police wanted to seize the material. According to the statement of the police officer who attended the address he took possession of the letters 'at the request of the householder'.[155] However, in a police memoir published some years later, the superintendent in charge of the investigation stated he had ordered that the documents should be seized.[156] The police interpretation of this event is that the articles were seized with the consent of the householder. The data indicates that

[153] MEPO 3/1582.
[154] MEPO 3/1582 Report from Limehouse Police Station, 4 October 1922 page 3.
[155] MEPO 3/1582 Statement of DI Frank Page, 5 October 1922.
[156] Frederick Porter Wensley, Forty Years of Scotland Yard: A Record of Lifetime's Service in the Criminal Investigation Department (Garden City 1930) 239.

> the police had every intention of obtaining the evidence but had no power to seize it without consent. There is nothing in the data which demonstrates conclusively that consent was obtained. The letters were admitted in evidence.

This may be interpreted as an example of noble cause corruption where the police believed they were acting in the best interests of the wider community and it was essential that such evidence should be put before the courts. It is another example of a lack of clarity in the law impacting on a police practice which the later Royal Commission in 1928 stated was a necessary police tactic in the gathering of evidence.

6.2.1.5 Compliance, breaches and circumvention in the same investigation

It is important to highlight that the data identifies that there are many cases where compliance, circumvention and breaches appear to occur within the same investigation.[157] This indicates that application of the rules was either careless, the result of a lack of a comprehensive understanding or judicious selection based on the circumstances at the time. It is impossible to determine from the data a definitive reason for these occurrences. The following case study provides a typical example.

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[157] App 2, lines 240-253.

Case Study 9 - Murder of Charlotte Harber by William Benson on 6 September 1928 at Coulsdon[158]

On 6 September 1928, William Benson was walking around Coulsdon golf course together with his married girlfriend, Charlotte Harber. The couple argued about finishing the relationship and Benson produced a knife and stabbed Harber in the chest. She died instantly. Benson walked from the golf course and approached a police officer and told him that he had just killed his girlfriend. The police officer immediately cautioned him and Benson took the officer to the body. The cautioning of Benson indicates that the officer suspected him of committing the crime and took him to the police station. The caution accords with the Judges' Rules by the letter and the spirit of the law. The exact words spoken to Benson is not apparent on the file, but by inference he has clearly been taken into custody. At the police station, Benson was spoken to by a detective officer who again cautioned him in the following terms: 'I caution you that anything you say may be given in evidence.'[159] This does not conform with the requirement that a suspected offender must be told that he need not say anything at all. The caution is in a diluted form and offers no protection to the prisoner. Benson was later charged but he was not further cautioned. This is in direct contravention of the Judges' Rules. It is indicative of a case which demonstrates that investigative requirements were well known but selectively applied.

[158] MEPO 3/1641.
[159] MEPO 3/1641 Report of DDI Hodges, 7 September 1928.

6.3 Conclusion

Examination of the 71 National Archive files has identified 66 cases of absolute compliance with the law, including where suspected offenders were afforded the protection of the caution prescribed by the Judges' Rules, prisoners were not questioned and that they were cautioned again after being charged. They complied with the letter and the spirit of the law. It is apparent that cases of compliance were more present in simple investigations where the identity of the offender was immediately known due to an unsolicited admission or where independent evidence was overwhelming against a particular individual. The inference which is drawn from this is that the police were aware of their responsibilities.

The data has also identified 101 entries which demonstrate breaches or circumventions spanning the same period. These transgressions are across the spectrum of the guidelines and law and include illegal detention of suspected offenders, the use of a diluted caution, no caution of a suspected person having been arrested, arrested persons being interviewed without a caution being administered and no caution being administered throughout the entire investigative process.

The volume of transgressions indicates that this was a habitual practice prevalent in more complex cases, where the guilt of the offender was suspected but there was no direct evidence to connect them. Consequently, the police gathering of evidence followed a line that circumvented the investigative standard. A possible

explanation for this behaviour is a lack of clarity in the law. The law and guidance relating to the questioning of people in custody appeared contradictory and it is possible that the police were unclear about the practices to be adopted or took advantage of the situation by adopting a more flexible interpretation. This manifested itself in people being detained at police stations rather than being arrested and which the police considered to be justified. The effect of this practice was to circumvent any constraints placed upon the police not to question people in custody. Its consequence was a process of obtaining admissions/accounts from suspected offenders without being advised that they need not say anything. The courts accepted the consequent evidence which effectively endorsed police behaviour.

The motivations of the officers concerned can rarely be identified in the data but it is a reasonable inference, based on the frequency of occurrences, that the police did not see an absence of clear legislation as a bar to effective investigations; legislative powers of search and further legislation could have provided clarity and specific instructions about the procedural treatment of suspected offenders. They were driven by a course of conduct which they perceived as being of benefit to the community. It is impossible to definitively argue that the police pursued this course of conduct despite being aware that its behaviours fell short of the standard required. It could be argued that the confusion within the law simply did not allow them to be aware of the exact procedure to be followed. The data, however, makes it apparent that they were selective in their use of the recognised procedures which indicates that they were taking advantage of a fluid legal position. Both political and social opinion, and

independent legal commentary were clear that the position represented a flaw in police procedures. They were operating in a manner which seemed contrary to the historical principle that the police should have no more powers than necessary and appeared to be unregulated in their investigation of the most serious of criminal offences.

This chapter has argued that breaches or circumvention of the assumed investigative standard were a routine practice. There was a range of reasons why this occurred but there are two significant causes. Firstly, there was little or no consequence for the police operating outside of guidance since the courts had made it clear that they would remain the arbiter of the admissibility of evidence. Secondly, a lack of clarity in the law either provided the police with no mandated instruction or provided them the opportunity to operate in a manner which they considered reasonable. It was the responsibility of the discrete government departments to recognise and address societal and political concerns and introduce legislation where it was considered necessary. New legislation may not have provided the panacea but it may have provided a clearer framework in which to operate, with increased safeguards, and would have removed the ability and responsibility of individual groups to interpret and dictate their own behaviours.

The following chapter now identifies a further legislative layer which exacerbated this position.

Chapter 7: The impact of coroners' legislation

This chapter builds on the arguments developed in chapters 5 and 6 that the developing criminal investigation process was largely misunderstood and that the emerging, and more probing investigative role of the police was not fully recognised. It specifically analyses the role of the coroner in the investigation of deaths and the law which governed its function. The chapter argues that alongside the extant law/guidance relating to police investigations, additional legislation existed which further impacted adversely on the ability of the police to carry out effective investigations. The chapter first outlines the historic development of the office of coroner which established its responsibility to investigate all deaths and argues that this historical role had become outdated and dysfunctional by the turn of the twentieth century. It then argues that the introduction of legislation throughout the inter-war period failed to fully recognise the developing role of the police in murder investigations and which in turn acted to impede efficient police investigations. A duality of process had developed where a suspected murderer would be subjected to two separate judicial processes which contributed to police inefficiency and the potential to compromise the police gathering of evidence. Case studies are used throughout the chapter to highlight how this duality translated into operational practice. The chapter advances a novel and significant argument that the issue of coroners' legislation and its development is indicative of successive governments not appreciating the complexities of criminal investigations. It also argues that the behaviours of the Home Office outlined in chapter 5, are replicated through its

dealings with the development and witholding of legislation relating to coroners. This is an issue which has previously escaped academic attention. It concludes by arguing that a combination of the issues identified in chapters 5, 6 and 7 present an inter-war legal landscape which acted as a hurdle to police effectiveness.

7.1 The historic development of the coroner

The role and responsibilities of the office of coroner had been contained in 32 separate statutes between 1275 and 1875[1] which directed it in the investigation of deaths.[2] It had a specific responsibility of investigating homicides.[3] The Coroners Act 1887[4] later mandated the conditions under which a coroner could order an inquest.[5] The evolvement of the police outlined in chapter 1 and its investigative expertise outlined in chapters 5 and 6 meant that the organisation had effectively become the primary body capable of investigating suspicious deaths; it had developed an investigative expertise beyond that of the coroner. This position was brought to the attention of the Home Office in 1915 by a correspondent[6] who argued that the coroner was now ill-adapted for the purpose

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[1] HO 45/24977 Sir G Lushington's memo dated 1876. Later Acts would be further introduced, but by the inter-war period, they had been repealed. These included Coroners Act 1844 (7 & 8 Vic c 92), County Coroners Act 1860 (23 & 24 Vic c 116), Municipal Corporations Act 1882 (45 & 46 Vic c 50), Coroners Act 1887 (50 & 51 Vic c 71), Coroners Act 1892 (55 & 56 Vic c 56), Yorkshire Coroners Act 1897 (60 & 61 Vic c 39) and Lincolnshire Coroners Act 1899 (62 & 63 c 48). See also John Cooper, *Inquests* (Hart 2011) 5-7.
[2] See also HL Debate 19 May 1925, vol 61, cols 330-331.
[3] See The King's Coroner Being a Complete Collection of the Statutes Relating to the Office Together with a Short History of the Same (William Clowes and Sons Ltd 1905) 7.
[4] Coroners Act 1887, s 3 (50 & 51 Vic c 71 s 3).
[5] See HO 45/24905.
[6] William Brend.

of investigating suspicious deaths.[7] The medical profession submitted numerous articles to the Home Office offering similar criticism.[8] The Home Secretary answered that he would take their views into consideration if he felt legislation was necessary.[9] This was a significant series of position statements which underpin the arguments below concerning the office of coroner undermining police investigations.

Commentary on the conflicting position of the role of the coroner and the police in investigating murder arose in 1920 when a House of Commons motion asked whether the law relating to coroners ought to be amended.[10] The Home Office seemed to support change. It considered that the role of the coroner should be professionalised through the appointment of Justices of the Peace and that investigations of deaths should be carried out by the now well-equipped police forces.[11] Newspapers similarly recognised the need for change[12] though considered the retention of the office of coroner as important.[13] The coroner continued to investigate cases of suspected foul play and a Home Office circular seems to support this position by allowing them to apply for funding for the

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[7] HO 45/10564/172763. The argument was made in a thesis submitted for a medical degree and which was considered by the Home Office. See William Brend, 'An Enquiry into the Statistics of Deaths from Violence and Unnatural Causes in the United Kingdom (1915) page 78.
[8] HO 45/10564/172763 - The articles were published in The Medical World, 25 February 1915 pages 233-234; 4 March 1915 pages 277-278; 11 March 1915 pages 308-310; 18 March 1915 pages 329-332; 25 March 1915 pages 361-363; 1 April 1915 pages 396-398. All were entitled Coroner's (sic) Courts: Their Uses and Abuses by Sir Edward Nundy.
[9] HO 45/10564/172763 Letter dated from Home Office (13 April 1925).
[10] HC Debate 9 March 1920, vol 126 col 57. See also HO 45/11214.
[11] HO 45/12285 - file 453044 (dated 1923) Memo initialled HBS (undated).
[12] The newspapers were more concerned with archaic practices such as the viewing of a body in a house. It argued that the practice should be abolished on the grounds of decency, economy and common sense. See The Times 7 March 1922.
[13] The Times 7 March 1922 and 10 July 1922.

provision of expert medical evidence[14] in such cases. It is significant that a handwritten note in the Home Office expressed doubt about the need to give coroners such a free hand.[15] The import of this comment is not clear but it may be indicative of a developing view that the role of coroner ought to be constrained or better defined. A later Home Office memorandum stated that the law prior to 1910 was antiquated, out of date and provided imperfect machinery.[16] It is likely that one example of this was the practice of coroners' courts to order a jury to be kept without 'meat, drink or fire' until they agree on a verdict.[17] It considered the findings of an earlier committee[18] on the function of the coroner to be unsatisfactory.[19]

The concerns about coroners' practices have been examined in more recent texts and identify that towards the end of the nineteenth century there were calls for the overhaul or abolition of the office.[20] Inquests had lost much of their importance and had relapsed into a backwater of the legal system.[21] The need for legislative reform was recognised but only in terms of administrative functions.[22] This is a

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[14] HO 45/14556 Amendment to Home Office Circular to Coroners of 25 April 1913, 20 February 1922. See also HO 45/14556 Home Office report signed by A.L. (1 June 1923) page 5.
[15] HO 45/14556 (file 173761) Note from A.L (13 June 1922).
[16] HO 45/12285 (file 453044/26) Secret Cabinet memo by the Home Secretary (7 February 1925).
[17] Second Report of the Departmental Committee appointed to inquire into the law relating to coroners and coroners' inquests and into the practice in coroners' courts, Part 1 (Cmd 5004, 1910).
[18] Second Report of the Departmental Committee appointed to inquire into the law relating to coroners and coroners' inquests and into the practice in coroners' courts, Part 1 (Cmd 5004, 1910) para 26.
[19] HO 45/12285 (file 453044) Memo initialled AL (12 December 1923).
[20] William Cornish et al, The Oxford History of the Laws of England: Volume X1 1820-1914 English Legal System (Oxford Scholarship Online 2010) 934.
[21] William Cornish et al, The Oxford History of the Laws of England: Volume X1 1820-1914 English Legal System (Oxford Scholarship Online 2010) 935.
[22] William Cornish et al, The Oxford History of the Laws of England: Volume X1 1820-1914 English Legal System (Oxford Scholarship Online 2010) 936. See also David Kelly, The English Legal System (Routledge 2012).

significant observation and runs in parallel with the arguments advanced in chapters 5 and 6 that the police service had evolved into a more sophisticated investigative body than perhaps had been recognised. There is no suggestion that it was not a police function to arrest suspected offenders, take statements from witnesses and take the suspected before the courts, but the procedural treatment of arrested offenders had become more complicated. The process was in need of review and reform and this now equally applied to the coroners' system which also had a role to play: the role and purpose of the coroner was being questioned.

Recent literature[23] emphasises that its role is shaped by the changing society in which it operates and coroners themselves have been critical of parliament in not clearly stating its purpose.[24] This is a strong indication that the role of the coroner is seen as a dynamic process. Arguments have been advanced that its function is seen as a back-up for the criminal process as well as other investigative and regulatory systems.[25] Others believe that it has a perception by some that the forum might see itself as providing an opportunity for bereaved kin to seek forms of justice, truth and accountability of death.[26] There is a significant body of opinion which argues that the role of the coroner is to shape social policy as well as

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[23] See for example G E Caraker, 'The Coroners Court in England and Wales: An Ancient Office that is still vigorous' (1951) 27 (5) American Bar Association Journal 361-363; Unidentified author, 'Coroners Courts (England and Wales)' (1986) 12 (4) Commonwealth Law Bulletin 116; Christopher Milroy and Helen Whitwell, 'Reforming the coroners' service' (2003) 327 (7408) British Medical Journal 175-176; Alexandra Pitman, 'Reform of the Coroners service in England and Wales; policy making and politics' (2012) 36 (1-5) The Psychiatrist; Boldt D, 'The coroner as judge and jury' (2020) 7 New Zealand Law Journal 246-250; Edward Kirton-Darling, *Death, Family and the Law* (Bristol University Press 2022).
[24] Edward Kirton-Darling, *Death, Family and the Law* (Bristol University Press 2022) page 26.
[25] Edward Kirton-Darling, *Death, Family and the Law* (Bristol University Press 2022) page 26.
[26] Edward Kirton-Darling, *Death, Family and the Law* (Bristol University Press 2022) page 26.

determining the established purpose of when, how and where a death was caused.[27] These recent arguments are reflective of the inter-war debate about the role of the coroner and highlights the importance of its purpose being clear.

The following case study illustrates the point.

Case study 1 – The murder of Vivian Messiter in Southampton – 30 October 1928[28]

William Podmore was suspected of committing the offence but had not been charged by the police. An inquest was opened in August 1929 and Podmore was present. He was informed that he need not say anything and was advised to seek legal assistance. The coroner opened the inquest and a juror challenged its purpose. The juror asked the coroner,

’Will you please give us some direction as to whether we are here to try and ascertain the cause of death or to listen to an enormous amount of evidence, of which we might not perhaps require to know nothing about? If during the proceedings, we come to the opinion that we are satisfied as to the cause of death, are we empowered by you to be allowed to give our verdict, or

[27] Edward Kirton-Darling, *Death, Family and the Law* (Bristol University Press 2022) page 26. See also Alexandra Pitman, ‘Reform of the Coroners service in England and Wales; policy making and politics’ (2012) 36 (2) The Pyschiatrist 1-5.
[28] MEPO 3/1643.

must we sit and listen to a lot of evidence which, perhaps, must be irrelevant and provide copy for the Sunday papers?'[29]

The coroner advised the jury that it was their duty to return a verdict of murder and should name the murderer if the evidence demonstrated that to be the case. The juror responded.

'I understand that we are here to listen to the evidence and if we are of the opinion that murder has been committed by someone, known or unknown, we are still to sit here and hear it through'.[30]

This particular case suggests that the purpose of a jury inquest was not clear to ordinary members of the public and is indicative of a process that was now outdated. The evidence being put before the inquest was to be repeated in a magistrates' and assize court whose roles were also to determine the guilt or otherwise of a suspected offender. It had become a prolonged and repetitive process. The chapter now examines this particular aspect.

7.2 Duality of process

The Home Office remained critical of the role of the coroner in the investigation of deaths. This related specifically to the duality of process which existed between

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[29] MEPO 3/1643 Transcript of Coroners' hearing 6 March 1929. See also HC Debate 7 May 1930 vol 238, cols 985-1078 for a debate about information obtained from coroners' inquests being used to satisfy the Sunday newspaper readership.
[30] MEPO 3/1643 Transcript of Coroners' hearing 6 March 1929.

the coroners' court and its duty to hold inquests and the criminal trial process with its function of determining guilt or innocence of a charged offender.[31] The implication is that it was specifically critical of the coroner's evidence-gathering function. It is apparent that the Home Office was particularly concerned about the practice of coroners taking evidence in cases of murder.[32] Evidence of witnesses giving oral depositions amounted to evidence which was capable of being used at a subsequent criminal trial but it was often the practice of coroners to withhold the written depositions. This deprived the criminal trial process of important evidence.[33] This opinion expressed in Home Office papers appears to be reflecting anecdotal concerns since the practice of providing depositions to the DPP and the person indicted with an offence was mandated by legislation.[34] Its import, however, is that the problem arises due to the duality of process which existed.

The developing role of the police was not reflected in a Coroner's Bill in 1923[35] which sought to make the office of coroner more efficient.[36] Police policy similarly reflected this legal position which stated that the duties of a police officer was to merely support the coroner in the execution of his duties.[37] Metropolitan Police

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[31] HO 45/12285 (file 453044) Memo initialled AL 12 December 1923). See also HO 45/12285 (file 453044/35D dated 1925); HO 45/21842 Letter from Home Office to solicitor (4 January 1935).

[32] See HO 45/12285 (file 453044) Memo initialled AL (12 December 1923) See also HO 45/12285 (file 453044/35D dated 1925). See MEPO 3/866 as an example of a coroner cautioning and examining a suspected offender.

[33] HO 45/12285 (file 453044) Memo initialled AL (12 December 1923). See also HO 45/12285 (file 453044/35D dated 1925).

[34] Prosecution of Offences Act 1879, s 5 (42 & 43 Vic c 22 s 5) and Coroners' Act 1887, s 18 (5) (50 & 51 Vic 71 s 18 (5)).

[35] 14 Geo 5. See also HO 45/24977 and HO 45/24905.

[36] HO 45/24977.

[37] To prevent breaches of the peace and to facilitate post-mortem examinations.

Orders specifically stated that, "Beyond this the Constable, as such, has no right or duty."[38] The Bill's content reflected the findings of the 1910 committee[39] on coroners' reform which only recommended several administrative changes to the coroner's function.[40] It commented, though, that the coroner's court is a court for which there is no authority with power to make rules of practice and procedure.[41] It also recognised that coroners' inquiries were often complete before any criminal proceedings could be instituted but made no recommendation about any change in process.[42]

Home Office criticism of the role of the coroner indicates that it recognised that rules and procedure ought to be integral aspects of a coroner's function and that it currently lacked any authority. This indicates that the duality of function between the coroner and the police which had developed was beginning to be recognised and it concluded its scrutiny of the 1923 Bill by stating that the idea of coroners being used to bring offenders to justice should be abandoned.[43] However, no legislation was recommended to address this anomaly and the Bill retained the power of a coroner to call for a jury in the case of murder[44] without the need to

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[38] MEPO 8/8 General Orders (1923), section XXVI, para 174c.

[39] Second Report of the Departmental Committee appointed to inquire into the law relating to coroners and coroners' inquests and into the practice in coroners' courts, Part 1 (Cmd 5004, 1910).

[40] Second Report of the Departmental Committee appointed to inquire into the law relating to coroners and coroners' inquests and into the practice in coroners' courts, Part 1 (Cmd 5004, 1910).

[41]These comments were aimed at the role of a post-mortem rather than any investigative ability. Second Report of the Departmental Committee appointed to inquire into the law relating to coroners and coroners' inquests and into the practice in coroners' courts, Part 1 (Cmd 5004, 1910) para 18.

[42] Report of the Departmental Committee appointed to inquire into the law relating to coroners and coroners' inquests and into the practice in coroners' courts, Part 1 (Cmd 5004, 1910) para 35.

[43] HO 45/12285 (file 453044 dated 1923) Memo initialled HBS (undated).

[44] Coroners Bill Clause 11 (2) (14 Geo 5 1923). In 1924, coroners in England and Wales held 37,355 inquests. There is no record of how many of these related to suspicions of murder. In

comply with the Judges' Rules outlined in chapters 5 and 6. The Bill also retained the power for a coroner's jury to return a verdict of guilty against someone who had already been sent for trial at the criminal courts.[45] This paved the way for the potential position that a man could be regarded as guilty by a coroner's court but could be found not guilty at a criminal trial.[46]

The Home Office was critical of a coroner being required to name a guilty party and have the power to commit that person for trial.[47] The coroner's inquisition should merely record the manner of death.[48] The question of instituting criminal proceedings should rest solely with the police and the Director of Public Prosecutions (DPP).[49] This was a position strongly endorsed by the DPP who stated that there should not be a duplication of proceedings and that jury inquests should resume only after the conclusion of criminal proceedings.[50] This was also a view expressed in parliament when it was argued that it should be made illegal for a coroner to carry on with an inquest when a court with 'fuller powers,' governed by the rules of evidence, was running in parallel.[51] The Home Office commented that dispensing with the duplicated role would save time and

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1925, coroners in England and Wales held 38,718 inquests. There is no record of how many of these related to suspicions of murder. See Criminal Statistics – Statistics relating to criminal proceedings, police, coroners, prisons and criminal lunatics for the year 1925 (Cmd 2811, 1925).

[45] Coroners Bill Clauses 21 (10) and (2) (14 Geo 5 1923).

[46] HO 45/12285 (file 453044) Memo initialled AL (12 December 1923).

[47] HO 45/12285 (file 453044 dated 1923) Memo initialled HBS (undated). The legislation which empowered a coroner to name a guilty party was the S.4 (3) Coroners' Act 1887 (50 & 51 Vic c 71).

[48] HO 45/12285 (file 453044 dated 1923) Memo initialled HBS (undated).

[49] HO 45/12285 (file 453044 dated 1923) Memo initialled HBS (undated).

