Communications Technology, Crime, and Regulation: A Historical Perspective

By

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I confirm that the work submitted is my own and that appropriate credit has been given where reference has been made to the work of others.

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Abstract

This thesis explores the interactions between communication technology, crime, and regulation through an historic perspective. Specifically, it is concerned with the electric telegraph, and how its social incorporation facilitated crime, and the resulting regulatory response. It seeks to sustain an increasing tendency in the literature to refer to the electric telegraph as a comparator to the internet effect, through the use of systematic archival research. This thesis is concerned with three central questions: how did the social incorporation of the telegraph facilitate crime; what crimes did telegraphy facilitate, and by whom; and how was telegraph facilitated crime regulated? It is therefore concerned with the social life of the telegraph, how it influenced crime, and the regulatory efforts to either prevent or respond to telegraph-facilitated crime.

In answering these questions, this thesis takes an interdisciplinary approach, connecting criminological, legal, regulatory, and historical scholarship, tracing the incorporation of the electric telegraph and its interactions with crime and regulation through an approach that is grounded in use of the technology as its organising concept. This thesis reveals a social transformation that in turn influences the ways that crime is experienced. Further, it identifies a pluralised approach to the regulation of telegraph facilitated crime, which it maintains have long-term consequences. By considering the relationship between crime, communications technology, and regulation through an historical perspective, continuities relevant to contemporary understanding of this relationship are revealed. This thesis therefore makes a methodological, as well as a conceptual, contribution to the literature.

Contents

3. Chapter Three: Regulation, Regulators and Modalities of Control

4. Chapter Four: Crime and Internal Post Office Regulation: Addressing Dishonesty in the Post Office

5.   Chapter Five: Telegraph Money Order and the Regulatory Response

6.   Chapter Six: External Regulatory Responses to Telegraph-Facilitated Crime

List of Tables

Table of Abbreviations

Abbreviation	
CPS	Crown Prosecution Service
ICT	Information and Communications Technology
TU	Telegraph Union
TMO	Telegraph Money Order
PMG	Postmaster General
GPO	General Post Office
IB	Investigation Branch
CEB	Confidential Enquiry Branch
CTO	Central Telegraph Office
CCoCC	Central Conference of Chief Constables
DDoS	Distributed Denial of Service Attacks
MP	Member of Parliament

1: Introduction

This thesis is concerned with the relationship between communications technology, crime, and regulation in an historic perspective. Specifically, it focuses on the social incorporation of the electric telegraph and its interactions with crime and regulation in the 19th and 20th Centuries. Existing research on communications technology, crime and regulation is oriented to contemporary technology, specifically the internet. This thesis aims to bring a diachronic perspective to this literature, by taking an interdisciplinary approach, and one that is grounded in an understanding that focuses on the use of technology. Whilst the electric telegraph and associated crime has been cited as an 'origin' or a comparator to internet-facilitated crime, literature thus far has not sustained this empirically with systematic archival research. This thesis responds to calls in the technology and crime literature to substantiate our understanding of the impact that processes of incorporation of communications technology historically had on crime and deviance.[1] Further it speaks to suggestions in the regulation literature calling for an historic understanding of regulatory approaches to crime and the role of institutions beyond the criminal justice state.[2] It therefore explores how the electric telegraph facilitated crime, but also regulatory efforts to prevent and manage this. This thesis therefore makes a historical contribution to scholarship concerned with the relationship between communications technology, crime, and regulation. This has the effect of drawing together a body of literature that tends to be disparate, as it is spread across disciplines including criminology, historical criminology, regulation scholarship, history of technology literature, and the discipline of history.

1.1 Aims

This thesis draws on the history of the electric telegraph, its social incorporation, and its interactions with crime and regulation, therefore providing historical context to what is often present as a contemporary issue. The purpose of this is threefold. Firstly, I am concerned with whether, how, and to what extent the social incorporation of the electric telegraph facilitated crime. Second, I explore the regulatory responses to telegraph-facilitated crime. Third, I make a conceptual contribution by focusing on the social incorporation of communications technology, to facilitate an understanding of how use

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[1] M. McGuire, *Hypercrime: The New Geometry of Harm* (2007, Routledge- Cavendish)
[2] J. Braithwaite, 'What's wrong with the sociology of punishment?' (2003) 7(1) Theoretical Criminology 5-28

of the technology facilitated crime, and to connect this to the regulatory response within its broader social setting. This in turn reveals continuities in the relationship between crime and communication technologies, implying that social transformations associated with incorporation of technology are fundamental to understanding, and regulating, the emergence of deviance. Fundamentally this exercise also facilitates an approach to regulation which accommodates for a range of regulatory responses which are often perceived as 'modern' and therefore overlooked historically or dealt with in scholarship unconnected to criminological and related regulatory (cyber) scholarship.

I am therefore concerned with: the ways in which the electric telegraph facilitated crime; the types of crime it facilitated; the regulatory response to telegraph facilitated crime including the measures incorporated to prevent and respond to these offences within and beyond the criminal justice system; and how crime and regulation interact within this specific historical context.

1.2 Approach

Foundational to my approach is an understanding of the interactions between crime, communication technology and regulation that is grounded in historical social context. This will therefore address some of the limitations associated with the use of history simply to search for the origin of, or a comparator to, the present situation. I firstly want to understand the ways in which the electric telegraph facilitated crime and the range of offences it facilitated. This is intended to substantiate claims of a comparable effect to that of the internet, but also to embed this comparison with contextual nuance. In seeking to understand the role of the electric telegraph in the facilitation of crime, I also seek to understand the range, or the types of crime associated with the technology. In answering this question, I re-direct some of the focus in the business and economic crime histories away from 'white-collar' crime as corporate crime, towards an accommodation of everyday economic offences, emerging in a range of social spaces, as determined by use and incorporation of the technology. My archival approach allows me to trace the emergence of telegraph-facilitated crime and deviance, acknowledging the shifting sites of offending, as well as the developing form and complexity of offences. This exercise also facilitates an analysis of the impact of telegraph incorporation on crime, highlighting the continuing 'transformation'[3] of crime historically. This process identified a distinction between categories of offenders and their various capabilities, which in turn informed my approach to regulation.

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[3] D. S. Wall, *Cybercrime: The Transformation of Crime in the Information Age* (2007, Polity Press)

Having mapped the interactions between the electric telegraph and crime chronologically through processes of introduction and incorporation, the thesis turns to the regulatory approach to preventing and responding to telegraph-facilitated crime. Drawing on regulation scholarship, I map and identify relevant regulatory spaces to direct my archival research. Drawing on findings from the analysis of the impact on crime, I evaluate internal and external regulatory efforts, acknowledging a clear preventative approach as well as a responsive one to telegraph facilitated crime. Fundamentally, this process highlighted the significance of the regulatory authority and role of a range of institutions and organisations within and beyond the criminal justice state. This in turn builds on existing literature advocating for acknowledgement of a range of institutions in shaping and maintaining the regulatory approach.[4] Further, this highlights the range of regulatory mechanism harnessed to manage the perceived risk of telegraph-facilitated crime, and therefore emphasises important continuities with the contemporary regulatory landscape.

After establishing the interactions between the electric telegraph and crime, and the electric telegraph and regulation, this thesis highlights the interactions between crime and regulation in this context. Attention is drawn to the significance of the range of regulatory measures imposed to prevent telegraph facilitated crime. Further, the influence of class dynamics, perceived and actual efficiency of the technology, and institutional economic and reputational considerations are evidenced in the shifting and responsive regulatory landscape. Relative to contemporary criticisms of the regulatory response to everyday economic crimes,[5] the distribution of responsibility and the hybrid range of regulatory mechanisms reflects what is often assumed as a contemporary approach to crime control borne out of the regulatory state. The thesis therefore allows for an original overview of the process of social incorporation of a communication technology, bringing together the impact on crime, and connecting this to the relevant regulatory responses from a range of institutions and organisations. It is suggested that by acknowledging the social, criminogenic, and regulatory implications through an historical perspective, this thesis highlights the persistence of shifting patterns of offending and regulation beyond the contemporary cyber-context.

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[4] Braithwaite (2003) (n 2)

[5] P. Larson, 'Soft and hard strategies of regulating economic crime' (2007) 14(2) Journal of Financial Crime 208-220

This thesis tells the story of the social incorporation and expansion of the telegraph network and its interactions with crime, as well as the regulatory response to manage crime in this context. It reveals what is referred to cautiously as the transformative effect of social incorporation of the electric telegraph on crime. It also emphasises the significance of regulatory authority vested within a range of institutions beyond the criminal justice state. It therefore tells the story of the Post Office response to telegraph facilitated crime, revealing an institutional culture and organisational approach to managing and preventing risk of economic and reputational harm. Beyond the Post Office, it considers the role of the criminal justice system, and acknowledges the regulatory authority of other private spaces, revealing the persistence of a distributed approach to the regulations of crime.

1.3 Disciplinary Relevance

My research has relevance to a range of disciplines. By engaging with archival research relevant to the influence of the electric telegraph on crime, I contribute to historical criminology literature. The legal and regulatory response to telegraph-facilitated crime will be of interest to legal historians and regulatory scholars. This is especially the case with those concerned with the regulatory power and authority of institutions beyond the criminal justice state.[6] Given that I am largely concerned with economic offences, often in regards to business crime, the research will also be of interest to historians within that context, providing an insight into 'everyday' offences and their regulation against the changing business and economic landscape.[7] By taking an approach to understanding technology in context, and focusing on its social incorporation and use, I am also making a methodological contribution which speaks to literature concerned with the history of technology and the social consequences of its incorporation.[8]

My thesis also holds relevance for those not immediately concerned with history. As discussed in the following chapters, there are parallels and continuities relevant to contemporary cybercrime and regulation scholarship, specifically literature concerned

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[6] Braithwaite (2003) (n 2)

[7] G. Robb, *White- Collar Crime in Modern England: Financial Fraud and Business Immorality 1845-1929* (1992, Cambridge University Press); H. van Driel, 'Financial fraud, scandals and regulation: A conceptual framework and literature review' (2018) 61(8) Business History 1259-1299; C. Griffiths, 'Prosecuting Fraud in the Metropolis, 1760-1820' (2017) available < https://livrepository.liverpool.ac.uk/3012313/1/201042524_Sep2017.pdf> last accessed 7.12.2023

[8] For example, see R. Wenzlheumer, *Connecting the Nineteenth-Century World: The Telegraph and Globalization* (Cambridge University Press, 2013); T. Weller & D. Bawden, 'The Social and Technological Origins of the Information Society: An Analysis of the Crisis of Control in England, 1830-1900' (2005) 61(1) Journal of Documentation, 777

with the impact of technology on crime, and the regulatory response to those offences.[9] Fundamentally, I am taking an interdisciplinary approach and aiming to bridge together and sustain the often-disparate scholarship, to provide a holistic understanding of the impact of the social incorporation of the electric telegraph on crime and regulation. I am therefore taking an approach which is grounded in the social use of technology and seeking to understand the impact on crime and regulation according to the social life of the technology.

1.4 Chapter Outline

Chapter One situates the focus of this thesis within the broader literature. It acknowledges the scale of attention paid to the relationship between communication technology and crime, and communication technology and regulation in contemporary literature, highlighting the limited ways in which scholarship has engaged with communication technologies outside of the internet, as well as the lack of dialogue between cyber-crime and cyber-regulation scholarship. Building on this, popular and academic histories of the electric telegraph imply a comparable, 'internet effect' was experienced socially in relation to the electric telegraph. Whilst across the literature there is evidence of the electric telegraph increasingly being compared to the internet, this is conceived as a comparable innovation in communications technologies to the rise of the internet, as opposed to a nuanced understanding of the impact of telegraphy on crime and/ or regulation. As a result, our understanding of the nuances of the relationship between crime, communications technology and regulation is inherently limited by the 'cyber-vacuum' through which it is explored. Running through our understanding of this relationship is a preoccupation with novelty, which impacts our capacity to understand the social impact of technology on crime and regulation in its specific historical context.

Whilst contemporary scholarship is beginning to acknowledge the historical antecedents of cyber-crime, there is a need to substantiate claims of comparability with sustained, archival research evidence. Drawing on a range of historical, criminological and regulatory scholarship, Chapter One makes the case for an archival approach to understanding the nuances of the relationship, whilst at the same time emphasises the

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[9] D. S. Wall, *Cybercrime: The Transformation of Crime in the Information Age* (2007, Polity Press)

need for an approach that is grounded in a social understanding of the technology, and its impact. Chapter One therefore justifies my research questions, my approach, and outlines the methodology I take as a result, in order to reposition the relationship between crime, communication technology and regulation in its historical context.

Chapter Two of this thesis is the first of four empirical chapters outlining my archival research findings. This chapter draws on the British Newspaper Archive, and the Royal Mail Archive to tell the story of the social incorporation of the telegraph and its role in facilitating crime. It traces the history of the incorporation of the electric telegraph to reveal how it was used to facilitate crime, who was using it to facilitate crime, the range of victims of crime who were impacted, as well as the shifting forms of telegraph-facilitated crime. This chapter is underpinned by an approach that acknowledges the social incorporation of technology as a pre-requisite for crime. By organising material into a broadly chronological structure, I am able to trace both the emergence of telegraph-facilitated crime, as well as its shifting form. Additionally, by drawing on newspaper reports, as well as records of the Post Office, I aim to capture a sense of the public perceptions of criminality in this sphere and avoid purely institutional interpretations.

Chapter Two traces the incorporation of the telegraph and emerging crime from the financial and business environment to individual victims of telegraph-facilitated crime. Several factors are considered specifically relevant to crime in this context. First, the expansion of the network gradually provided increased opportunities for, and potential victims of, telegraph-facilitated crime. Related to this, broader social and economic contexts are identified as providing important conditions that facilitated offending, specifically fraud. The social space within which the technology operates, and the relative novelty associated with the accommodation of new communication technologies is considered significant in co-producing conditions that can facilitate deception, deceit, and dishonesty in particular. Further, this Chapter considers the network operation and functioning, highlighting crime opportunities that emerged as a result of the physical infrastructure of the network. The significance of the separation of information from transportation is also accounted for, and this chapter explores the consequences of this in relation to offences that target information, but also the significance of an informed offender. The Chapter highlights the significance of the network as facilitating economic offending in particular and highlights that access to the network facilitated a more 'direct' form of offending. Finally, I consider how the electric

telegraph interacted with other technologies to facilitate more direct, and financially lucrative offending.

The following chapter builds on the underlying approach that emphasises an understanding of the nuances of the relationship between communications technology and crime as one that should be grounded in an understanding of social use and extends this approach to regulation. Specifically, Chapter Three justifies and outlines my approach to regulation, by exploring contemporary ideas related to the regulatory state, the significance of governance, and the pluralisation of crime control, to make the case for exploring the longer history of these relatively contemporary constructs. This chapter builds on the introduction to my approach to regulation in Chapter 1, by acknowledging the range of regulators and regulatory mechanisms that can be identified in relation to telegraph-facilitated crime when we move beyond the limitations of a state-centric criminal justice response to crime. Whilst contemporary literature has often emphasised this pluralisation of regulation as a largely contemporary phenomenon, the limitations of such an assumption are explored.

Drawing on Hancher and Moran's[10] regulatory space thesis, this chapter will set the foundations for my empirical approach to understanding the regulation of telegraph facilitated crime. From there, this Chapter introduces my approach to conceptualising regulation, and maps the regulatory space that informed my empirical research. Regulation relevant to telegraph-facilitated crime is acknowledged as emerging from several regulators, in distinct but related social spaces. Both the private and public sphere are identified as having regulatory effect on the telegraph, and within the public sphere, the competing regulatory aims within 'state' regulators is emphasised. This Chapter introduces the legislative, the (state) police, the Post Office and private companies as having regulatory authority in this capacity. Further, it emphasises the range of regulatory mechanisms emerging in these spaces applicable to telegraph-facilitated crime as conceived within its social context, including the law, architectural regulation, the emergence of norms, and 'self-regulation' of markets and users. As a result, Chapter Three advocates for an approach that recognises the pluralisation of regulation and regulators within and beyond the state in the 19th and 20th centuries to accommodate continuities in the regulatory approach to communication-technology facilitated crime, and avoid the pitfalls associated with a preoccupation with novelty evident in contemporary cyber-regulation scholarship.

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[10] L. Hancher, L & M. Moran, 'Organising Regulatory Space' in L. Hancher & M. Moran, (eds) *Capitalism, Culture and Economic Regulation* (1989)

Building on this, and the distinction drawn in Chapter Two related to offenders who were either internal or external to the telegraph network, Chapter Four introduces the internal regulatory approach of the Post Office. Drawing on archival material from the Royal Mail Archive, The BT Archive, Select Committee Reports and Hansard Debates, this chapter identifies the institutional response to crime in the Post Office. The institutional response is acknowledged as both preventative and responsive. In relation to preventative strategies, the Chapter outlines the structure and operation of the institution and its various branches as reflective of an approach that situates the threat from crime as inherently connected to the various technology with which it was facilitated. It traces the emergence of a fragmented approach to crime prevention, that tended to prioritise institutional revenue, reputation, and notions of efficiency over the most effective methods of crime control. Further, this chapter introduces the internal investigatory branch of the Post Office and demonstrates its significance as both as expert on crime in the Post Office, and therefore its role in informing preventive measures, as well as its monopoly over the policing of Post Office staff accused of dishonesty.

The responsive approach to crime control is unpacked through an examination of the Investigation Branch. Chapter Four therefore considers the role of the IB within the broader institution, acknowledging their extensive power and authority over staff of the Post Office, whilst also introducing the notion that institutional responses to crime were also influenced by broader cultural, economic, and reputational concerns associated with the organisation as a whole. By tracing the shifting approach to crime prevention and control, highlighting the authority vested in the institution to control, investigate and prosecute or dismiss workers, and reflecting on the approach to crime control whilst also accounting for broader institutional concerns, this Chapter highlights the regulatory authority of the Post Office, and the range of regulatory mechanisms utilised to control the perceived risk of harm to revenue and reputation, as opposed to prevent crime in a general sense.

Chapter Five explores the interactions between institutional regulation and telegraph-facilitated crime through an analysis of the Post Office approach regulating telegraph-money orders and related offending. Chapter Two identified the introduction of Telegraph Money Orders as facilitating a particularly 'direct' type of telegraph-facilitated crime. Offences of this nature posed a more explicit threat to Post Office revenue and

reputation. In acknowledgement of this, this chapter traces the emergence of telegraph facilitated crime alongside the regulatory approach of the Post Office. It identifies an initially more proactive organisational approach to crime prevention in the Post Office. Various mechanisms of preventative regulation are identified, including rules around use of the network, measures designed to enhance the validity of genuine telegraph-money orders, tight institutional controls over information, and the layering of technologies to enhance processes of verification. The regulatory response was initially designed for a clear purpose of crime prevention, and largely proved effective. However, by acknowledging regulation as a process, this Chapter identifies a subsequent process of de-regulation, owing to organisational concerns related to reputation and revenue emerging because of the relatively tight controls on telegraph-money orders. As a result, this chapter traces a shift from preventative to responsive regulation, with the responsibility for crime in the Post Office being resituated with the Investigation Branch. Chapter Five therefore returns to themes associated with organisational culture as influencing regulation in practice introduced in Chapter Four, whilst also reinforcing the Post Office monopoly on crime control as related to workers. This case study therefore also emphasises that the prevention of crime was possible, though only at the expense of potential Post Office revenue.

This thesis then moves beyond the institutional approach to regulation to consider the role of the law, the police, and private regulation in response to telegraph-facilitated crime. Highlighting the range of relevant regulators and regulatory mechanisms, Chapter Six engages with the capacity of external regulatory efforts in response to telegraph-facilitated crime. Given the Post Office monopoly over crime control where the organisation itself was the victim of crime, the role for the criminal justice system as more traditionally conceived was inherently limited. However, for private victims of telegraph-facilitated crime, the police took on a responsive role, whilst private companies developed preventative measures designed to limit the propensity for crime emerging from incorporation of telegraph technology. This Chapter draws on records of the Post Office, police records, and the records of the London Stock Exchange to analyse the range of regulatory approaches outside of the previous institutional perspective. The role of Post Office, however, remains prevalent. Their monopoly over crime in the Post Office, tight institutional controls around information related to telegraph-facilitated crime, and a reluctance to cooperate with authorities are explored. In this way, the chapter demonstrates a lack of cooperation between regulators.

Chapter Six therefore outlines the role of the Police in responding to telegraph-facilitated crime and considers the interactions between the police and the Post Office

both structurally and in terms of division of responsibility, which in turn reinforce the notion that the Post Office is the authority on crime control in this context. This chapter identifies limitations to the police response in relation to evidence and prosecutorial willingness. Further, through examining interactions between police authorities and the Post Office, as well as the limitations on police investigations sometimes imposed by the Post Office, this Chapter implies potential gaps in protection as well as responses for specific groups of victims.

Chapter Six goes on to consider the approach of private businesses, with a specific focus on financial markets. Whilst the remit of this thesis could not accommodate for a full, institutional analysis of private self-regulatory mechanisms, it includes an analysis of the approach of the London Stock Exchange to managing the perceived risk of crime emerging from incorporation of the tickertape. Building on existing research, Chapter Six evidences the tight controls imposed on use of the tickertape, and access to the price related signals it transmitted. Through an analysis of the approach of the Stock Exchange and its interactions with Extel, the emergence of an organisational approach which is comparable to that of the Post Office is clear. Controls focused on limiting the availability of information transmitted via telegraph to insiders and outsiders, to protect the Stock Exchange from a perceived risk of fraud is evident. This is significant in that it highlights the distribution of regulatory authority beyond the state, and the persistent interest and power associated with private companies in regulatory crime control.

This thesis therefore aims to make a novel contribution to our understanding of the impact of the social incorporation of the electric telegraph and its interactions with crime and regulation. The value of an historical approach is also methodological. This thesis aims to highlight the contribution that historical research can make, by adding a diachronic perspective to a literature that is often synchronic. It tells the story of the misuse and regulation of the telegraph throughout the process of incorporation, tracing the distributed (yet concentrated) regulatory authority for telegraph-facilitated crime, highlighting plurality in regulators and mechanisms of regulation. Further it considers the impact on crime and regulation in dialogue, further emphasising the value of an historical approach, given that account can be taken for social context, culture and related institutional and economic concerns that are not necessarily obvious when analysing the present. Finally, through its consideration of the Post Office as victim, investigator and prosecutor of telegraph-facilitated crime, this thesis also has contemporary implications. The Horizon scandal has situated the precarious role of the Post Office as central in facilitating the most significant miscarriage of justice in our

history. It is suggested that the legacy of themes identified within this research contributed to contemporary cultural and structural issues within the Post Office. The persistence of these themes should therefore be accounted for in contemporary debates related to the future of the Post Office, specifically its status as victim, investigator, and private prosecutor.

Chapter One: Communication Technology, Crime and Regulation: The Value of An Historical Approach

1.1 Introduction

The relationship between communications technology, crime and regulation is most often conceived through a contemporary lens. Explored most substantially through the cyber-crime and cyber-regulation literature, there exist lively debates around the impact of the internet on criminal behaviour, as well as the associated emergent regulatory challenges. Whilst contemporary cyber scholarship is beginning to acknowledge the historical antecedents of 'cyber' or 'virtual' crime,[11] the literature exploring the relationships between cybercrime, regulation, and communications technology tends to analyse the nuances of the relationship in contemporary terms.[12] As a result, the pre-internet period is largely overlooked.[13] Scholars of history have emphasised the role a historical perspective could play,[14] but the cyber-literature is demonstrative of an assumption that the Internet presents a novel challenge, for law, regulation and enforcement, because of its impact on crime.[15] This tendency arguably extends to traditional approaches to the history of technology, where a preoccupation with novelty is equally prevalent, despite the literature considering historical technologies; the impact of technologies at their time of innovation and incorporation into society is conceptualised as novel.[16] Whilst the Internet challenges our understanding of crime, effective regulation, and law, the impact of communication technology on crime tends to be discussed within a 'cyberspace' vacuum.

An extensive body of research (the cybercrime literature) considers the impact of the internet on criminal behaviour; the 'transformative effect' of the Internet has been engaged with at length.[17] However, there is a failure to consider this transformation

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[11] T. Weller & D. Bawden, 'The Social and Technological Origins of the Information Society: An Analysis of the Crisis of Control in England, 1830-1900' (2005) 61(1) Journal of Documentation 777, 778

[12] M. Castells, *The Information Age: Economy, Society and Culture (Volume I: The Rise of the Networked Society)* (2000, Blackwell, London, 2nd Edition); C. Oppenheim, 'An agenda for action to achieve the information society in the UK' (1996) 22(6) Journal of Information Science 401-421; J. Warner, 'What should we understand by information technology (and some hints at other issues)?' 52(9) Aslib Proceedings 350-7

[13] Weller & Bawden (n 11) at 778

[14] *Ibid*

[15] S.R. Salbu, 'Who Should Govern the Internet?: Monitoring and Supporting a New Frontier' (1998) 11(2) Harvard Journal of Law & Technology 430

[16] D. Edgerton, 'Innovation, Technology, or History: What is the Histography of Technology About?' (2010) 51(3) Technology and Culture 680-697, 683-4

[17] D. S. Wall, *Cybercrime: The Transformation of Crime in the Information Age* (2007, Polity Press)

outside of the contemporary context and develop understanding of the relationship between communications technology and crime throughout time. Additionally, whilst appropriate regulatory and legal responses are debated with vigour in regard to the Internet (the cyber-regulation literature), there exists no thorough examination of the interactions between communications technology, crime, and the regulatory response over time. Both literatures imply that the internet has bought with it a kind of departure from the old, impacting both crime and regulation in a novel, or even unforeseen way. A renewed interest in the electric telegraph, is however evident in historical, as well as social science scholarship. This has tended to manifest as a search for a comparable origin to the birth of the internet. However, popular histories, as well as contemporary 'cyber' literature, demonstrate a tendency to search for a comparable origin to the Internet effect, without sufficient consideration of the specific historical context of the telegraph.[18] It is proposed that by considering communications technology in context, and the interactions between communication technology, crime and regulation, a historical focus could further inform our understanding of the relationship between crime, communications technology, and regulation, and provide a systematic, developmental contribution.[19] This research sets virtual crime in its historic, social context, through an exploration of the interaction between communication technology, crime, and regulation, beginning in the 19th century. It will therefore supplement existing scholarship by adding a diachronic perspective to a literature that is largely synchronic.

This chapter provides a critical review of relevant scholarly literatures. It considers several bodies of literature, which although related, are often not considered alongside one another. The first section will consider the contemporary cyber-literature and will analyse what it reveals about the relationship between communications technology and crime, as well as appropriate regulatory responses. Whilst scholarship engages with the interactions between communications technology, crime, and regulation, I maintain a preoccupation with the novel limits understanding to post-Internet society. Additionally, the technology centred analysis evident in the cyber-crime literature, and a pre-occupation with space evident in the cyber-regulation literature, limits potential for a grounded understanding based on social practice.

The following section will discuss crime and communication technology in the 19th and early 20th century, relying on popular, as well as more rigorous historical scholarship. The purpose of this is two-fold: firstly, to emphasise the social impact of incorporation

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[18] P. Knepper, *Writing the History of Crime* (2016, Bloomsbury Academic)

[19] V. K. Nassa, 'Wireless Communications: Past, Present and Future' (2011) 3(2) Dronacharya Research Journal 50

of telegraph technology throughout this period; second, to highlight the case for systematic historical research which places social practice, thus use of technology at the centre of its analysis.[20] Discussion will include the regulatory response to telegraph technology.