[50] HO 45/12285 (file 453044/4 Letter from DPP to Ernley Blackwell (18 February 1924.) See also HO 45/12285 (file 453044 2 January 1924) Memo signed by AL (dated 4 March 1924).

[51] HL Debate 19 May 1925, vol 61, col 330.

money.[52] Newspapers voiced similar concerns about the role of the coroner and the manner in which they dealt with suspicious deaths.[53] It was argued that the role of the inquest had become superfluous in murder investigations.[54] The above points all indicate that despite evidential short-falls being identified in the coroners' inquiry, legislation was not seen as a means to address the concerns.

Home Office commentary, parliamentary debate and newspaper opinion also raised the wider constitutional issue of never having to try a man by inquisition alone; it was argued that this was the sole function of the criminal courts.[55] Coroners' legislation allowed an inquest to examine the evidence of a person suspected of an unlawful killing.[56] The commentary argued that it was this type of activity which brought the law of coroners' inquests into disrepute. Its proceedings had been diluted[57] and were not being taken seriously.[58]

The issue around duplication of process agitated considerable legal and political debates. The Coroners' Society[59] and the Home Office reiterated that they

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[52] HO 45/12285 (file 453044 dated 1923) Memo initialled HBS (undated). See also the later case of the alleged murder of Harry Pace in 1928 (MEPO 3/1638) when the evidence relating to the circumstances was given at the inquest, at committal proceedings, before a Grand jury and again at trial. See The Times 2 July 1928.
[53] The Times 10 June 1929; Manchester Guardian 12 October 1929.
[54] Manchester Guardian 13 May 1925.
[55] HO 45/12285 (file 453044 dated 1923) Memo initialled HBS (undated). See also HC Debate 7 May 1925, vol 183, cols 116-117 where the coroner implied that he did not concur with the outcome of criminal proceedings.
[56] Coroners' Act 1877 ss 4 and 5 (50 & 51 Vic c 71 ss 4 and 5).
[57] HO 45/12285 (file 453044 dated 1923) Memo initialled AL (12 December 1923).
[58] HO 45/12285 (file 453044 dated 1923) Memo initialled HBS (undated).
[59] HO 45/12285 (file 453044/12) minute (27 June 1924); HO 45/12285 (file 453044/14) Letter (14 July 1924); HO 45/12285 (file 453044/15 dated 8 July 1924); HO 45/12285 (file 453044/17) Memo from AL to EB (13 August 1924); HO 45/12285 (file 453044/21) Letter from DPP to Home Office (21 August 1924); HO 45/12285 (file 453044/35 dated 1 May 1925) Undated and unsigned memo; HO 45/12285 (file 453044/35B (1925); Justice of the Peace and Local Government Review, 30 May 1925; The Times 20 May 1925. HL Debate 19 May 1925, vol 61, col 329-336.

considered the earlier 1910 committee had failed to deal with 'this difficult matter'.[60] This indicates that the Home Office, newspapers, politicians and coroners themselves considered the 1923 Bill to be deficient in addressing operational concerns.

The following case study illustrates this point.

Case study 2 – The murder of Nellie Pearce in Fulham, London - 3 May 1923[61]

On 3 May 1923, the wife of Roland Duck befriended a prostitute called Nellie Pearce and took her back to her home in Fulham. She was invited to stay at the house for a few days but upon being asked to leave, she refused to go. Duck attacked Pearce and attempted to sever her head with a razor. She died because of her injuries. Duck was later described as 'half-blind, half-crippled and ex-army'.[62]

On the same day he allegedly carried out the attack, he surrendered himself to a police station and admitted the attack. He was charged with the offence. It was directed that he should appear before an inquest the same day and the entire evidence was placed into the public arena. The coroner addressed the jury and said, 'What was the nature of the act committed by Duck? If you believe his statement and take into consideration the

[60] HO 45/12285 (file 453044/24) Memo from AL (17 November 1924).
[61] MEPO 3/1586.
[62] MEPO 3/1586 - MPS report, 9 May 1923.

corroborated evidence placed before you, you can only come to one conclusion that the deceased died from the wound inflicted by Roland Duck – that Roland Duck murdered this girl. The jury returned a verdict of murder against Duck. The following day Duck made his first appearance at the criminal court charged with murder. The case was adjourned until 31 May when he was convicted.[63]

This case illustrates how the coroner's inquest process took precedence over the criminal investigation and effectively publicly tried and convicted a man for murder ahead of him appearing in the criminal courts. The process was not governed by the rules of evidence mandated in criminal courts. It duplicated the investigative process and placed the prosecution evidence into the public domain ahead of the criminal trial. The archival data demonstrates no evidential rigour and no means through which a suspected offender may defend himself.

These key criticisms were voiced in parliament when this duality of process was described as 'the mischief which may follow when a coroner's inquest proceeds alongside an inquiry by a magistrate or a criminal court.[64] Concerns were expressed that a witness may end up giving their evidence on four separate occasions: at the coroner's court, the petty sessions,[65] the Grand Jury[66] and the

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[63] MEPO 3/1586 - MPS report, 6 June 1923.
[64] HL Debate 19 May 1925, vol 61, cols 334.
[65] Magistrates Court.
[66] The Grand Jury system in England and Wales was abolished completely under the Criminal Justice Act 1948. It was originally intended to merely inquire whether there was sufficient ground to place an accused person on trial. It was replaced by committal proceedings carried out in magistrates' courts.

trial.[67] The repetition of evidence was regarded as harmful to the public.[68] There was particular concern that evidence which would be inadmissible in a trial would be aired in open court and directed at a person considered responsible for the death. This resulted in a real risk of prejudice.[69] The debate emphasised the point that a suspected person was not necessarily present when statements were read out at a hearing, nor was he necessarily legally represented. Such a position was not only likely to prejudice the future trial of an accused but also likely to inflame public opinion;[70] in effect, the accused man was convicted before he took his place in the dock.[71]

Despite the concerns, the Home Office concluded that the clauses which retained coroners' powers should remain in the 1923 Bill. It preferred instead to put forward a proposal to the Director of Public Prosecutions and the Lord Chief Justice.[72] The archival data does not identify any subsequent correspondence on this particular point but concerns about inquests falling short of the standards applied in the criminal courts were offset by a provision that the proceedings would be overseen by the Lord Chancellor's Department contained within earlier legislation.[73] The amended draft Bill resulted in the Coroners' (Amendment) Act 1926.[74] This is again indicative of the repeated theme throughout chapter 5 that

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[67] HL Debate 19 May 1925, vol 61, col 334. See also HO45/12478 where the practice was criticised by the police.
[68] HL Debate 19 May 1925, vol 61, cols 334.
[69] HL Debate 19 May 1925, vol 61, cols 334.
[70] HL Debate 19 May 1925, vol 61, col 335.
[71] HL Debate 19 May 1925, vol 61, col 335.
[72] HO 45/12285 (file 453044) Memo initialled AL (12 December 1923); G E Caraker, 'The Coroners Court in England and Wales: An Ancient Office that is still vigorous' (1951) 27 (5) American Bar Association Journal 361-363.
[73] Criminal Justice Act 1925, ss 11-14 (15 & 16 Geo 5 c 86 ss 11-14).
[74] Coroners' (Amendment) Act 1926 (16 & 17 Geo 5 c 59).

the Home Office more often favoured adopting a course of compromise rather than introduce further legislation. This behaviour would be repeated later when it further considered the need for legislative reform.

One of the specific reasons why the Act was introduced was to prevent the unnecessary duplication of proceedings before coroners and before justices.[75] The Brodrick Report on Death Certificates and Coroners,[76] published in 1971, stated that by 1926 the police had been recognised as the primary body responsible for investigating homicides and the new Act reflected this position.[77] It is important to note that this is a generalised use of the word 'investigating' and does not consider the details of the investigation as outlined in chapter 5. It is a comment which retrospectively recognises that the police had, in fact, morphed into an investigative body.

The report does not expand on this point, although section 20 of the Act[78] directed a coroner to adjourn an inquest where someone had already been charged with murder. The Home Office considered that this would reduce the number of coroners' inquisitions.[79] However, the Act did not remove the duality of process where no one had been charged and it retained the power for coroners to summons a jury if murder was suspected and empowered the coroner to send someone to stand trial.[80] Professional guidance was re-issued to coroners in

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[75] HL Debate 11 March 1926, vol 63, col 556.
[76] Report of the Committee on Death Certification and Coroners (Cmnd 4810, 1971).
[77] Report of the Committee on Death Certification and Coroners (Cmnd 4810, 1971) page 116.
[78] Coroners (Amendment) Act 1926 c 59 s 20.
[79] LCO 2/826 Home Office note undated.
[80] Coroners (Amendment) Act 1926 ss 13 (2) and 25 (1) (16 & 17 Geo 5 c 59 ss 13 and 25).

1927 which recognised the change in legislation[81] but dedicated 57 pages to detailing the legal explanation of murder and manslaughter.[82] It emphasised that a coroner's jury had all the rights of a Grand Jury to find a verdict of murder and on that finding the party may be tried and may be sentenced to death.[83] In practice, there was a 'decided tendency'[84] for the Assize court to offer no evidence in these cases which had only been committed on a coroner's warrant,[85] but it is an important point that the legislation remained in force. Judges were critical of the practice and described it as 'do[ing] away' with the safeguard of magistrates' proceedings which were provided by statute.[86]

After the passing of the Coroners' (Amendment) Act in 1926, between 1927 and 1936 the number of cases which resulted in coroners referring suspected murder cases to the DPP reduced.[87] This is reflected in the data contained within successive analyses of judicial statistics[88] within the same date range where

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[81] Thomas F D, Sir John Jervis on the Office and Duties of Coroners with Forms and Precedents (7th edn, Sweet and Maxwell 1927) v.
[82] This continued after the inter-war period. See Purchase W B, *Sir John Jervis on the Office and Duties of Coroners with Forms and Precedents* (8th edn, Sweet and Maxwell 1946).
[83] Thomas F D, Sir John Jervis on the Office and Duties of Coroners with Forms and Precedents (7th edn, Sweet and Maxwell 1927) 13.
[84] HO 45/12478 Evidence of Assistant Commissioner Kendal, page 5. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.
[85] HO 45/12478 Report of Director of Public Prosecutions, page 3. Undated, but it is clear from the contents that it was after the implementation of the Coroners' (Amendment) Act 1926. See also HO 45/18360.
[86] HO45/12478 Evidence of Assistant Commissioner Kendal, page 5. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.
[87] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 22. There were 17 cases in total. There had also been a few cases since 1926 where a coroners verdict of guilty has been followed by a trial which has also found the person guilty but the report argued that this was representative of where the police should have arrested earlier.
[88] Criminal Statistics: Statistics Relating to Criminal Proceedings, Police, Coroners, Prisons and Criminal Lunatics for the year 1927 (Cmd 3301, 1927); Criminal Statistics England and Wales 1928: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1928 (Cmd 3581, 1928); Criminal Statistics England and Wales 1929: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1929 (Cmd 3583, 1929);

there is a demonstrable increase of coroners' inquiries which were abandoned and not resumed. The implication is that they were handed to the police to continue the investigation. The same, important observation is again necessary here; passing an investigation to the police means an enquiry to establish the identity of the offender and does not include a discussion about the detailed nature of the investigation outlined in chapter 5.

Figure 1 - Number of coroners' cases adjourned and not resumed by virtue of Section 20 Coroners' (Amendment) Act 1926

1927	1928	1929	1930	1931	1932	1933	1934	1935	1936
90	149	148	138	162	155	193	188	182	226

Source: Criminal and judicial statistics annual reports

The figures reveal a significant point: it demonstrates the scale of suspected murder cases which were being overseen and investigated by the coroner prior to the 1926 Act being implemented. However, between these dates 17 suspected

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Criminal Statistics England and Wales 1930: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1930 (Cmd 4036, 1930); Criminal Statistics England and Wales 1931: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1931 (Cmd 4360, 1931); Criminal Statistics England and Wales 1932: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1932 (Cmd 4608, 1932); (Criminal Statistics England and Wales 1933: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1933 (Cmd 4977, 1933); Criminal Statistics England and Wales 1934: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1934 (Cmd 5185, 1934); Criminal Statistics England and Wales 1935: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1935 (Cmd 5520, 1935); Criminal Statistics England and Wales 1936: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1936 (Cmd 5690, 1936).

murder cases[89] were referred to the DPP as a result of a coroner's hearing, which demonstrates that after the new legislation coroners continued to inquire into cases of suspected murder. To a degree, this challenges Brodrick's assertion above[90] that the police had been recognised as the primary body responsible for investigating homicides.

Criticism of the coroner's process remained. The Daily Herald reported on a particular high-profile murder trial [91] that the case ought to go down in legal history as proving the need for revision of the existing laws governing the authority of a coroner's inquest.[92] The trial was a result of a guilty verdict at a coroner's inquest and the Times argued that had the matter been left in the hands of the police and the DPP, the matter would never have progressed to trial.[93] It is not possible to determine from the data examined the extent to which the DPP was a directing force in the prosecution of offences specifically referred by the coroners' process. However, his involvement seems to have been unaffected by the new legislation which indicates that prosecutions for murder were always overseen by the DPP office but which remained critical of the duality of process which existed to initiate proceedings.[94]

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[89] The Report of the Departmental Committee on Coroners 1936 (Cmd 5070, 1936) page 22.
[90] Report of the Committee on Death Certification and Coroners (Cmnd 4810,1971) page 116.
[91] R v Pace 1928.
[92] Daily Herald 9 July 1928. See also HC Debate 9 July 1928, vol 219, col 1857.
[93] The Times 8 July 1928.
[94] HO 45/12285 (file 453044/4) Letter from DPP to Ernley Blackwell (18 February 1924). See also HO 45/12285 (file 453044 dated 2 January 1924) Memo signed by AL (dated 4 March 1924).

Figure 2 - Murder cases prosecuted by the Director of Public Prosecutions (DPP)

1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
125			91	92	73	102	74	78	81

1929	1930	1931	1932	1933	1934	1935	1936	1937	1938
54	44	57	63	56	58	61	70	58	71

Source: Criminal and judicial statistics annual reports. There is no data available for the years 1920, 1921 and 1939.

There are several statistical variables in the data available and their reliability is subject to different interpretations. This was discussed in chapter 3 (methodology).[95] However, the broad trend tends to demonstrate that there was no significant variation in the murder rate throughout the inter-war period and no conclusions have been drawn about the DPP's involvement in specific cases.

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[95] For an analysis of the accuracy of historical data see Howard Taylor, 'Rationing Crime: the political economy of criminal statistics since the 1850s' (1998) 3 Economic History Review 569-590; Robert M Morris, 'Lies, damned lies and criminal statistics: Reinterpreting the criminal statistics in England and Wales' (2001) 5 (1) Crime Histories and Societies 111-127.

Figure 3 - Murder rates and percentage involvement of DPP in their prosecution

1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
123 (101%)			100 (91%)	99 (92%)	105 (70%)	125 (97%)	114 (65%)	100 (78%)	99 (81%)

1929	1930	1931	1932	1933	1934	1935	1936	1937	1938
103 (52%)	87 (51%)	111 (51%)	94 (67%)	111 (50%)	109 (53%)	101 (62)	114 (61%)	88 (65%)	97 (73%)

Source: Criminal and judicial statistics annual reports. There is no data available for the years 1920, 1921 and 1939.

Parliament was more concerned with historical and emerging trends despite the passing of the 1926 Act[96] and expressed the view that there were very strong objections to the current procedure.[97] A motion was introduced to wholly remove the need for a coroner to name a person responsible for murder regardless of the status of any police investigation.[98] It reiterated that the office of coroner was a very ancient office and it had gradually come to occupy a very different position. It was argued that a coroner's responsibility to name a murderer was originally due to a coroner's court providing a collateral security for the prevention of crime, and it was thought that the coroner's process provided a ready avenue to explore

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[96] HC Debate 11 July 1928, vol 219, cols 2244-2247.
[97] HC Debate 11 July 1928, vol 219, col 2245.
[98] HC Debate 11 July 1928, vol 219, col 2244.

whether murder[99] had been committed and to bring offenders to justice. The implication of this statement is that the coroner was historically best placed to investigate suspicious deaths but this had now changed. This thesis argues that this assertion recognised that the position had changed significantly since the introduction of the original legislation in 1887[100] and that the modern police service was now better placed to take primacy. This is supported by the commentary in the debate which argued that the police were perfectly aware of the evidence which had been placed before the coroner and if that evidence pointed to a specific person, the police were now capable of making their own inquiries and able to bring a person before the courts without the necessity of a coroner's warrant.[101] This represented an anomalous position and it was argued that a further Bill should be introduced to provide that a coroner should be limited to finding the cause of death alone.[102]

The debate emphasised the concerns about the recently introduced legislation which still allowed a coroner to investigate murder where the police had not yet made an arrest and argued that the 1926 Act was unsatisfactory.[103] The position was further aggravated when a person had been acquitted at the criminal courts but was then referred back to the coroner's court who would theoretically be able to determine the acquitted person to be guilty. It was argued that this represented a very illogical state of the law[104] and would later be described as 'unjust'.[105] It

[99] Or manslaughter.
[100] Coroner's Act 1887 (50 & 51 Vic c 71).
[101] HC Debate 11 July 1928, vol 219, col 2246.
[102] HC Debate 11 July 1928, vol 219, col 2246.
[103] HC Debate 11 July 1928, vol 219, col 2246.
[104] HC Debate 11 July 1928, vol 219, col 2246.
[105] HC Debate 30 January 1929 vol 224, col 948.

also contradicted a key point in the development of the Coroners (Amendment) Act 1926 that the issues decided in criminal proceedings were not to be re-rehearsed[106] at a coroner's hearing.[107] The statistical data relating to this specific point raises an anomaly which provides no definitive conclusion as to the extent that coroners' courts remained involved in murder investigations. Each year, coroners' courts returned guilty verdicts on murder cases although the rate decreased after the 1926 Act. However, its continued involvement highlights the duality of process which remained throughout the period.

Figure 4 - Murder verdicts returned by coroners' courts

1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
208			138	157	141	163	164	121	76

1929	1930	1931	1932	1933	1934	1935	1936	1937	1938
81	84	71	76	73	83	75	71	53	55

Source: Criminal and judicial statistics annual reports. There is no data available for the years 1920, 1921 and 1939.

By 1929, the narrative accused coroners of turning inquests into 'torture chambers' by using methods of inquiry not permitted for use by the police.[108] This referred to the continuing practice of unrestricted questioning of suspected

[106] The exact word used was 'canvassed'.
[107] HL Debate 11 March 1926, vol 63, cols 559.
[108] Daily Mail 10 October 1929; Manchester Guardian 12 October 1929.

offenders at an inquest. The newspapers argued that 'the majority of people value the principle of innocent until proven guilty and that people's opinion is 'the true strength of the law'.[109] Coroners' courts had been turned into inquisitions and use methods that no criminal judge would employ.[110] There is a direct link here to the arguments outlined in chapter 5 as it was suggested that the coroner framed questions on the advice of the police since they would not be permitted to do so under police investigative rules. The newspaper expressed the view that this was an attempt to circumvent the regulations and was 'unjust and a menace to our system of justice.'[111] The police recognised that this was a logical conclusion for observers to make but they stated that such criticism arose only in cases where coroners had opened an inquest and investigated the circumstances after the police had already decided that there was insufficient evidence to charge any person.[112] Many cases were cited where this criticism featured.[113] The police denied that they used coroners' inquests in this manner.[114]

The newspapers cited a particular case[115] where the coroner had directed the jury to name a suspected person. She was later acquitted at criminal court. The newspaper argued that it was time to call a halt to this new trend of criminal prosecution: 'Let the police do their job but not at the expense of our legal

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[109] Daily Mail 10 October 1929.
[110] Daily Mail 10 October 1929.
[111] Daily Mail 10 October 1929.
[112] HO45/12478 Evidence of Assistant Commissioner Kendal, page 6. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.
[113] HO45/12478 Evidence of Assistant Commissioner Kendal, page 7. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926. The alleged murders of Harry Pace (1928), Vera Page (1931), Nora Upchurch (1931) and Alfred Oliver (1929).
[114] MEPO 2/7334 Police report, 6 March 1935.
[115] The alleged murder of Harry Pace by Beatrice Pace in 1928.

code'.[116] The newspaper also reported that coroners were critical of police who effected an arrest before the coroner had an opportunity of questioning him before a jury.[117] This reinforces the chapter's argument that coroners still considered themselves the primary office of investigation. There were calls in parliament to amend the law[118] but the Home Secretary rejected the suggestion on the grounds that given the large number of inquests there were very few complaints.[119]

Throughout 1935 and 1936, debate about the powers of the coroner continued. The police argued that coroners were overworked and inquests were skipped through as a matter of expedience.[120] Newspapers reported that the old practice of coroners overseeing suspected murder cases was repugnant and should be abolished.[121] The fact that coroners were still conducting inquests into suspicious deaths, again challenges Brodrick's assertion above that the police were considered the primary body for investigations. One newspaper referred to inquests as 'unofficial murder trials'.[122] There was a split view within the Coroner's Office. Some supported this position;[123] others did not.[124] The Director of Public Prosecutions argued that short of some complete reform, he could see no way of

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[116] Daily Mail 10 October 1929.
[117] Daily Mail 26 October 1929.
[118] HC Debate 29 October 1929, vol 224, col 231; HC Debate 7 May 1930, vol 238, cols 985-1078.
[119] HC Debate 29 October 1929, vol 224, col 231. There were, on average, around 30,000 inquests held each year. See Judicial Statistics reports 1919-1938 cited above.
[120] MEPO 2/7334 Police report, 6 March 1935.
[121] Evening Standard 31 January 1935; Manchester Guardian Weekly 1 February 1935. See also The Times 2 February 1935.
[122] News Chronicle 7 February 1936.
[123] HO 45/24977 Letter from Holderness Coroner (18 January 1935); Daily Mail 7 February 1936.
[124] Belfast News 21 February 1936; Yorkshire Post 20 February 1936; Daily Mail and Daily Herald 20 February 1936; Pharmaceutical Journal 15 February 1936; The Times 7 February 1936; North Mail 7 February 1936; Sunday Despatch 16 February 1936.

avoiding a dual investigation.[125] The significance of this commentary is that it fundamentally underlines how a duality of process continued to exist and which led to the potential for evidence to be aired in a public environment and ran the risk of its confidentiality and integrity being compromised. The inference is that legislation could have been introduced to codify the procedure and remove the need for evidence to be given in public arenas on separate, unconnected occasions.

The matter was again reviewed in 1936 when the Departmental Committee on Coroners reported.[126] It dedicated an entire chapter to murder investigations.[127] The report cited that it used to be the function of the coroner before the present system of policing and magistrates[128] and stated that in 1933, 193 cases had been adjourned at the request of the police.[129] One case involved a jury not naming the offender as they were entitled to in law. The coroner directed them to change their decision.[130] This fundamentally overrides the responsibility of a jury and their requirement to reach an independent decision. The coroner arbitrarily decided on the guilt of an offender. The man was sent for trial but acquitted.[131] This reinforces the earlier view that coroners were conducting unofficial trials using inappropriate methods.[132]

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[125] HO45/12478 Report of Director of Public Prosecutions, page 4. Undated, but it is clear from the contents that it was after the implementation of the Coroners' (Amendment) Act 1926.
[126] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936).
[127] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936).
The report was heavily influenced by a coroner's hearing which effectively tried a man for murder against police and DPP advice. See The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) pages 26-28.
[128] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 22.
[129] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 22.
[130] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 23.
[131] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 23.
[132] Daily Mail 10 October 1929; Manchester Guardian 12 October 1929.

The Departmental Committee reported that this was an occasion which shocked the public conscience and arguments which should determine how a person should be prosecuted on a capital charge should be advanced.[133] The report emphasised that such matters should be dealt with in the criminal courts where strict rules of evidence were observed.[134] It argued that it was a fiction that coroner's inquests did not amount to a trial.[135] The accused's safeguards are completely ignored and even if found not guilty, it leaves an indelible stain on a man's character.[136] A prominent chief constable spoke against it[137] and the Press had unanimously protested against it.[138]

The report recommended that the legislation[139] which placed this responsibility on the coroner be removed in cases where the police have not charged anyone.[140] Coroners were being compromised in this dual role.[141] The responsibility should lie with the police which is the appropriate body to take the necessary steps to arrest the individual.[142] If an inquest needs to later resume because no-one has been charged, it must strictly follow the same rules of evidence which apply in the criminal courts.[143] This indicates that the authors of

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[133] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 23.
[134] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 23.
[135] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 24.
[136] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) pages 24-25.
[137] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 25. Chief Constable Major Egan, Southport Police.
[138] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 26.
[139] Coroners Act 1887 s 4 (3) (50 & 51 Vic c 71 s 4 (3)).
[140] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 25.
[141] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 28.
[142] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 25.
[143] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 25. This also fell in line with Scottish practice. See The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) pages 25-26.

the report are arguing that it is legitimate for an inquest to resume once a police investigation has been completed.[144] The Judges' Rules would apply equally in the coroners' and criminal courts.

The data in the coroners' files indicates that there was a strong view held by committee members employed to examine the process that murder investigations should have been the preserve of the police service; it was governed by the assumed investigation standard outlined in chapter 5 and the strict rules of evidence which followed. This idea that the strict rules of evidence were applied in the criminal courts is a naïve view given the breaches identified by this thesis in the data outlined in chapter 6. It is significant that the report provides more evidence of a lack of a comprehensive understanding of the criminal investigation process and is supportive of the arguments made earlier in chapter 5 that the emerging complexities of a criminal investigation were not fully recognised. The report argued that the coroner's process of eliciting useful information would be better served by the police carrying out the 'private questioning of possible witnesses and possible suspects'.[145] This is a statement which stands diametrically opposed to those contained in the RCPPP report of 1929 and legal commentary since the middle of the previous century[146] which strongly argued that the police should not be encouraged to question suspects. It demonstrates a lack of understanding of the criminal investigation and justice process or a willingness to side with the police view that questioning of prisoners ought to be allowed.

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[144] This is either after a trial by jury or the police failed to identify an offender.
[145] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) page 28.
[146] See chapter 5.

Its concluding comments state that 'in cases of suspected murder, it is of the greatest importance that there should be no friction between coroners and the police in the conduct of their respective enquiries.'[147] It recommended that the police taking precedence over murder investigations should be put on a legislative footing and coroners should be allowed to adjourn for periods of 14 days to allow the police to investigate.[148] A separate note in the archives from the DPP offers a contrary view which stated that he was opposed to any legislative reform.[149]

The Home Office gave a mixed response to the report though it was largely critical of its recommendations.[150] It recognised that the report was based on a particularly high-profile inquest where the coroner acted against the advice of the police and the DPP[151] but argued that the report's recommendations would not prevent the same circumstances arising again.[152] The matter was the subject of legal debate in professional journals[153] which concluded that any inquiry should be careful, impartial and well-informed. The Committee had comprised several

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[147] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) pages 28-29.
[148] The Report of the Departmental Committee on Coroners (Cmd 5070, 1936) pages 28-29.
[149] LCO 2/12454 Note by DPP Edward Tindal Atkinson (26 February 1936) pages 1-2.
[150] LCO 2/12454 Report of the Committee on Coroners note from Home Office (Maxwell) (28 February 1936).
[151] The case was an inquest in Weymouth in January 1935 where the suspect was treated by the coroner as if on trial but without the measures of protection afforded in criminal trials.
[152] LCO 2/12454 Report of the Committee on Coroners note from Home Office (Maxwell) 28 February 1936) page 1.
[153] The Law Journal, Volume LXXIX, No. 3601, 19 January 1935 pages 44-45. See also The Law Society's Gazette, Volume XXXII, March 1935 pages 99-100 which outline the appointment of a committee to inquire into the law and practice relating to coroners.

senior legal officials[154] but the Home Office criticised the Departmental Committee for 'erroneously' suggesting that legislation was the answer.[155]

The report recommended that a set of rules be established to govern the conduct of coroners[156] but the Home Office thought that it would be 'extraordinarily difficult to draw up'.[157] It was critical of the suggestion that coroners' inquests ought to be subject to the rules of evidence when there are no parties, no indictment, no prosecution and no defence. It sided with the report's assertion that an inquest was an investigation and not a trial[158] and criticised the report's guidance to coroners as inadequate.[159]

The Home Office drew the distinction between the role of a coroner with that of a police officer and the complicated rules of criminal evidence.[160] Only highly competent coroners could deal with this.[161] It recommended that in future no inquest should take place until there have been criminal proceedings or the police have decided that they cannot institute any.[162] It concluded by stating that

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[154] Lord Wright (former High Court judge), Sir Archibald Bodkin (former Director of Public Prosecutions) and Mr Digby Cotes-Preedy KC.
[155] LCO 2/12454 Report of the Committee on Coroners note from Home Office (Maxwell) (28 February 1936) page 1.
[156] Authorised under Section 20 Coroners' (Amendment) Act 1926.
[157] LCO 2/12454 Report of the Committee on Coroners note from Home Office (Maxwell) (28 February 1936) page 2.
[158] LCO 2/12454 Report of the Committee on Coroners note from Home Office (Maxwell) (28 February 1936) page 2.
[159] LCO 2/12454 Report of the Committee on Coroners note from Home Office (Maxwell) (28 February 1936) page 2. It is significant that this was also a view expressed in more recent academic treatment of the subject. See David Boldt, 'The coroner as judge and jury' (2020) 7 New Zealand Law Journal 246.
[160] LCO 2/12454 Report of the Committee on Coroners note from Home Office (Maxwell) (28 February 1936) page 3.
[161] LCO 2/12454 Report of the Committee on Coroners note from Home Office (Maxwell) (28 February 1936) page 4.
[162] LCO 2/12454 Report of the Committee on Coroners note from Home Office (Maxwell) (28 February 1936) page 4.

legislation was not the answer but only the appointment of full-time, highly-qualified coroners could remedy the situation. It anticipated strong resistance from boroughs and local authorities in this regard.[163]

This proposal was subsequently dismissed by the Lord Chancellor's department which expressed dissatisfaction with previous actions of full-time coroners.[164] The Lord Chancellor agreed with the removal of a coroner's power to commit someone for trial and being obliged to adjourn a case on the request of the police.[165] Conversely, he considered the introduction of standards of evidence far easier than the Home Office envisaged.[166] The Home Secretary was asked on two separate occasions when he intended to introduce legislation in light of the report's recommendations but he dismissed the idea on the grounds that there was insufficient time in the legislative timetable.[167]

In 1937, a draft set of rules governing the practice of coroners was prepared by the Coroners' Society.[168] This was despite the Home Office's earlier assertion that the wording would be difficult. This included a new caution to be administered at inquests when examining suspected offenders[169] and reasserting the position that the police may request an adjournment if they are still investigating the

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[163] LCO 2/12454 Report of the Committee on Coroners note from Home Office (Maxwell) (28 February 1936) page 5.
[164] LCO 2/12454 Letter from Lord Chancellor's Department (Claud Shuster) replying to Maxwell's letter above (3 March 1936) pages 1, 3.
[165] LCO 2/12454 Letter from Lord Chancellor's Department (Claud Shuster) replying to Maxwell's letter above (3 March 1936) page 2.
[166] LCO 2/12454 Letter from Lord Chancellor's Department (Claud Shuster) replying to Maxwell's letter above (3 March 1936) page 2.
[167] LCO 2/12454 HC Debate 26 November 1936, vol 318, col 537; HC Debate 6 April 1937, vol 322 col 22.
[168] LCO 2/4958 Report (7 January 1937).
[169] LCO 2/4958 Report (7 January 1937) para 1.

circumstances.[170] They also recommended that a coroner was able to exclude the public from any proceedings if it was in the interests of justice to do so.[171] The Home Office response was to acknowledge that the rules appear to have some sense though 'the drafting is not in all respects beyond reproach.'[172] It is not clear to which rule(s) this comment is aimed. The rules were never implemented due to the interruption caused by the Second World War and they would not be further considered until 1951.[173] There had been a repeated position adopted by the Home Office that legislation was unnecessary and it followed the political direction provided by the Home Secretary. To this extent, it embraced elements of Weber's model of bureaucracy by failing to respond to concerns of politicians, newspapers and the police and adopted the dispassionate position that the problems were sufficiently minimal to justify no legislative change.

Criticism of the coroner's office continued throughout 1937[174] and questions were later raised about when legislation would be introduced.[175] The following year, the issue of coroners' courts re-examining cases which had been dismissed at the criminal courts was raised again. It had been argued 10 years earlier that this was an illogical state of the law[176] but the practice was continuing.[177] It was argued that the law should be abolished but the Home Secretary stated that he was not in a position to make a statement as to the prospect of legislation and

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[170] LCO 2/4958 Report (7 January 1937) para 2a.
[171] LCO 2/4958 Report (7 January 1937) para 6.
[172] LCO 2/4958 Letter from Claud Schuster to Sir Alexander Maxwell (22 November 1937).
[173] LCO 2/4958 Letter from Home Office to Sir Albert Napier (19 July 1950) and unattributed letter (25 January 1951).
[174] HL Debate 15 April 1937, vol 104, col 949.
[175] LCO 2/12454 HC Debate 14 November 1938; LCO 2/12454 HC Debate 24 November 1938.
[176] HC Debate 11 July 1928, vol 219, col 2246.
[177] HC Debate 28 July 1938, vol 338, cols 3286-3287.

intimated that there was insufficient parliamentary time to introduce any.[178] None was introduced. Legislation to remove the responsibility from a coroner of finding a verdict of murder and the ability to charge a person with the offence was not introduced until the Criminal Law Act 1977.[179]

The chronology of events surrounding the departmental committee report in 1936 mirror the events following the RCPPP report in 1929 about police practice and procedure. Individual governments adopted contradictory positions. In 1936, the Home Office fundamentally disagreed with the committee's recommendation that legislation was necessary. In 1929, it had been an unofficial committee of judges which blocked the introduction of legislation governing the procedural treatment of arrested people and in 1936, the Home Office adopted the same position about the operational functionality of coroners. The combination of divergences of opinion and an unwillingness to introduce legislation may indicate that there was a lack of understanding of the part of government departments about the complexity of criminal investigations. It is recognised that alternative explanations may be put forward, but this thesis draws this conclusion based on the data examined.

The chapter has so far outlined how a duality of process existed which was specifically mandated through legislation. The issue acts as a supporting factor to the argument that inter-war legislation did not recognise the police as the primary office of responsibility for the investigation of murder. This was despite

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[178] HC Debate 28 July 1938, vol 338, col 3287.
[179] Criminal Law Act 1977, s 56.

recognition by parliamentary committee members and newspapers which were beginning to recognise the developing role of the police in investigations. It now examines the corollary to this position that there existed a significant degree of risk to the integrity of police evidence which was aired in a coroner's public inquest before the police had the opportunity to investigate and arrest suspected offenders.

7.3 Compromise of the police investigation

Of the 71 files examined at the National Archives, there are 12 examples of police evidence being shared in court at a coroner's open hearing before any person had either been charged with a criminal offence or had stood trial.[180] There are numerous other examples identified in newspaper coverage of coroners' hearings.[181] Many of these involved cases where the police investigation was current and at that time no-one had been arrested. This translated into a position where the coroner was openly investigating the circumstances with no evidence-gathering restrictions placed upon him. The effect of this was that evidence which would have been normally withheld from the public domain was made public knowledge. The risk associated with this course of action was that an as yet, un-arrested offender, may become aware of the evidence in the possession of the police and would be in a position to dispose of any further evidence. This

[180] App 2, lines 15-23, 25, 28, 33.

[181] See for example The Times 14 November 1918, 18 January 1919, 3 May 1919, 14 May 1919, 9 July 1919, 13 January 1920, 6 January 1922, 26 February 1926 and 10 November 1930. One matter was covered in great detail including evidence from the man suspected of murder over many weeks. See The Times 11 June 1930, 3,4 and 5 July 1930; 14 August 1930; 17 September 1930. Also see Daily Mail 27 February 1919; 12 December 1923.

potentially compromised the effectiveness of the police investigation and was a position which attracted occasional internal police criticism. Former Scotland Yard Chief Constable Wensley stated that it was a futile position where 'coroners have subjected certain witnesses to severe examination on points that appeared suspicious. Really, it was for the police to find the criminal'.[182] Assistant Commissioner Kendall argued that 'the unfairness lies in the fact that a man is finally put on trial before a dozen people who may have had a good opportunity of completely making up their minds on the matter before they come into court.[183] He further argued that coroners courts are notoriously known for being universally open to the Press and are universally exploited by them.[184] The matter will never be satisfactorily dealt with unless and until it is made contempt of court to publish the statement of anybody who may later be called as a witness in criminal cases.[185] A later observation was that criminal evidence should not be put into the public domain by inquests; the publicity causes pain and injustice.[186] It reiterated the earlier argument above that very little was achieved by a coroner's jury returning a guilty verdict since the whole thing has to be determined again at a criminal court.[187]

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[182] Frederick Porter Wensley, Forty Years of Scotland Yard: A Record of Lifetime's Service in the Criminal Investigation Department (Garden City 1930) 294.
[183] HO 45/12478 Evidence of Assistant Commissioner Kendal, page 7. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.
[184] HO 45/12478 Evidence of Assistant Commissioner Kendal, page 7. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.
[185] HO 45/12478 Evidence of Assistant Commissioner Kendal, page 8. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.
[186] MEPO 2/7334 Police report (6 March 1935).
[187] MEPO 2/7334 Police report (6 March 1935).

The following case study illustrates this point.

Case Study 3 – The murder of Alice Lawn in Cambridge – 27 July 1921[188]

Alice Lawn had been murdered in her shop and the police began to interview a series of witnesses to identify a suspect. A man named Clanwaring[189] came under suspicion but there was insufficient evidence to charge him with the murder. He was charged with an unconnected offence and remanded in custody and enquiries continued into the murder.

The coroner opened an inquest two days after the murder had been discovered. He commented that it was rare for a jury to be summoned in such circumstances. He then proceeded to take evidence of the discovery of the body.[190] The matter was adjourned until 8 August. Police officers investigating the case were troubled that any enquiries they now conducted would be reported back to the coroner.[191] The evidence may be passed onto Clanwaring during any future hearings. The investigating officer commented that this would depend on what type of man the coroner was and 'how deeply he intended to go into the matter'.[192] The comments made by the police officer are inferring that Clanwaring would be able to monitor police progress in the case and consequently be able to prevent further evidence

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[188] MEPO 3/1565 Reports of CI Mercer (1 August 1921 and 1 September 1921).
[189] He also used the pseudonym, Warren.
[190] The Times 30 July 1921.
[191] MEPO 3/1565 Report of CI Mercer (1 September 1921).
[192] MEPO 3/1565 Report of CI Mercer (1 September 1921).

being discovered. It is not the personal feelings of the investigating officer which exposes this concern, but the fact that the coroner's investigative process demanded that some or all of the evidence be declared in open court. Legislation mandated the process, although it was at the discretion of the coroner the extent to which, it was disclosed. This is indicative of a police investigation being potentially compromised by the coroner's proceedings running simultaneously.

When the inquest resumed it heard evidence from witnesses who visited the deceased's shop on the day of the murder and the description of a suspect was given.[193] This was placed into the public domain.[194] The inquest was again adjourned until 19 August. No person had been arrested or charged by the police but evidence they had obtained was passed to the coroner. When the inquest resumed it heard evidence from a number of witnesses. This included the evidence of the statements made by Clanwaring. He was unable to account for his movements at the time of the murder, had made statements which were proven to be untrue and could be shown to be in the area at the time of the offence. He was also in possession of money after the commission of the offence. There was no direct evidence to connect him to the offence.[195] Clanwaring gave evidence and denied any knowledge of the murder. The jury committed him to stand trial for murder.[196] He was later acquitted.

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[193] The Times 9 August 1921.
[194] The Times 9 August 1921.
[195] MEPO 3/1565 Report of CI Mercer (1 September 1921).
[196] The Times 20 August 1921.

This is a significant chronology of events and the case is illustrative of an investigation where the coroner gathered evidence outside of the rules of evidence applied in the criminal courts[197] and created a risk that important evidence may be provided to a suspected person before a criminal investigation had been concluded. It is also another factor in the argument that the developing role of the police was not fully recognised by the courts.

An additional, later criticism of the coroners' ability to compromise a police investigation was also apparent. In murder investigations, the (victim's) body was legally entirely under the control of the coroner.[198] The police had no authority in cases to choose the pathologist to conduct the post-mortem examination. In cases where someone had already been arrested and the police had initiated the proceedings,[199] informal agreements were reached between the coroner and the police as to the pathologist selected.[200] In all other cases the coroner selected the pathologist and the police were concerned that if the examination was done carelessly, or 'by a man without the right type of experience'[201] or 'who fits his conclusions to a pre-conceived idea'[202] the police are likely to be given a false

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[197] The assumed investigation standard outlined in chapter 6.
[198] Coroners' Act 1887.
[199] HO 45/12478 Evidence of Assistant Commissioner Kendal, page 8. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.
[200] HO 45/12478 Evidence of Assistant Commissioner Kendal, page 9. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.
[201] HO 45/12478 Evidence of Assistant Commissioner Kendal, page 9. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.
[202] HO 45/12478 Evidence of Assistant Commissioner Kendal, page 9. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.

line of enquiry.[203] They cited several cases where doctors appointed by coroners to make post-mortem examinations had 'blundered'.[204] The police argued that it was long overdue that it should be definitely laid down that nobody should be allowed to conduct a post-mortem examination for a coroner unless he is specially qualified to do so. The wording of the report implies that the police sought legislation to rectify what they saw as a weakness in existing law.

The Director of Public Prosecutions offered a view on the issue of evidence being placed in the public domain before a criminal trial.[205] He made the observation that before the 1926 Act, case law mandated that coroners' hearings were to be held in private.[206] The judge specifically stated that a jury who were afterwards to sit on a trial ought not to have ex parte accounts previously laid before them.[207] The Kings Bench ruled that it was a contempt of court to publish a report of inquest proceedings.[208] Another judge[209] had offered a view that subsequent legislation seemed to have allowed the privacy rule to have inadvertently elapsed.[210]

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[203] HO 45/12478 Evidence of Assistant Commissioner Kendal, page 9. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.
[204] The Epping case, the Cambridge Student case, the Scissors case at Croydon and the Cinema Murder. See HO 45/12478 Evidence of Assistant Commissioner Kendal, page 9. The report is undated but the contents of the report clearly indicate that it was after the implementation of the Coroners' (Amendment) Act 1926.
[205] HO 45/12478 Report of Director of Public Prosecutions, page 4. Undated, but it is clear from the contents that it was after the implementation of the Coroners' (Amendment) Act 1926.
[206] R v Fleet 1818, 1 B&A 379. HO45/12478 Report of Director of Public Prosecutions, page 4. Undated, but it is clear from the contents that it was after the implementation of the Coroners' (Amendment) Act 1926.
[207] HO45/12478 Report of Director of Public Prosecutions, page 4. Undated, but it is clear from the contents that it was after the implementation of the Coroners' (Amendment) Act 1926.
[208] HO45/12478 Report of Director of Public Prosecutions, page 4. Undated, but it is clear from the contents that it was after the implementation of the Coroners' (Amendment) Act 1926.
[209] Judge Abbott.
[210] Indictable Offences Act 1848 (11 & 12 Vic c 42). It is not clear what this refers to since the Act seems not to include coroners' proceedings and in any event, Justices had the power under section 19 to exclude people from the hearing.

It is an important point that the new legislation in 1926 was introduced at a time when there were deep concerns about the integrity of the coroners' investigative process and its ability to undermine police investigations. The new Act not only failed to introduce additional comprehensive safeguards to address this point but it continued to sanction the process which was recognised as flawed. It acted as an additional layer of obstruction to the police investigation procedure. Much later criticism cited this legislation as the source of the continuing practice of an outdated administration.[211] This chapter develops this argument and argues that legislation remained in place which obliged the police to comply with a process which potentially risked the integrity of an investigation. This is not an argument previously put forward in more recent literature.

In practice, after 1926 it had become more frequent that in circumstances where the police were conducting a parallel investigation and no-one had yet been charged, they asked the coroner to adjourn proceedings to allow them time to investigate.[212] It is central to this thesis's argument that this was not a request enshrined in legislation and the police remained at the discretion of the coroner.[213]

The following case study demonstrates this point.

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[211] Un-named legal correspondent, 'Coroner's Power to commit for Trial' (1971) 2 (5764) The British Medical Journal 761.
[212] See for example R v Creed MEPO 3/1623A .Transcript of coroner's court hearing 13 August 1926; R v Benson MEPO 3/1641: Report of DDI Hodges (7 September 1928).
[213] The 1910 committee on coroners similarly avoided the issue of requests being made subject to legislative control. See Second Report of the Departmental Committee appointed to inquire into the law relating to coroners and coroners' inquests and into the practice in coroners' courts, Part 1 (Cmd 5004, 1910) para 35.

Case study 4 - The murder of Edward Creed in Bayswater, London – 28 July 1926[214]

On 28 July 1926, Edward Creed was found murdered in his shop in Bayswater, London. He had sustained severe head injuries caused by a blunt instrument. He had been attacked at the shop doorway and his body had been dragged down cellar stairs where an attempt had been made to suffocate him by turning on gas taps. An inquest opened on 31 July when evidence of identification of the victim and the circumstances of the discovery of his death were outlined.

The police indicated they had several lines of enquiry[215] and the coroner adjourned the inquest until 13 August 'in the interests of justice'.[216] Several suspects were 'interrogated'[217] and during this period a series of anonymous letters were received by a person claiming he knew the identity of the murderers. The police used the newspapers to ask the anonymous writer to come forward[218] but this proved fruitless.

On 13 August, the inquest into the death of Creed resumed and the police requested an adjournment to give them more time to investigate the matter and to identify the anonymous writer. The coroner agreed to the request and

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[214] MEPO 3/1623A.
[215] MEPO 3/1623A Report of CI Cooper (28 August 1926).
[216] The Times 2 August 1926.
[217] MEPO 3/1623A Report of CI Cooper (28 August 1926) page 1.
[218] MEPO 3/1623A Report of CI Cooper (28 August 1926) page 2. Also see for example, The Times 13 August 1926.