Finally, the social life of technology will be considered, through a review of popular, as well as academic histories. This section emphasises the approach my research will take; the social life of technology will be at the centre of my thesis, for it is within this research that some particularly interesting themes emerge. It is proposed that to understand the interactions between communication technology, crime and regulation, use of technology, rather than the technology itself, should be studied.[21] There is evidence in the literature to suggest that historically, use of technologies has transformed social interactions,[22] and it is these changing interactions that contribute to transformations of criminal behaviour, and these transformations that regulation must seek to meet. I do not suggest that communication technologies themselves determine transformations of crime, but the way that they are used,[23] thus this research aims to avoid the pitfalls of placing the technology itself at the centre of analysis.[24] Of course material qualities of the technologies are relevant to their social impact, and thus their potential interaction with crime, however research should not bestow responsibility for impact on technology, but on its use.[25]

1.2 Communications Technology and Crime: A Preoccupation with the Novel

It is appropriate to consider contemporary literature relating to the relationship between crime, communication technology, and regulation, in order to determine how the interactions are conceptualised today. However, it is equally important that contemporary observations and analysis does not become an organising concept for historical research.[26] Historical research should not be undertaken deductively, to highlight pre-determined themes. Contemporary cyber literature relating to the relationship between crime, communications technology, and regulation demonstrates

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[20] M. McGuire, *Hypercrime: The New Geometry of Harm* (2007, Routledge- Cavendish)
[21] *Ibid*
[22] *Ibid*
[23] For discussion of the value of examining use over innovation, see; Edgerton (n 16) 680-697
[24] L. Winner, 'Do Artifacts Have Politics?' (1980) 109(1) Daedalus, Modern Technology: Problem of Opportunity 121-136
[25] *Ibid*
[26] Knepper 2016 (n 18)

a tendency to overlook historical technologies in the analysis of the relationship. Where historical examples are considered, they are generally utilised to enforce ideas about current technologies and issues relating to them.[27] Additionally, the search for an origin, without analysis of the nuances of the relationship over time, can produce a teleological perception that society has inevitably arrived at this point, and that the origins of this lie in a historically equivalent technology, for example.[28] This research aims to question such approaches.

It is important to consider the meaning of cybercrime, given it is the lens through which contemporary scholarship analyses the relationship between communications technology and crime. The terms 'cybercrime' and 'virtual crime' are sometimes used interchangeably[29] to refer to criminal activity that has exploited digital technology in the commission of, what are usually at core, traditional offences.[30] Legally, according to the Crown Prosecution Service (CPS), cybercrime refers to 'any type of criminal activity conducted through, or using, an Information and Communications Technology (ICT) device.'[31] The European Commission 'proposed a threefold definition'[32] of cybercrime, identifying it as either traditional crime committed over electronic communication networks and information systems, publication of illegal content over electronic media, or crimes unique to electronic networks.[33] Within the same field, others allow the term to incorporate 'computer-mediated activities which are either illegal or considered illicit by certain parties.'[34] Thus there is a suggestion that cybercrimes need not be criminal, or illegal,[35] but instead illicit[36] and occur 'through global electronic networks.'[37] This

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[27] *Ibid*

[28] *Ibid*

[29] P. Hunton, 'The Growing Phenomenon of Crime and the Internet: A Cybercrime Execution and Analysis Model' (2009) 25 Computer Law & Security Review 528, 529

[30] M. Yar, 'Online Crime' (2016) in Oxford Research Encyclopedias, Criminology and Criminal Justice available <
http://criminology.oxfordre.com/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-112> last accessed 13.3.2018

[31] Crown Prosecution Service, 'Cybercrime- Legal Guidance' available
http://www.cps.gov.uk/legal/a_to_c/cybercrime/#a03 last accessed 9.3.2018

[32] Home Affairs Committee, 'E- crime' available <
https://publications.parliament.uk/pa/cm201314/cmselect/cmhaff/70/7004.htm> last accessed 9.3.2018

[33] Communication from the Commission to the European Parliament, the Council and the Committee of the Regions, 'Towards a general policy on the fight against cyber crime' COM/ 2007/ 0267 available <
http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52007DC0267&from=EN> last accessed 9.3.2018

[34] D. Thomas & B. Loader, 'Cybercrime: Law enforcement, security and surveillance in the information age' in D. Thomas & B. Loader (eds) *Cybercrime: Law enforcement, security and surveillance in the information age* (2000, Routledge: London) 3

[35] Hunton (n 29) at 529

[36] J. Nhan & M. Bachmann, 'Developments in Cyber Criminology' in M. Maguire & D. Okada (eds), *Critical Issues in Crime and Justice: Thought, Policy and Practice* (2010, SAGE) 166

[37] Thomas & Loader (n 34)

limits the definition to crimes occurring in the virtual space of information networks.[38] There is also evidence of the term 'cybercrime' being used as a general term to define use of networked computers or Internet technology in any way to facilitate the commission of a crime.[39] Alternatively, it has been defined as 'any wrongdoing that includes a machine and a system,' thus 'machine wrongdoing' is seen as an equivalent definition to 'cybercrime.'[40]

Definitions vary and may refer to illicit or criminal behaviour occurring online, the existence of technology in the commission of a crime, or traditional crimes translated into a cyber equivalent.[41] The problem with the lack of clarity in definition is that it fails to encapsulate the impact of electronic communications technologies on crime,[42] and is often used in calls for changes to law and regulation, without explanation for what has actually changed. Demands for a new 'cyber law' to manage 'cybercrime' more effectively are unanswerable since the lines between crime and cybercrime are blurred by its very definition. Socially, definitional contradictions and variations are further problematized through the media's 'replete' reporting of high 'cybercrime threat levels'.[43] The risk posed to society by cybercrime according to such reports is expansive, yet there is no agreed upon understanding of what a cybercrime actually is, less still with regards to the actual threats they pose.[44] Combined with the low level of cybercrime prosecutions,[45] the concept of cybercrime remains confused, which can heighten the sense of risk or threat, and contribute to a social belief that the Internet is a uniquely unintelligible 'crime problem.'[46]

In order to unpack the blurred boundaries between crime and cybercrime, scholarship has attempted to analyse the range of cyber-facilitated offences to establish whether the impact of (Internet) technology has been to create new crimes that would not exist

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[38] Nhan & Bachmann (n 36) at 166

[39] For example the ACPO definition for cybercrime, West Midlands Police and Crime Commissioner, Strategic Policing and Crime Board, 'Cyber Crime- ACC Crime' (December 2013) available < http://www.westmidlands-pcc.gov.uk/media/266474/10-spcb-03-dec-13-cyber-crime.pdf> last accessed 9.3.2018

[40] V. K. Gunjan, A. Kumar & A. A. Rao, 'Present and Future Paradigms of Cyber Crime & Security Majors- Growth and Rising Trends' (2014) 4th International Conference on Artificial Intelligence with Applications In Engineering and Technology

[41] Nhan and Bachmann (n 36) at 167; Susan W Brenner, 'Is There Such a Thing as Virtual Crime?' (2001) 4(1) Cal. Crim. L. Rev. 105-111; D.S. Wall, 'Cybercrime and the Internet' in D.S. Wall (ed) *Crime and the Internet* (2001, Routledge) p 3-7

[42] D. Wall, 'Criminalising cyberspace: the rise of the Internet as a 'crime problem' in Y. Jewkes & M. Yar (eds) *Handbook of Internet Crime* (2013 Routledge) 88

[43] *Ibid*

[44] *Ibid*

[45] *Ibid*

[46] *Ibid* 89

without the technology itself and are therefore 'cyber' in nature.[47] Such offences would be distinct from internet-facilitated offences. Wall for instance, identifies three categories of technologically affected crime. The first is 'cyber-assisted' crime that 'uses the Internet in its organisation and implementation, but which would still take place if the Internet were removed.'[48] At the other end of the spectrum lies 'cyber-dependent' crime, which Wall maintain exists because of the Internet.[49] For example, spamming, distributed denial-of-service (DDoS) attacks, and 'new generation hacking'[50] would not exist without the Internet.[51] Finally, between the two extremes of the spectrum lies 'a range of hybrid 'cyber-enabled' crime'[52] where the impact of technology has been to extend the reach and potential impact of existing crimes in law, such as fraud.[53] If the Internet were taken away, these crimes could still happen 'but at a much more localized level and they lose the global, informational, and distributed lift that is characteristic of cyber.'[54]

Cybercrimes can be further categorised according to the ways in which technology shapes the criminal act itself. Following establishment of 'mediation by technology,'[55] Wall maintains that it is necessary to consider the 'modus operandi.'[56] He suggests three further categories that must be distinguished between; 'crimes against the machine,' 'crimes using the machine,' and 'crimes in the machine.'[57] This is because the modus operandi will have an impact on the body of law the behaviour relates to in most modern jurisdictions.[58] Finally, separating the offences by victimization experience is another important distinction to make when attempting to understand the effect of technology on crime.[59] Such a process can enable the identification of cybercrimes that sit comfortably under existing law, as well as demonstrate areas where the law, regulators, or private entities must make amendments in order to

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[47] D. Wall, 'Crime, Security and Information Communication Technologies: The Changing Cybersecurity Threat Landscape and Its Implications for Regulation and Policing' in R. Brownsword, E. Scotford & K. Yeung (eds) *The Oxford Handbook on the Law and Regulation of Technology* (2017, Oxford: Oxford University Press) 7
[48] *Ibid* 8
[49] *Ibid*
[50] Wall 2007 (n 17) at 60
[51] *Ibid*, 55-68
[52] Wall 2017 (n 47) at 8
[53] *Ibid*
[54] *Ibid*
[55] *Ibid*
[56] *Ibid*
[57] *Ibid* 8-9
[58] *Ibid*
[59] *Ibid*

effectively manage transformations in criminal behaviour generated by technological developments and advancement.[60]

Wall maintains there exist four categories within criminal law that can accommodate these cyber-offences:'[61] cyber trespass, cyber deceptions and thefts, cyber pornography, and cyber violence.[62] The transformation, therefore, is not of what it means to be criminal, but the manifestation of criminal behaviour,[63] or the criminal interaction. This analysis is useful; it facilitates comprehensive categorisation of the nature of internet facilitated crime, and in turn allows us to begin to consider the relevant regulatory landscape. However, there is a lack of engagement in contemporary cyber literature with the technologically mediated criminal encounter, beyond that facilitated by the Internet. The various categorisations provide a foundation for exploring the interactions between a specific technology and crime, but analysis is fixed in a post-internet time period. Considering the implications for managing crime are similarly presented as novel given the extent of the transformation, a regulatory transformation is also implied by this literature.

1.3 Regulating Communication Technology: A Preoccupation with Space

The cybercrime literature must be considered alongside the cyber-regulation literature, to demonstrate conceptualisation of the interactions between crime, communication technology, and regulation. The apparent 'transformation' of crime has led many to suggest a novel approach to regulation is required to adequately manage the crime problem. The lack of definitional clarity associated with cybercrime is problematic given the challenges posed by networked electronic communications technologies to law, regulation, and enforcement.[64] The internet transformed commerce and industry, but also social behaviour across digital networks, causing it to 'become global, informational and distributed,'[65] though as will be discussed in the following section,

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[60] *Ibid*

[61] M. Yar, 'The Novelty of 'Cybercrime': An Assessment in Light of Routine Activity Theory' (2005) 2(4) European Journal of Criminology 407, 410

[62] Wall 2001 (n 41) at 3-7

[63] Yar 2005 (n 61) at 410

[64] N. E. Marion, 'The Council of Europe's Cyber Crime Treaty: An Exercise in Symbolic Legislation' (2010) 4(1&2) International Journal of Cyber Criminology 669, 670; J. B. Hill & N. E. Marion, *Introduction to Cybercrime: Computer Crimes, Laws, and Policing in the 21st Century'* (2016, ABC-CLIO) 4

[65] Wall 2017 (n 47)

this transformation is perhaps not as profound as representations in the cyber literature present.[66] The nature of what was conceived as a 'virtual world' enhanced concerns about both criminal and civil wrongs occurring on a global scale.[67] What followed was an initial debate about governability, which has since evolved to discussions around mechanisms of regulation and a perception that the role of the state in this regulatory landscape is minimal. This in turn has been emphasised as 'transformative', novel, and therefore a distinct challenge to crime management associated with internet technology.

It was the nature of the cyberspace, and the qualities inherent in the 'new' networked digital technologies, that led cyber-libertarians to maintain that the Internet, and the resulting 'virtual space' should be exempt from terrestrial regulation and lay outside the reach of domestic laws.[68] Two alternate approaches to law and regulation arose, with some maintaining the nature of the space was akin to the 'wild west' and should be immune from centralized control and all but minimal governmental interference.[69] Therefore it was the global, border-less character of the 'virtual world' that demanded a different approach to law and regulation.[70] The instantaneity of communication, the ability to commit a crime in one territory that was experienced in another, and the complications arising from attempts to police and regulate a 'borderless' environment through reliance on traditional methods rooted in the notion of territorial sovereignty meant that for some, attempts to regulate and apply traditional domestic law were futile.[71] The nature of the space can mean that traditional law and regulation is difficult to enforce in practice,[72] and some, such as Barlow, have maintained that cyberspace is incapable of effective 'real world' regulation.[73]

Whilst cyber-libertarians maintained that the nature of cyberspace resisted regulation,[74] cyber-paternalists maintained the structure and nature was capable of manipulation

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[66] B. Winston, *Media Technology and Society: A History: From the Telegraph to the Internet* (1998, Routledge) 2

[67] J. Reidenberg, 'Lex informatica: The formation of Information Policy Rules through Technology' (1998) 76:3 Texas Law Review 553, 556

[68] D. R. Johnson & D. G. Post, 'Law and Borders- The Rise of Law in Cyberspace' (1996) 45 Stan. L. Rev. 1367 available http://www.yalelawtech.org/wp-content/uploads/riseofcyberlaw.pdf> last accessed 11.3.2018

[69] A. D. Murray, *The Regulation of Cyberspace: Control in the Online Environment* (2007, Routledge) 5; Johnson & Post (n 68)

[70] Johnson & Post (n 68)

[71] A. Murray, 'The Regulatory Edge of the Internet' (2003) 11:1 Int J Law Info Tech 87, 88-89

[72] Murray 2007 (n 69) at 5

[73] See J. P. Barlow, 'Thinking Locally, Acting Globally' (1996) Time, Published 15th January 1996 available < http://content.time.com/time/magazine/article/0,9171,983964,00.html> last accessed 4.3.2018

[74] L. Dahlberg, 'The Internet and Democratic Discourse: Exploring the prospects of online deliberative forums extending the public sphere' (2001) 4(4) Information, Communication and Society 615, 616-617

and regulation through architectural design.[75] The lack of physical form in cyberspace is insufficient to justify claims that terrestrial law cannot apply, since the 'virtual world' operates as a 'continuum of reality' and is subject to real world interference.[76] Claims that cyber-space is independent do not account sufficiently for the increasingly intertwined nature of the relationship between online and offline activity.[77] Arguably as technology becomes further integrated into day-to-day life, such a distinction is binary and unhelpful.[78]

The regulation literature then, is often concerned with space; there is much reference to the 'new virtual world,' new cybercrimes, and demands for a new Cyberlaw, without sufficient discussion of what has changed, and what remains the same.[79] Discussion is therefore grounded in uncertainty, and reflective of concerns about space and connectivity rather than use and impact, thus how people manoeuvre through, and interact with technologically mediated environments. The preoccupation with characteristics of the 'virtual space' detracts from the reality that the virtual operates alongside, and interacts with, the terrestrial.[80] Combined with the focus on qualities of the technology in the cybercrime literature, both bodies of work pay insufficient attention to the interactions between crime, communication technology, and regulation, in a manner grounded in social practice. Debate regarding the inherent governability of the space itself has moved on in many respects and is now generally concerned with the distribution of regulatory power, and managing regulating interventions, evaluating their impact not only on crime, but also on privacy and freedom of expression.[81] In the contemporary context this has led to discussions around distributions of power and knowledge within this regulatory space. However, the foundations of the debate discussed here remain fundamental to the body of literature and continue to highlight an approach that focused on responding to a novel challenge, with a novel regulatory landscape.

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[75] L. Lessig, 'Architecting Innovation' (2001) Drake L Rev. 397-398

[76] C. Chambers, 'Can You Ever Regulate the Virtual World Against Economic Crime?' (2012) 7(4) Journal of International Commercial Law and Technology 339, 341

[77] K. F. Aas, 'Beyond 'the desert of the real': crime control in a virtual(ised) reality' in Y. Jewkes (ed) *Crime Online* (2013, Routledge) 164

[78] *Ibid*

[79] Wall 2013 (n 42) at 94-95

[80] *Ibid*

[81] See; Y. Akdeniz, 'To Block or Not to Block: European Approaches to Content Regulation, and Implications for Freedom of Expression' (2010) 26(3) Computer Law and Security Review 260-273; B. Farrand, 'Capitalism, Decentred Enforcement, and its Legal Consequences for Digital Expression: The Use of Copyright Law to Restrict Freedom of Speech Online' (2013) 10(4) Journal of Information Technology and Politics 404-422; C. A. Tschider, 'Regulating the Internet of Things: Discrimination, Privacy, and Cybersecurity in the Artificial Intelligence Age' (2018) 96 Denver Law Review 87

It is necessary to develop a more nuanced understanding of exactly how technology interacts with criminal behaviour, and regulation. Whilst cyber-centric scholars are beginning to recognise the historical antecedents of 'cyber-crime,' this has manifested in the literature as a search for an origin or a comparator, rather than a developmental understanding of the relationship. There is a tendency in the cyber literature to assert the 'instantaneous nature' of communications, the 'annihilation of time and space' and the 'global reach' of the Internet as the qualities of the technology that contribute to the fundamental transformation of criminal behaviour. When the literature is considered in historical context, it is evident that these statements have been made before.[82] Prior to the Internet there were instant, global communication technologies in operation (the telegraph and the telephone for example); there was never a suggestion that these technologies had changed criminal behaviour to such an extent that a new legal order was required.[83] It is therefore appropriate to consider what both the popular, and more academic historical scholarship does reveal about the potential impact of prior communication technologies on criminal behaviour, and if and how any transformations were met by regulation.

1.4 Crime and Communication Technology in the 19th and Early 20th Century

There is a significant body of literature that engages with the history of crime. There is also an increasing tendency in contemporary communication technology and crime literature to refer to historical examples of 'virtual crime.'[84] However, to review the literature as it stands, there is no detailed analysis of the interaction between crime, communication technology, and regulation throughout the modern period. Rather, it is necessary to assemble a patchwork of studies, and piece together understanding from bodies of works which are quite disparate.[85] Additionally, some of the studies considered are intended for a popular audience, and so they are not the most rigorously researched. This thesis will focus on 19th century electrical communication technologies, specifically the telegraph, however it is important to note that this does not suggest that this period represents the beginning of innovations in communication

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[82] M. I. Wilson, A. Kellerman, K. E. Corey, *Global Information Society: Technology, Knowledge and Mobility* (2013, Rowman & Littlefield) 73

[83] J. Dator, J. Sweeney, A. Yee, *Mutative Media: Communication Technologies and Power Relations in the Past, Present and Futures* (2014, Springer) 89-91

[84] B. J. Bergiel, E. B. Bergiel, P. W. Balsmeier, 'Internet Cross Border Crime: A Growing Problem' (2008) 3(3/4) Journal of Website Promotion 133

[85] McGuire (n 1)

being used to facilitate criminal behaviour. The postal service, for example, has been recognised as an innovation that facilitated fraud in particular.

The 'Spanish Prisoner Scam' has been declared an early version of the infamous Nigerian 419 email scam.[86] Touted as the original 'advanced fee' frauds, scams of this type have their origins in the sixteenth century.[87] According to Gillespie, a typical sixteenth century case could involve a 'wealthy benefactor' engaging in discussion, via letter, with a 'trickster,' usually posing as a member of society, who would maintain that he was in correspondence with a member of the Spanish nobility, who was being held hostage.[88] The trickster would maintain that money was required for his release, and that he would allow the benefactor to share some of the costs associated with release, in return for a significant reward.[89] Additionally, the Spanish Prisoner would often be presented as having a beautiful, unmarried daughter, and once released, her 'father' would 'no doubt look favourably on any match involving their saviour.'[90] Variations on such schemes proliferated, but generally involved the use of the postal system to offer valuable rewards in return for an upfront fee, which would help free a prisoner.[91] Over time, the scheme became more and more sophisticated, with fraudsters appealing to victims by maintaining that the prisoner knew the victim.[92] Letters were often accompanied by elaborate forgeries of official documents, adding an impression of credibility to requests for money.[93] As Thomas notes, fraudsters were not afraid to use the latest technologies, and in the late nineteenth and early twentieth centuries, the letters would encourage their victim to respond by telegram, bringing two advantages; increasingly speedy communication, and victim investment in the cost of sending a telegram demonstrated they had already bought into the scam.[94] Whilst little is known about those behind the scam, what is clear is that it was extensive, organised, and successful over a sustained period of time.[95]

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[86] Bergiel *et al* (n 84) at 133

[87] H. Dang, 'The Origins of Social Engineering' (2008) McAfee Security Journal available < https://www.wired.com/images_blogs/threatlevel/files/mcafee_security_journal_fall_2008.pdf> last accessed 18.6.2018

[88] A. Gillespie, 'The Electronic Spanish Prisoner: Romance Frauds on the Internet' available **http://eprints.lancs.ac.uk/84370/2/The_Spanish_Prisoner_Final.pdf**

[89] *Ibid*

[90] *Ibid*

[91] D. Thomas, *Beggars, Cheats and Forges: A History of Fraud Through the Ages* (2014, Pen and Sword History)

[92] *Ibid*

[93] *Ibid*

[94] *Ibid*

[95] *Ibid*

Comparisons of the Spanish Prisoner Scam with more recent Internet frauds emphasise several similarities. Such scams are capable of generating vast amounts of money, have a global reach, target a high volume of potential victims, and draw on the same, or similar themes in correspondence, reaping the same results now, as they did hundreds of years ago.[96] Additionally, communicating across multiple networks or technologies, for instance via telegraph as well as post, appears to reinforce the success rate of such frauds.[97] Whilst this is an isolated example in the literature, it is provided as a means to demonstrate that fraudsters have relied on communication networks or technologies to facilitate criminal behaviour for hundreds of years. However, despite the tendency to identify a comparable antecedent, the continuities within the broader relationship between crime, communications technology, and regulation, as well as the significance of broader social context within which these technologies are incorporated are often anecdotal. Thus, the question turns to why so much of the crime and regulation literature tends to overlook the past in determining the relationship between the communication technology, crime and regulation. Whilst contributions may acknowledge that the relationship between crime and communication technology extends beyond the Internet as the medium of exchange, the intricacies of the relationship are addressed in current terms. Additionally, although historic examples may be drawn upon in order to reinforce arguments, I propose that not enough is known about the relationship in the 19th and 20th centuries for a historical perspective to contribute to our understanding of the present.[98] The use of historical antecedents in contemporary literature is therefore inherently undermined by a lack of contextualised and nuanced understanding about the social life of technology; similarities and differences are imposed from the position of understanding in relation to the contemporary 'equivalent.'

It is important to note, however, that whilst there is a failure to analyse the relationship between crime, communication technology, and regulation outside of the internet centred model, there exists a multitude of social and history of technology scholarship that recognises the significance of the electric telegraph on society, as well as criminology with a historic perspective which recognises a potential impact of technology on criminal behaviour.[99] Scholarly attention has been paid to the regulation

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[96] Bergiel *et al* (n 84); Gillespie (n 88)

[97] Gillespie (n 88)

[98] McGuire (n 1)

[99] For example, see M. Roth, 'Historical Overview of Transnational Crime' in P. Reichel & J. Albanese, *Handbook of Transnational Crime and Justice* (2013, SAGE Publications)

of the telegraph, with a particular focus on the international approach to regulation.[100] Additionally, there is literature that likens the social impact of the telegraph to that of the Internet,[101] although it has been criticised for presenting a progressive view, which overlooks context, and is altogether too simplistic.[102] This is at least in part due to the contemporary cyber literature referring to the popular historical literature in search of origins or comparators, as opposed to engaging with rigorous historical scholarship. Finally, the relationship between communication technology and crime has been considered over a sustained period of time by criminologist McGuire, who proposes a more nuanced perspective on 'cybercrime,' maintaining that the contemporary scale of network technologies has led to a preoccupation with the need for a 'paradigmatic shift' in analysing crime and regulation.[103] By collating studies which exist largely in isolation from one another, the potential impact of this research is emphasised.

1.4.1 *The Telegraph*

The telegraph and telephone have been identified as 'early forms of networked communication [which] provide an essential background for understanding the computer network.'[104] Understanding of magnetism and electricity in the late 1700s and early 1800s led to the recognition that flows of electrical current along wire 'could be used to activate a signal at the far end of the wire…hence be used for distant communication.'[105] Fari details three phases in the telegraph's development, maintaining the 'period of gestation' spans from the early 1830s where the apparatus was invented, through 1837-1846 where experimentation took place, and the first patents were processed, to a final 'entrepreneurial period' which covered the years 1846-1850, where a company[106] was authorised to transmit telegrams.[107] The first practical electric telegraph[108] was pioneered in England by Cooke and Wheatstone in

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[100] For example, J. Hills, *Telecommunications and Empire* (2007, University of Illinois Press) Chapter 3; for detail on Submarine Telegraphy, see S. Muller, *Wiring the World: The Social and Cultural Creation of Global Telegraph Networks* (2016, Columbia University Press)

[101] T. Standage, *The Victorian Internet: The Remarkable Story of the Telegraph and the Nineteenth Century's Online Pioneers* (1998, Weidenfeld & Nicolson)

[102] T. Jepsen, '" A New Business in the World": The Telegraph, Privacy and the U.S. Constitution in the Nineteenth Century' (2018) 59(1) Technology and Culture 95-125

[103] McGuire (n 1) at 6

[104] D. Nye, 'Shaping Communication Networks: Telegraph, Telephone, Computer' (1997) 64(3) Social Research 1067

[105] A. Richardson, 'The Cost of a Telegram: the evolution of the International regulation of the telegraph' (2015) Accounting History available < https://scholar.uwindsor.ca/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1085&context=odettepub> last accessed 11.4.2018, 5

[106] The Electric Telegraph Company

[107] S. Fari, *Victorian Telegraphy Before Nationalisation* (2015, Springer) 5

[108] For an overview of earlier telegraph systems, see; L. Solymar, *Getting the Message: A History of Communications* (Oxford University Press, 1999); G. Prescott, *History, Theory and Practice of the Electric Telegraph* (Ticknor and Fields, 1860)

1837, and Morse in the USA.[109] The first UK telegraph line was opened in 1839, along the railway line running from Paddington to West-Drayton.[110] Initial development and use of telegraphy was closely tied to the railways; 'telegraph systems were initially national in scope, often using railway right of ways to run cables between destinations.'[111] Telegraphy rapidly developed into a national network, accompanying the development of the national railway network, and facilitated the control of train movement.[112] It was not until 1843 that public access to telegraphs was granted, allowing the exchange of messages across the Great Western Railways lines.[113] The system relied on the 'transmission of words encoded in symbolic form' that would be transmitted, and received by operators.[114] As well as facilitating the organisation of the rail network, use of the telegraph was quickly recognised as important for controlling 'the movements of fugitives from justice,'[115] the detection of criminals,[116] and for the circulation of news.[117] The successful laying of a transatlantic cable in 1866 allowed the development of a truly international communication network, with international communications uninterrupted ever since.[118] These technologies developed sufficiently to allow 'near instantaneous communication…[creating] new forms of adjacency that offered to replace or supplement physical presence for many purposes.'[119] Its social incorporation was transformative in relation to infrastructure, and social and public order.