> said that 'it was expedient to follow that line [the granting of an adjournment] in public interest because they [the police] do not want to give the case away to any possible criminal through the revelation in the coroner's court'.[219] The coroner made the specific point that it was the responsibility of the police to investigate the murder and not that of the inquest. He said, 'This murder is particularly callous and brutal, the murder of a tradesman following his occupation. It is highly important in this case that the murderer should be run to earth, it is the duty of every loyal citizen to come forward and assist police in their endeavour to trace the murderer.[220]

This indicates that there was some recognition in 1926 that the police should have primacy over ongoing murder investigations yet it remained within the power of the coroner to continue the investigation and to place evidential material into the public domain. This represents a position that reflects the argument that the police remained a secondary body of investigation and the potential to risk compromising the confidentiality and integrity of evidence remained even after the introduction of the Coroners' (Amendment) Act 1926. It acts as an additional element to the argument that inter-war legislation did not allow the police to effectively carry out criminal investigations.

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[219] MEPO 3/1623A Inquest of Edward Creed. Statement of coroner (13 August 1926) and report of CI Cooper (28 August 1926).
[220] MEPO 3/1623A Transcript of coroner's speech (13 August 1926).

7.4 Conclusion

The thesis has already argued in chapters 5 and 6 that there was insufficient and conflicting investigative guidance and legislation to support an efficient and effective police investigation. This chapter has argued that an additional layer of obstruction in investigative practice existed due to legislation governing the office of coroner. The coroner had a duty to investigate deaths which had originated in the centuries before an established, professional police service had been developed. The police had become increasingly involved in cases of murder but primary responsibility legally remained with the coroner. This resulted in a duality of process which militated against one another. Legislation in 1926 failed to clarify the position over the conflicting process and the position remained that a person suspected of murder would be processed through both a coroner's court and a magistrates' court. Each was governed by different rules of evidence and it created a position where crucial evidence would be in the public domain before the police had the opportunity to investigate. The 1936 Departmental Committee on Coroners identified this as a significant operational issue but no legislation was introduced to remedy the situation.

Concerns about the working practices of coroners and their impact on police investigations is a recurring theme throughout the period. It was noted in Home Office and public commentary that the office needed reform and presented itself as a threat to the principles of British criminal justice. This was the headline feature of the debate but there was little reflection on the direct impact it was having on police investigations. Legislative reform was identified as being

preferable but no action was taken. It was specifically blocked by the Home Office. The duality of process of coroners and police investigating the same deaths resulted in an unofficial compromise rather than being set on a sound legislative footing. This was a recurring theme identified in chapter 5.

It is significant that the debates concerning coroners and the earlier discussions about police powers more generally reveal an establishment that was ignorant of the law. The RCPPP had erroneously believed that no powers existed to search arrested prisoners, and the Departmental Committee on Coroners thought it lawful for the police to privately interview suspects of murder. This demonstrates that the debate about any change in police procedures was based upon a platform of ill-informed decision-making and this contributed to confusion and eventual legislative inertia. This position is set against a wider inter-war context that resistance to any increase in police powers was a hallmark of the period. A brief exception to this position was the concerns raised about the conflicting role of the coroner but its narrative failed to have any impact on introducing new legislation.

Chapters 5, 6 and 7 present a picture of a lack of understanding towards police investigations. Neither parliament nor the courts accepted responsibility to clarify or codify existing law. Poor police practice was considered acceptable and both parliamentary commissions and the Home Office appeared ignorant of the detail of the law. The additional layer of conflicting coroners' legislation resulted in a position where the police were forced to operate within an unclear legislative framework and one that undermined its operational effectiveness. An inter-war

culture had developed and combined with the practical reality of a parliament, a civil service and a judiciary failing to meaningfully address a legislative weakness. The law governing murder investigations was defective and the combined components of government contributed to its cause.

Chapter 8: Conclusion

This chapter adopts a reflective approach and considers the various arguments which have been put forward in the previous chapters, how they are connected and what overall conclusions may be drawn. The central argument of the thesis is that the inter-war period witnessed the tacit development of the concept of a criminal investigation. Police forces had been actively engaged in murder investigations for many years but its practices and methods had attracted little socio/political attention and received scant scrutiny from the courts. The New Police formulated in 1829 had gradually and tacitly transformed from a body predominantly required to prevent crime and deal with general street disorder, to one which was required to gather evidence which was capable of withstanding public scrutiny. It brought a new meaning to the phrase 'investigation'. There was, however, little alignment between the legislation governing the gathering of evidence and the realities of police practice. This new and developing landscape had not been readily recognised and effectively, the criminal justice system was sleepwalking into a new century unaware of the developing ramifications of police behaviours. The courts held the historical view that police practice in investigations was largely irrelevant as it was the duty of the courts to provide the necessary safeguards to ensure that prisoners received a fair trial. This position began to change when police practices became more widely known and challenges were beginning to be made about the fairness of the means employed by the police in bringing evidence before the courts.

This historical and incremental development of investigative policing resulted in an inter-war landscape governed by a legal framework which failed to recognise the gradual change and consequently did not provide clear guidance to the police in the manner of investigations. There were two principal factors which contributed to this position: neither society, parliament nor the Home Office fully recognised the realities and complexities of the emerging criminal investigation and the courts did not wholly recognise the police as an important, integral element of the process. This led to the continuance of contradictory and confusing guidance, with the consequent failure to standardise and clarify the procedures necessary to ensure effective and lawful investigations. This resulted in the police being able to self-interpret existing guidance and conduct investigations in a manner which they considered fair and appropriate. They adopted a liberal interpretation of the spirit of the guidance which attracted little or no criticism from the courts; this was despite a groundswell of socio/political opinion which considered that the police were acting unfairly. The thesis has put forward an innovative idea that police behaviours may be seen as a course of noble cause corruption which they considered to be a benefit to the public and consequently more able to bring suspected murderers before the courts. This ability to interpret the rules flexibly was a product of the absence of clear legislation and guidance.

Coroners' legislation added a further layer of confusion and obstruction to the effective investigation to what was already an unstable legal position. The historic office of coroner remained, in law, the primary body responsible for the investigation of suspicious deaths. This legislation mandated the police to comply with a duality of judicial process: evidence relating to a murder investigation

needed to be presented simultaneously at both a coroner's hearing and a magistrates' court. This created inefficiencies and provided the potential to compromise evidence gathered during the police investigation. This outdated coroners' legislation reinforced the view that the police were a subsidiary body to the investigation process.

The central ideas that the criminal investigation process was not fully understood, and that the police were not recognised in law as the primary and competent body to investigate murder, has not previously received academic attention. The existing literature explores some of the operational detail involved in murder investigations and recognises the confusing state of the law and guidance at the time. However, its practical application and ramifications are largely absent in the research. It is these aspects which present as a new contribution to the knowledge of historical police practice and its relationship to the law; a richer picture of the policing of the period has been created. Its significance is that the rules of the inter-war period would be dismissed within contemporary legal commentary as 'judicial utterances'[1] yet they were to remain as the basis upon which the police were expected to conduct police investigations throughout the inter-war period and beyond.[2]

[1] Justice of the Peace and Local Government Review, 17 November 1928 743.
[2] They eventually became obsolete in 1986 by the provisions of the Police and Criminal Evidence Act 1984.

8.1 The developing concept of the criminal investigation

One of the recurring arguments of the thesis is that the developing criminal investigative process was not fully understood by parliament or the courts. It is important to provide a broader context to this position by outlining that this development was tacit and had not been subject to any meaningful degree of scrutiny before the turn of the twentieth century. What was emerging was new, with no overarching view of how the law, the police and the courts now needed to operate. Policing in the inter-war period may be seen as a transition from a Victorian-style preventative model to one with twentieth-century investigative expertise. The preventative principles of the early nineteenth century remained but there was a greater awareness of the process by which suspected offenders were brought before the courts. Late-Victorian legislation[3] and case law[4] which began to emphasise the importance of the need for arrested people to be advised that they need not say anything which may incriminate themselves, is indicative of this development.[5]

In the first decades of the twentieth century, the police expressed concerns about the procedural application of cautioning arrested people not to say anything when arrested and sought greater clarity about whether the person could be spoken to at all. It was not clear when, and under what circumstances, the caution needed

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[3] Indictable Offences Act 1848, s 18 (11 & 12 Vic c 42 s 18) and Evidence Act 1851, s 3 (14 & 15 Vic c 99 s 3).
[4] See for example *R v Baldry* (1852) 16 JP 276, 2 Den 430, 169 ER 560.
[5] *R v Baldry* (1852) 16 JP 276, 2 Den 430, 169 ER 560. This principle was first established as a court procedure in *R v Warwickshall* (1783) 1 Leach 263 before a formal police force was established.

to be administered.[6] Murder prosecutions were collapsing at trial due to the uncertainty of the practices to be adopted[7] and the Home Office sought judicial opinion. It was demonstrated in chapter 5 that no unanimously agreed position could be determined despite occasional communication between the Home Office, the police and the courts. Consequently, the Home Office refused to issue any guidance which would clarify the matter.[8] This narrative is indicative of an increasing awareness of the procedural treatment of arrested people and presents as the roots of a more detailed and complicated dialogue which attempted to resolve the lack of clarity throughout the entire inter-war period. It was the tacit birth of the concept of a police investigation being recognised in practice and law.

Early attempts to clarify the procedure and practice failed to have any significant effect. An informal set of Judges' Rules were issued by the Home Office[9] but it was quickly realised that the position had not been clarified and confusion remained.[10] This position was outlined in detail in chapter 5 when the Home Office pointed out that multi-interpretation of the rules was continuing.[11] It is a significant point that this early attempt to clarify the position stemmed from an informal meeting of judges and was not based upon any legislative footing. The intended effect of the rules could have been precisely set down in legislation and would

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[6] See for example HO 144/10066 - 52392/9 (10 May 1904).
[7] HO 144/10066 - 52392/10 (29 June 1912). See also The Times 20 June 1912.
[8] HO 144/10066 - 52392/9 (10 May 1904).
[9] App 3.
[10] HO 144/10066 - 52392/15 (7 November 1912); HO 144/10066 - 52392/17 (15 July 1915); HO 144/10066 - A52392/21 (23 March 1918).
[11] See HO 45/22971 Memorandum attached to letter from Chair of RCPPP to Home Office (6 March 1929).

have enabled the police and the courts to be clear about the procedures to be followed. It would also have empowered the courts to add further clarity, if necessary, through the development of case law as further cases went to trial. There can be no definitive conclusion as to why legislation was not introduced, but examination of the primary source material throughout this research indicates that the reason may arise from a lack of an understanding of the complexities and reality of the new style of investigation.

The early narrative identified in the data suggests that during this conceptual development period, the detailed nuances and complexities within a police investigation were not fully realised; there appears to have been no recognition of the impact that police procedures were having on the gathering of evidence nor its adverse impact on a citizen's expectations of freedom from undue State interference. These were key principles which were identified as being of paramount importance in the years leading up to the formation of the New Police in 1829. One important matter which appears to have escaped attention was the practice and the ramifications of the police arrest itself; it would have a significant bearing on police practice into the future. This was examined in detail in chapters 5 and 6. It was an issue which attracted little social, political or legal attention at the time nor in subsequent academic treatment of the subject. Ostensibly, it appears an unimportant issue, but it is a key point that the word 'arrest' did not appear in the Judges' Rules. They referred only to 'persons in custody' or the 'prisoner';[12] the element of arrest was implied but not specifically mentioned. This

[12] See App 3.

fails to formally recognise the responsibilities which follow from an arrest and adds to what was already an ambiguous legal landscape. It was outlined in chapter 5 that the act of arrest ought to have triggered the requirement to administer a caution to the suspected offender but since the word was omitted in the guidance it provided an unclear position when the act was supposed to be put into practice. This omission reflects an earlier expressed view from the courts that they merely saw the arrest as the mechanical means by which a suspected offender was brought before the courts[13] and attached little or no importance to its effect. This would later have a significant bearing on determining whether a person had actually been arrested or not and which in turn determined whether the Judges' Rules were to be applied. It was outlined in chapters 5 and 6 how this was translated into an obvious tactic to avoid the need to advise an arrested person that he need not say anything.

This seemingly indifferent attitude towards the act of an arrest is indicative of a judiciary which had not fully recognised the ramifications of police behaviours and not fully appreciated the practical realities now involved in a criminal investigation. It may also serve as one of the reasons why the introduction of legislation to resolve the confusion was not considered. The act of arrest serves as the bedrock upon which inter-war police investigative practices were built but its impact on the judicial process that followed appeared unimportant. It was an emerging, but dynamic landscape, and it is this specific issue which has received little academic

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[13] *R v Hughes* (1879) 4 QBD 614, 43 JP 556, 6 WLUK 58; Justice of the Peace and Local Government Review, 4 May 1929 page 280.

attention since.[14] This observation that this led to an apparent lack of understanding is now developed.

8.2 Criminal Investigations – a lack of understanding

Another of the central arguments throughout the thesis is that there was little appreciation of the operational reality and the effect of police behaviours in the criminal investigation process. There are several contributing factors to this position. It was outlined in chapter 2, that there was no restriction on constables asking questions of anyone who had not been arrested in their attempt to identify an offender.[15] Throughout the 1920s, it became a regular practice of the police to avoid arresting suspected offenders but instead to 'detain' them or 'take them to a police station'.[16] As chapter 5 demonstrates, this obviated the need to caution the suspected person and allowed them to ask unrestricted questions which otherwise may have been prohibited had they been arrested. This practice was highlighted through the use of a series of case studies in chapter 6. The practice was sanctioned by the courts[17] but was subject to criticism by outside commentators for its apparent abuse of the arrest process.[18] The thesis has put forward the argument that this tacit approval of the process is again indicative of a judiciary which saw the police involvement as a marginal role in processing

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[14] Wood touched on the subject but did not explore the ramifications of police behaviours in relation to the law. See John Carter Wood, *The Most Remarkable Woman in England* (Manchester University Press 2012).
[15] Paul Roberts, Law and Criminal Investigation cited in Tim Newburn et al, *Handbook of Criminal Investigation* (Cullompton 2007) 97. See also Rule 1, Judges' Rules.
[16] See app 2, lines 170-201.
[17] HO 45/22971 Letter to Royal Courts of Justice from the Home Office (23 April 1929).
[18] Justice of the Peace and Local Government Review, 4 May 1929, page 279.

suspected offenders and that the practical detail and effect of an investigation were not fully appreciated. The judiciary appeared indifferent to a police practice which had a direct bearing on the future treatment of the arrested offender. This is expanded upon below.

No attention was paid to this legal uncertainty other than an occasional decision arising in case law which sought to clarify particular points[19] and the broader meaning of the informal Judges' Rules remained open to question and interpretation. The Judges' Rules were not enshrined in legislation and therefore less capable of interpretation and development in the same way that legislation and common law principles were interpreted by the courts. A series of police behaviours[20] gave rise to concerns about the methods and procedures employed by the police and in 1928, a Royal Commission on Police Powers and Procedure[21] was appointed with specific terms of reference to consider the general powers and duties of the police in the investigation of crime and offences.[22] The catalyst for the Commission was not from any perceived concerns about the arrest procedure, but it presented as the opportunity to address the concerns about ambiguities in the law which had been expressed since the turn of the twentieth century. It also provided the opportunity to obtain a greater

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[19] See for example *R v Grayson* (1921) 16 CAR 7.

[20] For allegations of abuse of powers and assault upon Irene Savidge, see TA Critchley, *A History of Police in England and Wales* (Constable 1967) 201-2; Clive Emsley, *The Great British Bobby* (Quercus 2009) 209-10. See Heather Shore, 'Constable dances with instructress: The police and the Queen of Nightclubs in inter-war London' (2013) 38 (2) Social History 183, 186 < https://www.tandfonline.com/loi/rshi20 > accessed 25 October 2020 for a high-profile case involving a corrupt police sergeant. Sergeant Goddard was sent to prison for conspiring to pervert the course of justice. See Clive Emsley, *The Great British Bobby* (Quercus 2009) 203-7; Neil Davie, 'Law Enforcement: Policies and Perspectives' in David Nash and Ann-Marie Kilday, *Murder and Mayhem: Crime in 20th Century Britain* (Palgrave 2018) 276.

[21] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929).

[22] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page ii.

understanding of the developing investigation process. This thesis has examined the impact of the Commission's findings upon subsequent criminal investigations throughout the inter-war period and concludes that it was marginal. This is indicative of the lack of understanding of the criminal investigation process extending to parliament. Its context is now explained.

As the thesis discussed in chapter 2, the timing of the Commission coincided with a recurring political narrative that the police should have as few powers as possible.[23] Its roots were in late -eighteenth and early nineteenth-century political dialogue and is the subject of existing literature.[24] This thesis has built on that position and has put forward that it was a sufficiently significant factor that influenced governmental, political, social and judicial dialogue which was to follow throughout the 1920s and 1930s. The entire twenty-year period was witness to both parliament and newspapers calling for a restriction on police powers across a wide spectrum of subjects[25] and this may be directly transferred across to the

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[23] HC Deb 17 May 1928, vol 217, cols 1303-39; HC Deb 11 May 1925, vol 183, col 1602.
[24] See for example JF Moylan, *Scotland Yard and the Metropolitan Police* (G P Putnam's Sons Ltd 1929) 18; Charles Reith, *The Blind Eye of History* (Faber and Faber Ltd 1952) 140; Richard J Terrill, 'Politics, Reform and the Early-Nineteenth-Century Reports on the Committees on the Police of the Metropolis' (1980) 53 (3) The Police Journal 240, 243 < https://0-journals-sagepub-com.serlib0 > accessed 14 October 2020; Tim Newburn et al, *Handbook of Criminal Investigation* (Willan 2007) 41; Clive Emsley, *The Great British Bobby* (Quercus 2009) 33. See also Third Report from the Committee on the State of the Police of the Metropolis, 5 June 1818 p32.
[25] The range of subjects included enforcement of road traffic legislation, the curbing of prostitution, the ability to obtain search warrants, emergency legislation to deal with striking workers and increased activity in public order and political agitation. See for example, HL Debate 14 May 1924, vol 57, col 423; HC Debate 11 May 1925, vol 183, cols 1602-1605; HC Debate 16 November 1925, vol 188, cols 155-170; HC Debate 20 November 1925, vol 188, cols 802 -804; HC Debate 20 November 1925, vol 188 col 860-861; HC Debate 5 May 1926, vol 195, col 295; HC Debate 5 May 1926, vol 195, col 387; HC Debate 6 May 1926, vol 195, cols 527-530; HC Debate 5 July 1926, vol 197, col 1825; HC Debate 29 November 1926, vol 200, cols 905-915; HL Debate 9 December 1926, vol 65, cols 1394-1402; HC Deb 17 May 1928, vol 217, cols 1303-39; HC Debate 18 February 1932, vol 261, col 1804; HC Debate 10 April 1934, vol 288, cols 258-259; HC Deb 31 May 1934, vol 92, cols 756-757; HC Debate 30 Oct 1934, vol 293, col 90; HL Debate 8 November 1934, vol 94, col 208. HL Debate 8 November 1934, vol 94, col 329; HC Debate 20 March 1935, vol 299 cols 1200-1201; HC Deb 16 November 1936 vol

narrative about the need for any further investigative powers. This specific inference has not been suggested in previous academic literature.

The Royal Commission concluded that the general level of police competency in the investigation of crimes was higher than it had been before the First World War and it formed a very favourable opinion on the conduct, tone and efficiency of the police service as a whole.[26] There are, however, indications in its final report that the complexities of a criminal investigation were not fully understood in two respects. Firstly, the Commission considered that it was neither competent nor required[27] to deal with the complicated law surrounding the issue of the questioning of suspects[28] and secondly, that police powers of arrest were neither excessive nor inadequate.[29] It criticised the apparent practice of police 'detaining' people in murder investigations[30] rather than arresting them but did not seem to make the operational connection between the act of an arrest and the need to caution people. This was discussed in chapter 5 and referred to above. It recommended that an instruction should be issued to direct police officers that they should not question arrested people but without any apparent recognition

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317, cols 1349-1410; HL Debate 16 December 1936, vol 103 col 965; HC Deb 7 December 1936, vol 318, cols 1697-1712; HC Debate 28 July 1939, vol 350 col 1866. Also see Daily Mail 6 May 1919; Daily Herald 23 June 1919 and 6 April 1921; Daily Herald 4 May 1926; Daily Herald 3 June 1926; Manchester Guardian 26 August 1926; Daily Herald 8 June1934; Daily Herald 20 June 1934; The Times 29 June 1934; Daily Herald 17 July1934: Manchester Guardian 3 August 1934 and 19 September 1934; Daily Herald 19 October 1934: Daily Herald 31 October 1934; The Times 5 October 1936; Daily Herald 17 October 1936; Manchester Guardian 11 November 1936; Daily Mail 19 November 1936.

[26] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 124. See also Clive Emsley, *The Great British Bobby* (Quercus 2009) 211.

[27] This the exact word used.

[28] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 24.

[29] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 24.

[30] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 56.

that this was a central element of the confusion which had been aired for many years. The Home Office would later disregard this recommendation.[31] The Commission's conclusions were not based on the examination of any specific criminal investigations[32] and had it done so, it may have identified that application of the rules was inconsistent and remained open to interpretation. The Commission's conclusion would also later attract criticism within legal commentary that it had not taken the opportunity to address archaic and outdated law.[33]

The Royal Commission failed to address the ambiguities in the Judges' Rules and to bring clarity to the investigation process. It echoed the judicial view that the police role in the process was simply to take suspected offenders to court.[34] This position supports the thesis' view that the realities of a police investigation were not fully understood with seemingly no appreciation that investigations now routinely featured the questioning of arrested people. It is an important point that the Commission was, in practice, both able and competent to recommend legislative change. It recognised that there existed no power to search premises during a criminal investigation and recommended that the matter should be addressed.[35] This tends to contradict its earlier position that the Commission itself was neither required nor competent to deal with such matters. The specific issue of arrest and the procedural treatment of suspected persons appears to have

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[31] 45/22971 File 536053/11 Memorandum from Home Office to Metropolitan Police Commissioner (5 July 1929).
[32] The majority of the report focussed on police treatment of witnesses as opposed to suspects.
[33] Justice of the Peace and Local Government Review, 20 April 1929, pages 215, 248.
[34] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 57.
[35] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 45.

proven too complicated with the consequence of not recognising that legislative reform may be necessary.

It is important to reiterate that up until the publication of the Commission's report in 1929, the position remained that the legal basis of the procedural treatment of suspected offenders was unclear. This is apparent within the existing literature and was discussed in detail in chapter 5. Equally, the courts appeared to be indifferent to the consequent inconsistency and, arguably, unlawfulness of police practice. A Royal Commission had shied away from tackling the view that there existed outdated law and the broader suggestion that there continued to be police procedural irregularities. It is an important point that these concerns were impacting on the arrest and trial of suspected murderers whose convictions led to capital punishment. These cases attracted high levels of public attention with a recurring theme of ensuring that such people should receive a fair trial.[36] It was a significant matter of public policy. The continuing unstable legal framework, however, remained of high public concern and was subject to much criticism in newspaper and independent legal commentary.[37] It fell to the Home Office to take the matter forward. This presents as the next stage of demonstrating a lack of understanding of the new investigation process.

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[36] See for example HC Deb 11 May 1925, vol 183, col 1602; HC Deb 10 December 1906, vol 166, col 1661-2 and 1664; HC Deb 19 February 1917, vol 90, col 2480; Aberdeen Press and Journal 19 December 1928.
[37] See for example Daily Herald 11 March 1930 and 25 June 1930; Daily Herald and Manchester Guardian 23 July 1930.

8.3 Ongoing development of the narrative

This thesis has examined data which demonstrates that the conclusions of the Royal Commission were not only challenged by socio/legal commentary but also by the Home Office. The passing of the report to the department responsible for police policy triggered a chronology of events which appears to reinforce the wider view that existing arrangements were unclear and in need of reform. This fresh analysis and interpretation of events concludes, however, that the process remained largely misunderstood and that legislation was still not introduced. There was a combination of factors which contributed to that outcome.

The Home Office was a key factor in attempting to bring clarity to the legal uncertainty. It recognised that the issues were more complex than the Commission had realised and rejected or failed to act upon many of its recommendations.[38] In effect, it disagreed and ignored them. Further, it did not take steps to initiate the drafting of recommended legislation relating to the searching of premises nor did it issue suggested guidance to police forces which the Commission thought would clarify the wider position. It appears as though it was selective in which recommendations or subject areas it decided to take forward and many were not presented to the Home Secretary for further consideration. It was exercised about the apparent abuse of the arrest process where people were either detained or taken to police stations, but there is nothing

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[38] HO 45/22971 Memorandum from Home Office official (28 March 1929).

in the data to indicate that it specifically made the link between arrest and the issue of cautioning arrested people.

This may be indicative of a lack of understanding of the reality of the criminal investigation process and specifically the direct connection between the act of arrest, the administering of the caution and whether questioning of an arrested person was allowed. It forcefully re-emphasised, however, that the law was unclear and that the informal opinion of judges about the interpretation of the Judges' Rules was wrong. This is a key point which is expanded upon below but, significantly, the Home Office felt able to challenge the courts' view since the Judges' Rules had no force in law. Existing literature has not identified the extent to which the Home Office was concerned about this but the thesis has demonstrated that its contribution to the debate was active, rather than passive. This is an important point. The Home office had a governmental responsibility to oversee the practical realities of policing and was perfectly placed to propose legislation if it was considered appropriate. None was initiated.

The thesis has put forward the idea that the Home Office eventually deferred to the more informal opinion of HM judges. It is clear that there was a fundamental disagreement between the Home Office's interpretation of the Judges' Rules and those of the courts. HM Judges were forceful in stating that no questions should be asked of an arrested person[39] and the Home Office was equally clear in stating

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[39] HO 45/22971 Memorandum from Royal Courts of Justice, Justices Avory and Hewart (18 March 1929).

that the contrary position was true.[40] The Royal Commission had similarly remarked that the position was undesirable.[41] It is an important point that these position statements emanate only from correspondence between the three bodies. The Home Office consulted with the police who agreed with the position asserted by the courts that the status quo should be maintained. Ultimately, the Home Office ceded its position and concluded that no further guidance was necessary since police practice rarely attracted criticism. This suggests that the Home Office operated against the political direction recommended by a Royal Commission but instead deferred to the opinions of the police and those of HM Judges which had been expressed in correspondence, but which had no statutory or other legally enforceable basis. It is difficult to draw any definitive conclusion as to why this course was adopted, but the data indicates that it chose to follow the advice of the professionals engaged in the field and the views of its departmental head.

The courts remained of the view that it was not the role of the police to determine what was admissible evidence, but that of the courts. This was a justifiable position to adopt, but its effect was to ignore or sanction existing police operational practices. It implicitly authorised the police to take whatever action they felt necessary. This resulted in the range of inconsistent operational practices which were examined in chapter 6 and are expanded upon below. This position remained, despite the Home Office disagreeing with this opinion, and

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[40] HO 45/22971 Memorandum attached to letter (6 March 1929) from Chair of RCPPP to Home Office.
[41] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 26.

independent legal commentary maintaining that the law remained unclear and police practice questionable. This leads to the conclusion that the courts either did not fully recognise the practical realities of the police function or it was content to retain the status quo. The link between the arrest and questioning components of the police process was either not recognised or insufficient gravity was attached to it. This element was central to the emerging investigative concept. Neither the courts, the Home Office nor parliament intervened to suggest that legislation was necessary to clarify the position.

There is one other relatively minor, yet significant issue which indicates that the Home Office was not wholly focused on the legal realities of operational policing. The Royal Commission had identified that the searching of premises was a necessary and justified tactic of a police investigation but there was no police power which allowed them to carry out this function. The Home Office erroneously believed that a power did exist at common law[42] and it may have been this lack of knowledge which was a factor in not taking forward the Commission's recommendation to place such a provision on a statutory footing. It is a small contributory factor to the thesis' overall conclusion that the complexities and realities of a criminal investigation were never fully understood and that the introduction of legislation was not properly considered.

There is nothing in the data to definitively indicate why no legislative action was taken. It was discussed in chapters 2 and 5 that there was a general feeling that

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[42] Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 26.

police powers should be restricted to an absolute minimum and there were concerns about the infringement of people's civil liberties. This may have been a factor which influenced decision-making. However, it may equally be argued that the Home Office operated in a manner which mirrored Weber's view of a civil service which conducted its business in a discrete and dispassionate manner, divorced from the realities of the outside world. This argument was put forward in chapter 4.

There is an additional dimension to the developing narrative, which contributes to the wider appreciation that the emerging investigation process was not fully understood. The thesis has sought to establish the influences on the state of the law of the period. It is clear that governmental bodies were key components of the debate but it is an important point to emphasise that public opinion appeared to have had little influence. Police action was scrutinised in newspaper narratives, though it often limited its reporting to repeating parliamentary or Commission debates. Rarely did it offer an opinion and, in the context of the ongoing debate about the arrest, cautioning and arresting of suspected offenders, newspapers considered that the issues appeared to have been so complex that they felt unable to contribute to the debate. There may be a multitude of more complicated reasons why public opinion seemingly did not have a strong voice on the matter, but it may be indicative of a society which was content for its government to decide on complicated matters of law and felt that it had little or no active role to play in influencing their decision. The data examined throughout this research supports this suggestion and was explored in chapter 4 through the prism of social contract theory.

The issue of ‘detaining’ people, however, did receive some attention. This may be indicative of the wider society being more concerned about the more widely understood practice of the arrest and reported that not only did the courts seem to be supporting the police practice, but it had also gained the support of the Director of Public Prosecutions.[43] This attracted adverse comment and was identified as an abuse of process which was rapidly becoming unchecked.[44] This comment may connect to two earlier points. Firstly, despite the RCPPP and the Home Office effectively taking no action to consider legislative change, there remained a growing concern that police practice ought to be better regulated. Secondly, it is the type of social comment that may have been ignored as the Home Office dispassionately administered the bureaucratic process of determining whether any further action needed to be taken. To an extent, it challenges the idea in social contract theory that the public was happy to have a passive voice; the data indicates that it was particularly concerned that laws were adversely impacting on the welfare of citizens. In short, there can be no definitive conclusion about why wider society’s view did not have a more direct influence on the need to ensure that the law governing police practices was fair.

This public criticism is consistent with the thesis’ conclusion that the concept of investigations had not been generally recognised at the beginning of the period, but awareness was increasing. New concerns were beginning to be raised about the apparent police practice of interpreting the rules inappropriately and not being

[43] Daily Mail 23 October 1928.
[44] Manchester Guardian 27 November 1928.

properly scrutinised by the courts. Newspapers had adopted the view that the Royal Commission would resolve the issue,[45] which is again indicative of the view that change was seen as necessary. However, the practice of detaining people rather than arresting them would continue throughout the entire inter-war period. This is a significant point. Poor or questionable police practice had been identified in the 1920s yet the legal position would remain unaltered. The narrative which had developed between the Home Office and the judiciary appears to have had such a dampening effect that no further review of change in guidance or legislation seemed necessary. It leads to a conclusion that the courts wished to remain in control of the investigative, as well as the judicial process, and the police should continue to operate at a subordinate level.

The thesis has argued that the developing concept of an investigation was evolving gradually and tacitly. Its component elements were broadly not appreciated or understood by critical influencers and consequently, it is apparent that no action was taken which may have introduced clarity to the emerging process. The contributing factors to this position were outlined above and the thesis has then taken the analysis to the next level by examining how this unstable position translated into police operational practice in the course of murder investigations.

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[45] Daily Mail 13 February 1929.

8.4 The inter-war legal position – the assumed investigation standard

The thesis has undertaken a qualitative analysis of police investigations and has developed an assumed investigation standard against which the police were expected to operate, in the context of the unclear legal environment outlined above. It has drawn upon legislation and case law of the Victorian period, the relevant rules published under the auspices of the Judges' Rules in 1912 and 1918 and subsequent legal opinion in 1929. This assumed investigative standard was outlined in detail in chapter 6 and it is against this definition that police behaviours have been assessed.

It is a key point that the inability to more accurately define a prescribed investigation standard, and the methods by which the police were authorised to operate, is due to a lack of direction which may have been afforded by carefully drafted legislation. The analysis carried out for the thesis has needed to make judgements about police behaviours but there were some aspects of law and guidance which appear clear. Police were empowered to arrest people for murder[46] and to forcibly enter premises where the offender was known or suspected to be.[47] Once arrested the person could be searched for any evidence relating to that crime.[48] There were no other powers of search. There was no provision to apply for a search warrant to search for evidence relating to a murder.

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[46] Murder was a felony. *R v Keate* (1702) Comb 406, 1 WLUK 602, 90 ER 557; *Hogg v Ward* (1858) 3 H&N 417, 1 WLUK 35, 157 ER 533.
[47] Chitty's Constables (1819) 2nd ed p.59; 2 Hale 95; 1 Hawk c 63; 2 Hawk c 14.
[48] *Bessell v Wilson* (1853) 17 JP 567, 1 E & B 489, 118 ER 518; *Agnew v Jobson* (1877) 13 Cox CC 625, 42 JP 424, 47 LJMC 67; *Dillon v O'Brien* (1887) 1 WL UK, 16 Cox CC 245, 20 LR Ir 300. See also Report of the Royal Commission Upon the Duties of the Metropolitan Police Vol 1 (Cmd 4156, 1908) page 44.

The arrested person was to be advised that he need not say anything which may incriminate himself.[49] As the thesis has demonstrated, legal guidance issued either side of the Judges' Rules implied a strong suggestion that an arrested person shall not be asked any questions.[50]

It is a key argument throughout the thesis that the ambiguity of the Judges' Rules does not allow for a definitive description of the process to then be followed, but it was clear that a person must be cautioned 'once the police officer has made up his mind to charge a person with a crime'.[51] Once charged, the person must be further cautioned and taken before the court.[52] The effect of this rule is that there appears no guidance or direction for the period between the arrest and the decision to charge a person with the offence. It was discussed in chapter 5 that there was a further lack of clarity about the point at which a person was charged, which created an opportunity for the police to question a 'detained' person without the protection of a caution. This is a critical area of investigation where probative evidence could be obtained. Its component elements were discussed in chapter 4. The absence of any meaningful guidance or legislation to regulate it is indicative of the operational realities of an investigation not being fully recognised. It is this concept of an investigation which was developing tacitly and subconsciously at the beginning of the twentieth century and that part of the investigation process on which the thesis has concentrated.

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[49] 11 & 12 Vic c 42 s 18.
[50] Advice issued from Sir Henry Hawkins, Later Lord Brampton in 1882. Also see HO 45/22971 Letter from Royal Courts of Justice (26 April 1929). There was an exemption for questions to be asked under exceptional circumstances but they do not form part of this thesis' analysis.
[51] Judges' Rule 2.
[52] Royal Commission on the Duties of the Metropolitan Police 1906-1908 (Cmd 4156,1908) page 75.

8.5 Police practice in the inter-war period

The analysis showed that many investigations demonstrated wholesale compliance with the assumed standard of investigation. This indicates that individual police officers regularly operated within the confines of investigative guidance and complied with even the most strict interpretation of the assumed investigative standard. Compliance is apparent in investigations which do not appear complex; the offender surrendered himself to custody or the circumstances were such that the identity of the offender was apparent.[53] This is significant. There was no need to breach or circumvent the rules when a suspect immediately admitted to a crime or where the evidence strongly pointed to his guilt. There was no need for any further investigation. By that stage, there was already sufficient evidence to charge the suspected offender and take him before the court.

Many of the investigations, however, demonstrate that compliance, breaches and circumventions of the investigation standard occurred in the same investigation. Some investigations demonstrate that there was no compliance at all. This indicates that either the police were not aware of some of the rules, adopted a wide interpretation of them or were selective in what they applied as they progressed through the investigation continuum. In each of these cases, suspicions had been apparent towards a particular individual but there was no

[53] The majority of these were domestic killings or killings of babies by their mothers.

direct or circumstantial evidence[54] which could be connected to the suspect; it made the investigation more complex. It was a common feature for officers investigating offences of murder to be confronted by people whom they strongly considered to be responsible for the crime. This suspicion was normally based on the nature of the evidence presented to them by independent witnesses. No confessions had been forthcoming and there was insufficient evidence to prefer a charge. In these cases, the standard of the assumed investigation standard was not followed and further evidence was obtained outside of these parameters.

A conclusion that the police were unaware of the rules is countered to a degree by the high number of compliances. Indifference to breaching the rules is also countered by a lack of any meaningful evidence of officers being challenged over their integrity. Examination of trial transcripts of the period[55] confirmed that challenging a police officer's integrity was exceptionally rare.[56] As chapter 6 identified, where perceived breaches or circumventions were identified at the time, officers defended their actions and argued their position in open court.[57] Few instances[58] were found to indicate that the evidence obtained in an

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[54] Circumstantial evidence is evidence not of the actual offence committed but from which the guilt of an offender may be presumed with more or less certainty.

[55] These are reproduced in secondary sources but produced close to the trial dates. This has been regarded as accurate data and provides meaningful data in the absence of trial transcripts from the original case papers in the National Archives. See footnote below of identified material.

[56] See Helena Normanton, *Trial of Alfred Arthur Rouse* (William Hodge and Company 1931); Filson Young, *Trial of Frederick Bywaters and Edith Thompson* (William Hodge and Company 1923); Winifred Duke, *Trial of Field and Gray* (William Hodge and Company 1939; W Teignmouth Shore, *Trial of Frederick Guy Browne and William Henry Kennedy* (William Hodge and Company 1930); F Tennyson Jesse, 'Trial of Alma Victoria Rattenbury and George Percy Stoner (William and Hodge Company Ltd 1935); R H Blundell and R E Seaton, Trial of Jean Paul Vaquier (William Hodge and Co Ltd 1929); Donald Carswell, Trial of Ronald True (William Hodge and Co Ltd 1925); F Tennyson Jesse, Trial of Sidney Harry Fox (William Hodge and Co Ltd 1934); Winifred Duke, Trial of Harold Greenwood (William Hodge and Co Ltd 1930).

[57] App 2, lines 12-14.

[58] App 2, lines 12-14. This also includes data obtained from the transcript of a trial. See R H Blundell, *Trial of Buck Ruxton* (William Hodge and Co Ltd 1937) 136-137.

investigation was challenged as to its integrity. This indicates that the courts were generally accepting of police evidence and how it was gathered. This approach is consistent with the idea that the courts remained the arbiter over the method and admissibility of evidence.[59] It is unquestionably the role of the courts to assess the integrity of evidence but an indifference to the methods employed by the police, effectively authorised them to operate in a manner which contravened the principles of the published guidance.

The thesis has put forward the idea that the police either needed to employ certain tactics or they simply took advantage of the ambiguous guidance which had emanated from the dialogue between parliament, the Home Office and the courts. The ramifications of the arrest and its relationship to the procedural treatment of suspected offenders remained unclear. This led to the common practice of people suspected to have committed murder to be taken to a police station for further enquiries.[60] They were not formally arrested. There is evidence in these cases that there was a strong element of suspicion but with an insufficiency of direct evidence to formally charge the person and take him before the court. In many of these cases, the arrested person was repeatedly interviewed without the protection of the caution being administered. This allowed the investigating officer to obtain an account from the arrested person which often led to a full or partial confession. Only at this point was the arrested person cautioned and a written statement obtained. By the time the statement was

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[59] This point was reinforced in a trial in 1934 when the trial judge stated that it was not for the police to decide what evidence was admissible or not. See F Tennyson Jesse, *Trial of Alma Victoria Rattenbury and George Percy Stoner* (William and Hodge Company Ltd 1935) 280.
[60] See App 2, lines 170-201.

written, the evidence for prosecution had already been obtained and this rendered the effect of the caution to be meaningless.

This practice was defended by the investigating officer as either that the person had not been arrested and a caution was not required, or that at the time of the questioning, the investigating officer had not made up his mind to yet charge the person. The latter was a direct quote from the Judges' Rules which effectively gave absolute freedom to the investigating officer to question a suspected person until he was satisfied he had the evidence to charge. This was the type of occurrence about which the Home Office had been concerned. The data demonstrates this was now being translated into police practice. This supports the thesis' argument that had the 1929 Royal Commission carried out a closer scrutiny of police investigations, this questionable practice would have been exposed.

The Home Office had questioned whether it was now desirable to issue a direction that when a person had been detained 'on suspicion' that a caution ought to be administered when the point is reached that the suspected offender would not be allowed to go if he wished to do so.[61] The point being made by the Home Office was that it was clear that had a person wished to leave the police station and was not allowed to do so, he was in reality, under arrest. At that point, the caution must be administered. Issuing a direction to that effect would dilute the opportunity of the police to indefinitely detain someone and continue to

[61] MEPO 2/7953 Minute sheet (19 November 1929).

question them. This is indicative of the Home Office wanting to clamp down on perceived poor police practice. However, they stood back from this position when they subsequently agreed to accept the opinion of HM Judges who considered that a person detained for enquiries who is allowed to go after the enquiries have been made cannot be regarded as in custody.[62] This is an exemplar of a polarised opinion being expressed at the time.

This presents as a key factor to support the thesis' conclusion that the law was contradictory and confusing. By implication, the judges' informal opinion was that a person detained on suspicion cannot be considered to be in custody.[63] This emphasises the lack of clarity in the wording of the rules which spoke of a 'prisoner' or 'person in custody'. It is clear that in many of the cases examined the person who had been taken to a police station would not have been allowed to leave and a balanced interpretation of that set of circumstances would conclude that that person was under arrest. Judicial opinion undermined that position which led to the police having a greater degree of flexibility in interpreting each set of circumstances on an individual basis.

There was significant disagreement about the interpretation of the Judges' Rules. The confusion was also amplified by contemporaries of the period who publicly argued that not having the ability to ask questions of a suspect violated common

[62] HO 45/22971 Memorandum from Royal Courts of Justice, Justices Avory and Hewart (18 March 1929).
[63] HO 45/22971 Memorandum from Royal Courts of Justice, Justices Avory and Hewart (18 March 1929).

sense[64] and an absence of legislation needed to be remedied.[65] The frequency of breaches and circumventions identified strongly indicates that inter-war police interpreted the rules in a manner which allowed them to put evidence before the courts based on a procedure which they considered lawful. The repetitive practice indicates that they considered that these were necessary steps to achieve an effective investigation. There is no literature which tackles why these habitual practices took place but the thesis has advanced a novel explanation.

8.6 Reasons for breaches and circumventions of the assumed investigative standard

Public opinion expressed through newspapers, both at the beginning of the inter-war years, and throughout the period demonstrates that there was a concern that murders were beginning to remain unsolved.[66] The criticism was aimed at the general competency of the police and later at the law which appeared to constrain its activities.[67] There is some evidence that the police themselves were critical of the constraints imposed upon them but recognised the requirement to remain within the letter of the guidance.[68] Extrapolation of this position was examined in chapters 4 and 6 and suggests that police behaviours may be indicative of a viable variation on the broad theme of noble cause corruption. It is likely that they

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[64] Frederick Porter Wensley, Forty Years of Scotland Yard: A Record of Lifetime's Service in the Criminal Investigation Department (Garden City 1930) 294.
[65] Recommendation 30, Report of the Royal Commission on Police Powers and Procedure (Cmd 3297, 1929) page 116.
[66] HC Deb 17 February 1932, vol 261, col 1645. A high-profile case cited was the murder of Vera Page in December 1931.
[67] Daily Mail 19 September 1929.
[68] Daily Express 28 October 1930.

were conflicted between the need to solve murder cases and at the same time required to operate within the law. They used their understanding of what they considered to be poor law to address the perceived benefits that would accrue to society by bringing suspected offenders before the courts.

The actions of investigating officers arose not from any individual incidence of a corrupt act for personal gain but as a result of the wider police organisation's culture which was shaped by society's view that unsolved murder cases represented an unsatisfactory position. Neither the organisation nor the individual officers perceived its actions to be corrupt and flexible interpretation of the rules was seen as a means to achieve a benefit to the community. The alternative was to heighten concerns about unsolved murders. Their actions did not constitute a criminal offence and their official position was that they were expected to solve crime. The flexible interpretation of the rules satisfied society's requirements and, due to the apparent lack of clarity in the guidance, no law had been breached as a consequence. An absence of clear law governing a particular act effectively endorsed that position and their behaviours appeared to go unchecked in the courts. Without such behaviour, the police considered that those responsible for murder would otherwise escape justice. There would have been an increase in the number of unsolved murders had a strict interpretation of the rules been applied.

It is a significant point that the concerns about questionable police practices expressed before, during and after the Royal Commission resulted in no additional legislation or guidance which may have removed the potential for any

multi-interpretation of the guidance. The effect of this was that the police practice of manipulating the rules to secure the best evidence continued until 1939.[69] Breaches or circumventions of the rules continued to occur routinely. The trend of compliance and breaches occurring in the same investigation continued.[70] This is symptomatic of the law and guidance remaining unclear and suggests that earlier concerns that the law needed more clarity were justified. It is also indicative of the police continuing to remain as a subsidiary, rather than a complementary role to that of the courts and the latter retaining the view that it was not the role of the police to determine what evidence was admissible or not. This attitude continued to fuel the police behaviour of interpreting the rules in a manner which could secure the best evidence.

The operational reality of a police investigation continued to remain not fully understood. A recommendation by the Report of the Departmental Committee on Detective Work and Procedure in 1938 that the law should be amended to allow police to lawfully search premises during an investigation,[71] was again not acted upon. The Committee itself made no recommendations about any further change which may have removed the other long-standing ambiguities.[72] This parliamentary opportunity to recognise the complexities of a criminal investigation late into the inter-war period was again not translated into legislative action.

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[69] The research ends in 1939.
[70] See App 2, lines 240-253.
[71] Report of the Departmental Committee on Detective Work and Procedure Vol 5 (1938) para 180.
[72] However, the Committee did make substantial recommendations for improvement in forensic technology. See Keith Laybourn and David Taylor, *Policing in England and Wales 1918-1939* (palgrave macmillan 2011) 81-104.

The prevailing attitude at the beginning of the inter-war years that any procedural irregularities would be dealt with at court remained throughout the entire period. The developing investigative concept was not fully understood and the police role within it was not recognised. Little attention appears to have been paid to the developing concerns, since parliament was more concerned with post-war economic crises; policing was lower on the political radar. Consequently, legislation was not considered. It is more likely than not, that had legislation been introduced, fewer opportunities to have breached clearly defined rules would have occurred. Legislation could have effectively endorsed the position that the police service was the primary and most competent body to carry out investigations and provided the opportunity for an improved framework of accountability relating to criminal investigations.