1.4.2. *The Telegraph and Crime*

As recognised in cyber literature, the 'emergent digital… environment affects all aspects of society, from news and information to commerce…. crime, deviance…and civil society.'[120] Advances in technology are routinely capitalised upon to facilitate criminal behaviour, and according to Standage, the telegraph did not escape this.[121]

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[109] *Ibid*

[110] Solymar (n 108) at 58

[111] Richardson (n 105) at 5

[112] D. Lacy, *From Grunts to Gigabytes: Communications and Society* (1996, University of Illinois Press: Urbana and Chicago) 79

[113] C. Smith, 'How the UK's railways shaped the development of the telegraph' (2017) available http://home.bt.com/tech-gadgets/history-of-communication-uk-railways-telegraph-patent-cooke-wheatstone-11364186628315 last accessed 10.5.2018

[114] Prescott (n 108)

[115] *Ibid* 348

[116] *Ibid* 383

[117] *Ibid* 385

[118] *Ibid*

[119] S. Little, 'Twin Towers and Amoy Gardens: Mobilities, Risks and Choices' in M. Sheller & J. Urry (eds) *Mobile Technologies of the City* (Routledge, 2006)

[120] K. Kawaoto, *Media and Society in the Digital Age* (Allyn and Bacon, 2003) 9

[121] Standage (101) at 100-101

The telegraph has been identified as a medium utilized for 'illicit gain' particularly in relation to the stock markets, and the gambling industry.[122] Telegraph technology was used to intercept private information,[123] contact potential victims of fraud,[124] to facilitate the exchange of money as part of a fraud,[125] or theft, to intercept information used to facilitate financial gain,[126] and to organise acts of public disorder.[127] There is, however, little dedicated research to the use of telegraph technology in the facilitation of crime beyond general anecdotal references to 'telegraph crimes' referred to mostly in newspaper articles of the time. Several accounts recognise the stock market fraud, which utilised the optical telegraph for several years, allowing the Blanc brothers to make illicit gains based on intercepted and manipulated stock market information.[128] Gambling frauds are increasingly referred to in the literature as an example of how the separation of information from transport allowed it to travel faster, which in turn led to individuals manipulating existing social structures that had not yet adapted to this transformation.[129] Those wishing to place a bet on the horse races had traditionally been able to do so after the races had been run, but prior to the results being received.[130] Use of the telegraph to secretly transmit the results of the races in advance of their formal relaying is frequently detailed in academic and popular work as an example of deviant individuals manipulating the technology to facilitate illicit financial gain.[131] Similarly, telegraph equipment was tampered with to intercept information, allowing more time to place 'sure fire' bets prior to the official results being received, but with the official results having being intercepted.[132] Wenzlhuemer details examples of individuals cutting the wires of telegraph apparatus, and inserting their own apparatus in to the circuit, allowing them to intercept messages, falsify them, and then

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[122] C Kavanagh, 'IT and Cyber Capabilities as a Force Multiplier for Transnational Crime' in Virginia Cornolli (ed) *Organized Crime and Illicit Trade: How to Respond to This Strategic Challenge in Old and New Domains* (Springer, 2018) 42

[123] J. Kieve, *The Electric Telegraph: a social and economic history* (David and Charles, 1973)

[124] P. Knepper, *The Invention of International Crime: A Global Issue in the Making, 1881-1914* (2010, Palgrave, Macmillan) 12-25

[125] *Ibid;* For general information relating to money transfer and telegraph see; M. Collins, *Money and Banking in the UK: A History* (2012, Routledge) 22

[126] *Ibid*

[127] Although how the threat of this was perceived is maintained to be 'slight' in F.C. Mather, 'The railways, the electric telegraph and public order during the Chartist period, 1837-48' (1953) 38 History 40-53, whilst Fari (n 97) details a more significant threat which justified Government takeover of the network

[128] Standage (n 101); A. Kaijser, E. van der Vleuten & P. Hogselius, *Europe's Infrastructure Transition: Economy, War, Nature* (2015, Springer)

[129] Standage (n 101); M. De Saulles, *The Internet of Things and Business* (2016, Taylor & Francis) 69; For general discussion of the role of the telegraph in transforming gambling practices see; R. Munting, *An Economic and Social History of Gambling in Britain and the USA* (1996, Manchester University Press)

[130] *Ibid*

[131] *Ibid*

[132] Wenzlheumer (n 8)

forward on the incorrect information relating to opium prices.[133] Offences such as betting frauds, and market frauds therefore demonstrate criminal use of the 'annihilation of time and space' that is so frequently stated as having occurred as a result of telegraph technology.[134]

Telegraphy provided a means of contact for persons who may otherwise have had no interaction, in a similar vein to what was earlier described with the postal network. Thus the anonymity associated with the technology allowed for the flourishing of deceit over the wires.[135] Businesses, as well as individuals, were targeted, though this is not always framed in the literature as relating to the telegraph specifically, rather as a product of industrial and social change and an increase in economic offending.[136] Whilst there is evidence in the history scholarship of a comprehension that the telegraph technology influenced patterns of offending, and popular histories have provided evidence of a range of offences and behaviours that were influenced by the technology, analysis has not provided a systematic overview of the history of the telegraph and crime, nor connected this to attempts to regulate or manage criminal use of the technology.

Whist not offering a sustained historical analysis of crime and the telegraph, criminologist McGuire outlines the case for such research and its potential implications for contemporary understandings of cybercrime and cyber regulation.[137] Whilst he extends his analysis of crime and communication technology to include the telegraph, and telephone, there is insufficient research evidence to allow for serious engagement with the relationship outside of existing contemporary debates. McGuire maintains that the cyber literature is flawed for this very reason;[138] the Internet, or 'cyberspace' is not unique enough to require 'a theoretical accommodation for schismatic breaks between 'realities' to be made as a result.'[139] Rather, 'any transitions in social interaction that can be attributed to the advent of computer networks have been anticipated … in history.'[140] He proposes a focus on interaction, thus the common feature of all

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[133] *Ibid* 216
[134] R. Hassan & J. Thomas, *The New Media Theory Reader* (2006, McGraw-Hill Education UK) 246
[135] J. Harrington, *Technology and Society* (2011, Jones and Bartlett Publishers) 141
[136] See Robb (n 7); J.P. Locker & B. Godfrey, 'Ontological Boundaries and Temporal Watersheds in the Development of White-Collar Crime' (2006) 46 British Journal of Criminology 976-992
[137] McGuire (n 1)
[138] *Ibid* 6
[139] *Ibid*
[140] *Ibid*

communication technologies, can better our understanding of the relationship between communication technologies and crime.[141]

Throughout history, developments in communication have extended the possibilities of social life.[142] Social interactions therefore transition alongside communication developments, and it is these interactions, McGuire maintains, that we should focus on in the attempt to understand the relationship between crime and communication technologies, as opposed to the technologies themselves.[143] Rather than focus on the 'theoretically questionable' concept of cyberspace, and the construct of cybercrime, McGuire proposes that by analysing developments in context, we come to see the process of 'hyperspatialisation;' the Internet has not created a cyberspace, distinct from normal space, but rather a long gestation of technological development has created a 'hyperspace' which is both 'continuous with and produced out of normal space.'[144] This process, when observed in context, demonstrates that technologies do not produce new crime, but expand the possibilities for deviant behaviours.[145] Such an analysis does not diminish the impact of computer networked technologies; McGuire maintains that the process of hyperspatialisation has 'reached a crucial juncture' due to the 'transformation of our perceptions and beliefs about the social order and its threats' as a result of recent technological advancement.[146]

This 'period of gestation'[147] that McGuire refers to is particularly important in understanding the nuances in the interactions between crime, communication technologies, and also regulation. The changing experience of time and space reorganises social relations, and this is not a purely contemporary phenomenon.[148] Previous transformations tend to be overlooked, and none have required the creation of a new 'place' to accommodate them.[149] Cyberspace is therefore an unnecessary tool to manage the implications of the Internet, which are ultimately restructuring social interaction, and reorganising social boundaries, as other communication mediums have done before them.[150] It is within these changing social boundaries, and restricted

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[141] *Ibid*

[142] M. McLuhan, *Understanding Media: the extensions of man* (1964, 1st edition, McGraw- Hill)

[143] McGuire (n 1) at 6

[144] *Ibid* 7

[145] *Ibid*

[146] *Ibid*

[147] *Ibid*

[148] *Ibid* 16

[149] J.G.S. Koppell, 'No "There" There: Why Cyberspace isn't anyplace' (2000) available < https://www.theatlantic.com/magazine/archive/2000/08/no-there-there/378308/> last accessed 14.6.2018, at 16

[150] E. Wynn & J.E. Katz, 'Hyperbole over Cyberspace: Self-Presentation and Social Boundaries in Internet Home Pages and Discourse' (1997) 13(4) The Information Society 297

social interactions, that opportunities and weak spots are searched out and exploited in order to facilitate deviant behaviour.[151] This is a constantly emerging pattern of criminal behaviour, in both the physical context, as well as the 'hyperspatial.'[152]

Whilst McGuire's work highlights effectively that the relationship between crime and communication technologies expands well beyond the boundaries of contemporary network communication technology, further archival research is required to sustain it. This research will build upon McGuire's intuition. McGuire details developments in communication technology, demonstrating how the electric telegraph, for example, accelerated the 'stretch of spatial limitation,' allowing 'criminal exploitation of the telegraphic system…almost as quickly as it was developed.'[153] However he notes that determinations about historical interactions between crime and communication technology are necessarily 'inferred from a patch work of information.'[154] Systematic archival research would bolster our understanding of the interactions between crime, communication technology and regulation through time. Outside of literature directly concerning communications technology and crime, it is helpful to consider, as McGuire himself does, the regulation literature to determine whether, and if so, what, crimes regulation was attempting to overcome. This can have the effect of not only helping us to better understand crime, but also to conceptualise how crime and regulation have been considered alongside each in this context.

1.4.3. *The Telegraph and Regulation*

It is important to note that discussion of regulation extends beyond centralised regulation, and this chapter will acknowledge 'self-regulation,' 'technical regulation,' international regulation, as well as law. These methods of regulation are prevalent in contemporary cyber-scholarship however their significance extends beyond contemporary society and communications technology. Whilst this research does not endorse starting with contemporary structures and searching for an historical equivalent, it is helpful to consider these four modes of regulation, so as not to restrict the research to a legalistic approach. Regulation literature tends to demonstrate use of the law as reactive, rather than proactive, an emphasis on economic development, and in terms of users, growing concerns regarding privacy.

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[151] McGuire (n 1) at 59
[152] *Ibid*; M. Killias, 'The Opening and Closing of Breaches: A Theory on Crime Waves, Law Creation and Crime Prevention' (2006) 3(1) European Journal of Criminology 11-31, 11-12
[153] McGuire (n 1) at 59
[154] *Ibid* 68

From the early, and much referenced, optical telegraph fraud[155] onwards, there is a suggestion that law lagged behind technological advancements, and so was usually modified to accommodate technological developments following the experience of criminal misuse.[156] Law tended to accommodate changes associated with communication technology by attempting to define the nature of the criminal wrong in physical terms.[157] For example, 'Wiretapping', interfering or damaging the technology, or delaying or interfering with the transmission of telegrams was a criminal offence.[158] The physical nature of the wires themselves allowed the crime to be conceptualised as one of malicious damage. [159] In terms of the interaction between crime and regulation, it appears that regulation responded to crime, but the role of national legislation in protecting state interests is much more evident. For example, in 1880, two years after the arrival of the telephone in the UK, a legal injunction was granted to the state-owned Post office, ruling that under S 4 of The Telegraph Act 1869 a telephone was a telegraph, and telephone conversations were telegrams, due to the wires and apparatus used, thus the (state owned) Post Office was able to maintain its monopoly over the transmission of communications in Britain.[160] National legislation was therefore invoked to protect control of the networks, and meet the economic needs of the state.

At a national level, there is also a suggestion in historical scholarship that transformations in transport technology as well as communication technology caused a 'crisis of control,'[161] which in turn justified more intensive and intrusive government legislation.[162] The nationalisation of the telegraph industry in 1870 can be seen as evidence of an 'increasing state interest in business and communication.'[163] It is interesting that increased governmental intrusion arguably contributed to fears relating to the extent of government intervention, with Weller and Bawden maintaining that these fears bear 'a striking resemblance to current debates and fears over the issues

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[155] See the previous section detailing the Blanc Brothers Optical Telegraph Fraud

[156] S. Fari, *The Formative Years of the Telegraph Union* (2015, Cambridge Scholars Publishing); J.W. Carey, 'Technology and Ideology: The Case of the Telegraph' in J.W. Carey, *Communication as Culture: Essays on Media and Society* (2009, Taylor and Francis) 155-177; P. Regan, *Legislating Privacy: Technology, Social Values and Public Policy* (2000, University of North Carolina Press) 137

[157] E.H. Freeman, 'The Telegraph and Personal Privacy: A Historical and Legal Perspective' (2012) 46(6) EDPACS 9-20, 10

[158] Malicious Damage Act 1861, s37

[159] Brenner (2001) (n 41)

[160] C. Smith, 'When a telephone conversation was actually a telegram in the eyes of the law' (20th December 2017) available http://home.bt.com/tech-gadgets/when-a-telephone-conversation-was-actually-a-telegram-in-the-eyes-of-the-law-11364121187126 last accessed 11.5.2018

[161] Weller and Bawden (n 11) at 2

[162] *Ibid* at 786

[163] *Ibid* 792

of data protection and personal privacy.'[164] Whilst these fears prevail today, they maintain their origins can be located in the 19th century, when government intervention into private lives was feared, yet the intrusion of the commercial world was accepted.[165]

The historical scholarship concerning the role of government regulation as a response to emergent communication technologies tends to concern industrialisation and technical progress, and how this was managed by the state. Additionally, as Vincent demonstrates, state concerns regarding security were evident with the regulation of the postal system, and the ability of the state to interfere with, and intercept the post.[166] Mistrust relating to the perceived intensity of state intrusion, and debates regarding the acceptability of state surveillance, have therefore been evidenced in relation to earlier network communication technologies.[167] The complexity of the relationship between security and privacy, much referenced in the cyber-regulation literature,[168] proceeded the Internet age. Arguably the intense scrutiny with which the press greeted Home Office practices of intercepting the post in 1844,[169] and the emergent security privacy debate, justifies historical research into the interactions between crime, communications technology and regulation. Government fears that criminals would utilise the communication medium to facilitate breaches of peace were stated as justification for Home Office powers to issue warrants allowing them to intercept the post.[170]

There is scholarship relating to the demise of experienced privacy, whilst simultaneously privacy developed as a legal concept.[171] Arguably the evolution of the concept of privacy interacts with developments in communication technologies, which in turn has an impact on the role of the law, and thus crime in general. It is suggested that in this scenario rather than law attempting to keep up with crime, crime emerged as a result of changing societal perceptions and experiences of privacy. Du Boff, in discussing the impact of telegraphy on business in the United States, maintains that

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[164] *Ibid* 793

[165] *Ibid*

[166] D. Vincent, *Literacy and Popular Culture: England 1750-1914* (1989, Cambridge University Press) 230-231

[167] *Ibid*

[168] See R.H. Weber, 'Internet of Things- New Security and Privacy Challenges' (2010) 26 Computer Law & Security Review 23-30

[169] Vincent (n 157) at 231

[170] *Ibid*

[171] S. Shapiro, 'Places and Spaces: The Historical Interaction of Technology, Home and Privacy' (1998) 14(4) The Information Society 275-284; C. Marvin, *When Old Technologies Were New: Thinking about Electric Communication in the Late Nineteenth Century* (1998, Oxford University Press) 70; I.R. Morus, 'The Electric Ariel: Telegraphy and Commercial Culture in Early Victorian England' (1996) 39(3) Victorian Studies 339-378, 373; Jepsen (n 102)

'elaborate codes and ciphers' were quickly devised to conceal the content of messages.[172] Jepsen maintained that the role of the operators was significant with regards to the employment by 'merchants, brokerage houses, and newspaper reporters' of cipher codes to protect the privacy of their dispatches.[173] Whilst there is evidence to suggest that telegraph operators, as a general rule, saw the protection of privacy as a vital component of their profession,[174] the potential for 'eavesdropping' was clearly sufficient for users of the telegraph to employ codes and ciphers to protect their correspondence.[175] Shapiro demonstrates that use of code and ciphers to protect the content of messages from those it was not intended for was not something solely attributable to the technology of the telegraph, but that 'most people 'when' communicating through the postal system employed 'significant discretion'[176] Kahn notes that the use of such techniques was more commonly associated with elite members of society, rather than the general population, in order to protect politically sensitive or military information.[177] History reveals an awareness that information could be intercepted and used to facilitate illicit financial gain.[178] Whether responses were to actual or perceived threats is difficult to gauge. The limited reference in the historical scholarship to the telephone also reveals concerns over the privacy of correspondence, and classes of people previously largely unable to intrude into elite private life gaining access, to potentially fulfil deviant desires.[179]

Whilst the use of code is also associated with attempts to keep the cost of sending telegrams low (the length of a telegram increased both the cost and transmission time),[180] there is evidence of a 'desire for secrecy.'[181] Kooken, once captain of the Indiana State Police and chairman of the Department of Police Administration at Indiana University, writing in the 1930s, suggested that the 'complex operations of organized criminal bands necessitate the keeping of records, and of communication by telegraph and by mail.'[182] Cipher would be used in such circumstances to protect the content of communications; 'for practical purposes the criminal requires a system of

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[172] R.B. Du Boff, 'Business Demand and the Development of the Telegraph in the United States, 1844-1860' (1980) 54(4) *The Business History Review*, Business History of Technology 459-479, 478
[173] Jepsen (n 102)
[174] Freeman (n 157) at 12
[175] *Ibid*
[176] Shapiro (n 171) at 279
[177] D. Kahn, *The Codebreakers* (Macmillan, New York, 1967) 174-187
[178] A. D'Agapeyeff, *Codes and Ciphers- A History of Cryptography* (2016, Read Books Ltd)
[179] Marvin (n 171)
[180] Wenzlheumer (n 8) at 246
[181] *Ibid* 247
[182] D.L. Kooken, 'Cryptography in Criminal Investigations' (1936) 26(6) Journal of Criminal Law and Criminology 903, 904

enciphering that can be easily memorised, …[and] frequently changed.'[183] He maintained police must take more notice in criminal investigations in recognising evidence concealed through use of cipher, and 'careful analysis' should be used to solve the code and incorporate it into the investigation.[184] This suggests that telegraphic communication may have played a role in the organisation of criminal groups, and that an awareness of the presence of operators, or that messages could be intercepted, caused ciphers to be developed to protect incriminating, as well as competitive commercial, or politically sensitive, information.

Further evidence of the telegraph being used to organise anti-social or criminal behaviour comes in the response, detailed by Solymar,[185] of the Government during periods of social unrest or riot. They were able to take control of the network, potentially because of fear of misuse, and its role as an organising technology, but also because it enabled their communications to take precedence, at a time where they themselves may have needed to be more organised.[186] Thus in 1848, empowered by the Electric Telegraph Company Act 1846, Sir George Gray, then Home Secretary, wrote a letter to the Electric Telegraph Company requiring them to 'take possession of all telegraphs and telegraph apparatus,' and 'only obey …orders' given by himself or his secretary, thus obstructing communication between Chartists in London, and expanding communication 'between agents of government.'[187] The ability of Government to take over the (at the time privately operated) network is demonstrative of both the benefits associated with fast, distant communication in policing and controlling crime and anti-social behaviour, but also of the concept of the network as a threat.

There is a more robust literature on the international regulation of the telegraph, although crime features very little in it. Literature has emphasised the implications of an international network of communication and what this demanded in terms of its international organisation. Whilst telegraph systems were initially national in scope, 'the demand for international communications was strong and telegraph lines were developed' between European countries in the 1840s, expanded to Russia by the 1850s, as well as India and China.[188] In 1851 the first Submarine Cable Company laid the first cable connecting France to the UK, and by 1858 the first transatlantic cable[189]

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[183] *Ibid* 905
[184] *Ibid* 903-4
[185] Solymar (n 108)
[186] *Ibid* 57
[187] *Ibid*
[188] Richardson (n 105)
[189] The cable failed shortly after it was laid.

was laid connecting the UK to America.[190] The first telegraph treaty[191] was signed in 1849, and anticipated the setting up of national services in some cases, and from then until the mid-1850s several countries signed bilateral agreements, 'in order to increase access to communication.'[192]

In 1865 in Paris, the formal constitution of the Telegraph Union (TU) of the European States was established; a single body to regulate the International Telegraph Service.[193] The Paris Convention reiterated and enforced 'five basic principles of international telegraph communication,' which essentially sought to balance freedom of correspondence for citizens with state authority to supress or suspect communications, ultimately emphasising the authority of nation states[194]

It is clear from the established norms that the TU recognised the potential for the network to be misused, and also the potential for correspondence to be interrupted, and intercepted. However, literature reveals that the emphasis of the TU was on lowering international telegram charges and expanding telegraph space. Priority was given to the telegraph 'at the service of diplomacy and the business world,'[195] and there was a focus on prosperity and international diplomacy as opposed to organising the network in a manner that reduced opportunity for, or responded to, criminal use. Whilst international regulatory efforts are engaged with in this context, they are not analysed in terms of their impact on actual or potential offending. Rather their regulatory significance is presented in relation to the organisation of the network, though it is proposed this would have had implications for crime prevention more broadly.

As Fari details, administrations were able to violate the 'privacy of correspondence' and block telegrams thought to be a threat to national security, morality, or social order.[196] This further reinforces the notion that whilst liberal values encouraged the TU to endorse freedom of communications, there was awareness that open flows of communication could be a threat to society. The literature does not detail specific threats that were perceived. In fact, reference to the prevention of fraud in the international regulation literature reveals that the use of code by companies intending to cut costs by compacting several messages into a telegram was interpreted as a 'fraud against the telegraph administrations,' and was seen as a sufficient problem to

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[190] *Ibid*
[191] Treaty of Vienna, signed between Prussia and Austria on 3 October 1849
[192] Fari 2015 (n 156)
[193] *Ibid*
[194] *Ibid*
[195] *Ibid*
[196] *Ibid* 83

justify imposing a 10 word limit in international telegrams.[197] Whilst the ethos of the TU appeared to endorse liberal values favouring communication for citizens, in practice the needs of government were prioritised (given that States party to the TU had a nationalised telegraph service). Fraud in this context was interpreted akin to corporate crime, rather than an acknowledgement of any risk inherent in telegraph-facilitated crime per se.

It is possible that the international regulatory body did not specifically identify an international threat from crime emanating out of use of telegraph technology because there was 'overall, no panic about the impact of world-shrinking technologies on crime.'[198] However, Knepper recognises that there were those 'who spotted specific weakness in the infrastructure' and raised concerns about criminality emerging from said weaknesses, and victimisation occurring on a wider scale.[199] Nationally, there was awareness amongst 'police and prison authorities, lawyers, professors, and other specialists' of an 'emerging class of professional criminals' that 'took advantages of advances in transportation, communication and commerce to carry out theft, fraud and other property related crimes.'[200] The internationalisation of crime was conceptually driven by the internationalisation of communication, and transport.[201] Whilst the actual level of threat posed by the 'professional criminal' is difficult to gauge, many were concerned that a gap had emerged between technological advances and legal resources, and that as a result of international mobility and anonymity, as well as the organising structure of international communications, 'criminals specialising in financial gain' were able to roam in search of victims, without an adequate international police response to stop them.[202] Whether this was due to credible threat, or whether it resulted from 'speculations and forecasts, and anxieties and doubts,' Knepper maintains that the social impact of technology provoked 'some popular fear,' that emerged from concerns about potential future victimisation.'[203]

There is a suggestion that the pace of technological development contributed to a change in social understanding of the criminal, but it is difficult to determine exactly how deviant behaviour was facilitated by communication technologies, and to what extent. There is no systematic, developmental analysis of the interaction between communication technology and crime; discussion tends to include innovations in

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[197] *Ibid* 133-4
[198] Knepper 2010 (n 124) at 42
[199] *Ibid*
[200] *Ibid* 12
[201] *Ibid* 12-13
[202] *Ibid* 25
[203] *Ibid* 188-189

communication technology alongside those relating to transportation, money, and industrialisation in general. In addition, the potential impacts of increasing use of the telegraph, such as its role as a 'world shrinking technology,' the growth of global business,[204] and the separation of communication from transportation all feature in the literature as social experiences that appear to have impacted criminal behaviour, but these 'effects' of communication technology can be attributed to a number of social changes beyond just the technology itself. The absence of a systematic analysis of the interaction between crime and communication technology means that actual patterns in use are overlooked. Sweeping statements as to the transformative effect of the technology[205] fail to recognise how the technology was used, and by whom.[206] The relationship between crime and communications technology must be analysed in context, whilst being mindful of the role of technology in manifesting the social experience.

1.5 The Social Life of Communication Technology

In order to avoid falling victim to a determinist approach, I propose that use of the technology, thus who used it, how it was used, and the social setting should remain at the centre of research.[207] The following section will detail some of the 'social transformations' identified by the literature as having occurred following incorporation of the technology into society, and how these transformations may have impacted both the opportunity for, and experience of, criminal interactions. Given that my research will take an approach grounded in social practice, these social transformations provide opportunities for further research that reflects the use of technology, as opposed to the material qualities of it. At the same time, it is imperative not to overstate the social impact of technology, thus analysis must be grounded in social practice.