It is difficult to view the inter-war arrangements through the prism of modern-day standards but the majority of the concerns aired throughout the 1920s and 1930s are reflected within the provisions of the Police and Criminal Evidence Act 1984. There is no suggestion that police practice today is beyond reproach, but its accountability is much more transparent. It is expected and accepted that modern-day criminal investigations include an element of the questioning of suspects and the searching of their premises. There is also clear direction about the criteria and the timing of the need to caution a suspected offender. Today, this specific element applies whether the suspect is under arrest or not. The thesis represents as a situational analysis of a particular period and must be divorced from twenty-first-century values, but its importance is that it underlines the point that there is sometimes a need to address growing social concerns through

legislation. Policing criminal investigations during the inter-war period had escaped meaningful scrutiny and its effect would last for decades.

8.7 Coroners' legislation

Coroners' legislation throughout the inter-war period acted as an additional contributor to police inability to effectively and efficiently investigate cases of murder.[73] It is significant that in the years immediately preceding the inter-war period, concerns were raised about the function and purpose of coroners' courts proceedings: its function was regarded as outdated and archaic and in need of legislative reform. It is a key point that the Home Office did not act upon concerns raised by newspapers and the medical profession and stated that legislation would be introduced only if it was considered necessary. This is an important position statement and is indicative of a government department which was unclear about the purpose of the coroner's office.

It recognised that an earlier parliamentary review of its role and function had been unsatisfactory but did not consider the need to introduce reforming legislation. This early narrative was focused on the historic role of the coroner and its responsibility to investigate deaths but there is nothing in the archival material examined which indicates that it realised that it was having a detrimental impact on police investigations. The thesis has identified that this lack of recognition is a key factor which adversely impacted on police investigations until 1926 and to a

[73] It equally applied to the investigation of manslaughter.

lesser, though still significant extent, for the remainder of the inter-war period. The impact of coroners' legislation on police investigations has not previously been the focus of detailed academic attention and the thesis has contributed an additional layer of knowledge to this investigative aspect.

It was identified above that the police had not been recognised in law and practice as holding a significant role in the developing investigative concept of crime. The coroner adopted the reverse position: the office was mandated in legislation that it was the primary body responsible for such investigations. Such a position reinforces the point that the complexities and ramifications of a criminal investigation were not fully appreciated and reveals that the purpose of the then-modern coroner's office was unclear. This manifested itself in a duality of process. Persons arrested for murder would initially be presented before the coroner and next before a criminal magistrate. This presents as a factor in the inefficiency and potential ineffectiveness of the police investigation. It required the police to present evidence on separate occasions for different purposes. This led to a position where an arrested person would potentially become aware of the evidence before the police had concluded its investigation and allowed a suspected offender to destroy any further evidence before the police were alerted to its presence.

The Home Office was not alive to the risk and there is some evidence to indicate that the police took steps to attempt to prevent such information from becoming publicly known. The duality was recognised at the time but its potential adverse impact on police investigations was not. This is an important point as police

investigations were required to continue despite them being legally required to operate in a less than efficient manner. It underlines the earlier conclusion that the investigative process was not fully understood and that the police were not recognised in law as the primary body responsible for murder investigations. Critics at the time emphasised the irregularity of the position by stating that coroners' courts were not governed by the strict rules of evidence applied in the criminal courts. Coroners had a free hand to aggressively question people suspected of murder. This practice effectively undermined all the fundamental principles of the Judges' Rules but their application was not transferred to the arena in which all murder inquiries were initiated.

The Home Office played a pivotal role in interpreting these practices. It shaped the direction of the legislative reforms which would follow. It was cognisant of all the concerns which had been raised about the integrity of the coroner's inquest evidence-gathering process, and the ability of a coroner to send someone for trial despite an ongoing police investigation. It also recognised that in practice the police were now better placed to carry out investigations and legislative reform was necessary to remove the duality of process. This did not prevent it from failing to recommend changes to proposed legislation[74] which would continue to allow a coroner to summon a jury in cases of murder and to retain its power to send someone for trial. The resulting Coroners' (Amendment) Act 1926 introduced a provision that where someone had already been charged with murder the inquest must be adjourned until the conclusion of criminal proceedings. This did not affect

[74] Coroners' Bill 1923.

an ongoing police investigation where no-one had yet been arrested and the coroner would continue to operate in the same manner in overseeing the investigation. This indicates that the Home Office continued to not fully appreciate the implications of running two processes in parallel with the consequent risk of compromising the gathering of police evidence.

The conduct of the Home Office in its oversight of the drafting of legislation for coroners parallels its earlier involvement in the review of police practice when dealing with arrested offenders. It adopted the position that any perceived weaknesses in the coroner's role should remain but made recommendations to the Lord Chancellor's department that it should be responsible for ensuring that no procedural irregularities would again occur. A few years earlier it had adopted the position that any perceived ambiguities in police procedures could remain as the courts had indicated that it was their responsibility to determine the admissibility or otherwise of police evidence. They adopted these positions despite a wealth of opinion that legislative change was required. It is symptomatic of a government department which was prepared to ignore the direction given by parliamentary commissions and preferred to shape policy based on its own professional judgements.

The Coroners' (Amendment) Act 1926 did have a positive impact on police investigations, and the legislation was implicit in its recognition of a police service which had matured into an investigative body. Current literature puts forward this position, but this thesis has shown that this recognition was restricted. There remained a significant number of instances when the coroner continued to hear

evidence before anyone had been arrested and charged with an offence. The police could request for the case to be adjourned but this was not enshrined in legislation. This is a key point and is again indicative of the police service not being recognised as the primary body responsible for investigations. The guidance issued to coroners implied that they were expected to continue with the investigation of unsolved and ongoing cases. The police became increasingly concerned that its investigative role was being undermined; its position had improved but the duality of process remained. The underlying message contained within the legislation was that the coroner's office was still treated as a competent investigative body despite the rhetoric contained in Home Office files, legal journals, newspaper reports and parliamentary debates, which indicated the opposite position. The courts similarly reflected this position. Prisoners committed on a coroner's warrant for murder were generally dismissed without allowing them to progress to trial. This indicates that they recognised the unreliability of the evidence produced by the coroner's process.

The debate about the role, purpose and function of the coroner's office which extended into the 1930s, demonstrates that the concerns of the previous decade remained, but no legislation was introduced to resolve the issue. The Home Office was again instrumental in this inertia. There were repeated calls for the abolition of the coroner's process in murder investigations but it considered the matter too complicated to resolve. It is an important observation that the Home Office appeared to have side-stepped the issue. It concerned itself with administrative functions of the coroner's office rather than focusing on the abolition of the process. This is indicative of the Home Office not understanding the problem

caused by the duality of process and choosing not to propose any legislative steps which may have removed the perceived obstacles of efficiency.

It is an important and significant point that the office of government which was designed to oversee and administer the legislative framework of the criminal investigative process was occasionally wrong in its interpretation of extant law. This was seen in the earlier debates about police investigative powers when the Home Office wrongly assumed the police already had powers to search premises. In its deliberations on the need to introduce new coroners' legislation, it suggested that it would be the preferred position that the police privately interview suspected offenders rather than exposing them to a coroners' process where there were no governing rules of evidence. It appears as though the Home Office of the 1930s was unaware of the debates in the 1920s which concluded that the questioning of suspected offenders was prohibited. It is indicative of a government department which was not aware of the rules governing a criminal investigation. It did not adopt a holistic approach to the understanding of the criminal investigative process and failed to recognise that the roles of the coroner and the police in murder investigations were inefficiently connected.

The operation of the coroner's system throughout the inter-war period acted as a significant obstacle to police effectiveness. It ran in parallel to a police investigative process, already governed by legal ambiguities, resulting in evidence being gathered which fell short of the assumed investigative standard. There is also some evidence to suggest that the duality of process which existed, facilitated one of the circumventions adopted by the police. Legislation allowed

the coroner to gather evidence for use at a criminal trial without the protection of a suspected offender being informed that he need not say anything incriminating. The police took advantage of this position by using the opportunity to ask questions by proxy via the authority of the coroner. The extent of the practice is not clear but it presents as an example of the coroner's process facilitating the police to circumvent the assumed standards of an investigation to gather additional evidence.

The combined effect of the coroner's and police operating procedures was an inefficient framework and one that afforded less than the ideal level of protection for people suspected of committing serious criminal offences. It was a position which would remain until the introduction of the Criminal Law Act 1977 and the Police and Criminal Evidence Act 1984 which respectively removed the coroner from the criminal investigative process and provided a clearer operational framework within which the police needed to operate. The existing literature has not tackled this legal dilemma and the conclusions drawn in this thesis represent as a new and significant contribution to the field of historical police investigations and the legal foundation upon which they were based.

8.8 Postscript and future research

The research has drawn upon a broad sample of the available data which has enabled reasonable inferences to have been drawn. There are, however, some weaknesses which should be acknowledged. The time allowed for the research has necessitated restricting the amount of data that could be analysed but which

has been offset by selecting files from across the entire date range (1919-1939). It is unknown what other data is available without conducting further research. The National Archives have few trial transcripts which may provide further information about the nature and frequency of allegations of a breach of the rules and how judges responded to it. This may provide for a minor adjustment in the weighting of the argument that rules were habitually breached or the courts were satisfied with police practice. However, given the recurring patterns identified, this presents as a low risk. Further Home Office papers may be available which shed an alternative light on the dialogue between itself, parliament, the courts and the police. This may equally adjust the assessment of the extent to which each body was a contributory factor in not introducing legislation. However, given the volume of material already identified which contains the details of the relevant dialogue, this again presents as a low risk. It is clear that a form of detective work was conducted before the inception of the New Police in 1829 but no analysis has been undertaken of any parliamentary debate or trial transcripts which may reveal concerns about the nature of police investigations in the intervening years between 1829 and 1918.[75] This may produce additional information which can add to the context of the inter-war years and which shaped later debate.

The thesis has focused on a particular period of history and argues that it witnessed the tacit development and partial recognition of the investigative element of policing. There is an incremental and linear development of an

[75] The transcript of the trial of Frederick Baker in 1867 who was accused of the murder of Fanny Adams has been examined and reveals that the trial judge was critical of questions being put to an arrested person. See evidence of Superintendent William Cheyney, 5 December 1867, reproduced in David Green, *Trial of Frederick Baker (Notable British Trial Series No. 91*) (Mango Books 2021) 102-103.

awareness that the process by which suspected offenders were brought before the courts comprised more than a simple arrest. The integrity of process and an emphasis on fair procedural treatment of arrested people became important. The data indicates that by the end of the inter-war period there remained ambiguity in the law, and police continued to interpret the rules and adapt their methods of gathering evidence in a manner which would ostensibly satisfy the courts.

After the Second World War there was increasing parliamentary and social interest in the investigation process which culminated in a high number of cause célèbres resulting in the police being severely criticised over its practices. Examples of these high-profile cases are the murder convictions of Timothy Evans in 1950,[76] James Hanratty in 1962,[77] Molloy, Robinson, Hickey and Hickey in 1978 (Carl Bridgewater)[78] and the Guildford and Birmingham pub bombings in 1974.[79] These cases dominated the headlines but the procedural treatment of arrested people applies to all levels of criminality and uncertainties would have been raised in many other, simpler cases.

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[76] See for example, Michael Eddowes, *The Man on your Conscience* (Cassell & Co 1955); Ludovic Kennedy, *10 Rillington Place* (Panther 1971); The Stationery Office, *Rillington Place* (The Stationery Office 1999); Jonathan Oates, John Christie of Rillington Place (Pen & Sword 2015); Peter Thorley, *Inside 10 Rillington Place* (Mirror Books 2020).
[77] See for example Louis Blom-Cooper, *The A6 Murder* (Penguin Books 1963); Jean Justice, *Murder vs Murder* (The Olympia Press 1964); Lord Russell of Liverpool, Deadman's Hill (Tallis Press 1966); Paul Foot, Who Killed Hanratty? (Panther 1971, Penguin Books 1988); Bob Woffinden, *Hanratty: The Final Verdict* (Pan Books 1997); Leonard Miller, *Shadow of Deadman's Hill* (Zoilus Press 2001); Paul Stickler, *The Long Silence* (History Press 2021).
[78] See for example Paul Foot, *Murder at the Farm* (Review 1997).
[79] See for example Robert Kee, Trial and Error: The Maguires, the Guildford pub bombings and British Justice (Penguin 1989); Chris Mullins, Error of Judgement: The Truth about the Birmingham Bombings (Poolbeg Press 1990); Bob Woffinden, Miscarriages of Justice (Coronet Books 1989).

Despite some of these cases standing up to scrutiny[80] the effect of publicised dubious police practice had a marked effect on the British psyche and arguably reduced the standing of UK police forces to a remarkable degree.[81] This is an important aspect of public sector governance and policy. The Police and Criminal Evidence Act (PACE) implemented in 1986, was a keystone piece of legislation which sought to set down strict parameters in which the police must operate. It specifically addressed the investigative issues covered in this thesis which mandated strict guidelines and codes of practice regarding the arrest, evidence-gathering methods and procedural treatment of suspected offenders. This did not wholly remove allegations of police malpractice but has demonstrably standardised and professionalised police work.[82] The legislation has substantially reduced the ability to place multi-interpretations on case law.

It is a potentially significant area of research to examine police investigations between 1940 and 1984 to determine the extent to which concerns about police practice grew as society's attitudes changed and awareness of police practice increased. Interpretation of the Judges' Rules through case law and appeal court decisions may be tracked and compared against police practice then. This would determine the extent to which police continued to take advantage or were forced to comply with unclear guidance, and how this changed from 1940 through to the implementation of PACE. This analysis could run in parallel with a review of changing attitudes in society towards policing, key events e.g. high levels of

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[80] See for example Paul Stickler, *The Long Silence* (History Press 2021).
[81] It is acknowledged that this research has been restricted to English and Welsh cases only.
[82] Michael Zander, 'PACE (The Police and Criminal Evidence Act) 1984; Past Present and Future' (2011) National Law School of India Review 23 (1) 53.

terrorist activity and subsequent arrests, and advances in technology. The analysis may result in being able to make a judgement about whether the introduction of unambiguous legislation could have prevented poor police practice with the consequent effect of fewer allegations of miscarriages of justice. It also raises the wider question of 'What is the role of law?' It would be wrong to assume that all police malpractice would have been eradicated but a markedly improved system of criminal investigation, with increased integrity, may have resulted.[83] Zander argues that any review of the impact of PACE since its introduction in 1986 can only result in an inability to accurately gauge its effect due to the multitude of varying perspectives.[84] However, this specific piece of research is aimed at identifying changes in police practice and law alongside the change in prevailing attitudes. The outcome of the research could act as a consideration for both current and future policy advisers and law-makers.[85]

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[83] Zander believes that the degree to which PACE has improved the integrity of the criminal justice process is unanswerable. There are too many competing perspectives. See Michael Zander, 'PACE (The Police and Criminal Evidence Act) 1984; Past Present and Future' (2011) National Law School of India Review 23 (1) 62.

[84] Michael Zander, 'PACE (The Police and Criminal Evidence Act) 1984; Past Present and Future' (2011) National Law School of India Review 23 (1) 62.

[85] The Regulation of Investigatory Powers Act 2000 is an example of pro-active legislation which directed that police activity was not lawful unless it was specifically allowed for in legislation; for example, surveillance activities.

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Appendix 1 – List of primary source documents examined

Number	Perspective	Reference
1	Police	Police Review: 13 December 1895; 30 September 1938
2	Police	National Archive files: ASSI 13/50 CRIM 1/183/2 CRIM 1/183/3 CRIM 1/183/4 CRIM 1/184/2 CRIM 1/184/3 CRIM 1/185/1 CRIM 1/185/2

		CRIM 1/185/3
		CRIM 1/186/1
		CRIM 1/186/3
		CRIM 1/186/4
		CRIM 1/187/3
		CRIM 1/187/4
		CRIM 1/188/1
		CRIM 1/188/3
		CRIM 1/188/5
		CRIM 1/281
		CRIM 1/516
		DPP 1/78

		DPP 2/241 HO 45/24916 HO 144/1631/406003 HO 144/4093 HO 144/11143 HO 144/16260 HO 144/17938 HO 144/17939 HO 144/20916 HO 144/20991 HO 144/21075A HO 144/22660 LCO 2/749

		MEPO 2/4481 MEPO 2/7334 MEPO 2/7953 MEPO 3/260 MEPO 3/262A MEPO 3/262B MEPO 3/269 MEPO 3/274 MEPO 3/275 MEPO 3/284 MEPO 3/285B MEPO 3/866

		MEPO 3/1561 MEPO 3/1565 MEPO 3/1582 MEPO 3/1586 MEPO 3/1600 MEPO 3/1605 MEPO 3/1623B MEPO 3/1631 MEPO 3/1623A MEPO 3/1628 MEPO 3/1638; MEPO 3/1641 MEPO 3/1642

		MEPO 3/1643
		MEPO 3/1653
		MEPO 3/1657
		MEPO 3/1673
		MEPO 3/1682
		MEPO 3/1706
		MEPO 3/1728
		MEPO 3/1729
		MEPO 3/1729
		MEPO 3/1737
		MEPO 8/8
		MEPO 8/11

		PCOM 9/763
3	Social	Daily Mail: 27 February 1919; 6 May 1919 28 August 1920; 7 September 1920 13 March 1922 12 December 1923 30 January 1924; 24 April 1924 27 January 1925; 23 February 1925; 17 March 1925; 2 April 1925; 25 July 1925; 18 November 1925 28 April 1926 21 May 1928; 15 October 1928; 23 October 1928 1 February 1929; 13 February 1929; 23 March 1929; 3 April 1929; 18 May 1929; 19 September 1929; 10 October 1929; 26 October 1929

		24 July 1930 17 February 1932 7 February 1936; 6 May 1936; 8 October 1936; 21 October 1936; 19 November 1936 24 September 1938
4	Social	Daily Herald: 23 June 1919 6 April 1921 6 April 1923 4 May 1926; 3 June 1926 19 May 1928; 9 July 1928; 11 October 1928; 17 October 1928; 18 October 1928; 24 October 1928; 20 November 1928; 27 November 1928 15 January 1929; 23 March 1929

		9 January 1930; 11 March 1930; 25 June 1930; 23 July 1930 19 February 1932 8 June 1934; 12 June 1934; 13 June 1934; 15 June 1934; 20 June 1934; 20 June 1934; 17 July 1934, 19 October 1934; 31 October 1934 17 October 1936; 19 October 1936; 11 November 1936; 16 November 1936; 24 November 1936 24 September 1938
5	Social	The Times: 14 November 1918; 2 December 1918 18 January 1919; 10 April 1919; 3 May 1919; 14 May 1919; 9 July 1919 13 January 1920; 23 August 1920 5 April 1921; 30 July 1921; 9 August 1921; 20 August 1921

		6 January 1922; 7 March 1922; 10 July 1922 1 February 1924 27 January 1925; 20 May 1925; 30 July 1925; 30 August 1925; 7 November 1925; 18 November 1925 26 February 1926 19 May 1928; 25 May 1928; 4 June 1928; 8 July 1928; 27 July 1928; 12 September 1928; 11 October 1928; 14 October 1928; 4 November 1928 26 January 1929; 29 January 1929; 25 May 1929; 10 June 1929; 12 October 1929 22 January 1930; 11 June 1930; 3 July 1930; 4 July 1930; 5 July 1930; 14 August 1930; 17 September 1930; 10 November 1930 15 June 1934; 29 June 1934 2 February 1935

		7 February 1936; 5 October 1936; 8 October 1936; 17 October 1936; 19 October 1936; 11 November 1936
6	Social	Manchester Guardian: 17 December 1920 30 January 1924 27 January 1925; 11 February 1925; 13 May 1925 26 August 1926 13 June 1928; 14 June 1928; 15 September 1928; 19 September 1928; 24 September 1938; 10 October 1928; 11 October 1928; 16 October 1928; 17 October 1928; 18 October 1928; 30 October 1928; 21 November 1928, 27 November 1928; 5 December 1928 18 March 1929; 3 April 1929; 12 October 1929 23 July 1930

		3 August 1934; 19 September 1934 31 May 1935 4 March 1936; 22 May 1936; 8 October 1936; 16 October 1936; 28 October 1936; 11 November 1936; 16 November 1936; 17 November 1936; 18 November 1936; 11 December 1936 4 November 1937
7	Social	Other national newspapers: The People: 18 March 1928 Daily Express: 17 June 1930; Daily express 28 October 1930; 8 November 1930 Evening Standard: 31 January 1935; Manchester Guardian Weekly 1 February 1935 Daily Telegraph: 24 September 1938 Daily Mirror: 24 September 1938
8	Social	Local newspapers:

		Aberdeen Press and Journal 19 December 1928 Fife Free Press and Kirkcaldy Guardian 26 October 1929 Lancashire Evening Post 31 December 1929 Holderness Coroner dated 18 January 1935 News Chronicle 7 February 1936 North Mail 7 February 1936 Pharmaceutical Journal 15 February 1936 Sunday Despatch 16 February 1936 Yorkshire Post 20 February 1936 Belfast News 21 February 1936 Daily Sketch 24 September 1938 Yorkshire Post 24 September 1938

		Liverpool Post 24 September 1938
9	Home Office	William Brend, 'An Enquiry into the Statistics of Deaths from Violence and Unnatural Causes in the United Kingdom (1915) Government Circular 45/64, Judges' Rules and Administrative Directions to Police, 24 June 1964 HO Circular 45/64 HO 45/11214 HO 45/12478 HO 45/18360 HO 45/19921 HO 45/20461 HO 45/20462 HO 45/21842

		HO 45/22971 HO 45/24916 HO 144/4093 HO 144/6596 HO 144/10066 HO 144/17938 HO 144/17939 HO 144/21075A HO 144/22660 LCO 2/826 LCO 2/4958 LCO 2/12454

10	Political	Seventh Report from Her Majesty's Commissioners on Criminal Law, 11 March 1843 Royal Commission Upon the Duties of the Metropolitan Police Vol 1 1908 Cmnd 4156 Arrest of Major R O Sheppard DSO RAOC, Report by The Rt Hon J F P Rawlinson: Enquiry Held Under Tribunals of Enquiry (Evidence) Act 1921 Cmnd 2497 Report of the Street Offences Committee 1928, Cmnd 3231 Report of the Royal Commission on Police Powers and Procedure, 16 March 1929 HMSO Cmd 3297 The Report of the Departmental Committee on Coroners 1936 Cmnd 5070 Report of the Departmental Committee on Detective Work and Procedure Vol 5 1938 Report of the Committee on Death Certification and Coroners, November 1971 Cmnd 4810

		Criminal Law Revision Committee, Eleventh Report, Evidence (General), 1972, Cmnd 4991
11	Political	House of Lords Debates: 14 May 1924 vol 57 col 423; 15 May 1924 vol 57 col 460; 15 May 1924 vol 57 cols 443-444 19 May 1925 Volume 61 Columns 329-336 11 March 1926 vol 63 col 556-559; 9 December 1926 Vol 65 cols 1394-1402 4 June 1930 vol 77 cols 1377-1378 8 November 1934 vol 94 col 329; 8 November 1934 vol 94 col 208 16 December 1936 vol 103 col 965 15 April 1937 vol 104 col 949

		7 April 1938 vol 108 cols 599-600 House of Commons Debates: 10 December 1906 vol 166, cols 1661-2 and 1664 19 February 1917 vol 90, col 2480 9 March 1920 vol 126 col 57 7 May 1925 vol 183 cols 116-117; 11 May 1925, vol 183, col 1602; 11 May 1925, vol 183, col 1605; 16 November 1925 vol 188 cols 155-170; 20 November 1925 vol 188 col 860; 20 November 1925 vol 188 cols 802 -804; 20 November 1925 vol 188 col 861; 20 November 1925 vol 188 col 160-171; 20 November 1925, vol 188, col 861 6 May 1926 vol 195 cols 527-530; 5 May 1926 vol 195 col 295; 5 May 1926 vol 195 col 387; 5 July 1926 vol 197 col 1825; 29 November 1926 vol 200 cols 905-915

		17 May 1928 vol 217, cols 1303-39; 9 July 1928 vol 219 col 1857; 11 July 1928 vol 219 cols 2244-2247; 28 July 1938 vol 338 cols 3286-3287; 5 December 1928 vol 223 col 1221 29 October 1929 vol 224 col 231 7 May 1930 vol 238 cols 985-1078 23 July 1931 vol 255 cols 1663-1666 17 February 1932 vol 261 col 1645; 18 February 1932 vol 261 cols 1803-1804 16 April 1934 vol 288, col 807; 16 April 1934 vol 288, col 807; 31 May 1934 vol 92 cols 756-757 10 April 1934 vol 288 cols 258-259; 30 Oct 1934 vol 293 col 90 20 March 1935 vol 299 cols 1200-1201 16 November 1936 vol 317 cols 1349-1410; 7 December 1936, vol 318, cols 1697-1712

		26 May 1938 vol 336 cols 1375-1376; 14 November 1938 28 July 1939 vol 350 col 1866
12	Legal/judiciary	Justice of the Peace and Local Government Review: 19 January 1918; 14 June 1924; 30 May 1925; 17 November 1928; 5 January 1929; 12 January 1929; 6 April 1929; 20 April 1929; 27 April 1929; 4 May 1929; 11 May 1929 The Law Journal, Volume LXXIX, No. 3601, 19 January 1935 The Law Society's Gazette, Volume XXXII, March 1935 Sir Edward Coke, Institutes Vol 3 (1644) The Medical World:

		February 25th, 1915; 4 March 1915; 11 March 1915; 18 March 1915; 25 March 1915; 1 April 1915
13	Legislation	Unlawful Drillings Act 1819 Coroners Act 1844 Gaming Act 1845 (8 & 9 Vic c 109 s 3) Indictable Offences Act 1848 11 & 12 Vic c 42 s 18 County Coroners Act 1860 Prosecution of Offences Act 1879 (42 & 43 Vic c 22 s 5) Municipal Corporations Act 1882 Coroners Act 1887 Vagrancy Act 1898 (61 & 62 Vic c 39 s 1) Coroners Act 1892 Yorkshire Coroners Act 1897

		Lincolnshire Coroners Act 1899 Licensing Act 1902 (2 Edw 7 c 28 s 29) Licensing (Consolidation) Act 1910 (10 Edw 7 & 1 Geo 5 c 24 s 82) Forgery Act 1913 (3 & 4 Geo 5 c 27 s 16) Defence of the Realm Act 1914 (4 & 5 Geo 5 c 29) Larceny Act 1916 (6 & 7 Geo 5 c 50 s 42) Police Act 1919 (9 & 10 Geo 5 C 46) Emergency Powers Act 1920 (10 & 11 Geo 5 c 55) Infanticide Act 1922 Criminal Justice Act 1925 (15 & 16 Geo 5 C 86) Coroners' (Amendment) Act 1926 (16 & 17 Geo 5 C 59)

		Incitement to Disaffection Act 1934 (24 & 25 Geo 5 C 56) Public Order Act 1936 (1 Ed & 8 & 1 Geo 6 C 6) Criminal Law Act 1977 Police and Criminal Evidence Act 1984 c 60
14	Case Law	R v Fitzpatrick (1631) 3 ST TR 420 R v Keate (1702) 90 ER 557, Comb 406; 1 WLUK 602 R v Hunt 3B and Ald 568 Beckwith v Philby 6 B&C 635 R v Fleet 1818, 1 B&A 379 Chitty's Constables (1819) 2nd ed p.59 Redford v Birley 1822 3 Stark 77 R v Poulton 1832 5 C & P 329

		Bessell v Wilson (1853) 17 JP 567, 1 E & B 489 Hogg v Ward (1858) 157 ER 533 Agnew v Jobson (1877) 42 JP 424, 47 LJMC 67 Dillon v O'Brien (1887) 16 Cox CC 245, 20 LR Ir 300 R v Hughes (1879) 4 QBD 614; 43 JP 556 R v Fennell (1881) 7 QBD 147 R v Dudley 1884 14 QBD 273 R v Gavin (1885) 15 CC 656 R v Serné 1887 16 Cox 311 Dillon v O'Brien (1887) 16 Cox CC 245, 20 LR Ir 300 R v Male and Cooper (1893) 17 Cox CC 689 R v Miller (1895) 18 Cox CC 54

		R v Stormouth 1897 61 JP 729 Rogers v Hawken (1898) LJQB 526 R v Histead (1898) 19 Cox CC 16 R v Whitmarsh 1898 62 JP 711 R v Brackenbury (1903) 17 Cox CC 628 R v Knight and Thayre (1905) 20 Cox CC 711 R v Best (1909) I KB 692 R v Booth and Jones (1910) 5 CA R 177 R v Ibrahim (1914) AC 599 R v Gardner and Hancox 1915 80 JP 135; R v Crowe and Myerscough (1917) 81 JP 288; R v Voisin 1918 1 KB 531

		R v Ibrahim 1919; R v Beard 1920 AC 479; R v Hussey 1924 89 JP 28; R v Benson
15	Coroners	Second Report of the Departmental Committee appointed to inquire into the law relating to coroners and coroners’ inquests and into the practice in coroners’ courts, Part 1, 1910 Cmnd 5004 The Report of the Departmental Committee on Coroners 1936 Cmnd 5070 Criminal Statistics: Statistics Relating to Criminal Proceedings, Police, Coroners, Prisons and Criminal Lunatics for the year 1927 Cmnd 3301 Criminal Statistics England and Wales 1928: Statistics Relating to Crime, Criminal Proceedings,

		and Coroners' Investigations for the year 1928 Cmnd 3581 Criminal Statistics England and Wales 1929: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1929 Cmnd 3583 Criminal Statistics England and Wales 1930: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1930 Cmnd 4036 Criminal Statistics England and Wales 1931: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1931 Cmnd 4360 Criminal Statistics England and Wales 1932: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1932 Cmnd 4608 Criminal Statistics England and Wales 1933: Statistics Relating to Crime, Criminal Proceedings,

		and Coroners' Investigations for the year 1933 Cmnd 4977 Criminal Statistics England and Wales 1934: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1934 Cmnd 5185 Criminal Statistics England and Wales 1935: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1935 Cmnd 5520 Criminal Statistics England and Wales 1936: Statistics Relating to Crime, Criminal Proceedings, and Coroners' Investigations for the year 1936 Cmnd 5690
16	Coroners	Files in addition to those identified above which also contain a coroner's perspective: HO 45/24977 HO 45/24905

		HO 45/10564 HO 45/12285 HO 45/14556

Appendix 2 – Evidence extracted from data

	Question 1: Is there any evidence that extant law prevented effective and lawful investigations? **(Code: prevent)**		
	Year	**Source reference**	**Evidence**
1	1910	Second Report of the Departmental Committee appointed to inquire into the law relating to coroners and coroners' inquests and into the practice in coroners' courts, Part 1, 1910, para 35 Cmnd 5004	Coroners' hearings were often complete before any criminal proceedings could be instituted
2	1923	HO 45/12285 - file 453044 (dated 1923) - memo initialled HBS (undated)	The Home Office considered that the idea of coroners' courts being used to bring offenders to justice should be abandoned
3	1923	Coroners Bill Clause 11 (2) 14 Geo 5 (1923)	Despite the opinion that coroners' courts should not

			be used to bring offenders to justice, proposed legislation retained the coroner's ability to do so
4	1923	HO 45/12285 - file 453044 (dated 1923) - memo initialled HBS (undated). The legislation which empowered a coroner to name a guilty party was the S.4 (3) Coroners' Act 1887 (50 & 51 Vic c 71)	The Home Office was critical of a coroner being required to name a guilty party and have the power to commit that person for trial
5	1924	HO 45/12285 - file 453044/4 - letter from DPP to Ernley Blackwell dated 18 February 1924. See also HO 45/12285 - file 453044 2 January 1924- Memo dated 4 March 1924 signed by AL	The Director of Public Prosecutions also endorsed the view that there should not be any duplication of proceedings between the coroner's process and the criminal investigation
6	1925	HL Debate 19 May 1925 vol 61 col 334	The duality of process which existed between coroner's process and the criminal investigation provided the potential for mischief

7	1925	Manchester Guardian 13 May 1925	The role of the inquest had become superfluous in murder investigations
8	1920	CRIM 1/185/3 deposition of DDI Duggan dated 2 June 1920	Confusion/contradiction of status of suspect
9	1920	HO 144/1631/406003 Transcript of trial 21-22 June 1920 pp 51-58	Confusion/contradiction of status of suspect
10	1920	CRIM 1/185/3 deposition of Arthur Neil dated 18 May 1920	Confusion/contradiction of status of suspect
11	1930	HO 144/16260 deposition of James Rutt dated 10 June 1930	Confusion/contradiction of status of suspect
12	1920	HO 144/1631/406003 transcript of trial 22 June 1920 p.51	Question of suspicion tested at court
13	1920	MEPO 3/269 - Daily Telegraph 23 June 1920; MEPO 3/269 - report of DDI Duggan dated 23 June 1920	Question of suspicion tested at court

14	1920	HO 144/1631/406003 transcript of trial 22 June 1920 p.51	Question of suspicion tested at court
15	1921	MEPO 3/1561 - Murder of Thomas Thomas in Garnant 13 February 1921	Duplicated proceedings at inquest hearings
16	1921	MEPO 3/1565 - Murder of Alice Lawn in Cambridge 27 July 1921 - report of CI Mercer dated 1 September 1921	Duplicated proceedings at inquest hearings
17	1923	MEPO 3/1586 - Report of DDI Burton dated 5 May 1923 - Murder of Nellie Pearce on 31 May 1923 by Roland Duck in Fulham	Duplicated proceedings at inquest hearings
18	1923	MEPO 3/1600 -Transcript of coroners note 7 December 1923 - Murder of Isobel Bailey on 7 December 1923 by Major Norman Bailey	Duplicated proceedings at inquest hearings

19	1923	HO 45/12285 - file 453044 - memo initialled AL 12.12.23	Duplicated proceedings at inquest hearings
20	1924	MEPO 3/1605 - Transcript of coroners hearing 7 May 1924	Duplicated proceedings at inquest hearings
21	1925	LCO 2/749 - Hansard Report 'Inquests and Capital Charges' 19 May 1925 - columns 329-336	Duplicated proceedings at inquest hearings
22	1925	HO 45/12285 - file 453044/35D dated 1925	Duplicated proceedings at inquest hearings
23	1926	LCO 2/749 - Letter from Incorporated Justices' Clerks' Society dated 7 May 1926	Duplicated proceedings at inquest hearings
24	1926/1928	R v Creed MEPO 3/1623A - transcript of coroner's court hearing 13 August 1926; R v Benson MEPO 3/1641 - Report of DDI Hodges 7 September 1928	The police could only request a coroner to adjourn an inquest during an ongoing criminal investigation. There was no provision in law.
25	1928	MEPO 3/1641 - Report of DDI Hodges 7 September	Duplicated proceedings at inquest hearings

		1928 - Murder of Charlotte Harber by William Benson on 7 September 1928 at Coulsdon	
26	1930[1]	HO 45/12478 – Evidence of Assistant Commissioner Kendal, page 9	Pathologists were used that had no experience in criminal matters
27	1930[2]	HO45/12478 – Report of Director of Public Prosecutions, page 4	Confidential criminal evidence was put into the public domain at coroners' hearings
28	1934	MEPO 2/7334 - Justice of the Peace and Local Government Review, 15 December 1934 XCVIII pp 811-812	Duplicated proceedings at inquest hearings
29	1935	MEPO 2/7334 -Police report dated 6.3.35 and letter from DPP dated 9 May 1935	Duplicated proceedings at inquest hearings

[1] The report is undated but the contents of the report clearly indicate that it was created after the implementation of the Coroners' (Amendment) Act 1926.

[2] Undated, but it is clear from the contents that it was created after the implementation of the Coroners' (Amendment) Act 1926.

30	1935	HO 45/21842 Letter dated 4.1.35 from HO to solicitor	Duplicated proceedings at inquest hearings
31	1935	MEPO 2/7334 -Police report dated 6 March 1935; Manchester Guardian Weekly 1 February 1935; Evening Standard 31 January 1935. See also The Times 2 February 1935	Coroners' proceedings in murder investigations should be abolished
32	1936	The Report of the Departmental Committee on Coroners 1936 Cmnd 5070 pp 23-26	The coroner should be removed from the murder investigation process
33	1937	MEPO 2/7334 - HC Debate 6 April 1937 Vol 322 Cols 22-23	Duplicated proceedings at inquest hearings
	Question 2: Is there any evidence that influencers encouraged the development of the criminal law to allow for more effective and lawful investigations? **(Code: encourage)**		
	Year	**Source reference**	**Evidence**

34	1928	Report of the Street Offences Committee 1928, Cmnd 3231 p.23	Police processes ought to be clear and enshrined in legislation
35	1929	Report of the Royal Commission on Police Powers and Procedure, 16 March 1929 Cmnd 3297, p.12	Legislation governing police investigations was out of date and in need of review
36	1929	Report of the Royal Commission on Police Powers and Procedure, 16 March 1929 Cmnd 3297, p.18	Legislation should not be introduced which would limit discretionary powers
37	1929	Report of the Royal Commission on Police Powers and Procedure, 16 March 1929, Cmnd 3297, pp 45 and 116	The searching of premises should be placed on a statutory footing
38	1929	Justice of the Peace and Local Government Review, January 12, 1929, p.19	The searching of premises should be placed on a statutory footing

39	1931	MEPO 3/866, reports of DCI Hambrook dated 27 November and 7 December 1931	Premises of suspected offender unable to be searched
40	1926	Daily Mail 28 April 1926	Newspapers argued that police methods need changing to address the rising number of unsolved murders
41	1930	Daily Express 8 November 1930.	Newspapers argued that police methods need changing to address the rising number of unsolved murders
42	1932	Daily Herald 19 February 1932	Newspapers argued that police methods need changing to address the rising number of unsolved murders
43	1926	Coroners' (Amendment) Act 1926 (16 & 17 Geo 5 C 59)	The Coroners' (Amendment) Act 1926 recognised that the police took primacy in

			investigations if someone had been charged with an offence
44	1928	Daily Herald 9 July 1928; The Times 8 July 1928; HC Debate 9 July 1928 vol 219 col 1857; HC Debate 11 July 1928 vol 219 col 2244	Public pressure to remove the coroner from the murder investigation process
45	1929	Daily Mail 10 October 1929; HC Debate 29 October 1929 Volume 224 Column 231; HC Debate 7 May 1930 Volume 238 Columns 985-1078	Public pressure to remove the coroner from the murder investigation process
	Question 3: Is there any evidence that influencers discouraged or prevented the development of the criminal law to allow for more effective and lawful investigations? **(Code: discourage)**		
	Year	**Source reference**	**Evidence**
46	1904	HO 144/10066 - 52392/9 dated 10 May 1904	Home Office refused to intervene when early concerns about the

			questioning of arrested people were resulting in the collapse of criminal trials
47	1914/18	Report of the Royal Commission on Police Powers and Procedure, 16 March 1929, Cmnd 3297, p.72	The introduction of the Judges' Rules did not provide the clarity sought concerning the questioning of arrested people
48	1924	HO 45/12285 - file 453044/24 memo from AL dated 17 November 1924	The Home Office and the Coroners' Society considered that the 1910 parliamentary committee on coroners' reform had failed to tackle the difficult issue of duality of proceedings between the coroner's process and the criminal investigation
49	1925	HC Deb 11 May 1925, vol 183, col 1602	People suspected of murder were not given a fair trial due to police practice

50	1925	HC Deb 11 May 1925, vol 183, col 1605; HC Deb 20 November 1925 vol 188 col 160-171	Police powers specifically rejected
51	1926	Coroners' (Amendment) Act 1926 (16 & 17 Geo 5 C 59)	The Coroners' (Amendment) Act 1926 retained the responsibility of a coroner to investigate cases of murder where no person had yet been arrested
52	1927	Thomas F D, Sir John Jervis on the Office and Duties of Coroners with Forms and Precedents 7th edn (Sweet and Maxwell 1927) 13	The Coroners' (Amendment) Act 1926 retained the responsibility of a coroner to investigate cases of murder where no person had yet been arrested
53	1928	HC Deb 17 May 1928, vol 217, cols 1303-39; HC Deb 11 May 1925, vol 183, col 1602	Concerns that the police already had too many powers
54	1929	Justice of the Peace and Local Government Review	RCPPP criticised for not dealing with the complicated

		20 April 1929, pp 215 and 248	issue of the admissibility of statements and not taking the opportunity of dealing with archaic laws
55	1929	Report of the Royal Commission on Police Powers and Procedure, 16 March 1929 Cmnd 3297, p.57; R v Hughes (1879) 4 QBD 614; 43 JP 556; Justice of the Peace and Local Government Review, May 4, 1929. p.280	The police investigation was regarded as unimportant and its significance was not recognised
56	1929	MEPO 2/7953 - letter from Home Office dated 3 December 1929, p.1	Despite a lack of clarity about the practice of arrest the Home Office decided that there was no need to clarify the position by the introduction of legislation

56	1929	HO 45/22971 Letter dated 6 March 1929 from Chair of RCPPP	It was never the intention of the Royal Commission on Police Powers and Procedure (RCPPP)(1929) to revise the ambiguous codes (Judges' Rules) governing police practice
58	1929	Report of the Royal Commission on Police Powers and Procedure, 16 March 1929, Cmnd 3297, p.24	The RCPPP stated that it was neither competent nor required to deal with the complicated law surrounding the issue of the questioning of arrested people
59	1929	HO 45/22971 Letter to Royal Courts of Justice dated 23.4.29 from Home Office	The Home Office considered the rules to be sufficiently clear and saw no benefit in issuing a further instruction which sought to clarify the matter further
60	1929	HO 45/22971 (File 536053/8) Letter from Hewart to Home Secretary dated 28 May 1929	HM judges stated that it was not within their province to offer any criticism or comment upon the

			recommendations by the RCPPP for any legislative change
61	1929	HC Debate 29 October 1929 Volume 224 Column 231	Home Secretary rejects the need for amended coroners' legislation
62	1930	HO 45/22971 File 536053/23	Despite evidence of repeated misinterpretations of the law concerning the questioning of arrested people no legislation was proposed. Only Home Office guidance amended
63	1936	LCO 2/12454 - Report of the Committee on Coroners note from Home Office (Maxwell) dated 28 February 1936, p.1; HC Debate 26 November 1936 Volume 318 Column 537; HC Debate 6 April 1937 Volume 322 Column 22.	The Home Office rejected a parliamentary recommendation that legislation should be introduced to address the concerns of the coroner's process running in parallel with criminal investigation
64	1937	HC Debate 28 July 1938 vol 338 col 3287	The Home Office again rejected calls for the

			introduction of new legislation to govern coroners' inquests
	Question 4: Is there any evidence that the police complied with the requirements of the legal framework in which they operated? **(Code: compliance)**		
	Year	**Source reference**	**Evidence**
65	1919	MEPO 3/262B Report of DCI Wensley dated 17 July 1919 p. 29	Cautioned upon arrest
66	1919	MEPO 3/262B Statement of Supt Frederick James Underwood dated 9 July 1919	Cautioned upon arrest
67	1919	ASSI 13/50 Deposition of PC Theopilus Turner dated 23 December 1919	Cautioned upon arrest
68	1920	ASSI 13/50 Deposition of PC Ralph Tingey dated 29 May 1920	Cautioned upon arrest
69	1920	ASSI 13/50 Deposition of Insp John Parker 13 May 1920	Cautioned upon arrest

70		MEPO 3/275 Report of CI Mercer dated 13 September 1920, p.20	Cautioned upon arrest
71	1920	MEPO 3/274 Deposition of George Mercer dated 7 October 1920	Cautioned upon arrest
72	1920	CRIM 1/187/3 Deposition of DI John Davies dated 16 September 1920	Cautioned upon arrest
73	1920	MEPO 3/284 report of DI Davies dated 16 September 1920	Cautioned upon arrest
74	1920	CRIM 1/183/2 Deposition of DDI William Smith dated 14 January 1920	Cautioned upon arrest
75	1920	CRIM 1/183/2 Deposition of William Fox dated 14 January 1920	Cautioned upon arrest
76	1920	CRIM 1/186/3 Deposition of Walter Hambrook dated 26 June 1920	Cautioned upon arrest
77	1920	CRIM 1/187/4 Deposition of DDI Duggan dated 7 October 1920	Cautioned upon arrest

78	1921	MEPO 3/1565 - report of CI Mercer dated 8 August 1921	Cautioned upon arrest
79	1922	MEPO 3/1582 Report of DDI Hall undated, p.2	Cautioned upon arrest
80	1922	MEPO 3/1582 Report from Limehouse Police Station 4.10.1922 p.3	Cautioned upon arrest
81	1923	MEPO 3/1586 - Report of DDI Burton dated 5 May 1923	Cautioned upon arrest
82	1924	CRIM 1/281 - Murder of Betty Maud Beadon (7) by Maud Beadon on 1 July 1924	Cautioned upon arrest
83	1924	HO 144/4093 - evidence of PC Francis Day Transcript of trial 19..6.24 - Murder by Abraham (Jack) Goldenberg on 3 April 1924 of William Hall at Headley, Hampshire	Cautioned upon arrest
84	1927	MEPO 3/1628 Report of DCI Cornish dated 25 May 1927 p.31	Cautioned upon arrest

85	1928	MEPO 3/1631 Report of CI Berrett, dated 8 February 1928, p.6	Cautioned upon arrest
86	1928	HO 144/11143 Deposition of DS Clayton Whittaker dated 1 November 1928.	Cautioned upon arrest
87	1928	MEPO 3/1642 - Murder of Julia Mangan by Robert Williams 23 October 1928	Cautioned upon arrest
88	1928	MEPO 3/1641 - Report of DDI Hodges 7 September 1928 - Murder of Charlotte Harber by William Benson on 7.9.28 at Coulsdon	Cautioned upon arrest
89	1928	MEPO 3/1631 Report of CI Berrett, dated 8 February 1928, p.16	Cautioned upon arrest
90	1929	HO 45/24916 Report of DDI Wesley dated 6 October 1929	Cautioned upon arrest
91	1930	MEPO 3/1657 Report of DCI Hambrook dated 30 October/10 November 1930 p. 33	Cautioned upon arrest