Prior to the telegraph, 'relations were personal [and] mediated … face-to-face.'[208] Correspondence occurred among people who 'by and large knew one another as actual persons.'[209] The transfer of business and personal transactions to the wire

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[204] Weller and Bawden (n 11)

[205] For example, the 'annihilation of time and space' has been cited in reference to the telegraph, as well as the Internet. For a discussion of the tendency to overstate the impact of the telegraph; see G. O'Hara, 'New Histories of British Imperial Communication and the 'Networked World' of the 19th and Early 20th Centuries' (2010) 8(7) History Compass 609-625

[206] *Ibid*

[207] *Ibid*

[208] Carey (n 156) at 205

[209] *Ibid*

allowed encounters to take place in a technologically mediated environment. The combination of business and communications becoming relatively fast paced and operating over a larger physical space meant that communications could be expected from further afield, and from persons unknown. This transformation of social interaction could have provided the opportunity for forged and fraudulent communications to reach unsuspecting victims. With more encounters occurring 'over the wires,' it is feasible that more individuals would be able to take advantage of the degree of temporary anonymity, potentially facilitating crime.[210]

The telegraph has also been cited as '[freeing] communication from the constraints of geography,'[211] therefore allowing communication to occur independently. Interactions need no longer be localized, and geographical constraints had a lesser impact.[212] This could have generated more opportunity to commit crime 'at a distance,' and therefore contributed to the dissolution of the traditional single 'crime scene.'[213] The criminal interaction was thus increasingly capable of being dispersed, and no longer required the physical presence of perpetrator and victim simultaneously or in proximity.[214] This also has the impact of separating the perpetrator from the 'scene' of the crime.[215] In this sense, there is a potential impact on victim pool; we could hypothesise an increase in potential victims (business or individual) who are separated geographically yet accessible via the network.[216]

Whilst the Internet has facilitated the movement of information and criminal activity with a 'level of efficiency and speed never seen before,'[217] the telegraph also impacted the speed of communication. The 'annihilation of time and space' has been cited as emerging from both the telegraph and the Internet.[218] Whilst there is a value in this comparison, it is important to consider the extent to which the telegraph had the effect of annihilating time and space. Information was 'freed' from transportation;[219] it could travel independently of transport, and importantly, at speed.[220] However the actual

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[210] J. May & N. Thrift, *Timespace: Geographies of Temporality* (2003, Routledge) 113
[211] Carey (n 156) at 204
[212] L. Montoya, M. Junger & Pieter Hartel, 'How 'Digital' is Traditional Crime?' (2013) European Intelligence and Security Informatics Conference, IEEE Computer Society 31, 34
[213] Hunton (n 29) at 530
[214] *Ibid*
[215] Montoya et al (n 212) at 530
[216] Carey (n 156) at 204
[217] M.D. Goodman & S.W. Brenner, 'The Emerging Consensus on Criminal Conduct in Cyberspace' (2002) 6 Law Tech Journal available http://www.lawtechjournal.com/home/articles/37/ last accessed 20.5.2018.
[218] Standage (n 101)
[219] Carey (n 156) at 204
[220] *Ibid* at 213

speed of transmission, the material politics of the network, its initial close ties to the railways, and the availability of the network, both in terms of its structure and ordering as well as prohibitions on use associated with cost, undermine the argument regarding annihilation. However, there was a measurable impact on the speed of communication for those who could access it, and evidence of a perceived sense of instantaneity none the less. Certainly, the freeing from transportation is an important consideration, though again it is important to acknowledge that the telegraph network facilitated the transmission of messages between offices within that network, thus is not a direct comparator to the internet. Whilst caution is warranted regarding claims of the annihilation of time and space, the impact on applicable communications is still significant, theoretically facilitating the further dispersal of the criminal encounter. The speed of communication as a result of the telegraph was incorporated into existing social and business interactions. The acceptance of bets via telegraph for instance, provided an opportunity that offenders could make use of, particularly in the commission of fraud.[221] Finally acceptance and use of telegraph technologies signified a change in pace of business and personal lifestyles, and thus money could be sent, and information intercepted at speed, meaning that the criminal encounter became more fleeting.[222]

The transmission of information over electronic networks impacted the accessibility of information.[223] 'Intelligence' could be transmitted 'to great distances'[224]and as a result could be intercepted.[225] This is not to suggest, however, that the interception of information was a novel act in and of itself. Rather telegraphy provided another opportunity. Whilst legislation emerged that aimed to prevent the interception or manipulation of information, it referred to the physical acts of interfering with the technology, rather than the taking of information itself.[226] Information had become the target of some criminal acts, but additionally access to information could facilitate criminal acts, informing the criminal, and resulting in crime becoming more profitable, and easier to perform and operate on a greater scale.[227] The telegraph sparked the

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[221] S. Lewis & D.A. Lewis, 'Digitalizing Crime Prevention Theories: How Technology Affects Victim Offender Behaviour' (2011) 4(2) International Journal of Criminology and Sociological Theory 756, 762
[222] Carey (n 156) at 205
[223] P.N. Grabowsky, 'Crime and Technology in the Global Village' (1998) Presented at the conference: Internet Crime, Melbourne, 16-17 February 1998, Australian Institute of Criminology, available http://aic.gov.au/media_library/conferences/internet/grabosky.pdf last accessed 1.4.2018
[224] M. Blondheim, *News Over the Wires: The Telegraph and the Flow of Public Information in America, 1844-1897* (1994, Harvard University Press) 34
[225] *Ibid*
[226] Malicious Damage Act 1861
[227] Knepper (2011) (n 124) at 58

beginning of a gradual 'loss of control' over information.[228] Information had become both a potential target of the criminal encounter, as well as an accomplice.[229]

Putting use into context is an important task for research; telegraphy was incorporated into business life, and this could have impacted perceptions of telegraph facilitated crime, as well as how crime was facilitated by the telegraph. Literature has emphasised the rise of white-collar crime in the Victorian period, and an increased social awareness.[230] There is also evidence of a lack of sympathy for victims of fraud,[231] and a tendency to see 'white-collar' criminals as less morally offensive than the traditional street criminal.[232] It is interesting to consider whether the tendency to blur the moral boundaries between aggressive business behaviour and white-collar crime, and the potential for sophisticated frauds to seem comparable to business ventures, hindered their conception as morally repugnant, and thus impacted how they were regulated. Additionally, it is helpful to consider whether the role of technology in social interaction changed perceptions relating to the impact of interactions.[233] 'Sociology's traditional stance on interaction implies that physical co-presence provides the standard by which to judge the importance…of all…varieties of exchange'[234] and exploring the perception, as well as the experience of technologically mediated criminal interaction over time may provide some enlightenment with regards to why victims and perpetrators of technologically mediated crimes are conceptualised differently to those associated with traditional, face to face, offences.

Finally, there is evidence that implies a degree of admiration towards successful fraudsters who harnessed technology to elaborate swindles.[235] Newspaper articles imply that Victorian attitudes towards technology, and admiration for those employing it, played a role in perceptions of the technically proficient fraudster as 'skilful' and the victims as neglectful.[236] Researching the historical interaction between communications

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[228] C.R. Williams, 'A Proposal for Protecting Privacy During the Information Age' (1994) 11(1) Alaska Law Review 119, 119-120

[229] Lewis and Lewis (n 221)

[230] For example, see Locker & Godfrey (n 136)

[231] Thomas (n 91)

[232] S.P. Green, 'Moral Ambiguity in White Collar Criminal Law' (2014) 18(2) Notre Dame Journal of Law, Ethics and Public Policy 501

[233] K.A. Cerulo, 'Reframing Sociological Concepts for a Brave New (Virtual?) World' (1997) 67(1) Sociological Inquiry 48-58

[234] *Ibid* 50

[235] C. Emsley, *Crime and Society in England 1750-1900* (Pearson Longman, 2011) Chapter 1; For a contemporary perspective see M. Yar, 'Computer Crime Control as Industry', in K.F. Aas, H.O. Gundhus & H.M. Lomell (eds) *Technologies of InSecurity: The Surveillance of Everyday Life* (2009, Routledge)

[236] For example, see; BNA, Edinburgh Evening News, 'Fraud by Telegraph' Friday 26th October 1883; BNA, Edinburgh Evening News, 'A Lottery Fraud in the United States' Thursday 6th December 1883; BNA, Globe, 'Tapping The Wires' Friday 2nd November 1883

technology and perceptions of crime could contribute to our understanding of societal perceptions about technology facilitated crime today; there is evidence that victims of fraud are still 'blamed' in a sense, and that the street thief is conceptualised as more 'criminal' than the organised, technology facilitated, prolific thief.[237] This is significant when we reflect on the emergence of the scientific, or skilled vision of the criminal. The vision of the criminal that is generally associated with the 19th century is one associated with the habitual offender; a product of low intelligence, morality and will.[238] However scholarship has identified another vision of criminality, 'notably at odds with this [degeneration] framework.'[239] As Churchill maintains, by the end of the 19th century there were two 'distinct visions of serious criminality' and of particular interest to this thesis is the emergence of the technically proficient, modern criminal.[240] I will therefore consider, in a historical context, the changes in criminal interactions between offender and victim, how regulation responds, and also the perception of the technological criminal, who offends from a distance. In acknowledging the significance of technological development in co-creating the vision of the professional criminal, it is proposed that we can identify discourses of criminality that have shaped not only perceptions of crime and the criminal, but also regulatory responses.

Whilst these transformations of social interaction through the incorporation of communications technology into society indicate that criminal opportunity may be enhanced by technology, given that technology reconfigures 'the specific social arrangements for the accomplishment of crime,'[241] it is important not to overstate the impact of technology on society. Technologically mediated environments make 'when, how and whether communications take place very different from how these occur in face-to-face encounters.'[242] However the extent to which 19th and 20th century society experienced technologically mediated environments has tended to be overstated in some of the cyber, and popular history literature comparing the impact of the telegraph to that of the Internet. It is apparent that the search for a comparable origin to the

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[237] C. Cross, 'No Laughing Matter: Blaming the Victim of Online Fraud' (2015) 21(1) International Review of Victimology 187-204

[238] N. Davie, 'Tracing the Criminal: The Rise of Scientific Criminology in Britain, 1860-1918' in P. Knepper & P. Ystehede (eds) *The Cesare Lombroso Handbook* (2013, Routledge London: New York)

[239] D. Churchill, 'Security and Visions of the Criminal: Technology, Professional Criminality and Social Change in Victorian and Edwardian Britain' (2016) 56 British Journal of Criminology 857-876, 858; Davie *Ibid*

[240] *Ibid* at 858

[241] A. Cohen, 'The Concept of Criminal Organisation' (1977) 17(2) British Journal of Criminology 97, 110

[242] A. Goldsmith & R. Brewer, 'Digital Drift and the Criminal Interaction Order' (2015) 19(1) Theoretical Criminology 112, at 115; J. Meyrowitz, 'Shifting Worlds of Strangers: Medium Theory and Changes in 'Them' Versus 'Us'' (1997) 67(1) Sociological Inquiry 59-71

Internet, for a time, thwarted a nuanced understanding of the social impact of the telegraph.[243] Studies such as Standage's *The Victorian Internet*[244] have been criticised for overstating the impact of the telegraph on society as a whole. Whilst 'time space annihilating,' 'world shrinking,' 'instantaneous' communication via the telegraph became a possibility during the 19th century, academics have more recently warned against overlooking the actual experience of the telegraph beyond the elite, and businesses.[245] Telegraphy was expensive, and many preferred the postal system.[246] Additionally the postal system was efficiently operating, thus the arrival of the telegraph did not signify a transformation whereby prior to the technology, long distance communication had been impossible. The telegraph was not 'instantaneous' nor was it accessible to, or used by all.[247] In fact, telegraphy was notably largely confined to urban areas,[248] and largely utilised by only a minority of the population for some time.[249] Submarine telegraphy in particular was 'patchy' and could be unreliable, and the structure of the network dictated that messengers were required to deliver telegrams on foot.[250] Thus one must be careful not to overstate claims that the telegraph network equated to a 'Victorian internet.'[251] Telegraphy had a social status, and its users for a time largely belonged to elite groups, or businesses.[252] We should therefore not assume these experiences of time space compression for example, belonged to society as a whole, nor should we assume they result from the 'advent of the new technology.'[253]

1.6 My Contribution

My research will focus specifically on the 19th and early 20th century, and the social incorporation of the electric telegraph. By examining the relationship between crime, communications technology, and regulation through an historical perspective, I hope to generate understanding about the relationship between the social incorporation of the electric telegraph and crime, and how the regulatory landscape sought to respond to, or prevent, telegraph facilitated crime. In turn, I aim to identify continuities and discontinuities in the relationship between communications technology, crime, and regulation, as well as offer some insight into the antecedents of what is often perceived

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[243] O' Hara (n 204)
[244] Standage (n 101)
[245] Hassan & Thomas (n 134) at 245
[246] Nye (n 104)
[247] *Ibid*
[248] *Ibid*
[249] O'Hara (n 204) at 614
[250] *Ibid*
[251] Standage (n 101)
[252] A. Lubrano, *The Telegraph: How Technology Innovation Caused Social Change* (2013, Routledge) 69
[253] Hassan & Thomas (n 135) at 245

as a contemporary literature. In doing so, I hope to bridge together the often-disparate literatures alluded to in this introduction, presenting an interdisciplinary approach to an issue which spans historical, criminological, and regulatory research.

This research acknowledges the telegraph sits on a spectrum of communication technology development, and examines its interaction with crime and regulation, over time. However, it is important to note that it is not suggested that the telegraph bought about the first 'virtual crimes,' not least because the concept of what constitutes a virtual crime is inherently confused. Rather, it is recognised that communication and crime are inherently linked via the simple fact that criminal behaviour requires an interaction of some sort.[254] Different patterns of interaction emerge over time depending on changes to people's lived social experience.[255] These changing interactions provide different possibilities for criminal behaviour.[256] The way that technology is used and incorporated by society can provide new opportunities for deviant behaviour.[257] New forms of deviance, social abuse or crime may also, more unusually, rely on innovative use of technology, rather than general social incorporation of technology.[258] Beyond the impact on crime, this research will evaluate the regulatory response to telegraph facilitated crime. I am concerned with how telegraph-facilitated crime was perceived and controlled within an institutional as well as a public forum. Relevant considerations therefore include the Post Office, the police, and the criminal justice process more generally, as well as the wider regulatory context which includes those organisations which incorporated the telegraph.

1.7 Methodology

Examining the relationship and interactions between communications technology, crime and regulation from a historical perspective presents some immediate methodological challenges. I aim to generate an understanding of the relationship

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[254] Goldsmith & Brewer (n 242) at 113; Winston (n 66) at 2
[255] C.A, Lin & D.J. Atkin, *Communication Technology and Social Change: Theory and Implications* (2014, Routledge)
[256] H. Unver, *Global Networking, Communication and Culture: Spread of ICT, Internet Governances, Superorganism Humanity and Global Culture* (2018, Springer) 4
[257] S. McQuade, 'Technology-enabled Crime, Policing and Security' 32(1) Journal of Technology Studies available < https://scholar.lib.vt.edu/ejournals/JOTS/v32/v32n1/mcquade.html> last accessed 14.5.2018
[258] *Ibid*

which is grounded in a comprehension of social context. Such an endeavour is naturally limited by available sources. I am not concerned with a purely quantitative account, neither could this be sustained by existing records. However, there are a range of archives available that can assist a historical inquiry into crime and regulation, as well as institutional records that can help us further our understanding of the relevant communication technology. In order to identify available and potential useful archival material, it is helpful to consider my research questions as this thesis demands consideration of a range of resources and perspectives. I am concerned with both the impact of social incorporation of the telegraph on crime, and the regulatory response, whether preventive or responsive.

In identifying and selecting relevant archives, I have tried to capture a range of perspectives reflecting the breadth of understanding of the interactions between crime, communication technology and regulation as well as how this might have shifted throughout time. However, the sources available naturally skew to reflect particular perspectives. It is worth recognizing that certain groups[259] were less likely to leave records of their lives.[260] What is available however, is records that should help to capture public perceptions, institutional perceptions, and state perceptions of the impact of the telegraph on crime as well as the regulation of telegraph-facilitated crime. Whilst the combination of these records helps to present a relatively well-rounded picture of the social incorporation of the telegraph and its impact on crime and regulation, it is also imperative to acknowledge that processes of selecting records for preservation will impede a complete account.[261]

With regards to the relationship between the electric telegraph and crime, and in the absence of criminal statistics that distinguish telegraph offences, or systematic police records, I turned towards the British Newspaper Archive. Using basic search terms initially (for instance "telegraph + crime") I was able to begin to understand contemporary perceptions of crime emerging as a result of, or in accordance with, the electric telegraph. This in turn allowed further refinement of my search terms (towards more offence specific searches) to generate a sample of newspaper reports from the United Kingdom. The time-period was chosen specifically to capture both the introduction of the telegraph, and its incorporation, and therefore shifting perceptions. This was particularly important to me, as I wanted to be able to understand how crime

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[259] For instance, the poor, children, and women (and others)

[260] B. Godfrey, 'Historical and Archival Research Methods' in D. Gadd, S. Karstedt & S. Messner, *The SAGE Handbook of Criminological Research Methods* (2012, Sage Publications)

[261] J. Clary-lemon, 'Archival Research Processes: A Case for Material Methods' (2014) 33(4) Rhetoric Review 381-402

initially emerged in relation to the telegraph, but also how and if manifestations of crime shifted over time, thus avoid presenting a static understanding of the nuances of the relationship. Newspaper articles also offer the advantage of highlighting a specific popular understanding or perception relative to contemporary understandings of crime and communication technology. Attempts were made to ensure that reports captured both urban and rural areas. By collating newspaper articles chronologically, I was able to trace themes and patterns emerging in the data set. Naturally not every relevant article could be captured in the research process, but a sample of 167 articles was collected spanning the period 1845- 1917 to evaluate both the incorporation of the telegraph and telegraph money orders. Beyond newspaper articles, I also made use of the Old Bailey (online)[262] to glean an understanding of the perspective of the courts, where possible. Obviously, such an approach was limited by cases that reached the Old Bailey. However, court records provide a distinct perspective from those associated with the public press. Court records give an indication of the type of offences that were being prosecuted, therefore offer insight into both the impact of telegraph on crime, but also the regulatory response. Several other archives provided documents relevant to both the telegraph and crime, as well as the regulation of telegraph facilitated crime.

Turning to the relationship between crime and regulation, the extensive records in the Post Office Archive offer substantial institutional insight. Given processes of nationalisation saw the Post Office hold a monopoly on the electric telegraph from 1870, extensive institutional records relative to emerging crime in this sphere provide an organisational perspective of the relationship between crime and the electric telegraph. Further, the Post Office played a significant role in the prevention of and regulatory response to telegraph facilitated crime. Working with such a substantial archive was challenging in that it took time to familiarise myself with the structure of the archives. Informed by the broader literature, as well as newspaper searchers, I initially used the digital search tool to identify records that were immediately relevant (such as records of Money Order offences). This process allowed me to familiarise myself with the organisation of the archive and how this reflects the organisation of the institution. I was then able to map the collection more generally and could identify collections and series which, whilst not immediately relevant or catalogued in relation to their relevance to crime or regulation, contained relevant information. This process allowed a sense of familiarisation with both the organisational operation and structure, as well as the institutional response to regulating crime.

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[262] Digital Records from the Old Bailey

I was able to identify specific series to focus on, particularly those related to the work of the Investigation Branch of the Post Office, but also those branches that were responsible for specific technologies, such as telegraphy or money orders. Pertinently this exercise contributed to understanding in relation to the institutional regulation of telegraph- facilitated crime, but also corroborated the findings from the newspaper searches regarding the impact of telegraphy on crime. Internal records of the Investigation Branch, as well as the branches responsible for the telegraph and money orders, allowed me to connect the perceived threat of telegraph-facilitated crime with the institutional response. This was particularly important as I am concerned with the interactions between communication technology, crime and regulation, and elements such as organisational structure and institutional orderings can reflect the broader approach to managing crime in this setting, therefore informing our contemporary understanding of the nuances of this relationship. Finally, records from the Solicitor's Branch and Staff Branch allowed me to piece together the different ways that the Post Office responded to offenders. Such an approach avoids limiting understanding of the regulation of crime to one which is concerned with a purely criminal justice response. Engaging in this process and spending time in the archive allowed me to gather an institutional perspective of both the perceived risk of crime, crime recorded by the organisation, and its response, whether direct or indirect, preventative, or responsive. I also visited the British Telecom Archives, given they held records relevant to the electric telegraph prior to nationalisation, as well as limited records post nationalisation.

Whilst I wanted to avoid focusing on a narrow criminal justice response to telegraph-facilitated crime, it was still important to consider this perspective so as to draw the various narratives and approaches together. Both the National Archive and the London Metropolitan Archive provided further perspectives. The London Metropolitan Archives hold some related records such as pamphlets produced by Post Office staff, as well as some policing records. Of particular interest was records relating to the Stock Exchange and the Electric Telegraph Co. Whilst the company records were largely administrative, they offer some indication of both processes and purposes of incorporation of the telegraph, and also preventive approaches assumed by commercial entities whose operation relied on the network. The National Archives held records relevant to policing and a more official state narrative.[263] The combination of these records was valuable in producing a nuanced social history of the electric telegraph, crime, and regulation. I was able to not only explore the interactions

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[263] For instance, Home Office records, Metropolitan Police Records.

between crime and regulation throughout time, but also explore interactions between regulators. The records of the different institutions and organisations speak to each other, and tracing these interactions has facilitated an approach whereby I can engage, as far as is possible, with the broader regulatory landscape, its contradictions, and nuances. However, whilst newspaper records help to capture popular understanding of this relationship, the voices of those who commit offences is missing.

There are, inevitably, limitations and challenges associated with archival research. Historical inquiry raises methodological problems; given the limited data and methods available there is firstly the issue of evidence. This is further problematised with a research question that aims to ground understanding within its social context, thus presents issues related to interpretation.[264] Most obviously, there is no single collection which engages with the extent or breadth of the issues with which I am concerned. Whilst the records of the Post Office are easier to navigate in that familiarisation with the organisational structure allowed for the identification of directly relevant sources, the records of the police are more disparate. This is in part due to the range of forces and is exacerbated by the submersion of telegraph-facilitated crime issues within records recorded in relation to other matters. Further, where archives contained relevant material addressing the specific topic(s), accounts and records were not necessarily consistent across the period. This can inhibit understanding of the full picture over the period as a whole.[265] Finally, the cataloguing of the archive, and processes of preservation were not done in accordance with my specific area of interest. Sources represent the views or perspectives of those by whom they were produced and preserved.

From a practical perspective, the condition of the records can also be challenging. Earlier documents were generally handwritten; whilst much of this was legible there are records which were particularly challenging to decipher. Records are also incomplete, and those I accessed often required a broader contextual understanding of the institutions and perspectives they presented to interpret their significance. They also present some biases. For example, they can tend to offer more direct insight into problems encountered and decisions made as opposed to how those decisions worked out in practice. Whilst later records in the series will sometimes refer to practical

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[264] M. Bosworth, 'The Past as a Foreign Country? Methodological Implications of Doing Historical Criminology' (2001) 41 British Journal of Criminology, 431-442

[265] S.J. Milner, 'Partial Readings: addressing a Renaissance Archive' (1999) 12(2) History of Human Sciences, 89-105; P. Joyce, 'The Politics of the Liberal Archive' (1999) 12(2) History of Human Sciences, 35- 49

consequences of earlier decisions, these are very much reflective of an institutional perspective. To try to overcome the challenges associated with piecing together the long-term institutional perspectives I photographed all the sources so that they could be easily revisited and cross-referenced.

Fundamentally, I was keen to avoid analysing the relationship between crime, communications technology, and regulation through a contemporary (or cyber) lens. I sought to overcome this, as well as the inherent limitations of the collections by piecing together information related to the telegraph and crime, and the regulatory approach to telegraph-facilitated crime through consultation of material that was directly relevant as well as contemporaneously relevant, and then connecting these sources together where appropriate. Selection of archives and sources was driven by a historical understanding of the sites of use of the telegraph. Interpretation of sources required careful consideration of context, both social and historical, and involved consideration of the legal landscape as well as broader social changes, specifically in relation to the Post Office and the criminal justice system, as well as social, economic, and commercial context more generally. By piecing together this largely fragmented history, I aim to contribute to understanding of the electric telegraph, crime and the regulatory response through an approach that is grounded in the social use of the technology. By avoiding a wholly institutional approach I cast the net beyond the formal response of the state to telegraph-facilitated crime and regulatory responses. This thesis therefore makes a methodological contribution to the literature, taking a longitudinal approach guided by incorporation of the technology, avoiding contemporary literatures preoccupation with novelty.

1.8 Conclusion

Several themes emerge from the literature that, in conjunction with the more elaborate literature on the telegraph, provide some areas where systematic, developmental research should be welcomed. The body of literature criticised for its use of the telegraph as a comparable origin for cyber-crime, as well as the popular literature that draws similarities between the social impact of the telegraph and Internet imply that the search for an origin is to facilitate contemporary analysis as opposed to historical understanding. It is therefore appropriate to consider the use and development of communication technology throughout time, in order to see how patterns of use transformed, alongside changes in perceptions of the criminal, and experiences of crime. My research will analyse the interactions between crime, communication technology, and regulation over time, taking a systematic developmental approach that

is grounded in social practice, and thus use of technology as opposed to a techno-centric approach. This review has highlighted that whilst contemporary cyber literature has begun to acknowledge the historical antecedents of cybercrime, scholarship does not engage with rigorous historical studies sufficiently, and demonstrates a tendency to search for a comparable origin, to reinforce contemporary arguments.

As a result, the cyber-literature tends to overstate the social impact of the telegraph, imposing an internet equivalent sense of novelty, and discussion remains grounded in post-internet conceptions about space and place, with a focus on material qualities of technology rather than social use. The final section of the literature review demonstrates potentially fruitful areas of research where the social transformation of interactions as a result of the incorporation of technology into society has the potential to alter the criminal encounter, as well as perceptions of the criminal. The 'social transformations' are often referred to in the cyber-literature with as 'revolutionary' and novel, resulting from modern networked, Internet technologies. By repositioning the relationship between crime, communications technology and regulation in its historical context, this research will bring a new perspective to the relationship between crime, communications technology, and regulation. Building on the insights of McGuire,[266] systematic, developmental archival research should generate greater understanding of the nuances of the relationship throughout time, adding a diachronic perspective to a literature that is largely synchronic.

Chapter Two: The Telegraph and Crime

"*It is at once curious and saddening to note how every boon of alleviation of science begets its special evil, and the facility with which each fresh discovery or addition to the resources of civilisation is abused or perverted*"[267]
Birmingham Daily Post 1887

2.1 Introduction

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[266] McGuire (n1)
[267] BNA, Birmingham Daily Post, 'Telegraph and Crime' 16.9.1887

The relationship between crime and communication technology is most attentively examined through a 'cybercrime' lens, whereby the development of the cybercrime narrative assumes an air of novelty inherent in the relationship between crime and internet technology. I have maintained that the preoccupation with novelty fails to account for previous nuances in the relationship between crime and communication technologies. As the Birmingham Daily Post posited in 1887, 'inventions and sciences…. are responsible for a large number of crimes that the world otherwise would be spared… telegraph frauds…seem to be the order of the day.'[268] It appears that a preoccupation with novelty, and communication technology as a causal factor in the development of crime, existed long before the invention, and incorporation of Internet technology. It is therefore appropriate to consider the relationship between communications technology and crime across a wider period, to understand the relationship outside of the cyber vacuum. This chapter will focus particularly on the telegraph, and rely upon the British Newspaper Archive, and the Royal Mail Archive, to determine what deviant behaviour emerged either as a result of, or developed in line with, the social incorporation of electric telegraph communications technology. It will demonstrate how the telegraph was used to facilitate criminal behaviour, discuss who was using it, and why, as well as who the victims of telegraph crime were.

Whilst the UK telegraph line was opened in 1839, it was not until 1843 that public access to telegraphs was granted, facilitating the exchange of messages across the Great Western Railway lines.[269] Whilst initially the emphasis of telegraph use was the organisation of the rail network, use of the telegraph was also recognised as facilitating the detection of criminals, and the control of 'the movements of fugitives from justice.'[270] The earliest representations and reports relating to the relationship between the telegraph and crime emphasise its use as a crime fighting technology, and public awareness of the role of the telegraph in relation to crime resulted from a few 'big stories' relating to the capture of criminals as a result of the electric telegraph.[271] The much reported case relating to the capture of a murderer who had fled by train in 1845 is an example of this.[272] The ability of telegraph communications to outpace transport was frequently highlighted as a crime fighting tool, with the electric telegraph being

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[268] *Ibid*
[269] Smith (n 110) at 8
[270] Prescott (n 108) at 348
[271] M.K. Matossian, *Shaping World History: Breakthroughs in Ecology, Technology, Science, and Politics* (M.E. Sharpe, Armonk, New York) 153
[272] BNA, Royal Cornwall Gazette, 'Quaker Murderer' 10.1.1845

described as 'detecting crime' as a result of Police reliance on it.[273] It was able to link up forces, allowing them to telegraph descriptions of suspects travelling in the direction of the force contacted, hence provided them with an informed network of officers, able to share information and cooperate to apprehend fugitives.[274] However, from 1847, there are also reports of telegraph technology being relied upon to assist in deviant behaviour, as well as methods of protection against frauds by telegraph, for example, being discussed within the public sphere. It is clear that beyond the telegraph's crime fighting abilities, lay other interactions between crime and the communication technology.

This chapter traces the incorporation of the electric telegraph and its misuse chronologically, emphasising the necessity of social incorporation as a pre-condition for crime. Beyond this, it is evident that the technology facilitated crime in a range of (somewhat familiar) ways. We witness increasing complexity and technicality of telegraph-facilitated crime, and the significance of situational factors such as proximity and access to the network in facilitating crime. Further, the significance of a persistent knowledge imbalance, technical proficiency, and the increasingly complexity of telegraphic incorporation and its impact on social structures and interactions is emphasised. The changing social conditions emerging as a result of incorporation of the electric telegraph reflect the 'social shaping of technology'[275] which in turn forms the context through which changing patterns of crime emerge.

2.2 Early Telegraph-Facilitated Crime

Use of the telegraph to facilitate criminal behaviour was dependent on its incorporation into different aspects of society. This is reflected when we trace incidents of crime following incorporation of the telegraph, with the first reported 'sites' of telegraph facilitated crime being the first 'sites' of telegraph incorporation. One of the areas where the telegraph was first incorporated into daily life was in relation to the stock markets.[276] The telegraph was used to transmit information regarding the markets,[277]

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[273] L. Rotunni, *Postal Plots in British Fiction, 1840-1898: Readdressing Correspondence in Victorian Culture* (Springer, 2013) 128

[274] *Ibid*

[275] L. Hamill, 'The Social Shaping of British Communications Networks Prior to the First World War' (2010) 35(1) Historical Social Research 260-286

[276] J.A. Tarr, T. Finholt & D. Goodman, 'The City and the Telegraph: Urban Telecommunications in the Pre- Telephone Era' (1987) 14(1) Journal of Urban History 38-80, 38-39

[277] Hamill (N 275) at 267

with the speed of transmission within this context interpreted as 'revolutionary.'[278] From 1840 London became increasingly connected to the major cities in Britain, and by 1850 a national network connected members of the London Stock Exchange to those dealing in securities.[279] Whilst reliance on the technology was by no means uniform, newspaper reports indicate that the developing connectedness was capitalised upon fairly quickly, and used to facilitate deviance. By 1848 there were reports of frauds on the money market, achieved through the circulation of false information via telegraph. The London Evening Standard maintained, in 1848, that the electric telegraph was the 'most active agent employed in the propagation of… fabricated rumours…. Turning the most important and astonishing discovery of modern times… into a medium for committing the most enormous frauds that have even been practised.'[280] False intelligence was being circulated via the electric telegraph network, maintaining, for example, that France had declared war against Austria, that the Emperor of Russia had died, the King of Prussia had been dethroned, and that Rothschild's Bank had failed in Paris,[281] all of which had dramatic effects on the Stock Exchange.

Concerns were raised over the potential public harms emerging as a result, with the London Stock Exchange interpreted as not doing enough to address this given it was the public as opposed to the exchange who had suffered as a result.[282] It is evident in the early reports that the validity of telegraph messages was difficult to establish, and the apparent anonymity of those sending false messages and reports was of great concern. It is also clear that throughout Europe, people were taking advantage of the adoption of the electric telegraph, transmitting false information, and profiting from, or enjoying, the 'rapid and extensive transitions in prices'[283] produced as a result. Since it became accepted that information affecting the markets could be communicated via electric telegraph,[284] false information was difficult to identify, and was therefore capable of manipulating the market to a significant extent. For example, there are frequent reports in July 1848 of 'fabricated intelligence' respecting an 'outburst of rebellion' in Ireland, which, on discovery of the information being false, was originally presumed to have been a hoax circulated on political grounds.[285] However, after the

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[278] R. Michie, *The London Stock Exchange: A History* (1999, Oxford University Press: Oxford, New York) at 73

[279] *Ibid*; R. C. Michie, 'The London Stock Exchange and the British Securities Market, 1850-1914' (1985) 38(1) The Economic History Review 61-82

[280] BNA, London Evening Standard, 'Money Market and City Intelligence' 14.4.1848

[281] BNA, Censor of the Times, 'Trickery of the Electric Telegraph' 16.4.1848; Lancaster Gazette, 'Political Intelligence: Electric Telegraph' 22.4.1848

[282] *Ibid*

[283] BNA, Hereford Journal, 'Abuse of the Electric Telegraph' 19.4.1848

[284] BNA, Shipping and Mercantile Gazette, 'The Markets' 27.6.1848

[285] BNA, London Evening Standard. 'Money Market and City Intelligence' 28.7.1848

discovery that 'large operations were entered into in public securities' it was reported that the committee of the Stock Exchange called an inquiry.[286] Multiple recorded incidents of the circulation of either forged telegrams or false information relative to social, political and economic conditions has been recorded, with the identity of perpetrators difficult to establish.[287] The immediate challenge therefore related to the identification of false information. Traditional mechanisms of identification that facilitated relationships of trust were more difficult to navigate in the emerging social and business conditions.[288] This was exacerbated by a lack of immediate connection between the false information and the deviant outcome leading to delays in identifying offending.

Newspaper reports do not treat incidents such as this with surprise; rather they appear accustomed to a 'danger' associated with leaving 'such a powerful engine as the electric telegraph in the private hands, without control or responsibility.'[289] Indeed, false information influencing the financial markets was not a new concern per se.[290] However use of the telegraph to transmit it presented a familiar but distinct challenge. So concerned with the potential financial implications as a result of the malicious circulation of false information, multiple reports suggest government officials should be privy to all communications made from Holyhead and Liverpool, justified by the risk to the public.[291] However, in the House of Commons, when asked if government intended to take steps to prevent promulgation of false rumours by means of electric telegraph, Sir George Grey, then Home Secretary, maintained it was impossible to prevent the perpetration of fraud. However, he emphasised the likelihood that the perpetrator of the fraud on the markets would be caught.[292] Whilst he recognised the ability of Government to take possession of the telegraph at any time to prevent information being transmitted, it was considered too costly to the country. Attempts to manage risk from fraud were balanced against potential expense, and in this instance, the potential loss was deemed greater than the risk.[293] Discussions therefore prioritised a

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[286] BNA, London Evening Standard. 'Money Market and City Intelligence' 28.7.1848
[287] BNA, Liverpool Mercury, 'Stock Exchange Telegraph Fraud' 19.11.1847
[288] See K. Chopra & W. A. Wallace, 'Trust in Electronic Environments' (2003) Proceedings of the 36th Hawaii International Conference on System Sciences available https://www.researchgate.net/profile/William-Wallace-14/publication/232626047_Trust_in_Electronic_Environments_PDF/links/54329c700cf20c6211bc6559/Trust-in-Electronic-Environments-PDF.pdf last accessed 14.3.2022
[289] BNA, London Evening Standard. 'Money Market and City Intelligence' 28.7.1848
[290] Michie (n 278)
[291] BNA, London Evening Standard. 'Money Market and City Intelligence' 28.7.1848
[292] BNA, Morning Post, 'Prevention of False Rumours' 29.7.1848
[293] *Ibid*

responsive approach to telegraph-facilitated frauds; an approach that will be engaged with in more depth later in this thesis.

The circulation of false information impacting the markets, and frauds against the stock market were also facilitated by a sense of internationalisation. The increasingly international financial markets, and the layering of telegraph technology within this context lay the foundations for the distribution of misinformation or false information. In 1876 telegrams were received in London and Paris which appeared to have been sent by a banking house in Constantinople ordering the sale of large amounts of Turkish stocks.[294] Whilst the fraud was only partially successful, in total it was reported that 'in the aggregate the amount of speculative stock thus attempted to be flung upon the market reached £2,000,000.'[295] For those relying on financial information to make a profit, speed in acting on information is necessary. However, the lack of familiarity with the network and its relative novelty meant that effective means to validate information were not in place. Those relying on the information therefore risked financial loss if they didn't act on the information quickly and it was correct, but also if they acted on the information and it was incorrect. Hence this period of incorporation presents specific challenges associated with maintaining the financial benefit from information transmitted via telegraph, whilst also managing the financial risks associated with potentially false information. The incorporation of the electric telegraph within this context enhanced the 'range of technologies available for crime' but misinformation itself was not something new.[296] An emphasis on progress and economic growth appears to have co-created opportunities for deviance in that whilst the technology provides the means to distribute the information, the culture within which that technology is incorporated provides important contextual conditions which co-facilitate crime. The technology is the tool through which to distribute the deceit,[297] but it is the social shaping and incorporation of that technology that produces the conditions through which successful criminal or deceitful use of the tool is enabled. With the telegraph, we see that the specific social systems into which it is incorporated, or which it co-produces provide important foundations for offences facilitated there, and it was within organisational social setting[298] that we first witness both incorporation of the technology, and its misuse.

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[294] BNA, Newcastle Journal, 'Telegraphic Frauds' 8.8.1872
[295] *Ibid*
[296] M. R. McGuire, 'Technology crime and technology control' in M.R. McGuire & T.J. Holt (eds) *The Routledge Handbook of Technology, Crime and Justice* (2017, Routledge: London & New York) at 49
[297] See Chapter 1 for a discussion of technology-enabled offences.
[298] For a discussion of the importance of social settings in understanding the context of identity related crime see B. J. Koops, R. Leenes, M. Meints, N. van der Meulen & D. O. Jaquet-Chiffelle, 'A Typology of Identity-Related Crime' (2009) 12(1) Information, Communication and Society, 1-24

Of specific interest in terms of the reported initial incidents of telegraph facilitated crime is that the incorporation of the technology was relatively recent. We therefore witness the significance of novelty, in that whilst use of the telegraph within this context was 'usual', its use had not developed to include significant precautions against fraud at this time, reflected in the inability to evaluate the 'genuineness' of information shared over the wires. Whilst use and incorporation determined opportunity for fraud, its simultaneous novelty also facilitated exploitation. This was the case with relatively simple offences which were essentially examples of legitimate use of the telegraph for illegitimate purposes. In producing a typology of identity frauds, Koops et al have acknowledged the significance of the social space within which communication-based offences occur, but also within those spaces, the steps that people take to initiate communication.[299] These steps include addressing, authenticating and authorization. Whilst addressing comes prior to 'identity management… which typically involves authentication and authorisation,' offenders in this context tend to rely on authentication and authorisation to facilitate offending.[300] In a novel, technologically mediated environment both authentication of identities and authorization of some kind of action beyond that communication are difficult to mediate. Detection of deviance, or more specifically of fraud in this context, 'is part of its social construction which evolves over time.'[301] It is suggested that in the context of communications, adaptation to the incorporation of new technologies in various social settings, particularly regarding the authentication and authorization of communication and resulting transactions lags behind misuse to an extent.[302] Combined with the emphasis on the promotion of the technology within that social space, social systems and developing networks do not have the requisite means to effectively authenticate or authorize communications, as a result, they facilitate offending. However, use of the network for illegitimate purposes was not static in relation to either the target or form of the offence. What initially emerged as the circulation of false information relative to social, economic, or political context on a global scale, developed, as this chapter will demonstrate, to incorporate the interception of genuine information, and the forging of instructions, but the significance of financial institutions as a target of criminal activity was evident from the outset.

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[299] *Ibid,* at 5

[300] *Ibid,* at 6

[301] H. van Driel. 'Financial fraud, scandals and regulation: A conceptual framework and literature review' (2018) 61(8) Business History 1259-1299, at 1267

[302] On the technological arms race in relation to technological change more broadly see P. Ekblom, 'Technology, Opportunity, Crime and Crime Prevention: Current and Evolutionary Perspectives' in B. LeClerc, E. Savona & U. Ernesto (eds) *Crime Prevention in the 21st Century: Insightful approaches for crime prevention initiatives* (2016, Cham: Springer)

With regards to telegraph usage determining opportunity for telegraph facilitated offences, government reliance on the electric telegraph was also susceptible to deviant behaviour. In 1866 a clerk in the office of the International Electric Telegraph Company was charged with obtaining money by false pretences from the Secretary to the Treasury.[303] The accused was the clerk appointed to facilitate an arrangement between government and the international telegraph office, whose role was to receive messages at the foreign office and forward them using the company lines. He was accused of overcharging the sender of the message, or in some cases, charging for messages which he failed to send altogether, therefore generating a personal profit.[304] The accused's role with regards to the functioning of the network essentially put him in a position where he was able to take advantage of it, overcharging in an environment where appropriate charges would perhaps not have been known.

2.3 The Facilitation of Telegraph-Facilitated Crime

What is clear thus far, is that the potential victim pool of telegraph facilitated crime was dependent on users of the telegraph network, hence initial reports of telegraph facilitated crime being concentrated around financial and government institutions. In tracing the history of telegraph facilitated crime, it is therefore important to bear in mind the process of diffusion and social incorporation of telegraph technology, as well as the specific context of different uses of telegraphy, and so the social systems in which they are incorporated. Initially associated with the organisation of the railways, telegraphy became more commercialised following the establishment of the Electric Telegraph Company in 1846.[305] In the same year, the Electric Telegraph Act[306] facilitated government possession of the lines for security reasons; an example of this being the 'move against the Chartists' in 1848.[307] Indeed, the importance of the telegraph to the government was evident from the outset.[308] Beyond this, telegraphy was reasonably quickly incorporated into business life, particularly in the City of London, and by 1854 the majority of telegrams were sent on behalf of businesses, particularly the stock exchange.[309] Most large towns in Britain were linked by 1857, but the nationalisation of the industry[310] saw expansion of the network, and reduced costs, which eventually

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[303] BNA, Essex Herald, 'Fraud on Government by Telegraph Clerk' 13.3.1866
[304] *Ibid*
[305] Hamill (n 275) at 267
[306] Electric Telegraph Act 1846
[307] Hamill (n 275) at 267
[308] *Ibid*
[309] *Ibid*
[310] Electric Telegraph Act 1868

drew use of the network into the public sphere more broadly.[311] It is important to acknowledge, however, that high costs when compared to the (efficient) postal network continued to prevent the wider social incorporation of the telegraph; it did not obliterate existing communication networks. Having established the initial targets of offences were driven by use, and therefore opportunity, it is necessary to consider the shifting form of telegraph facilitated crime, and how this adapted throughout time. Through the process of incorporation of the network we witness a broader pool of potential victims emerging, but we also see an increasing range of ways to commit offences, and a gradual shift towards more complex manipulation of the network and its operation.

2.3.1 *Expansion of the Network*

The expansion of the network, and incorporation of the network into other areas of social life provided increased opportunity for offending. As use of the telegraph network expanded into business life, more frauds were experienced in that sector, and finally as telegraphy became a more routine method of communication within (sections of) society, individual victims of telegraph-facilitated offences became more common. Simultaneously it is important to appreciate arguments relating to the reconfiguration of time and space that emerged alongside the social incorporation of the telegraph. Whilst this chapter would avoid uncritical acceptance of the 'shrinking of time and space' rhetoric, it is worth introducing the idea that incorporation of the technology did impact the 'ways in which time and space were understood in ordinary human affairs.'[312] Time became a driver of action. This, I will argue, facilitates circumstances where the commission of theft or fraud via telegraph can happen much quicker, the experience more fleeting, and less obvious or dependent on gullibility.

Hamill has emphasised the significance of the electric telegraph in 'determining the social,' maintaining that incorporation of the technology into political and business networks produced communication networks, in turn influencing social relations and interactions.[313] The social shaping of technology will also shape opportunities for crime. The types of offence that would be committed, however, varied considerably, from forgery and fraud, to causing physical damage for disruptive purposes, and there were

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[311] Hamill (n 275) at 267
[312] J.W. Carey, 'Technology and Ideology: The Case of the Telegraph' (1983) 8 Prospects, 303-325, at 312
[313] Hamill (n 275); See also D. MacKenzie & J. Wajcman (eds) *The Social Shaping of Technology* (1999, 2nd Edition, Open University Press)

various elements of the network that could be exploited to facilitate crime. It will be shown that the physical infrastructure of the network, the information it transmitted, and the functioning of the network, became targets of crime, and also that the nature of the network and its social impact had an effect on the way that crime was experienced. This affected the victim pool, the impact of crime, and the experience of crime itself. Having acknowledged the contextual factors determined by use and incorporation of telegraph technology, it is necessary to acknowledge the different aspects of the network that facilitated offending.

2.3.2 *Network Operation and Functioning*

The network operation and functioning provided those with an understanding of the way it operated the opportunity to commit fraud. The telegraph delivery system, for instance, facilitated 'novel' frauds.[314] On three occasions in 1866, prior to being caught, an individual was able to obtain money for pretend telegraphic messages, enclosed in large envelopes, which contained blank paper.[315] In this case, the accused arranged visits to houses where there was no one in except females, who he convinced owed him money for the 'telegram' he was delivering.[316] Given that the correspondence was not opened prior to the exchange of money, the fraud was not discovered until he had left the premises. Those who would not know what to expect with regards to delivery of a telegram could therefore be caught out because of their lack of knowledge of the intricacies of the network, apart from their understanding that telegrams would be delivered. In another instance, warnings to the public were issued relating to fake telegraph boys, who were said to be taking down messages, and taking payment for telegrams in transport 'hubs', taking advantage of the fact that passengers may not have time to go to the nearest telegraph office.[317] The fact that genuine telegraph boys could be expected in those circumstances, as the ordinary working of the electric telegraph included them, facilitated the fraud. With regards to the technicalities of early electric telegraph stock market fraud, it appears that they sometimes relied upon physical delivery of forged telegrams, as opposed to actual insertion of false messages on the wire. Deviant behaviour of this type then, did not rely directly upon using the technology to facilitate the offence, but rather relied upon the social changes as a result of incorporation of the network, and the way in which the technology was experienced. There were several instances where 'foreign telegrams'

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[314] BNA, Fife Herald, 'Telegraphic Frauds' 22.11.1866
[315] *Ibid*
[316] *Ibid*
[317] BNA, London Evening Standard, 'Alleged Telegraph Fraud' 29.6.1904

had not actually passed through the national telegraph network, but rather telegrams were forged and delivered in a manner that made them appear as though they had been sent via the network.[318] It is important that we acknowledge, therefore, the social life of technology, because within these social spaces we find opportunities for offences which rely on those social transformations as opposed to the actual technology itself.

The process of social incorporation and social change was also experienced by different people at different times. This allowed those armed with more knowledge of the network and the way that it operated to take advantage of those who were less familiar. Telegraph clerks were particularly capable of manipulating the operation of the system for the purpose of personal financial gain. There are reports of employees condensing long messages, and pocketing the difference between what they charged, and the actual cost of transmitting the shorter message.[319] Similarly, records indicate clerks sometimes charged higher prices than the actual cost of transmission, and once again pocketing the difference.[320] Additionally, there are examples of telegraph messengers opening telegrams prior to delivering them, and inserting the words "an answer required," meaning that they were given a reply to send back, and could charge for that reply, without actually sending the message.[321] This is not a novel offence in essence; cheating and dishonesty are familiar to the criminal law. However, it is important to note that the success of attempts to fraudulently appropriate money for example, was at least dependent on an understanding of the ordinary functioning of the network, particularly in terms of avoiding detection. Novelty, or more broadly technological, and therefore social, change has an influence on the success of offences such as these, given they fundamentally require an imbalance of information between the offender and those that they take advantage of. The novelty is situated within the opportunity itself.[322]

2.3.3. *The Physical Structure of the Network*

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[318] BNA, Bolton Evening News, 'Forged Telegraphs (Spanish Dividend)' 26.8.1873
[319] BNA, Aberdeen Evening Express, 'Curious Telegraph Frauds' 16.9.1890
[320] BNA, Shipping and Mercantile Gazette, 'Legal Notes- Frauds by a Telegraph Clerk' 2.3.1866
[321] BNA. Yorkshire post and Leeds Intelligencer, 'Curious Charge of Fraud' 4.1.1873
[322] For a further discussion of the significance of technology creating opportunities for offending, see M.S. Nuth, 'Taking advantage of new technologies: For and against crime' 24(5) Computer Law and Security Review 437-446; P. Ekblom, 'Crime, situational prevention and technology: the nature of opportunity and how it evolves' in M.R. McGuire & T.J. Holt (eds), *The Routledge Handbook of Technology, Crime and Justice* (2017, Routledge: London, New York)

The networks' physical structure was subject to compromise, which in turn facilitated offending. In the most straightforward instance, this could be stealing the physical material required for the functioning of the network. Given that the physical infrastructure was not confined to the telegraph office and the wires formed a physical network running over the country, the wires themselves could be targeted in their physical form. Wires were cut and stolen, sometimes for no other reason than to take the material itself.[323] However, the majority of reports of wire cutting or tapping reveal the wires provided access to the network to either intercept, delay, or insert information, or in some cases, prevent communication. In these instances, the infrastructure that forms part of the technology itself is what enables offending.

The network was subject to physical disruption for the purposes of facilitating public disorder or preventing effective policing. The significance of the electric telegraph and its perception as a tool of control[324] is relevant here. From the outset, the government was empowered to take possession of all telegraph lines in response to threats of public disorder or in an emergency.[325] The significance of these powers is revealed when we consider the perceived political and social threat emerging from the Chartists in 1848.[326] At the time, the then Home Secretary Sir George Gray issued a statement taking possession of all telegraphs, in order to obstruct lines of communication between Chartists in London and the provinces.[327] There was an evident perception that the network could be used to organised and facilitate public disorder. The organising capabilities of the technology was acknowledged as both a threat and a tool from the outset. Whilst state authorities commandeered the technology to assert control and prevent disorder, the physicality of the network meant that the reverse was also possible; citizens could target the infrastructure to prevent organised state action.

In 1865 it was reported that in the USA overland telegraph wires were routinely and systematically cut during periods of unrest, rioting and violence, in order to prevent authorities gaining control of the situation.[328] Similarly in 1887 there were multiple reports of telegraph wires being cut to prevent Police congregating to prevent disorder.[329] This required a certain level of planning and organisation, and reports

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[323] BNA, Lancaster Guardian, 'Cut Telegrah Wires' 24.1.1857
[324] F. Sprenger, 'Between the Ends of a Wire: Electricity, Instantaneity, and the World of Telegraphy' in M. M. Hampf & S. Muller-Pohl, *Global Communication Electric: Business, News and Politics in the World of Telegraphy* (2013, Campus: Frankfurt) at 373
[325] Electric Telegraph Company Act 1846
[326] For broader Context; NA, HO 45/05/2410 'Miscellaneous Electric Telegraph Papers' 1848
[327] Solymar (n 108) at 204
[328] BNA, Dundee Advertiser, 'Crime in America' 15.8.1865
[329] BNA, West Sussex Country Times, 'Telegraph Wires Cut' 22.10.1887

essentially indicate that the cutting of the telegraph wires was part of a wider plan to ensure a prohibited meeting could take place uninterrupted by authorities.[330] By cutting the wires, the perpetrators took away any potential for authorities to communicate at sufficient speed to effectively diffuse the situation.[331] Rail roads were torn up, and telegraph wires cut near Newcastle to prevent the authorities and military assisting with evictions.[332] It is interesting that it was considered a Government right to seize control of the network, and legislation explicitly allowed for this, yet private citizens were able to achieve the same result via the cutting of the wires, at least temporarily.

The physical infrastructure of the network could be tampered with to intercept, delay or insert false information, and commit offences that were more directly reliant on the function of the technology itself. In relation to delaying communications, records reveal reports of wires being cut to delay information being received in betting establishments in England, given that prior to receipt of the horse race results, bets were still taken for races already run.[333] This provided an opportunity to delay racing results, whilst sure fire bets were put on. The physical infrastructure of the network therefore indirectly facilitated economic offences by making information more susceptible to delay or interception. Additionally, there are reports of attempts to delay the arrival of newspaper dispatches through the physical cutting of the wires for purposes of disruption.[334] Perpetrators who targeted the physical infrastructure of the network were generally working in small, organised groups, and it was access to the physical material that comprised the network, as opposed to capitalising on social use of the system that facilitated criminal behaviour. The physical compromise of cutting the wires for purposes such as preventing or delaying communication generally required little specialist knowledge, and was often peripheral to the offence, providing the required conditions for effective frauds, for instance.

Where the physical compromise of the wires involved the insertion of, or interception of messages on the wire, some degree of technical understanding, or apparently legitimate access to technology was required. Former employees of the network, who had the skills and understanding required for the interception and manipulation of messages already upon the wire are a good example of this. In 1861, reports indicate that extensive frauds were practised over a substantial period of time in Bombay in

[330] *Ibid*

[331] BNA, Banbury Advertiser, 'Telegraph Wires Cut' 20.10.1887

[332] BNA, Shields Daily News, 'The Ponsonby Evictions: Tearing up Rails and Cutting Telegraph Wires' 27.9.1887

[333] BNA, Isle of White County Press and South of England Reporter, 'Extraordinary Telegraph Frauds' 7.11.1885

[334] BNA, Westmorland Gazette, 'New Offence- Cutting Telegraph Wires' 17.4.1847

relation to the opium market. Speculators in opium 'caused messages to be grossly falsified whilst passing through the wires between Galle and Bombay.'[335] In this case, employees at the telegraph establishment were found to be 'impossible to corrupt,' however former employees, who had the skills and understanding required for the fraud, 'consented to aid the conspirators.'[336] The accused obtained possession of a signal instrument and battery. The offence consisted of cutting the wire, inserting a signal instrument and battery, and then falsifying original messages already upon the wire, in order to benefit financially from the opium market.[337] A wealthy opium speculator was eventually tried and found guilty of instigating the commission of the telegraph frauds. It is interesting to note that the frauds were both organised and persistent. In this case, as in others, the special understanding, or access to equipment that can be applied to the telegraph network remotely removed the necessity of employees of the electric telegraph being involved, given that the network was accessible through the physical wires themselves, and could be manipulated with a little specialist knowledge. In this scenario, the perpetrators literally became part of the network in a sense, as opposed to misrepresenting themselves as part of the network, or manipulating or monopolising part of the existing, official network (employees). The physical infrastructure that comprised the network was therefore a target of offending, for both disruptive purposes, or to facilitate offending that relied upon either access to, or the transmission of (often) false information. However, the transmission of false information was not dependent on the cutting of the physical wires.

2.3.4 *The Falsification of Information*

The network was also subject to non-physical compromise, often for the purposes of facilitating economic crime, although there are examples of false information being circulated simply for the purposes of causing distress.[338] In these scenarios, rather than target the physical infrastructure of the network (the wires and cables), the network was used in a seemingly 'ordinary' way to facilitate criminal behaviour. There are multiple examples of telegrams circulating false information, often to substantiate, or support the narrative of a fraud, that would then take place 'face to face.' In several cases this amounted to a telegram that would be sent, seemingly from someone known to the victim. These forgeries would target specific businesses, or homes, maintaining to be from someone known to the individual, or a company who were involved with the business receiving the telegram, informing them that someone would call at the house/

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[335] BNA, Morning Advertiser, 'Telegraph Fraud India' 27.3.1861
[336] *Ibid*
[337] *Ibid*
[338] BNA, Globe, 'By The Way' 11.8.1897

place of work, and requesting that the victim pay them a sum of money. In many cases the money was paid over prior to the discovery of the fraud, with the original telegram having facilitated the exchange of money, given that it appeared to support the narrative necessary to successfully commit the offence. Interestingly, there are multiple reports of businesses falling victim in such circumstances,[339] whilst individuals targeted (often women at home alone) appear less likely to fall for the scam,[340] largely due to the fact that they often checked back to confirm they were to hand over the sum.[341] It seems that potentially the faster paced business environment, combined with enhanced anonymity, increased the success rate of these types of fraud.

Solicitors firms, for instance, on several occasions fell victim to forged telegrams apparently coming from other firms or clients of the firm, informing them that someone will be calling on them to collect some money, and ensuring them that funds will be sent via post that evening to reimburse them.[342] The fraud was only discovered following the firm posting a letter confirming they had handed over the money. Railway stations were a target location, with reports indicating that false telegrams were sent to railway officials appearing to be from the coachman, maintaining a passenger had left his purse on the train, with a well-dressed passenger arriving shortly afterwards, maintaining the message was in reference to his purse, and asking to loan some money, and return it that evening.[343] The individual in question failed to return the borrowed funds, and repeated the fraud in many different locations. Additionally banks were targeted, with telegrams being sent authorising payments from another's account, seemingly from the account holder.[344] Supported by inside information from a previously held position as a traveller to a brewer, one individual was able to ensure banks authorised the payment of cheques, under the presumption they were receiving instructions from the account holder.[345] Stockbrokers also fell victim to the fraud narrative delivered by telegram; in one instance in 1900, a Glasgow stockbrokers reported a loss of several thousand pounds following the receipt of a telegram purporting to come from someone known to the firm, named Merton.[346] The forged telegram instructed them to buy a significant number of shares for the client, and the purchases were made 'on the strength of the telegram which [later] proved to be a

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[339] For another example, see BNA, Birmingham Mail, 'Ingenious Frauds at Birmingham and Brussels: Man Detained on Atlantic Liner' 17.4.1914
[340] Though it is worth acknowledging the limitations of this interpretation; it is somewhat speculative given possibly selectivity in newspaper reports
[341] BNA, York Herald, 'Remarkable Case of Attempted Fraud' 12.11.1894
[342] BNA, Pall Mall Gazette, 'Alleged Telegraph Frauds' 22.9.1896
[343] BNA, London Daily News, 'Ingenious Telegraph Frauds' 7.10.1890
[344] BNA, Cambrain News, 'A Swindler From Wales' 5.1.1876
[345] *Ibid*
[346] BNA, Globe, 'Fraud by Telegraph' 6.2.1900

forgery.'[347] Once again it is demonstrable how the power of a preceding telegram could apparently legitimise the fraud narrative. These offences tended to facilitate illicit financial gain. The role of the technology was peripheral in that it formed part of the narrative which effectively set up the offences. The accommodation of the technology and its incorporation into social spaces provided means to procure money in what would appear to be an ordinary transaction. The telegrams therefore lent a sense of legitimacy to transactions that would otherwise be suspicious. This is perhaps a result of the business environment embedding the technology much quicker than society more generally, largely due to associated relatively high costs, which in itself could have lent a sense of legitimacy to instructions arriving via telegram.

2.3.5 *The Interception of Information*

Whilst information could be intercepted via the network's physical infrastructure as discussed above, information transmitted over the network was inherently accessible to staff working the electric telegraph. Newspaper reports indicate that by 1854 telegraph stock market fraud was facilitated by the interception of information, as opposed to the planting of false information, as demonstrated in the previously discussed reports of stock market fraud. Reports of the Berlin telegraph frauds in 1854 detail how employees of the telegraph intercepted telegrams, and shared despatches relative to public funds, before transmitting them to the person(s) the message were intended for.[348] This organised system of fraud was only detected due to several bankers noticing that upon the receipt of orders from correspondents by electric telegraph to purchase certain descriptions of public securities, the securities had been 'bought up before they could execute their orders' therefore requiring them to pay higher prices.[349] Here, the modus operandi was to intercept and share information intended for another, as opposed to inserting false information. Hence the accessibility of information transformed opportunities for deviance, and reliance on the technology in the normal operation of the stock market provided the opportunity for interception. In Bombay, opium brokers were found to be 'in the habit of inducing the… boys who work the line in the Office… to abstract important commercial messages.'[350] The information required to facilitate the fraud was commercial, reflecting the use of the telegraph technology at this time. Similarly, information on the cotton markets was targeted, given that the earliest available information that could facilitate financial decision

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[347] *Ibid*
[348] BNA, Bradford Observer, 'Fraud on the Berlin Telegraph' 30.11.1854
[349] *Ibid*
[350] BNA, Homeward Mail from India, China and the Easy, 'India Telegraph Fraud' 23.2.1865

making was communicated via telegraph.[351] Where information was intercepted in this manner, it is not a case of using the technology itself to commit crime, but rather relying on the information being transmitted over the network to facilitate crime. Whilst we have seen instances of the wires being targeted by non-telegraph-employees, often the interception of messages for the purposes of informing criminal behaviour was facilitated by telegraph employees, with immediate access to the network.

It is important to consider the role of language in the facilitation of fraud. Whether in relation to the interception of information, manipulation of information, accessibility of information, or the development of a fraud narrative, communication is central to the offence. As I will go on to maintain, those with access to information that can either inform or 'legitimize' the fraud narrative are often best placed to engage in fraud or deception quickly and easily. What is of particular importance here, however, is the role of the telegraph or any development in communication technology in changing the 'forms of social relations mediated by language.'[352] Communication or exchange are fundamental for many economic offences. The introduction of new technologies impacts social experience of communication or exchange; the 'lines displaced personal relation mediated by speech and correspondence in the conduct of trade and substituted the mechanical coordination of buyer and seller.'[353] Additionally the language of the telegraph was substantially different to the language of the letter. 'Words were expensive.'[354] Communication was therefore condensed. The social experience of communication in this setting was therefore substantially different. A process of accommodation, integration and learning associated with the incorporation of new communication technologies arguably facilitates the emergence of a new way to develop a fraud narrative in the business setting.[355] The costs associated with the telegraph, the limitation on words, and the settings within which its use was incorporated increase the speed of frauds. The social experience of business exchange, or the social acceptance of short, punctuated instructions to approve payment, were inherently pro speed. The 'fraud narrative' therefore is less labour intensive. Those subjects of the fraud narrative are less disposed to ask questions, particularly where that narrative falls in line with what would be expected in that environment. Therefore, those closely associated with the network were often best

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[351] BNA, Homeward Mail from India, China and the East, 'Bribing Telegraph Signallers in Bombay to Disclose Messages' 22.4.1865
[352] Carey (n 312) at 311
[353] *Ibid*
[354] *Ibid*
[355] For the significance of developing processes to validify communications in relation to identity related crime see; Koops *et al* (n 298)

placed to take advantage of the language of the telegraph and the social setting within which it operated.

2.3.6 *Access to the Network*

Given the operation of the network depended on employees having access to private information, they occupied a position of trust that, as we will see, was sometimes abused. The success of electric telegraph frauds often depended on the complicity of telegraph employees, given their access to the technology, and familiarity with the network. In some cases, it was only the familiarity with the technology and the network that was required to successfully perpetrate a fraud. There are multiple reports of employees of the telegraph office sharing the content of messages to allow another to profit, particularly in cases related to gambling industries. Often as part of an organised scheme, clerks had access to private commercial information that was highly valuable to those wishing to perpetrate a fraud. Generally rewarded financially for their role, clerks shared information relating to stock markets,[356] and racing results,[357] for example. In some instances they worked alone, placing bets after receiving the results of the races in another's name to avoid detection.[358] This involved intercepting a telegram, detaining and delaying a telegram, forging and counterfeiting a telegram, and finally obtaining money by false pretences.[359] More often than not however, the interception, delay, forgery, and obtaining money by false pretences, was part of an organised attempt where several individuals, some non-employees, would profit.

Some frauds required the accomplice employee to be situated in the Central Telegraph Office, to intercept a passing telegram. The telegram would be sent, placing a bet on a race that had not yet been run. The employee accomplice could then delay the telegram in the central office, waiting until the results of the race where known, then insert the name of the winner, and forward it on to its destination.[360] In other cases, employees shared the contents of telegrams, revealing the results of the races, and then back dated telegrams sent as a result of the information, to appear as though they had been sent at a time prior to the results of the race being known.[361] Access to the

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[356] BNA, Homeward Mail from India, China and the East, 'India Telegraph Fraud' 23.2.1865; Homeward Mail from India, China and the East, 'Bribing telegraph signallers in Bombay to disclose messages sent to other people' 22.4.1865

[357] BNA, Dundee Courier, 'The Manchester Telegraph Frauds' 3.11.1883; Sheffield Evening Telegraph, 'Ingenious Turf Telegraphic Fraud' 25.10.1890

[358] BNA, Manchester Courier and Lancashire General Advertiser, 'The Alleged Telegraph Frauds in Manchester' 9.11.1895

[359] BNA, Driffield Times, 'Alleged Telegraph Frauds at Malton' 31.10.1896

[360] BNA, Sheffield Evening Telegraph, 'Ingenious Turf Telegraph Fraud' 25.10.1891

[361] BNA, Western Morning News, 'Alleged Telegraph Fraud' 14.4.1892

forms required to send a telegram meant that telegrams could be inserted onto the wire by telegraphists, without officially being sent, and thus paid for. There are examples of telegraphists filling out only the 'C forms' to insert messages onto the wire and backdating these so that they appeared to have been transmitted at an earlier time, communicating bets on the race results.[362] In these instances, the messages would be sent in another's name, who had an established relationship, and therefore account, with the bookmakers they intended to defraud. There are instances reported where the person whose account was used to make bets was unaware of the behaviour of the clerk in question, but often accounts were set up and used non-fraudulently for a period to establish a sense of legitimacy, and then later used to facilitate fraud, thus less suspicion would be aroused.[363]

Clerks went to great lengths to avoid detection, and it is clear that the system of physical forms allowed for manipulation. For example, in one case an employee, on being caught, admitted to taking messages placing bets from his accomplice outside of working hours, that left the name of the relevant horses blank.[364] He then took these messages (A forms) to work, inserting the name of the winner when the information was received at the office, and coding the message as being received at the exact time the race was run. In order to avoid detection, he took the 'A' forms (the initial messages with the blank space left for the winner's name) home, and his accomplice filled in the name of the winning horse. The following morning he placed the physical forms with the messages of the previous day, altering the numbers of the other forms so that the fraudulent form sat in sequence relevant to the time it was supposedly received, thus making the bet appear genuine should it arouse suspicion.[365] The unique position of clerks having access to information, as well as their ability to misuse the intricacies of the electric telegraph network, not only meant they were best able to commit fraud, but also that they were able to employ measures to avoid detection. Where, as discussed previously, telegrams could be used to inform or support a fraud narrative that occurred outside of the network itself, employees formed part of the network, thus had access to both information to inform frauds, as well as the technology to manipulate to facilitate them. The criminal encounter could therefore be perpetrated through use of the technology itself.

There are examples of employees working alone, with other employees, or as part of organised groups made up of employees, and non-employees of the telegraph office.

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362 BNA, Manchester Evening News, 'Alleged Frauds on Book Makers: Post Office Prosecution' 24.2.1899
363 *Ibid*
364 BNA, Ludlow Advertiser, 'Alleged Racing Frauds at Bridgnorth' 29.9.1900
365 *Ibid*

Some are represented by the newspapers as pawns in another's plan, seduced by the promise of financial reward, however others are represented as deviant; misusing their position of trust to benefit financially, and often significantly. Additionally, some committed a number of offences over a sustained period of time.[366] There is evidence of systematic fraudulent behaviour, where the success relied largely on the ability of clerks to backdate telegrams, given that the time stamp was generally accepted by bookmakers as unequivocal evidence of genuineness, if the bet was coming from an account known to the business, and not directly associated with an employee of the telegraph office.[367]

It is clear, therefore, that access to the network, and knowledge of the network operation facilitated the proliferation of economic offences, both in terms of available opportunities for offending, but also the incorporation of methods to reduce the likelihood of detection. Whilst, as the following chapters will demonstrate, mechanisms of detection developed, particularly within the Post Office, it appears that the criminal encounter is transformed to an extent when the offence incorporates the electric telegraph. It facilitates both access to, and distance from, the victim of a range of largely economic offences. The simultaneous accessibility but lack of proximity, combined with the pace embedded in business transactions serves to provide ideal conditions for economic offences such as fraud. Clerks and employees connected to the network were able to take an informed approach to offending.

2.3.7. *Interactions with other Technologies*

Whilst employees appear best placed to misuse the technology, from the late 1870s, following the incorporation of telephone technology, non-employees were able to make fraudulent bets without the assistance of employees. Telephone communication could be used to transmit race results faster than the electric telegraph, and this was capitalised upon immediately. Combined with manipulative delay tactics, individuals were able to overcome the limitations imposed by the recording of the time dispatches were handed in, to place sure fire bets. The technique required the sender of telegrams placing bets to first hand in a series of long 'blocking messages' which would take a significant amount of time for the telegraphist to transmit. They would then hand in shorter messages, placing their bets. In the time it would take for telegraphists to insert the long blocking messages, the results of the race would be communicated to the

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[366] BNA, Yorkshire Evening Post, 'Alleged Fraud on a Bookmaker: Telegraph Clerk in Trouble' 24.10.1901
[367] *Ibid*

perpetrator by telephone,[368] and he would then re-approach the clerk, maintaining he had made a mistake in one of the messages, and ask to alter it. In most reported cases, the timestamp was not altered to reflect the time of amendment, and since the long blocking messages had delayed the insertion of the messages placing bets, they appeared genuine to both employees, and the commission agents who received them.[369] Described as a 'loophole in Post Office regulations,'[370] the fraud capitalised on both the increasing speed of alternate communication technologies, and the telegraphists emphasis on speed in coding telegrams. In other cases, where the messages could not be altered, perpetrators were able to cancel the telegram under Post Office regulations, after receiving the results via telephone, to at least prevent bad bets.[371] More generally, the requirement of speed of transmission, underpinned by a persistent emphasis on institutional efficiency, were arguably fundamental to the commercial success of the electric telegraph,[372] and in practice sustained conditions that created opportunities for fraud.

However, it was the introduction of the telegraph money order system, which truly appears to have given licence to more expansive telegraph offences. The system of Telegraph Money Orders (TMOs) was gradually incorporated into society, and as with the telegraph frauds discussed above, as more people began to use TMOs to send money over the country, and further afield, more opportunities and potential victims for fraud became available. The service was brought into operation on 2 September 1889. It was extended to all Head Offices and Branch Offices in the United Kingdom at which telegraph, and money order business was transacted in March 1890.[373] What is significant here, is that the ability to transfer money over the network puts the technology itself at the centre of potential offences in a more direct way. The entirety of a financial fraud could more easily take place over the network; the crime could take place 'on the machine.'[374] It is also important to emphasise that the success of TMO fraud was dependent on the social incorporation of the technology, and diffusion of offences followed the social diffusion of the technology. It is apparent that not only is

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[368] For an example see BNA, Liverpool Echo, 'A Cheshire Betting Sensation: Charge Against a Licensee's Son. Alleged Telegraph Fraud' 23.11.1904

[369] BT, TCB 2/357, GPO, *Back-coding of telegrams: course of procedure. P.M.G. minute- Solicitors Comment* (1895)

[370] BNA, Globe, 'Sporting Chatter' 15.4.1908; See also GPO, 'Trial at Winchester assizes of George Phillips, Herbert Rowland Townsend…. For conspiring together to defraud bookmakers by means of back-coded telegrams' 18.2.1908- 18.3.1908

[371] BNA, Globe, 'Sporting Chatter' 15.4.1908

[372] R. Wenzlhuemer, 'The Telegraph and the Control of Material Movements: A Micro-Study about the Detachment of Communication from Transport' (2017) 58(3) Technology and Culture 625-649

[373] For a discussion of the incorporation and expansion of the TMO system see Chapter 5.

[374] We can therefore consider the analytical value of Wall's categorisation of technology facilitated crime in accordance with the way in which the technology was relied upon. See Wall (2007) (n 7)

there a delay between the introduction and incorporation of the technology and its role in criminal behaviour, but also that telegraph employees, with access to and understanding of the network, were the first to rely upon it for fraudulent purposes.

Despite an expectation the introduction of the TMO system would immediately enhance the opportunity for fraud, Post Office reports indicate that during the first two years of use, there were no reported cases of forgery of TMOs, and newspaper reports sustain this.[375] It was on the 9th of November 1891 that the first (known) forgery occurred, and importantly, this was committed by an employee of the telegraph. The forgery was of a telegram advising a TMO by a post office servant, to the amount of £9-16-0 and was committed in the Central Telegraph Office.[376]

Beyond the forgery of the forms themselves, the other method adopted by employees with access to the signalling instrument was to simply signal messages onto the lines directly. The earliest report[377] of such an instance was in 1895-6, where a systematic and organised system of fraud occurred in Manchester.[378] Having access to the transmitting apparatus absolved the need to forge the forms altogether. Whilst this method was often avoided given the higher likelihood of detection[379] (since the operator themselves would presumably be automatically suspected) it was successful some instances. In this case, the organised group also included someone unconnected to the Post Office, who called at the respective offices for payment of the fraudulent TMOs.[380] The development of TMO-facilitated offences will be explored in further detail in Chapter Five.

2.3.8 *An Informed Approach*

Fundamental to the early TMO frauds and forgeries, was access to the network. In the case of the first recorded TMO forgeries, it was access to the forms filled out in the

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[375] GPO, POST 27/ 117, Telegraph Branch Memorandum (7 May 1903) in 'Telegraph Money Orders: Cases of Forgery of Telegrams Advising'

[376] GPO, POST 27/116 'Telegraph Money Orders: Cases of Forgery of Telegrams Advising, 1888-1927'

[377] BNA, Manchester Evening News, 'The Charges Against Post Office Employees: Painful Scene in Court' 29.8.1895

[378] GPO, POST 27/116 'Telegraph Money Orders: Forgery by Post Office Servants of Telegrams Advising: Forgeries by Alltree, Taylor, Wilkinson and others, Method of Commission' P 36 of Memorandum

[379] For example, another case detailed (Sisley, 1898) demonstrates the likelihood of detection when inserting messages directly onto the wire, given that the messages sent immediately before and after the fraudulent message indicated who was operating the wire at that time. See GPO, POST 27/116 'Telegraph Money Orders: Forgery by Post office Servants of Telegrams Advising: History of Safeguards against' P 8 of Memorandum

[380] *Ibid*

normal process of sending a telegram advising a TMO, combined with access to the network (i.e., the ability to insert the form/ put a message onto the wire) that facilitated the frauds. Additionally, knowledge of the network functioning, for example, routes telegrams advising TMOs would take, was fundamental in ensuring the forgery would not arise suspicion. Finally, the lack of identification procedures on collection of TMOs was also of great importance. Employees were also able to identify relationships over the wire in some cases and insert messages into it requesting urgent money based on the information obtained through observing private messages.[381] Combined with a developing regulatory landscape,[382] opportunities arose that facilitated offending by this specific category of workers. As a result, they were likely to be approached by outsiders to assist in the facilitation of offending, but we also see instances where they 'worked' alone. It is important to emphasise the distinction in this case, since the method of commission was significantly different for employees, as opposed to non-employees of the network. Non-employees were less able to manipulate the technology itself, and therefore had to rely on a wider fraud narrative, to facilitate the sending of money from an individual victim. In this sphere we witness the significance of communications technology facilitating identity-based offending.[383]

It is in the case of non-employees that social incorporation, and ordinary use of the TMO system was so fundamental. This also explains the delay in the reliance of TMO technology to facilitate fraud between innovation, social incorporation, and illicit use. Illicit use by non-employees was determined by ordinary use, and ordinary use took time to become established. In the business environment, where the introduction of TMOs increased the pace of financial transactions, reports indicate incidents of TMO fraud by non-employees of the network. There are examples of apparently ordinary business communications requiring financial transactions be initiated being fraudulent in nature. In some cases, business owners were targeted through the perpetrator taking on the identity of someone known to the business, requesting the transfer of money by TMO via a forged telegram.[384] For example, hotel keepers in Bath and Norwich were sent telegrams, supposedly from well-known friends or business

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[381] BNA, Bridlington Free Press, 'Ingenious Telegraphic Fraud: Failure Leads to Prison' 12.12.1913
[382] Note that the regulatory response to TMO frauds and the interactions between crime and regulation are detailed in Chapter 5.
[383] For a discussion of identity crimes, see; R. Jamieson, L. Land, R. Sarre, A. Steel & G. Stephens, 'Defining Identity Crimes' (2008) ACIS Proceedings. 107, 442-451; D. Wall, 'Policing Identity Crimes' in D. Wall & M. Williams (eds), *Policing Cybercrime: Networked and Social Media Technologies and the Challenges for Policing* (2014, Routledge: London)
[384] BNA, Bath Chronicle and Weekly Gazette, 'Fraud on a Bath Hotel Keeper' 31.5.1894

associates asking for an urgent loan.[385] Within industries that incorporated the TMO system into their operation, staff were often best placed to capitalise. For example, where private firms and companies developed codes to transmit confidential information over telegraph, staff within the organisation were able to use the code to transmit seemingly legitimate financial requests to pay an individual calling at an office a certain amount, or to send a TMO to a specified location.[386] The significance of an informed approach does not just extend itself to workers of the telegraph network, therefore. The integration of the technology into different sectors, in particular environments where financial transactions were commonplace and insider information could ensure the information that induced the fraudulent transaction appeared legitimate, facilitated 'everyday' offending.[387] Specifically, the transactions or the instructions received to induce them are perceived as normal in that context, and legitimacy is implied in the presentation of the instructions received via telegram. However, the informed approach required was not limited to staff of the various industries targeted.

Individuals were also frequently targeted by perpetrators armed with personal information, or local knowledge, that informed the communication sent to ensure the victim sent the requested money order. For example, telegrams were sent maintaining that the victim's mother had had an accident, purporting to be from the victim's father in law, urgently requesting financial assistance to get the mother home.[388] In this case, the perpetrator had lodged at the house of the victim's mother (who had supposedly suffered the accident), where she had told him about her daughter and son in law, and where they lived.[389] He was able to use this information, sending a communication declaring an emergency, thus increasing the likelihood that the money order would be sent without delay, or sufficient pause to consider its legitimacy. Individuals also received telegrams purporting to come from their children requesting they urgently send money via telegraph.[390] Familial relationships, where siblings[391] or family members were separated in terms of distance, were relied upon to facilitate TMO

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[385] *Ibid*

[386] BNA, Birmingham Mail, 'Ingenious Frauds at Birmingham and Brussels: Man Detained on Atlantic Liner' 17.4.1915

[387] For a discussion of the importance of acknowledging 'everyday' offending in relation to fraud specifically see C. Griffiths, 'Prosecuting Fraud in the Metropolis, 1760-1820' (2017) available < https://livrepository.liverpool.ac.uk/3012313/1/201042524_Sep2017.pdf> last accessed 9.1.2024

[388] BNA, Eastern Evening News, 'Alleged Frauds: Use of the Wire' 4.7.1896

[389] *Ibid*

[390] BNA, Leeds Mercury, 'Fraud by Telegraph' 26.6.1906

[391] BNA, For example Morning Post, 'Strange Forgery Case' 16.8.1897

fraud. How the information relied upon to legitimise the fraud was accessed varied from case to case. There were instances where perpetrators obtained letters belonging to another that revealed a potential target of fraud, as well as provided the perpetrator with a person to impersonate.[392]

The horse racing industry was once again the target of multiple frauds. This time, men, and sometimes women, travelled to the town where the races were going on, and impersonated well known racing men, telegraphing their wives asking them to wire some money at once.[393] 'Unsuspecting wives' would often send the money by TMO, with the 'rogues' signing the order and taking the money.[394] Newspaper articles were also used to inform the 'fraud narrative' in some cases.[395] For example, in 1909 The Daily Telegraph and Router reported that a Maud Newman had been charged with attempting to obtain the sum of £5, by means of a forged telegram from Mr Bernard John Summer.[396] The telegram claimed to be from the recipients fiancé, asking him to urgently send money via TMO. Upon her arrest, police discovered a Newspaper article in her possession announcing their recent engagement.[397] The perpetrator was also sometimes known to the victim. Some individuals relied upon information obtained from the victim themselves to legitimise the fraud narrative. For instance, a resident in Glasgow received a telegram purporting to come from his cousin in Northern Ireland, asking him to wire a loan of £5.[398] Presuming his relative was in need of the money, he wired it back, and on discovery of the fraud, was able to identify the perpetrator on the basis of information included in the proceeding telegram that only he knew.[399]

Those who ran public houses and hotels seemed prone to sharing information, which was then used against them, to induce them into sending TMOs. In one instance a man named Frederick Gardiner, knowing that a publican he had been talking to was going on holiday to Blackpool, travelled there himself, and then sent telegrams to the publican's mother, maintaining to be him, and asking for her to send money via telegraph money order owing to the fact that he had been pickpocketed.[400] There are also instances of particular areas being targeted. In one report, a 'suspect, armed with local knowledge' contacted several inhabitants of a small town via telegraph, to inform

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[392] BNA, Edinburgh Evening News, 'Alleged Fraud by a B.A.' 8.1.1898

[393] BNA, Pearson's Weekly, 'Rogues on the War Path: Some Little Dodges you should Steer Clear of' 9.4.1898

[394] *Ibid*

[395] BNA, Daily Telegraph and Courier (London), 'Alleged Telegraph Frauds' 2.7.1909

[396] *Ibid*

[397] *Ibid*

[398] BNA, Airdrie and Coatbridge Advertiser, 'Fraud by Telegraph' 21.11.1908

[399] *Ibid*

[400] BNA, Bradford Daily Telegraph, 'Frauds By Telegraph: A Timely Warning to Holiday Makers' 19.8.1898

them that relatives known to the victims had supposedly lost everything to a house fire, and asking for money to be wired urgently.[401] Several residents sent TMOs before the fraud was revealed.[402] Additionally, it appears that at particular times, particular scams targeting specific victim groups fell into favour. Reports provide a warning to those whose husbands work on the railway against sending money orders after receiving telegrams maintaining that their husband has been involved in an accident of some sort, and money was required to get him home/ to the hospital.[403] Referred to as 'the accident fraud,' victim distress at receiving such a message, was likely to override any doubts they may have as to the legitimacy of the telegram.[404] These frauds also sometimes took place face to face, without the necessity of communicating via telegram, and extended to other occupations.[405]

2.3.9 *The Social Setting*

With regards to telegraph money orders, clerks were in the best position to facilitate fraud, given their access to information, as well as the technology itself. There is a significant difference in the way the technology was used to facilitate offending, particularly in relation to TMO fraud and forgery. In case of non-Post Office employees, the success of an offence was largely dependent on a participating victim, due to their inability to access the network and forge false telegrams of advice. The success of a fraud of this type was dependent on the social use of the technology, and their ability to produce a compelling fraud narrative. Employees of specific industries were naturally informed to facilitate such narratives, however the ability to commit economic offences was also extended to outsiders.

Employees of the Post Office, however, were in a unique position whereby they were not only armed with information about the network, and party to private information exchanged over the wire that could facilitate fraud, but most importantly, had access to the network itself. They relied upon inserting false 'b' or 'c' forms, or using the apparatus to signal messages themselves, and the lack of sufficient identity checks. The role of the technology itself in each scenario is therefore distinct. With regards to non-employees, the technology itself is used to facilitate the fraud narrative; the actual sending of TMOs is legitimate but informed by deception. With employees, the

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[401] BNA, Northern Whig, 'Frauds by Telegraph: A Novel Trick' 23.8.1902
[402] *Ibid*
[403] BNA, London Evening Standard, 'The New Frauds: Ingenious Swindles Increasing: Methods of Detection' 26.8.1909
[404] *Ibid*; BNA, Belfast Telegraph, 'The New Frauds: Ingenious Swindles Increasing: Methods of Detection' 30.8.1909
[405] *Ibid*

technology was more central to the fraud. The technology facilitated the forgery of telegrams advising TMOs, thus the TMOs cannot be considered in any way legitimate. Both types of offending, however, were dependent upon the social incorporation of the TMO technology. Whilst employees depended upon its social use to seemingly validify the false messages imposed into the system, non-employees relied upon its social use to facilitate the transfer of TMOs, quickly. The use of urgency in the fraud narrative exemplifies this, and reinforces the notions associated with a perceived acceleration of time that emerged out of social incorporation of the technology, and ultimately impacted the conditions required to facilitated economic offences.[406]

It is also important to stress that broader social changes facilitated offending. Improvements in transport, and the ability of individuals to quickly move from one place to another, allowed clerks in particular to travel to other areas where they were unknown to collect TMOs. Importantly as the telephone was socially incorporated it provided alternate routes to TMO crime, with fraudulent TMOs being called in, rather than inserted by employees.[407] This is significant as it provided outsiders with the opportunity to commit more direct offences. The changing pace of life also provided important social conditions that facilitated offending. Consideration must also be taken for the gradual process of internationalisation, whereby correspondence could be expected from overseas. Whilst before the mid 1900s there is little evidence of successful international TMO fraud, it was certainly conceived as both a benefit and a risk of the international TMO system, that money could be exchanged across borders. This concept will be returned to in the following chapters, but it is clear from the records that economic offences, specifically those reliant on the system of TMOs increased following their incorporation. Extensive records indicate that the system continued to be used to facilitate economic offending by those inside and outside the Post Office, and that the ability to 'call in' TMOs by telephone particularly seems to have fuelled offending in this regard.[408]

As will be evident in Chapter 5, the use of TMO's to facilitate economic offences expanded from the mid-twentieth century. Whilst the focus of this chapter has been on incorporation of technology and the offending that this facilitated, the purpose of this has been to demonstrate the range of offending that emerged in accordance with that

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[406] C. Keep, 'Technology and Information: Accelerating Developments' in P. Brantlinger & W. B. Thesing (eds), *A Companion to the Victorian Novel* (2005, Blackwell Publishing)

[407] GPO, Post 120/421, *Money Order Fraud Series* (1898-1957)

[408] POST 120/421, Money Order Series Frauds (records of offenders and methods of offending in relation to Money Orders, inc. telegraph money orders committed against the Post Office) 1898- 1957; POST 120/ 422, 'Telegraph Money Order Frauds' 1957- 1965; POST 120/ 423, 'Telegram Payment Order Frauds 1966-79;

process of incorporation, and to engage with some of the explanations for this. Beyond the process of incorporation, it is clear that telegraph-facilitated offending became more commonplace, and this will be engaged with in more depth when considering the fluctuating regulatory emphasis on preventing crime in the Post Office in the following chapters. Additionally, this Chapter has focused on telegraph facilitated crime, thus crime that incorporates the technology, or relies on the technology for its success. It is also expedient to acknowledge that the technology could be used to organise offending or offenders, or information intercepted could inform quite separate offending. Records reveal the use of telegraphy in the organisation of other offences such as burglary,[409] therefore reflect Wall's typology in that offences could be telegraph-assisted, with the technology used to facilitate the organisation of offending.[410]

2.4 Conclusion

This chapter has demonstrated how the ordinary and expected functioning of the electric telegraph network could be exploited to facilitate crime, in particular economic offences. These offences are referred to as 'everyday' for two reasons. Firstly, illicit use of the telegraph was largely dependent on legitimate use of the telegraph. From this broad overview, it appears that legitimate use drove illegitimate use; for example, the first incidents of telegraph fraud were largely related to the stock market, and business environments, given that this was the social setting for the telegraph at that time. This is particularly clear in relation to TMO fraud, whereby there was an initial, and unexpected (at the time) delay in incidents of fraud, and it was those closest to the system, with an understanding of how the technology worked, who were most able to manipulate it for fraudulent purposes. It was not until social use had increased significantly that the rate of TMO fraud increased. This chapter has highlighted that the challenges of identifying telegraph-facilitated offences included its legitimate use in facilitating offending, or the difficulties associated with identifying a 'non' legitimate telegram or TMO advising. This therefore highlights the often-unremarkable nature of offending in this regard.[411]

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[409] HO 144/22989, HO, 'Production of telegrams on application by police' GPO Letter to Home Office (May 1932)

[410] D.S. Wall, 'Crime, Security and Information Communication Technologies: The Changing Cybersecurity Threat Landscape and Its Implications for Regulation and Policing' in R Brownsword, E Scotford and K Yeung (eds) *The Oxford Handbook on the Law and Regulation of Technology* (2017, Oxford: Oxford University Press), at 8

[411] M. Felson, *Crime and Everyday Life: Insight and Implications for Society* (1994, Pine Forge Press: Thousand Oaks; London; New Delhi)

Second, these offences are referred to as 'everyday' because of their nature, and the need to distinguish from other types of offending which are often the focus of scholarship concerned with the history of economic offences. Whilst scholarship often acknowledges the growth of corporate and white-collar scandals throughout this period,[412] we must be careful not to overlook the persistence of smaller scale economic offences. Through an examination of the prosecution of fraud between 1760 and 1820 Griffiths emphasised the impact of fraud on 'everyday activities, simple contracts and economic relationships such as purchasing goods' maintaining that the influence of this was felt among 'most social strata and relationships from creditor and debtor, to master and servant.'[413] Whilst the type of offences that this chapter has focused on sit closer to white-collar crime in form,[414] they do not amount to conceptions of organised corporate crime,[415] but do tend to involve either a breach of trust or confidence,[416] and are generally economic in nature. Neither can the type of offences that emerge be reduced to 'worker's fiddles' given the type of offending was not only situated with workers.[417] Rather it is suggested that much of the offending that has been the focus of this chapter was facilitated by social incorporation of telegraph technology which had the capacity to disperse the criminal encounter, in turn dismantling traditional mechanisms for developing, maintaining or verifying relationships of trust. I have however emphasised the significance of information imbalance emerging out of processes of social incorporation of the technology. This influenced the mediation of relationships via the wire, but also facilitated the technically proficient offender. The role of the technology itself within this varied.

The physical structure and material that made up the network was the target of criminal behaviour, as well as the non-material messages that travelled through it. Physical interference could also have a further purpose, such as the interception, delay, or insertion of messages into the network. Additionally, the network was subject to non-

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[412] S. Wilson, *The Origins of Modern Financial Crime* (2014, Routledge: London); G. Robb, *White Collar Crime in Modern England: Financial Fraud and Business Morality 1845-1929* (1992, Cambridge University Press)

[413] Griffiths (2017) (n 387) at 3

[414] Specifically, offence type (i.e., fraud) and setting (often within a business setting, with a business at victim); See E.H. Sutherland, *White Collar Crime* (1949, Dryden Press: New York); E.H. Sutherland, 'Is 'White Collar Crime' Crime?' (1945) 10 American Sociological Review, 132-139 for a discussion of white-collar crime

[415] See S. S. Simpson, *Corporate Crime, Law and Social Control* (2002, Cambridge University Press)

[416] For discussion on the significance of trust in conceptualising white-collar crime, see S.P. Shapiro, 'Collaring the Crime, not the Criminal: Reconsidering the Concept of White-Collar Crime' (1990) 55 American Sociological Review 346-365

[417] M. Levi, *Regulating Fraud: White-collar Crime and the Criminal Process* (2013, 1st Published 1987, Routledge) at xxii

physical compromise, for the purposes of circulating false information, or supporting the 'fraud narrative.' As TMO's were introduced, the technology itself could be relied upon to forge false messages, and I argue that this marks a significant development. As will be discussed in Chapter Five, this had implications for regulation that extended beyond law into attempts to prevent fraud via the methods of use. What is perhaps most significant is the ability of those closely connected to the network itself to manipulate the technology to facilitate crime. Employees of the Post Office were able to use the technology directly to commit fraud. The 'criminal encounter' could be fulfilled by one person and was not dependent on victim participation to the same degree that frauds perpetrated by non-employees were. This has significant regulatory implications, and as a result, Chapter Four will analyse the relationship between internal (employee) crime facilitated by the network, and regulation, separately to the relationship between external (non-employee) crime and regulation (Chapter Six).

It is finally important to note that the conceived risk of crime associated with the technology did not always appear consistent with the actual, or experienced threat. Conceptually, the threat of communications technology crime developed throughout the period, and newspaper reports include warnings to users, urging them to be vigilant. A conceived threat then, is evident. In practice this was combined with tones of surprise at the novelty of successful frauds, which seems somewhat contradictory. Novelty is embedded within public perceptions of new technologies, and despite familiarity with the nature of the offences it facilitates, technicality appears to imply a sense of a greater or riskier threat.

Whilst this chapter has provided a broad overview of the (fairly) immediate impact of communications technology on crime, is it demonstrable that the technology had a transformative effect when we situate it within its social context. If we are to consider the whole of the criminal encounter; perpetrator, victim, criminal event, and impact, the social incorporation of telegraph technology generated a new social space where new opportunities for deviance emerged, and the criminal encounter was dispersed. This is not to suggest a new understanding of what was criminal was necessary, but rather recognisably familiar crimes could be committed in less recognisable ways, at a greater speed, scale, and distance. Pools of both potential perpetrators and victims extended as use extended, but also became accessible in different ways. It is within this social space that I suggest further attention should be paid to the nuances of the relationship between crime and communication technology. Further, when we acknowledge the value of focusing on the social spaces that emerge or shift through processes of incorporation of technology, we can also begin to identify the relevant regulatory space.

The following chapter will therefore introduce my approach to regulation, setting the foundations for the following chapters which evaluate the interactions between telegraph-facilitated crime and regulation.

Chapter Three: Regulation, Regulators and Modalities of Control

3.1 Introduction

Whilst the previous chapter has identified themes associated with both the development of, and the categories of, telegraph facilitated crime, this chapter will introduce the approach to regulating telegraph-facilitated crime. As acknowledged by McGuire[418] and building on the approach in the previous chapter, 'any well-founded historical overview of technology or crime control will be dependent on the history of

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[418] M.R. McGuire, 'Introduction' in M. R. McGuire & T. J. Holt (eds) *The Routledge Handbook of Technology, Crime and Justice* (2017, 1st Edition, Routledge: New York)

technology and its influence upon society.'[419] In seeking to understand the relationship between telegraph-facilitated crime and regulation, this thesis aims to ground its analysis in the social context of the technology in order to account for the 'complex and subtle….technological processes' occurring in the contexts of crime and regulation.[420] I therefore take an 'informed socio legal [and] criminological approach' to both the misuse of telegraph technology, and its regulation.[421] As Crawford has emphasised, there is a pressing need to embed studies of regulation 'in the cultural, political and institutional contexts that generate, nourish and sustain them.'[422] The approach must be one that is grounded in their social context, not least because technology does not operate in a vacuum.[423] Rather technologies work 'as a composite set of artefacts, processes and practice which must be understood holistically if they are to be understood at all.'[424] As the previous chapter has argued, the incorporation of communication technology extends the criminal encounter. More broadly, 'viewing technology in terms of extension [helps to] underline why it has a social character.'[425] Evaluating the relationship between crime, communications technology, and regulation through a consideration of the social life of that technology allows us to capture the extension of capacity in the context of crime and regulation as a result of technological incorporation.[426] Whilst the previous chapter dealt with crime, this chapter engages specifically with regulation in this context.

This chapter lays the groundwork for my empirical approach to regulation, which is discussed in the remaining chapters of this thesis. It introduces the concept of regulation, drawing on a range of scholarship in order to justify the employment of a regulatory approach to understanding crime control historically, and outlines the regulators with which this thesis is concerned. Engaging with regulatory theory scholarship demonstrates fluctuating understandings of what constitutes regulation and the regulatory state. However, foundational to this literature is an approach that acknowledges regulation as mechanisms or processes of social control[427], and the regulatory state as both borne out of, and facilitating this.[428] This is often conceived as

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[419] *Ibid* at 55
[420] *Ibid*
[421] *Ibid*
[422] A. Crawford, 'Networked governance and the post-regulatory state? Steering, rowing and anchoring the provision of policing and security' (2006) 10 Theoretical Criminology 449, 451
[423] McGuire (2017) (n 418) at 1
[424] *Ibid*
[425] M. McGuire, *Technology, crime and justice: the question concerning technomania* (2012, Routledge, New York) 24
[426] *Ibid*
[427] M. Janowitz, 'Sociological Theory and Social Control' (1975) 81(1) American Journal of Sociology 82-108
[428] G. Majone, 'The Rise of the Regulatory State in Europe' (1994) 17(3) West European Politics 77-101

a contemporary phenomenon, with a state centric focus on crime control overlooking the governing capacities of non-state police and the private sector,[429] prior to the emergence of the regulatory state from the 1990s. This thesis argues that this implies a historical myopia in the much of the contemporary literature.[430] It identifies a tendency to frame regulation scholarship in contemporary terms, overlooking historical antecedents of a regulatory response to crime, particularly within the cyber-literature. To overcome the limitations of a state-centric or narrow understanding of historical approaches to regulation, I draw on regulatory scholarship both broadly and in relation to crime control specifically, as well as cyber-regulation literature to identify the type of regulation with which I am concerned. It is also acknowledged that whilst regulation scholarship tends to frame the significance of a pluralised approached to the regulation of crime in contemporary terms, research engaging with the history of white-collar and business crime has long acknowledged the role of businesses and organisations, particularly in relation to the regulation of staff.[431]

I therefore draw on Hancher and Moran's 'regulatory space' thesis[432], explored further by Scott,[433] and emphasise 'the coexistence of plural systems of norms and authority in both modern and pre-modern societies.'[434] Given processes of nationalisation situated responsibility for the operation of the telegraph with the State, as well as the obvious crime control response, this might seem inappropriate. However, drawing on the regulatory space metaphor to inform the empirical approach has the benefit of both taking account of the role of institutions (including their culture and structure), but also accommodating the fact that central state authority is not necessarily concentrated or

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[429] A. Crawford, 'Plural policing in the UK: policing beyond the police' in T. Newburn (ed) *Handbook of Policing* (2008, 2nd Edition, Willan; London); S. Shearing, 'Reflections on the Refusal to Acknowledge Private Governments' in J. Wood & B. Dupont (eds) *Democracy, Society and the Governance of Security* (2006, Cambridge University Press: Cambridge)

[430] Particularly the cyber-regulation scholarship

[431] J. Taylor, 'Privacy, publicity and reputation: how the press regulated the market in nineteenth-century England' (2013) 87(4) Business History Review, 679-701; J.P. Locker, 'Quiet thieves, quiet punishment': private responses to the 'respectable' offender, c. 1850-1930' (2005) 9(1) History and Societies, 9-31

[432] L. Hancher, L & M. Moran, 'Organising Regulatory Space' in L. Hancher & M. Moran, (eds) *Capitalism, Culture and Economic Regulation* (1989)

[433] C. Scott, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design' (2001) Public Law 283-305

[434] *Ibid* at 288

uniform.[435] Whilst it can be tempting to perceive the state as a monolith,[436] therefore assuming regulation emanating from the state serves a more single purpose, my approach accommodates for the range of approaches towards regulation evident within and across state bodies and institutions..

Following this conceptual discussion of regulation, I introduce the various sites of regulation I am concerned with. Whilst the Post Office during this period was essentially an 'arm of the state' which afforded the institution broad powers of investigation and prosecution, its function also mimics that of a corporation in the pursuit of economic success. Therefore, my approach has been to distinguish between state regulators. Specifically, I will introduce the role of law, police, and the Post Office, as well as self-regulation by users of the network and private institutions, to identify and evaluate the relevant 'regulatory space.' The broader purpose is therefore to 'map' the sites of empirical archival research I have engaged with to evaluate the practical operation of the sometimes fragmented and uncoordinated, regulatory response to telegraph-facilitated crime. This will enable me to identify continuities and discontinuities in the regulation of communications technology- facilitated crime, highlighting the significance of power, knowledge and organisational structure and culture in the relationship between crime and regulation in this context in the following chapters.

3.2 Conceptualising Regulation

Increasing scholarly attention towards regulation across various contexts has seen definitions of regulation vary [437] from a more traditionally conceived hierarchical ideas of regulation, associated with the state as rule maker and enforcer and convenient in its simplicity,[438] towards a decentred and pluralised conceptualisation of 'networked'[439]

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[435] *Ibid* at 289

[436] See P. Joyce, *The State of Freedom: A Social History of the British State since 1800* (2013, Cambridge University Press: Cambridge) for a discussion re the need to avoid assumptions presenting the state as a monolith and inquire into its assembly in more concrete technological and institutional terms

[437] L McGregor, T Prosser & C Villiers (eds) *Regulation and Markets Beyond 2000* (2000, Ashgate) 1

[438] C. Hood, O. James, G. Jones & T. Travers, *Regulation Inside Government: Waste Watchers, Quality Police, and Sleaze – Busters* (1999, Oxford: Oxford University Press)

[439] L. Johnston and C. Shearing, *Governing Security: Explorations in policing and justice* (2003, London: Routledge)

or 'horizontal'[440] regulation. As Black maintains, 'definitional chaos is almost seen as an occupational hazard by those who write about regulation'[441] and this is reflected in the way the concept of regulation is instrumentalised across scholarship. Historically regulation has been perceived more generally as situated with the state. Reflective of Hobbes's leviathan, state issued laws were conceptualised as the foundations of regulation, their authority rooted in the sovereignty accorded to the state.[442] Regulation came to be conceived as a 'subcategory of law'[443] inherently associated with state power and authority.[444] Hence regulation, narrowly conceived, is an expression of state centric will. This in turn has been criticised for allowing us to overlook the pervasiveness of 'private governments,'[445] therefore limiting our understanding of broader approaches and processes which in practice, constitute regulation. This limits our 'normative thinking'[446] and the ways we interpret divisions of power, responsibility, and inequalities.

To overcome these limitations, regulation has come to be understood as applying more broadly to encompass informal rules.[447] Several models of regulation emerge. The first mobilises the framework of regulation as relating to a broader range of techniques[448] being used to regulate, but with the regulatory power or authority still vested largely with government.[449] The second acknowledges that regulation in practice has also emerged in the absence of rules of any kind, through economic incentives, architecture, and emotion.[450] Sometimes conceptualised as an 'activity that restricts behaviour and prevents the occurrence of certain undesirable activities,'[451] regulation can comprise rules and processes that prevent specific activities. A third model, however, interprets regulation as anything 'influencing the flow of events.'[452] This

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[440] *Ibid*; Crawford (2006) (n 422)

[441] J. Black, 'Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a 'Post-Regulatory' World' (2001) 54(1) Current Legal Problems 103-146, 129

[442] Shearing (2006) (n 429)

[443] P. Drahos & M. Krygier, 'Regulation, institutions and networks' in P. Drahos, (ed) *Regulatory Theory: Foundations and Applications* (2017, ANU Press) 12

[444] B. Orbach, 'What is Regulation?' (2012) 30(1) Yale Journal on Regulation Online, 1-10, at 3

[445] Shearing (2006) (n 429)

[446] *Ibid* at 13-14

[447] C. Parker & J. Braithwaite, 'Regulation' in M. Tushnet and P. Cane (eds) *The Oxford Handbook of Legal Studies* (2005, Oxford University Press) 119; for a discussion of the analytical distinctions between legislation and regulation, see N. Kosti, D. Levi-Faur & G. Mor, 'Legislation and regulation: three analytical distinctions' (2019) 7(3) The Theory and Practice of Legislation 169-178; Black (2001) (n 441)

[448] For instance, state intervention in the economy would constitute regulation under this definition see; Black (n 441)

[449] Black (2001) (n 441) at 129

[450] Parker & Braithwaite (n 447) at 119

[451] R. Baldwin and M. Cave, *Understanding Regulation: Theory, Strategy and Practice* (1999, Oxford, New York: Oxford University Press) 2

[452] Parker & Braithwaite (n 447) at 119

approach is less concerned with regulation as preventing specific activities, and more concerned with general desirable outcomes, aligning with conceptualisations of governance.[453] The meaning of regulation itself therefore can become so broadly framed that essentially any kind of effectual action could be conceptualised as regulation.

Additionally, whilst in the first model, the role of the state is central, in the second and third models we see a range of interpretations that assign different levels of responsibility for the state. The third model accommodates for a much broader range of regulators, and often sees the role of the state as peripheral.[454] This categorisation is conceptually useful, but in practice we see significant overlap in the way that they are drawn upon. For instance, whilst many may acknowledge a very broad spectrum of regulatory instruments and processes, some interpret this as emerging ultimately from the state, whilst others perceive them as emerging from non-governmental actors.[455] However there is increasingly a shift away from the first category of regulation (that which sees regulation as formal rules emerging from the state), to one which accepts both the form and source of regulation as pluralised.

Among these varied positions on regulation, there is however some continuity. As Drahos and Krygier have emphasised, whilst our understanding of regulation can be distinguished according to the means of regulation or source of regulation, there is a contemporary, underlying consensus, which rests on the acknowledgement that 'regulation no longer has one exclusive command centre and that rising interconnectedness characterises the relationship among the many centres and sources of regulation in the modern world.'[456] Both the meaning of regulation and what it comprises, as well as where it emanates from have expanded; whilst there is a lack of agreements on precise definitions, it is clear that regulatory power and authority is no longer viewed as vested solely with the state, but also that the increasingly expansive regulatory landscape signifies something of a departure from traditionally conceived state power.

This is reflected in the concept of the regulatory state, which emerged from the 1990s onwards and has been interpreted as reflecting either the expansion of state

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[453] R.A W. Rhodes, 'The New Governance: Governing Without Government' (1996) 44 Political Studies 652-67; R.A.W. Rhodes, *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability* (1997, Open University Press; Buckingham); Parker & Braithwaite (n 447) at 119-120

[454] J. Black, 'Constitutionalising Regulatory Governance Systems' (2021) LSE Law, Society and Economy Working Papers 02/2021

[455] *Ibid* at 130

[456] Drahos & Krygier (n 443) at 14

administration, or a neoliberal shift in governance.[457] This narrative sustains the idea that this huge expansion of regulation and regulators is a contemporary phenomenon. We have seen an emphasis on the 'new regulatory state,'[458] which acknowledges a 'shift from government to governance'[459] whereby the role of the state is to steer as opposed to row and to govern at a distance.[460] Accommodating the various conceptualisations of the regulatory state throughout time, as well as the pluralisation of regulators and increased interest in regulatory theory, Levi-Faur identifies the core feature of the regulatory state as one that 'applies and extends rule making, rule monitoring, and rule enforcement either directly or indirectly… rules can be made, monitored and enforced directly via bureaucratic organs of the state or indirectly via the supervision of other organisational, regulatory systems.'[461] The breadth of meanings assigned to regulation therefore raises questions about the distinction between regulation and governance.

3.2.1 *Accounting for governance*

The blurred boundaries between regulation and governance are important to acknowledge. Whilst it may be assumed that regulations concerned with crime prevention and control might be considered distinct from market based or economic regulations, I maintain that to understand the relationship between the social incorporation of technology, technology-facilitated crime, and regulation, regulation itself must be conceived through a broader lens. This is not to suggest, however, that regulation be equated with governance.

As with regulation, governance provides something of a definitional dilemma. Governance is sometimes accepted as broader than regulation.[462] Governance may *incorporate* regulation, but governance processes have been defined as being concerned with 'providing, distributing,'[463] and redistributing.[464] As a result it is often

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[457] D. Levi-Faur, 'The Odyssey of the Regulatory State: From a 'Thin Monomorphic Concept to a 'Thick' and Polymorphic Concept' (2013) 35(1-2) Law and Policy 29- 50

[458] J. Braithwaite, 'The New Regulatory State and the Transformation of Criminology' (2000) 40 British Journal of Criminology 222-238

[459] Levi-Faur (2013) (n 457)

[460] Braithwaite (2000) (n 458); Levi-Faur (2013) (n 457)

[461] Levi-Faur (2013) (n 457)

[462] J. Braithwaite, 'Editors Introduction: Can Regulation and governance make a difference' (2007) 1 Regulation & Governance 1-7

[463] *Ibid* at 3

[464] D. Levi-Faur, 'Regulation and Regulatory Governance' (2010) Jerusalem Papers in Regulation and Governance; Working Paper No. 1 AVAILABLE < https://edisciplinas.usp.br/pluginfile.php/5549163/mod_resource/content/1/Levi-Faur%20%282010%29.pdf> last accessed 13.8.2023

seen as essential for ordering processes, concerned with the cooperation associated with plural regulators and mechanisms.[465] In literature concerned with governance the state is within the governance structures, but not necessarily central, and the range of tools of governance includes the various regulatory mechanisms discussed in this chapter, but also extends to facets such as organisational structure, culture and broader social processes.[466] As a concept it is 'analytically valuable'[467] as it allows for the interaction of a range of regulatory mechanisms, structures and organisations.[468]

Alternatively, governance is sometimes equated with regulation, particularly regarding the pluralisation of actors, mechanisms, and processes of social control. [469] This is problematic in that it insinuates that governance mainly encompasses processes that are purposely designed with specific goals,[470] therefore fails to account for unintentional ordering.[471] Additionally assuming a functional, goal-led purpose is misleading given the often organic emergence of mechanisms and processes of governance.[472] Regulation is however part of governance; 'steering the flow of events and behaviour,'[473] but for the purpose of this thesis is understood as more goal oriented.

The cyber-regulation literature also grapples with the distinction between regulation and governance. Cyber-governance accommodates for the range of regulators and regulations, thus in a global cyberspace specifically it encompasses overlapping and competing authorities, rules, standards, protocols, contracts, and codes of conduct for instance.[474] Regulation can be distinguished from governance in this context when we frame according to regulator; regulation emerges from a range of sources, whilst

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[465] J. Hofmann, C. Katzenback & K. Gollatz, 'Between coordination and regulation: Finding governance in Internet governance' (2017) 19(9) New Media & Society 1406-1423, 1410

[466] *Ibid*

[467] *Ibid*

[468]*Ibid*

[469] *Ibid* at 1411

[470] *Ibid;* C. Scott, 'Regulation in the Age of Governance: The Rise of the Post-Regulatory State' in J. Jordana & D. Levi-Faur (eds) *The Politics of Regulation* (2005, Cheltenham: Edward Elgar)

[471] M. van Eeten & M Mueller, 'Where is the governance in Internet governance?' (2013) 15(5) New Media & Society 730-736

[472] Hofmann et al (2017) (n 465) at 1412

[473] Braithwaite (2007) (n 462) at 3; M. Van Eaton, 'Where is the Governance in Internet Governance?' (2009) GigaNet: Global Internet Governance Academic Network, Annual Symposium 2009 available < https://deliverypdf.ssrn.com/delivery.php?ID=85700507103102501409007011711812100004003202003100305408511912409608100102311300406405411400103706210401402900100112509806402003301601008105911302501408506812008600807008607808609400308702012606407009508110309009509400306602107512408710411206500206712 4&EXT=pdf&INDEX=TRUE> last accessed 12.9.2023

[474] J. Feick & R. Werle, 'Regulation of cyberspace' in R. Baldwin, M. Cave & M. Lodge (eds) *The Oxford Handbook of Regulation* (2010, Oxford University Press: Oxford) at 525-526; J R. Reidenberg, 'Governing Networks and Rule-Making in Cyberspace' (1996) 45 Emory Law Journal 911- 930

governance encompasses both the network of regulators and their social, political and economic context.

3.2.2 *Distinguishing Regulation from Governance*

Governance can accommodate regulation but will be distinguished from regulation for the purposes of this thesis. Rather regulation is conceptualised as rule making, monitoring and enforcement.[475] This thesis accepts that conceptualising regulation as akin to governance serves to accommodate for a range of processes that could otherwise be overlooked, [476] and allows for the de-centring of regulation from the state.[477] However empirically this thesis is concerned with more direct rule making specifically in relation to crime. It is therefore concerned with rule making, monitoring and enforcement by social, business, and political actors,[478] in response to a specific crime problem. Regulation is further characterised into laws emanating from the legislature or the courts, and regulations emerging from bureaucratic and administrative rule making.[479] I therefore depart from governance, as well as the broadest conceptualisations of regulation, 'by thinking of [regulation] as an instrument of governance which takes as its focus the deployment of authority.'[480]

The 'regulatory space' thesis[481] provides a useful concept through which to narrow my approach to regulation in reference to the specific relationship I am concerned with. Whilst the metaphor of regulatory space developed in relation to 'economic regulation under advanced capitalism'[482] it is significant in that it both captures the range of actors in each regulatory space, their interdependence, the significance of power dynamics in this context, and that formal authority is 'not the only source of power within a regulated domain.'[483] Regulatory space is identified according to the 'range of regulatory issues' of concern, and authority and power within that context is identifiable by paying

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[475] Levi-Faur (2010) (n 464); C. Hood, H. Rothstein & R. Baldwin, *The Government of Risk: Understanding Risk Regulation Regimes* (2001, Oxford University Press: Oxford); R. Van Loo, 'Regulatory Monitors: Policing Firms in the Compliance Era' (2019) 119 Columbia Law Review 369

[476] For example, Scott's (2001) (n 433) definition of regulation as 'any process of set of processes by which norms are established, the behaviour of those subject to the norms monitored or fed back into the regime, and for which there are mechanisms for holding the behaviour of regulated actors within the acceptable limits of the regime…' effectively captures the plurality of interests evident within a regulatory regime concerned with elements of steering; Levi-Faur (2010) (n 464)

[477] Black (2001) (n 441); Levi-Faur (2010) (n 464)

[478] Levi-Faur (2010) (n 464)

[479] *Ibid*

[480] Hancher & Moran (n 432); Scott (2001) (n 433)

[481] Hancher & Moran (n 432)

[482] *Ibid* at 272

[483] Scott (2001) (n 433) at 285

'attention to the relations between organisations' occupying the [issue driven] space.[484] Whilst the concept of regulatory space arguably straddles both the broader definitions of regulation, alongside understandings of governance, it allows us to perceive regulation as an instrument of governance, accommodates for 'pluralism in legal and policy processes,' therefore the recognition of plural systems of authority and resource, and facilitates comprehension of the 'interactions' between regulators within that space.[485] In particular, by drawing on the regulatory space metaphor and acknowledging the pluralism of regulators and regulations, we can also begin to consider the significance of institutional structure and culture on regulatory decisions and operation in practice.[486] This draws our attention to pluralism not only in terms of among regulators, but also within them. In the context of crime control, however, regulatory scholarship has traditionally tended to be more focused on the role of the state and how that has shifted, as opposed to pluralism among and within regulators.

3.2.3. *Regulation in the Context of Crime Control*

Much of regulation scholarship discussed above developed outside of the specific context of crime control. Gurinskaya and Nalla acknowledge the definitional controversy associated with regulation in broad terms, observing that attempts to 'introduce the term regulation into criminological discourse' should demonstrate an awareness that contemporary debates are concerned with different interpretations of regulation.[487] Specifically in the context of crime control, regulation scholarship tends either to be concerned with the relationship between the state and the provision of private security, synonymous with policing more broadly and indistinguishable from notions of governance, or a means to accommodate for 'direct' and 'coercive' state centric forms of social control as well as 'softer, often nonstate methods of control referred to as regulation.'[488] The latter approach distinguishes according to the target of regulation, with the coercive measures reserved for the offender, and the less direct measures targeted at the offence.[489] This therefore accounts for regulatory mechanisms such as situational crime prevention, and crime prevention through design.[490] Whilst the criminal justice system is concerned with coercive measures and

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[484] Hancher & Moran (n 432) at 277-279
[485] Scott (2001) (n 433) at 285
[486] *Ibid* at 287
[487] A. Gurinskaya & M. K. Nalla, 'The Expanding Boundaries of Crime control: Governing Security through Regulation' (2018) 679(1) ANNALS American Academy of Political and Social Science 36-54
[488] *Ibid*
[489] *Ibid*
[490] *Ibid*

the offender, broader processes of regulation are distributed among actors and are concerned with approaches geared towards prevention of the offence. Regulation, broadly conceived in this area, encompasses for both prevention and response, and studies of regulation should arguably demonstrate an awareness of this.

This 'new regulatory approach' has been acknowledged in response to crime in a general sense.[491] Garland situates this shift as emerging alongside an acknowledgement of the 'limitations of criminal justice agencies' in their capacity to crime.[492] Referring to the 'myth of sovereign crime control,' he maintains that the 'notion that a single sovereign power could govern all social life was enhanced in the mid-nineteenth century by the creation of a strong state apparatus.'[493] Specifically this was facilitated by a perception that the new public police had a 'professional monopoly over the function of crime control'[494] combined with broader (and gradual) processes of centralisation of criminal justice institutions. There is debate about the extent to which this occurred in the 19th century, but ideas related to centralisation throughout the 19th and certainly within the 20th century arguably gave rise to notions that a strong state could effectively govern social life.[495] However, Garland posits a shift in perceptions, whereby following the state assumption of 'control functions and responsibilities' which had previously 'belonged to the institutions of civil society,' the limitations of the state in achieving social control, and dealing with the normality of everyday crime became much more apparent.[496] In response, regulation is conceptualised as moving beyond command-control models of regulation to incorporate a range of regulators and mechanisms of regulation designed to address a specific issue. Prominent in this approach in criminology is a push to focus on crime as opposed to the criminal, to focus on prevention as opposed to apprehension, and to incorporate private actors within the sphere of regulatory crime control.[497]

Shifting away from positivist approaches,[498] regulatory criminology's recognition of both the existence of and the value of a regulatory approach to crime control is therefore

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[491] J.D. Freilich & G.R. Newman, 'Regulating Crime: The New Criminology of Crime Control' (2018) 679(1) ANNALS of the American Academy of Political and Social Science 8-18, 10

[492] D. Garland, 'The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society' (1996) 36(4) British Journal of Criminology, 445-471, 448

[493] *Ibid*

[494] *Ibid*

[495] *Ibid*

[496] *Ibid* at 449

[497] Freilich & Newman (n 491) at 10-11

[498] R. V. Clarke, 'Regulating Crime: The Birth of the Idea, Its Nurture, and the Implications for Contemporary Criminology' (2018) 679(1) ANNALS of the American Academy of Political and Social Science 20, 22

important to acknowledge.[499] Within this sphere it is accepted that an 'avalanche' of mechanisms exist to prevent crime, emerging from a range of institutions, and encompassing the public and the private sectors.[500] It is founded in an approach that perceives crime as following opportunity,[501] thus shifts the focus of concern from one occupied with addressing root causes of crime, to one of preventing crime more generally.[502] It is also reflective of a shift towards proximate and situational preventive interventions, and away from psychological and sociological explanations for crime. The significance of the state's responsibility for coercive responses to crime arguably sees the role of the state remain more central in the context of regulatory crime control.

In circumstances where state sponsored coercive responses are perceived as limited in their effectiveness, we see more attention paid to a model of regulation which marginalises the role of the state, as evidenced in literature concerned with the regulation of cyber-crime.[503] Within limited state control over the design, availability or accessibility of internet-related products, and a more tenuous connection between state and private sector organisations who provide such products, within this sphere, broader processes of regulation have become accepted as crime control.[504] This is reflected in Lessig's seminal work on the regulation of cyberspace, which conceives regulation as a constraint.[505] Whilst law is an obvious constraint, indeed an appealing one given its rigidity and enforcement lends itself to control, we must also account for norms, nature or architecture, and markets.[506] We must therefore acknowledge direct and indirect regulation.[507] Direct regulation emanates from an authority with clearly evident rules or standards which are enforceable on the 'governed.'[508] Indirect

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[499] *Ibid*

[500] R.V. Clarke, 'Criminology and the fundamental attribution error' (2016) 41(3) The Criminologist, 1-7

[501] M. Felson & R.V. Clarke, 'Opportunity Makes the Thief: Practical Theory for Crime Prevention (1998, Police Research Series Paper No. 98) Research, Development and Statistics Directorate, London.

[502] N. Tilley, 'Privatizing Crime Control' (2018) 679(1) ANNALS of the American Academy of Political and Social Science 55, 57

[503] See; S.W. Brenner, 'Cybercrime: re-thinking crime control strategies' in Y. Jewkes (ed) *Crime Online* (2007, Collumpton: Willan) at 12-28; B. Dupont, 'Bots, cops and corporations: on the limits of enforcement and the promise of polycentric regulation as a way to control large-scale cybercrime' (2017) 67(1) Crime, Law and Social Change 97-116; L. Huey, J. Nahn & R. Broll, 'Uppity civilians' and 'cyber-vigilantes': the role of the general public in policing cyber-crime' (2012) 13(1) 81-97; D.S. Wall, 'Policing Cybercrimes: situating the public police in networks of security within cyberspace' (2007) 8(2) Police Practice and Research 183-205; M. Yar, 'The Policing of Internet Sex Offences: pluralised governance versus hierarchies of standing' (2013) 23(4) Policing and Society 482-497

[504] Tilley (2018) (n 502) at 57-58; Dupont (2017) (n 503); M. Brunner, 'Challenges and Opportunities in State and Local Cybercrime Enforcement' (2020) 10 Journal of National Security Law & Policy 563

[505] L. Lessig, 'The Constitution of Code: Limitations on Choice-Based Critiques of Cyberspace Regulation' (1997) 5 CommLaw Conspectus 181, at 181

[506] *Ibid*

[507] *Ibid*

[508] L. Johnston & C. Shearing, 'Governing Security: Explorations in policing and justice' (2003, Routledge: New York) 25

regulation, as we will see, involves the embedding of security functions 'occupationally and functionally.'[509] This can incorporate the responsibilization of various occupations, organizations and individuals,[510] but also the design of an environment. This approach is not only reserved for cyber-crime and regulation. Beyond the case of the internet, we have witnessed the proliferation of situational contingencies designed to prevent crime,[511] often emerging from the private sphere. These contingencies include technological design, architectural design of places, enhanced private supervision, informal codes of conduct, and developments in security.[512] Mechanisms of social control are mobilised to enhance security and maintain order, thereby preventing crime.[513] The paradigm of security within the crime control literature reflects this approach which acknowledges a range of regulators and modes of regulation to manage the risk of crime. In the regulation of communication technology, we see an example of the shift in approaches to incorporate the management or prevention of crime through the imposition of proximate interventions. There remains a role for the state, but it is somewhat marginalised to responsive coercive strategies, in a limited range of circumstances.

We also see evidence of the significance of regulation for crime control purposes with economic offences. As illustrated in Chapter 2, the most direct impact of the telegraph on crime was in relation to economic offences. In a contemporary context, it is accepted that both the prevention of, and response to economic crime mobilises a range of organisations, institutions, and processes beyond those associated with the criminal justice system.[514] As Sutherland maintains, the rules, procedures and processes that seek to address financially motivated, or white-collar crime, extend well beyond the criminal law.[515] This is heightened when we consider white-collar offences

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[509] *Ibid* at 26

[510] *Ibid*

[511] Tilley (2018) (n 502) at 60

[512] *Ibid* at 60-61; see also R.V. Clarke, '"Situational" Crime Prevention: Theory and Practice' (1980) 20(2) British Journal of Criminology 136; for a cyber-context, see H. Ho, R. Ko & L. Mazorelle, 'Situational Crime Prevention (SCP) techniques to prevent and control cybercrimes: A focused systematic review' (2022) 115 Computers & Security 102611; B.W. Reyns, 'A situational crime prevention approach to stalking victimization: Preventive tactics for internet users and online place managers' (2010) 12 Crime Prevention and Community Safety, 99-118

[513] C. Shearing & P. Stenning, 'From the panoptican to Disney World: The development of discipline' in R. Clarke (ed) *Situational Crime Prevention: Successful case studies* (1992, New York, NY: Harrow and Heston); N. Tilley, 'Crime reduction: Responsibility, regulation and research' (2016) 11(2) Criminology and Public Policy 361-78

[514] P. Grabowsky, 'The Prevention and Control of Economic Crime' (2001) Annual Report for 1998 and Resource Material Series No. 55 at 44-53 available < https://press-files.anu.edu.au/downloads/press/p228301/pdf/ch091.pdf> last accessed 4.11.2023

[515] Sutherland (1949) (n 414) at 9

facilitated by developments in technology. As is well established, 'the police alone are unable to cope with economic crime,'[516] and processes of responsibilisation, network design and management, and organisational processes and procedures are fundamental to fraud prevention, and the regulation of technology.[517] Regulatory responses to crime are however, often conceived through the lens of 'policing,' and much of the literature focuses on the pluralisation of policing which can arguably be misleading, in that policing is most commonly associated with the state.

3.3 Historical Antecedents of Regulatory Pluralism

As evidenced in relation to crime control, the pluralisation of the regulation of crime has not just been felt within the context of prevention; the state 'no longer holds a monopoly over policing.'[518] Crime control is the responsibility of organisations and actors beyond the public police, whether they be state or non-state actors.[519] Scholarship has engaged with the effectiveness of these contemporary networks of policing, seeing the shift as a reflection of a contemporary or novel response to crime.[520] By conceiving policing, through this contemporary lens, we risk overlooking the pre-history of the state police in England and Wales and themes of networked policing evident historically. This in turn implies that we may ignore continuities when assuming a break from the past.[521] Indeed, it is often overlooked that prior to the formation of the new police in 1829 (and following their gradual introduction and expansion), policing was not within the sole remit of the state. Suggestions of a paradigm shift in approaches to crime control, and more broadly social control and security suggest a 'discontinuation' in criminal justice, in turn implying a fundamental shift in the 'character of crime

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[516] *Ibid,* See also M. Button, J. Tapley & C. Lewis, 'The 'fraud justice network' and the infrastructure of support for individual fraud victims in England and Wales' (2013) 13(1) Criminology and Criminal Justice, 37-61; D.S. Wall, 'Policing Identity Crimes' (2013) 23(4) Policing and Society, 437-460

[517] P. Grabowsky, 'Beyond responsive regulation: The expanding role of non-state actors in the regulatory process' (2013) 7(1) Regulation & Governance

[518] R. Brewer, 'Controlling crime through networks' in Drahos, R. (ed) *Regulatory Theory: Foundations and Applications* (2017, ANU Press) 447

[519] J. Lea, *Crime and Modernity: Continuities in Left Realist Criminology* (2002, SAGE publications Ltd: London; Thousand Oaks; New Delhi) at 104; More broadly D. Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (2001, Oxford University Press: Oxford)

[520] A. Crawford, 'Policing and Security as "Club Goods": the New Enclosures' in J. Wood & B. Dupont (eds) *Democracy, Society and the Governance of Security* (2006, Cambridge University Press; Cambridge); Brewer (n 546)

[521] T. Jones & T. Newburn, 'The Transformation of Policing?: Understanding Current Trends in Policing Systems (2002) 42 British Journal of Criminology 129-146

control.'[522] This is perceived as a recent but significant shift. Criminology traces the rise and fall of the 'monopolistic criminal justice state';[523] conceiving the expansion and central role for the criminal justice state in the 19th century as evidence of a state monopoly on crime control.[524] Whilst this narrative is subject to critique,[525] the idea of a modern withdrawal from this model of authority and power in relation to crime control continues to underpin literature.[526] As Churchill has maintained, 'viewing crime control as a homogenous totality promotes a totalising view of its history, in which grand structural shifts… predominate.'[527] Taking governance, and broader connotations of regulation, traditionally conceived as contemporary ideas, and using them as a lens through which to analyse the history of crime and criminal justice can help us avoid this.[528] Firstly such an approach accommodates continuities in crime control which may otherwise be overlooked. Second, it helps us 'capture the complex web of relations between formations of crime control across times.'[529] Finally, it avoids the tendency to situate a crime or crime control issue through the lens of the state monopoly thesis uncritically. This is particularly pertinent given a fetishizing of the new police following their introduction in 1829 as the ultimate symbol of state control and reflective of the state monopoly on crime control.[530]

Given the assumption of contemporaneity in the literature on regulation and governance, the pluralist approach towards regulation and the security paradigm that dominates the contemporary approach to crime control may seem irrelevant to my empirical approach. Within the period with which I am concerned, it might be assumed that the State would remain the sole 'regulatory space' and therefore site of empirical concern. However, there is nuance within this monopoly on authority. State authority is interpreted as one which allows the state 'an exclusive right to determine who may legitimately exercise coercion over others, and in what circumstances.'[531] Not then, that the state, or in response to crime specifically, the criminal justice system, was exclusively responsible for the prevention, detection, and broader responses to, crime

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[522] D. Churchill, 'History, Periodization and the Character of Contemporary Crime Control' (2019) 19(4) Criminology & Criminal Justice 475-492

[523] *Ibid*; D.C. Churchill, 'Rethinking the state monopolisation thesis: the historiography of policing and criminal justice in nineteenth-century England' (2014) 18(1) Crime, History and Societies 131-152

[524] Churchill *Ibid*; Garland (1996) (n 493) at 448

[525] Garland (1996) (n 493)

[526] Churchill (2014) (n 523)

[527] Churchill (2019) (n 522)

[528] *Ibid*

[529] *Ibid*

[530] *Ibid*

[531] L. Johnston & C. Shearing, 'Governing Security: Explorations in policing and justice' (2003, Routledge: New York) 14

and risks of crime. Whilst Johnson and Shearing maintain that state governance of security was initially 'dominated… by a reactive and punitive mentality involving the application of necessary coercion to locate and punish wrongdoers,'[532] this does not imply a complete lack of plurality in regulators, but rather a consistency in approach within formal 'state sponsored security programmes.'[533]

In relation to the periodization of policing, there are 'parallels' between contemporary developments and pre-19th century 'concepts of policing.'[534] It is prudent to acknowledge a range of continuities in policing that are often overlooked. Specifically, when we acknowledge the long(er) history of policing, the 'state monopoly' on policing is contextualised as an anomaly set against a much longer history of pluralised policing.[535] Not only did the pre-metropolitan police systems of policing incorporate a range of actors, but it also employed a range of mechanisms of social control.[536] These efforts were not purely reactive, but also emphasised the persistence of an approach that prioritises the prevention of crime through the reduction of opportunity.[537] There are continuities in the regulation of crime, that any historical approach to understanding the nuances of the relationship between crime and regulation should account for. As a result, the formalisation of the criminal justice state through the period with which I am concerned does not imply uniformity amongst regulators and regulations, despite the concentration of state power within the regulatory space.

Beyond this, whilst the state maintained the authority on coercive measures traditionally associated with responding to crime, a broader preventative approach (and therefore regulatory approach) is evident across society and industry that may fall outside of the immediate realm of state control. The emergence of big business as a site of regulation is an important consideration; incorporating both punitive and responsive regulation as well as preventative approaches towards the management of risk.[538] Whilst the historical antecedents of private and self-regulation within the

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[532] *Ibid* at 15

[533] *Ibid*

[534] A. Crawford, 'Networked governance and the post-regulatory state? Steering, rowing and anchoring the provision of policing and security' (2006) 10 Theoretical Criminology 449, 452

[535] L. Zedner, 'Policing Before and After the Police: The Historical Antecedents of Contemporary Crime Control' (2006) 46(1) British Journal of Criminology, 78-96

[536] M. Neocleous, 'Social Police and the Mechanisms of Prevention: Patrick Colquhoun and the Condition of Poverty' (2000) 40 British Journal of Criminology 710-726; Dodsworth, F. 'Police and the prevention of Crime: Commerce, temptation and the corruption of the Body Politic, from Fielding to Colquhoun' (2007) 47(3) British Journal of Criminology 439-454; Crawford (2006) (n 533); Zedner (n 534)

[537] Garland (1996) (n 493) at 465; R. V. Clarke, 'Regulating Crime: The Birth of the Idea, Its Nurture, and the Implications for Contemporary Criminology' (2018) 679(1) ANNALS, AAPSS 20, at 33

[538] J. Braithwaite, 'What's wrong with the sociology of punishment?' (2003) 7(1) Theoretical Criminology 5-28

business context are acknowledged in literature concerned with white-collar crime, the range of offences, offenders and victims emerging alongside incorporation of the telegraph implies we should extend this analysis to incorporate a wider range of offenders and regulatory mechanisms.[539] Additionally, social incorporation impacted a range of institutions, business environments and social spaces, which implies distinct approaches may emerge in these spaces.

It might appear that my approach is complicated by the nationalisation of the telegraph. The Post Office, as an arm of the state, took on significant regulatory functions. However, I maintain that an approach that reduces the regulatory landscape to a state monopoly on crime control cannot account for the nuances in the regulatory approach. Firstly, whilst the Post Office was part of the state, its operation was in practice distinct from other 'arms of the state' as we will evidence in relation to policing. Second, the Post Office developed internal mechanisms for policing and prosecution, which again operated distinctively from the more traditionally conceived criminal justice system. Third, the organisation operated much like a corporation; driven by often economic and reputational goals which were relative to the institution itself. This justifies distinguishing between the state more broadly, the CJS, and the Post Office. In part this is due to a pressing need to acknowledge the range of regulatory mechanisms operationalised to address or prevent telegraph-facilitated crime. Beyond this, it facilitates the approach to evaluating the relationship between technology facilitated crime and regulation within the broader regulatory space framework, which, as already established, draws on aspects of governance which might influence the regulatory mechanisms in practice. Within this context, organisational culture, competing regulatory aims, power dynamics, knowledge, economic concerns and reputational concerns have all been identified as influencing processes of regulation, and how they interact with crime.[540] Tacking my approach to regulation and the significance of governance, and situating it within the context of crime control in the nineteenth and early twentieth century allows for an analysis of the relationship between crime and regulation which avoids fetishizing the emergence of the criminal justice state throughout the period. 'Regulatory pluralism…always was a reality' with literature recognising the state 'has never been the sole font of regulation.'[541]

In acknowledging the antecedent of the contemporary regulatory landscape, this chapter also seeks to contribute to Braithwaite's call to incorporate different sites of

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[539] See Chapter 2, specifically the acknowledgement that the types of offending with which I am concerned do not fit neatly into categories of white collar or corporate crime.
[540] Scott (2001) (n 433) at 5
[541] Parker & Braithwaite (n 447) at 126

regulation beyond those associated with the formal criminal justice process into our understanding of the sociology of punishment.[542] This is not only to avoid the generalisations and areas of oversight that can emerge out of an approach that centralises the criminal justice state in the history of punishment. Such an approach also marginalises 'white-collar' crime, crimes committed by organisations, and crimes committed within organisations. It causes us to overlook the important histories of business regulation and their significance in preventing and responding to crime, and the interactions between public and private crime control. Indeed it is suggested that the 'contemporary' shift within regulatory criminology identified previously as incorporating a changing emphasis from coercion of offenders as crime control, towards prevention of crime, or a combination of the two as crime control, was 'imported from business regulation.'[543] Hence a preoccupation with state mandated punishment and prevention of crime when analysing a given 'regulatory space' could inhibit understanding of the history of the regulation of crime, and see us overlook important aspects of social context which might explain regulatory decision making.

3.4 My Approach

My approach, therefore, takes regulation as previously defined as a rule making, monitoring and enforcement by state and non-state actors, and I am concerned with regulation as having a specific goal. Influenced by Black[544] and Yeung[545] regulation is understood as the organised attempt 'to manage risk or behaviour in order to address a problem or concern'[546] thus regulation as inherently concerned with a 'set of objectives.'[547] In this instance, that is the prevention of telegraph-facilitated crime, whether that be preventive in practice, or responsive. I have justified taking an approach influenced by regulatory scholarship in the context of crime control by drawing on cyber-regulation scholarship, as well as contemporary regulatory

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[542] Braithwaite (2003) (n 537)

[543] *Ibid*

[544] J. Black, 'Learning from Regulatory Disasters' (2014) LSE Legal Studies Working Paper No. 24/ 2014, available
<https://deliverypdf.ssrn.com/delivery.php?ID=537100100007025089085022102021074000103051006034026016025071108086084004000004075074121007006025119120053086119002081064100067112050061043086014086112085119071073054037032065089026001023018065027067125065115072125072126091007101030096100100001117002&EXT=pdf&INDEX=TRUE> last accessed 11.5.2023; See also J. Black, 'What is *Regulatory Innovation?*' in J. Black, M. Lodge & M. Thatcher (eds) *Regulatory Innovation* (2005, Edward Elgar Publishing)

[545] K. Yeung, 'Are Human Biomedical Interventions Legitimate Regulatory Policy Instruments?' in R. Brownsword, E. Scotford & Karen Yeung (eds) *Oxford Handbook of Law, Regulation and Technology* (2016, Oxford University Press) at 835

[546] *Ibid*

[547] Black (2014) (n 544) at 2

criminology scholarship which acknowledges the limitations of the state, and the range of regulators and regulations evident in a contemporary sense. I have then drawn on literature that engages with the history of the criminal justice state and punishment to emphasise that such an approach is not as 'novel' as contemporary literature sometimes assumes. Therefore, utilising the regulatory space metaphor to identify the relevant area of concern in this context allows me to cast a wider lens than the role of the state. Importantly, the regulatory space metaphor also allows me to draw on broader issues traditionally associated with governance in accounting for and understanding the relevant regulatory landscape. In other words, where the area of concern is identified according to the goal, or the issues with which I am concerned, the influence of governance can be accounted for in the context of those regulations, without broadening the scope of the study beyond my definition of regulation. This approach allows me to account for broader social context that influences regulatory decision making, as well as the interactions between telegraph-facilitated crime and regulation in practice. It also allows me to comment on the interactions between regulators and regulations, within that 'regulatory space,' something which Braithwaite has maintained is missing from 'histories of the present'[548] which overlook the extent of regulatory space evident historically.

3.5 Mapping the Regulatory Space

Whilst it is imperative for my approach to avoid the tendencies critiqued by Braithwaite above, associated with 'histories of the present,'[549] contemporary literature which acknowledges a pluralisation of regulations in both number and form, as well as a range of regulators, is still useful in identifying my regulatory space. This is not to suggest that imposing contemporary findings onto the past as a basis for empirical research is an appropriate exercise. Rather that the 'contemporary' status of the literature does not imply that it only applies to the present, as I have sought to demonstrate above. I have therefore drawn on contemporary regulation scholarship, as well as the cyber-literature as a means to broaden the regulatory space with which I am concerned, so as to avoid the pitfalls described by Braithwaite.[550] I am still concerned, however, with producing a 'history of the past'[551] and therefore whilst the

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[548] Braithwaite (2003) (n 538)
[549] *Ibid*
[550] *Ibid*
[551] *Ibid*

literature influenced the spaces with which I was concerned, this was in order to identify and map the social life of the telegraph, and examine how it was regulated in practice, rather than what this means for us today.

The approach must therefore engage with 'changes in law and norms, changes in networks and protocols, [and] changes in relationships and behaviour,'[552] to capture the range of relevant regulation in practice. This is to reflect the underlying approach which accepts that to understand regulatory control, regulation must be evaluated in its social and economic context, in consideration of relevant and fluctuating institutional power dynamics and legal and social structures.[553] The approach therefore attends to Losoncz's proposition that both an objective and subjective evaluation is required; the objective to account for the rules and responses of law, the state and the relevant organisations, the subjective to account for the experience of the regulated and the regulators.[554] This allows me to take account of the role of 'institutional orderings' which emerge less consciously but hold 'significant regulatory effects.'[555] As a result, Shearing's perspective on regulatory systems as regulatory space;[556] with regulation as 'comprising a variety of institutional orderings and regulatory mechanisms,'[557] alongside an acknowledgement of the regulatory power of commercial institutions are fundamental to the perspective of regulation this chapter rests on.

As evidenced in Chapter 1, the social incorporation of the electric telegraph was gradual. The State had a significant interest in the network, from the outset. This was further exacerbated post nationalisation of the network, and the Post Office therefore became a significant site of regulation, given its organisational control of the network. The significant initial influence was also felt in relation to big business, with use gradually expanding to smaller businesses, and then personal use. Theoretically then, these spheres become potential areas of control, or sites of regulation.

Lessig has argued that in the context of cyberspace, regulatory power emerges from the state, private corporations, non-governmental organisations, social norms, self-

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[552] I. Losoncz, 'Methodological approaches and considerations in regulatory research' in Drahos, R. (ed) *Regulatory Theory: Foundations and Applications* (2017, ANU Press) at 79
[553] *Ibid*; Scott (2001) (n 433); Black (2001) (n 423)
[554] Losoncz (n 552)
[555] P.N. Grabowsky & R.G. Smith, 'Telecommunications and Crime: Regulatory Dilemmas' (1997) 3(19) Law & Policy
[556] C. Shearing, 'Towards a Constitutive Conception of Regulation' in J. Braithwaite & P. Grabowsky (eds) *Business Regulation in Australia's Future* (1993, Australian Institute of Criminology)
[557] Grabowsky & Smith (1997) (n 554)

regulation, and the markets. [558] Essentially, when we identify who, within that space, has the capacity to invoke mechanisms of control, we can identify relevant sources of regulation. Further, and key to my approach is that in accounting for the range of regulators identified here, Lessig points to a range of mechanisms, or modalities of regulation that become evident as a result. He categorises law, architecture, norms, and markets as modalities of regulation.[559] For Lessig, these modalities of regulation work by constraining our behaviour.[560] Fundamentally, these 'modalities of control' are not special to the internet, rather they are categories of regulation which are mobilised in society generally, to manage a range of harms and potential harms.[561]

It is necessary to first say something about each of these modalities. Deployed by Lessig (and others)[562] as a mechanism for considering the effectiveness of regulatory responses to cyber-crime, yet identified as pre-existing internet technology, these modalities are mechanisms of control experienced in everyday life.[563] Law as a regulator is relatively self -explanatory in this context, and depends on the existence of appropriate legislation and state enforcement, thus sanctions imposed 'ex post.'[564] Law involves explicit standard setting, monitoring and enforcement, thus is incorporated within my definition of regulation. The other categories warrant a degree of explanation. Social norms act as a 'constraint' on behaviour, as they emerge as 'community standards' and are formed of expectations about acceptable and unacceptable behaviour within a given space. In turn, these guide our decision making about ourselves and others we interact with.[565] They can emerge within society more generally, or within organisations, institutions, and technological systems. Relevant to my approach are norms as more informal standard setting or rule making; whilst the consequences for breaching those standards may not include the coercion of the state, within organisations and technological systems there are mechanisms for their monitoring and enforcement.

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[558]L. Lessig, L. *Code: Version 2.0* (2006, New York: Basis Books); A. Murray, J. Feick & R. Werle, 'Regulation of Cyberspace' in Baldwin, R., Cave, M., and Lodge, M. (eds) *The Oxford Handbook of Regulation* (2010, Oxford University Press)

[559] Lessig (2006) (n 558