92	1930	PCOM 9/763 Birmingham post 5 December 1930	Cautioned upon arrest
93	1930	MEPO 3/1653 Report of DDI Bennet dated 12 April 1930	Cautioned upon arrest
94	1930	HO 144/16260 Statement of Lily Feely dated 7 June 1930	Cautioned upon arrest
95	1930	HO 144/16260 Deposition of DDI Frederick Hedges dated 16 June 1930	Cautioned upon arrest
96	1930	CRIM 1/187/3 Deposition of William Murrells dated 24 September 1930	Cautioned upon arrest
97	1932	MEPO 3/1673 Report of DI Winter dated 8 June 1932, p.7	Cautioned upon arrest
99	1932	MEPO 3/1673 Report of DI Winter dated 8 June 1932, p.27	Cautioned upon arrest
99	1932	MEPO 3/1673 Statement of Barney dated 31 May 1932	Cautioned upon arrest
100	1934	DPP 2/241 - Report of DDI Allan dated 21	Cautioned upon arrest

		November 1934 p.4 - Murder of Louise May on 6 November 1934 by George Newman	
101	1937	HO 144/20916 Statement of Gerald Rogers dated 5 May 1937	Cautioned upon arrest
102	1937	HO 144/20916 Statement of George Stone dated 5 May 1937	Cautioned upon arrest
103	1937	HO 144/22660 Statement of Herbert Stone dated 29 July 1937	Cautioned upon arrest
104	1938	MEPO 3/1729 Report of DDI Harris dated 14 February 1938, p.4	Cautioned upon arrest
105	1938	MEPO 3/1729 Statement of DS Gwilym Edwards dated 11 February 1938	Cautioned upon arrest
106	1938	MEPO 3/1737 Statement of DS William Skardon dated 31 December 1938	Cautioned upon arrest
107	1939	MEPO 3/1737 Statement of DDI Francis Gillan dated 6 January 1939	Cautioned upon arrest

108	1919	MEPO 3/262A - Coroner's deposition dated 4 May 1919 of DDI Francis Hall	No questioning of prisoner
109	1920	CRIM 1/188/3 deposition of IDI Hugh Hunt dated 18 October 1920	No questioning of prisoner
110	1920	CRIM 1/186/1 deposition of Henry Tarbard dated 12 May 1920	No questioning of prisoner
111	1920	ASSI 13/50 deposition of DI George Barnes dated 22 April 1920	No questioning of prisoner
112	1920	CRIM 1/184/3 deposition of DDI William Smith dated 12 April 1920	No questioning of prisoner
113	1920	CRIM 1/185/3 deposition of Supt Arthur Neil dated 29 May 1920	No questioning of prisoner
114	1920	CRIM 1/185/3 deposition of DDI Duggan dated 29 May 1920	No questioning of prisoner
115	1920	CRIM 1/183/2 deposition of DDI William Smith dated 14 January 1920	No questioning of prisoner

116	1920	CRIM 1/183/2 deposition of William Fox dated 14 January 1920	No questioning of prisoner
117	1930	CRIM 1/516 deposition of DI Fergus Ewart dated 22 July 1930	No questioning of prisoner
118	1930	MEPO 3/1653 Report of DDI Bennet dated 12 APRIL 1930	No questioning of prisoner
119	1938	MEPO 3/1729 report of DDI Harris dated 14 February 1938 p.4	No questioning of prisoner
120	1938	MEPO 3/1729 statement of DS Gwilym Edwards dated 11 February 1938	No questioning of prisoner
121	1919	MEPO 3/262A - Coroner's deposition dated 4 May 1919 of DDI Francis Hall	Cautioned after being charged
122	1920	CRIM 1/188/3 deposition of DDI Hugh Hunt dated 18 October 1920	Cautioned after being charged

123	1920	CRIM 1/186/1 deposition of Henry Tarbard dated 12 May 1920	Cautioned after being charged
124	1920	ASSI 13/50 deposition of DI George Barnes dated 22 April 1920	Cautioned after being charged
125	1920	CRIM 1/184/3 deposition of DDI William Smith dated 12 April 1920	Cautioned after being charged
126	1920	CRIM 1/188/5 - Report of DDI Tanner dated 22 October 1920	Cautioned after being charged
127	1920	CRIM 1/184/2 statement of Adolph Hanella dated 24 March 1920	Cautioned after being charged
128	1920	CRIM 1/185/3 deposition of Supt Arthur Neil dated 29 May 20	Cautioned after being charged
129	1920	CRIM 1/185/3 deposition of DDI Duggan dated 29 May 1920	Cautioned after being charged
130	1930	CRIM 1/516 deposition of DI Fergus Ewart dated 22 July 1930	Cautioned after being charged

	Question 5: Is there any evidence that the police breached the requirements of the legal framework in which they operated? **(Code: breach)**		
	Year	**Source reference**	**Evidence**
131	1924	MEPO 3/1605 - Statement of CI Percy Savage 5 May 1924 - Murder of Emily Kaye by Patrick Mahon on 16 April 1924	Questioning of suspects against Home Office instructions
132	1928	HO 144/11143 deposition of DS Clayton Whittaker dated 1 November 1928	Questioning of suspects against Home Office instructions
133	1928	HO 144/11143 deposition of Supt Thomas Hammond dated 1 November 1928	Questioning of suspects against Home Office instructions
134	1928	HO 144/11143 statement of Clayton Whittaker undated	Questioning of suspects against Home Office instructions
135	1928	HO 144/11143 statement of Supt Thomas Hammond undated	Questioning of suspects against Home Office instructions

136	1919	ASSI 13/50 - deposition dated 10 November 1919 of PC Albert Holland	Arrested but no caution administered
137	1919	ASSI 13/50 deposition dated 10 November 1919 of Insp George Wattam	Arrested but no caution administered
138	1920	CRIM 1/184/3 deposition of PC George Allchin dated 5 May 1920	Arrested but no caution administered
139	1920	CRIM 1/184/2 - Insp John Bradshaw deposition dated 9 April 1920	Arrested but no caution administered
140	1920	CRIM 1/184/2 deposition of Insp Charles Vanner dated 25 March 1920	Arrested but no caution administered
141	1920	CRIM 1/187/3 - deposition of William Murrells dated 24 September 1920	Arrested but no caution administered
142	1920	CRIM 1/187/3 deposition of DI John Davies dated 16 September 1920	Arrested but no caution administered
143	1920	CRIM 1/185/1 deposition of Alfred Crutchett dated 3 June 1920	Arrested but no caution administered

144	1922	MEPO 3/1582 statement of DS Ernest Foster dated 13 October 1922	Arrested but no caution administered
145	1923	MEPO 3/1586 - inquest deposition dated 3 May 1923 of Frederick Taylor	Arrested but no caution administered
146	1930	HO 144/16260 deposition of James Rutt dated 10 June 1930	Arrested but no caution administered
147	1933	MEPO 3/1682 - report of DI Campion 14 May 1933 and statement of PC Walter Middleton 12 May 1933 - Murder of Boleslov Pankovski by Varnavas Antorka on 12 May 1933	Arrested but no caution administered
148	1930	MEPO 3/1657 Report of DCI Hambrook dated 30 October/10 November 1930 p 33	Suspect searched without being arrested
149	1920	MEPO 3/284 report of DI Davies dated 16 September 1920	No caution after charge

150	1923	MEPO 3/1586 - Report of DDI Burton dated 5 May 1923	No caution after charge
151	1920	CRIM 1/183/4 deposition of DDI Albert Yeo dated 28 February 1920	No caution administered throughout entire process
152	1920	CRIM 1/184/3 deposition of PC George Allchin dated 5 May 1920	No caution administered throughout entire process
153	1920	M 1920EPO 3/285B Statement of Insp Alfred Barrett dated 21 October 1920	No caution administered throughout entire process
154	1920	CRIM 1/188/5 deposition of Alfred Barrett dated 11 November 1920	No caution administered throughout entire process
155	1920	CRIM 1/186/4 deposition of DS Robert Craven dated 19 June 1920	No caution administered throughout entire process
156	1920	CRIM 1/186/4 deposition of DI Harry Harris dated 5 November 1920	No caution administered throughout entire process

157	1920	CRIM 1/186/4 CI Harry Hawkins dated 5 November 1920	No caution administered throughout entire process
158	1920	CRIM 1/188/3 deposition of Insp Francis Sale dated 18 October 1920	Property seized as a result of a search
159	1920	CRIM 1/183/4 deposition of DDI Albert Yeo dated 28 February 1920	Property seized as a result of a search
160	1920	MEPO 3/285B Statement of Insp Alfred Barrett dated 21.10.20; CRIM 1/188/5 deposition of Alfred Barrett dated 11 November 1920	Property seized as a result of a search
161	1920	CRIM 1/184/2 deposition of Insp Charles Vanner dated 25.3.20; CRIM 1/184/2 deposition of Insp John Bradshaw dated 9 April 1920	Property seized as a result of a search
162	1920	MEPO 3/275 report of CI Mercer dated 13 September 1920, pp 18-19	Property seized as a result of a search

163	1921	MEPO 3/1565 - report of CI Mercer dated 1 August 1921	Property seized as a result of a search
164	1922	Wensley, Forty Years of Scotland Yard, p.239	Property seized as a result of a search
165	1922	MEPO 3/1582 statement of DI Frank Page dated 5 October 1922	Property seized as a result of a search
166	1922	MEPO 3/1582 exhibit schedule	Property seized as a result of a search
167	1922	MEPO 3/1582 exhibit schedule	Property seized as a result of a search
168	1926	MEPO 3/1623B - statement of DS Reginald Morrish dated 25 August 1926	Property seized as a result of a search
169	1930	MEPO 3/1657 Report of DCI Hambrook dated 30 October/10 November 1930 p. 33	Property seized as a result of a search
	Question 6: Is there any evidence that the police circumvented the requirements of the legal framework in which they operated? **(Code: circumvent)**		

	Year	Source reference	Evidence
170	1919	MEPO 3/260 Report of DCI Wensley 15 February 1919 p 29	Suspect not arrested but 'taken to police station'
171	1919	MEPO 3/260 Report of DCI Wensley 15 February 1919 p 34	Suspect not arrested but 'taken to police station'
172	1919	MEPO 3/260 Report of DCI Wensley 15 February 1919 p 35	Suspect not arrested but 'taken to police station'
173	1919	MEPO 3/260 Report of DCI Wensley 23 June 1919 p.1	Suspect not arrested but 'taken to police station'
174	1919	MEPO 3/262A Statement of PC William Hewson dated 4 May 1919	Suspect not arrested but 'taken to police station'
175	1919	MEPO 3/262A report of DDI Hall 2 June 1919	Suspect not arrested but 'taken to police station'
176	1919	HO 144/20991 Transcript of trial 24 October 1919 p 19	Suspect not arrested but 'taken to police station'
177	1919	HO 144/20991 Transcript of trial 24 October 1919 p 20	Suspect not arrested but 'taken to police station'

178	1919	HO 144/20991 Transcript of trial 24 October 1919 p 22	Suspect not arrested but 'taken to police station'
179	1919	HO 144/20991 Transcript of trial 24 October 1919 p 23	Suspect not arrested but 'taken to police station'
180	1919	HO 144/20991 Transcript of trial 24 October 1919 p24	Suspect not arrested but 'taken to police station'
181	1919	HO 144/20991 Transcript of trial 24 October 1919 28	Suspect not arrested but 'taken to police station'
182	1919	HO 144/20991 Transcript of trial 24 October 1919 31	Suspect not arrested but 'taken to police station'
183	1919	HO 144/20991 report of Neil dated 1 August 1919 p.11	Suspect not arrested but 'taken to police station'
184	1919	ASSI 13/50 Depositions dated 10 November 1919 of Insp George Wattam	Suspect not arrested but 'taken to police station'
185	1919	ASSI 13/50 Depositions dated 10 November 1919 of PC Albert Holland	Suspect not arrested but 'taken to police station'
186	1920	MEPO 3/275 report of CI Mercer dated 13 September 1920 pp 18-19	Suspect not arrested but 'taken to police station'

187	1920	CRIM 1/184/3 Deposition of PC George Allchin dated 5 May 1920	Suspect not arrested but 'taken to police station'
188	1920	CRIM 1/188/3 deposition of Insp Francis Sale dated 18 October 1920	Suspect not arrested but 'taken to police station'
189	1920	ASSI 13/50 Deposition of DI Harry Harris dated 5 November 1920	Suspect not arrested but 'taken to police station'
190	1920	ASSI 13/50 CI Harry Hawkins dated 5 November 1920	Suspect not arrested but 'taken to police station'
191	1922	MEPO 3/1582 Report from Limehouse Police Station 4 October 1922 p.3	Suspect not arrested but 'taken to police station'
192	1922	MEPO 3/1582 Statement of DS Ernest Foster dated 13 October 1922	Suspect not arrested but 'taken to police station'
193	1924	MEPO 3/1605 - Statement of CI Percy Savage 5 May 1924 and statement of Mark Thompson 2 May 1924 - Murder of Emily Kaye by Patrick Mahon on 16 April 1924	Suspect not arrested but 'taken to police station'

194	1929	HO 45/24916 Report of DDI Wesley dated 6 October 1929	Suspect not arrested but 'taken to police station'
195	1931	HO 144/17938 Lordship's notes of evidence - evidence of DI Herbert Gold 24 April 1931	Suspect not arrested but 'taken to police station'
196	1931	HO 144/17939 Transcript of trial - Hubert Moore p 178	Suspect not arrested but 'taken to police station'
197	1931	HO 144/17939 Transcript of trial - Hubert Moore p 184	Suspect not arrested but 'taken to police station'
198	1937	HO 144/22660 Statement of William Diamond dated 29 July 1937	Suspect not arrested but 'taken to police station'
199	1937	HO 144/21075A Court transcript of evidence at trial of CC Harry Barnes 9 March 1937	Suspect not arrested but 'taken to police station'
200	1938	MEPO 3/1728 Report of DDI Baker dated 17 June 1938 p 11	Suspect not arrested but 'taken to police station'

201	1939	MEPO 3/1737 Statement of DI Francis Gillan dated 6 January 1939	Suspect not arrested but 'taken to police station'
202	1919	MEPO 3/260 Report of DCI Wensley 15 February 19 p 1	Premises searched without suspect being arrested
203	1919	MEPO 3/260 Report of DCI Wensley 15 February 19 p 29	Premises searched without suspect being arrested
204	1919	MEPO 3/260 Report of DCI Wensley 15 February 19 p 34	Premises searched without suspect being arrested
205	1919	MEPO 3/260 Report of DCI Wensley 15 February 19 p 35	Premises searched without suspect being arrested
206	1922	Wensley, Forty Years of Scotland Yard, p 239	Premises searched without authority
207	1933	MEPO 3/1682 - statement of DI Clarence Campion 15.5.33 - Murder of Boleslov Pankovski by Varnavas Antorka on 12 May 1933	Premises searched without authority

208	1919	MEPO 3/260 Report of DCI Wensley 15.2.19 p 1	Statement taken from suspect without a caution being administered
209	1919	MEPO 3/260 Report of DCI Wensley 15.2.19 p 29	Statement taken from suspect without a caution being administered
210	1919	MEPO 3/260 Report of DCI Wensley 15.2.19 p 34	Statement taken from suspect without a caution being administered
211	1919	MEPO 3/260 Report of DCI Wensley 15.2.19 p 35	Statement taken from suspect without a caution being administered
212	1920	CRIM 1/188/1 deposition of DDI John Beard dated 4 October 1920	Caution did not include the warning that the suspect need not say anything
213	1920	CRIM 1/186/1 deposition of William Brown dated 10 MAY 1920	Caution did not include the warning that the suspect need not say anything
214	1922	MEPO 3/1582 voluntary statement of Frederick Bywaters dated 4 October 1922 Exhibit 5	Caution did not include the warning that the suspect need not say anything

215	1922	MEPO 3/1582 voluntary statement of Frederick Bywaters dated 5 October 1922 Exhibit 6	Caution did not include the warning that the suspect need not say anything
216	1924	HO 144/4093 - evidence of Supt Walter Twitchwell Jones, transcript of trial 19 June 1924 and evidence of Supt William Davis, transcript of trial 19 June 24 p.18 - Murder by Abraham (Jack) Goldenberg on 3 April 1924 of William Hall at Headley, Hampshire	Caution did not include the warning that the suspect need not say anything
217	1927	MEPO 3/1628 report of DCI Cornish dated 25 May 1927 p 31	Caution did not include the warning that the suspect need not say anything
218	1928	MEPO 3/1641 - Report of DDI Hodges 7 September 1928 - Murder of Charlotte Harber by William Benson on 7 September 1928 at Coulsdon	Caution did not include the warning that the suspect need not say anything

219	1928	HO 144/11143 transcript of trial 16 November 1928 pp 159-165	Caution did not include the warning that the suspect need not say anything
220	1938	MEPO 3/1729 statement of DDI Harris dated 11 February 1938	Caution did not include the warning that the suspect need not say anything
221	1920	MEPO 3/275 report of CI Mercer dated 13 September 1920, pp 18-19	Voluntary statement did not contain a caution at beginning
222	1922	MEPO 3/1582 voluntary statement of Edith Thompson dated 5 October 1922 Exhibit 3	Voluntary statement did not contain a caution at beginning
223	1922	MEPO 3/1582 voluntary statement of Frederick Bywaters dated 4 October 1922 Exhibit 5	Voluntary statement did not contain a caution at beginning
224	1922	MEPO 3/1582 voluntary statement of Frederick Bywaters dated 5 October 1922 Exhibit 6	Voluntary statement did not contain a caution at beginning
225	1924	MEPO 3/1605 - Statement of CI Percy Savage 5 May 24 - Murder of Emily Kaye	Voluntary statement did not contain a caution at beginning

		by Patrick Mahon on 16 April 1924	
226	1919	MEPO 3/260 Report of DCI Wensley 15 February 1919 p 29	Interviewed while clearly a suspect but with no caution
227	1919	MEPO 3/260 Report of DCI Wensley 15.February 1919 p 34	Interviewed while clearly a suspect but with no caution
228	1919	MEPO 3/260 Report of DCI Wensley 15 February 1919 p 35	Interviewed while clearly a suspect but with no caution
229	1924	MEPO 3/1605 - Statement of CI Percy Savage 5 May 1924 - Murder of Emily Kaye by Patrick Mahon on 16 April 1924	Interviewed while clearly a suspect but with no caution
230	1931	HO 144/17938 - Lordship's notes of evidence – p 56	Interviewed while clearly a suspect but with no caution
231	1931	HO 144/17938 - evidence of Wallace p 63	Interviewed while clearly a suspect but with no caution
232	1931	HO 144/17938 Notice of Appeal 7 May 1931 p 3	Interviewed while clearly a suspect but with no caution
233	1937	HO 144/21075A -court transcript of evidence at	Interviewed while clearly a suspect but with no caution

		trial of CC Harry Barnes 9 March 1937	
234	1919	ASSI 13/50 - deposition dated 10 November 1919 of Insp George Wattam	No caution until after charge
235	1919	ASSI 13/50 - deposition dated 10 November 1919 of PC Albert Holland	No caution until after charge
236	1920	ASSI 13/50 - deposition dated 7 June 20 of Herbert Chilton Taylor	No caution until after charge
237	1920	CRIM 1/185/2 deposition of Frederick Colbey dated 10 June 1920	No caution until after charge
238	1920	CRIM 1/185/2 deposition of DI George Pride dated 11 May 1920	No caution until after charge
239	1936	MEPO 3/1706 report from CI Sharpe dated 7 May 1936	Arrested on minor charge but interrogated about murder
	Cases identifying compliance, circumvention and breaches in the same investigation		

	Year	Source reference	Evidence
240	1920	CRIM 1/188/3 - Murder of Margaret Rourke by Agnes Rourke on 15.10.20	Compliance, circumvention and breaches in the same investigation
241	1920	MEPO 3/285B - Murder of Caroline Jervis by Albert Bartlett on 23 December 1920	Compliance, circumvention and breaches in the same investigation
242	1920	CRIM 1/186/1 - Murder of Elizabeth Johnson by Charles Johnson on 8 May 1920	Compliance, circumvention and breaches in the same investigation
243	1920	CRIM 1/184/2 - Murder of Marie Everley by Adolph Hanella on 23 March 1920	Compliance, circumvention and breaches in the same investigation
244	1920	CRIM 1/184/3 - Murder of George Busby by William Cornwall on 11 April 1920	Compliance, circumvention and breaches in the same investigation
245	1923	MEPO 3/1586 - Murder of Nellie Pearce on by Roland Duck on 3 May 1923	Compliance, circumvention and breaches in the same investigation

246	1924	MEPO 3/1605 - Murder of Emily Kaye by Patrick Mahon on 16 April 1924	Compliance, circumvention and breaches in the same investigation
247	1924	HO 144/4093 - Murder of William Hall by Abraham (Jack) Goldenberg on 3 April 1924	Compliance, circumvention and breaches in the same investigation
248	1928	MEPO 3/1641 - Murder of Charlotte Harber by William Benson on 7 September 1928	Compliance, circumvention and breaches in the same investigation
249	1930	HO 144/16260 - Murder of Frederick Feely by Lily Feely on 7 June 1930	Compliance, circumvention and breaches in the same investigation
250	1933	MEPO 3/1682 - Murder of Boleslov Pankovski by Varnavas Antorka on 12 May 1933	Compliance, circumvention and breaches in the same investigation
251	1937	HO 144/22660 - Murder of Lily White by Frederick Corneby on 21 July 1937	Compliance, circumvention and breaches in the same investigation
252	1938	MEPO 3/1729 - Murder of Henry Shaw by Charles Robson on 10 February 1938	Compliance, circumvention and breaches in the same investigation

253	1938	MEPO 3/1737 - Murder of Ernest Key by William Butler on 24 December 1938	Compliance, circumvention and breaches in the same investigation

Appendix 3 – The Judges' Rules

Rule 1: When a police officer is endeavouring to discover the author of a crime there is no objections to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.

Rule 2: Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or any further questions, as the case may be.

Rule 3: Persons in custody should not be questioned without the usual caution being first administered

Rule 4: If the prisoner wishes to volunteer any statement, the usual caution should be administered. It is desirable that the last two words of the caution should be omitted and that the caution should end with the words "be given in evidence."

Rule 5: The caution to be administered to a prisoner, when he is formally charged, should therefore be in the following words – "You are not obliged to say anything unless you wish to do so but whatever you say may be given in evidence". Care should be taken to avoid any suggestions that his answers can only be used in evidence against him as this may prevent an innocent person making a statement which might assist to clear him of the charge.

Rule 6: A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given but in such a case he should be cautioned as soon as possible.

Rule 7: A prisoner making a voluntary statement must not be cross examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance, if he has mentioned an hour without saying whether it was morning or evening or has given a day of the week and a day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.

Rule 8: When two or more persons are charged with the same offence and statements are taken separately from the persons charged the police should not read these statements to the other persons charged, but each of such persons should be furnished by the police with a copy of such statements and nothing should be said or done by the police to invite a reply. If the person charged desires to make a statement in reply, the usual caution should be administered.

Rule 9: Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish.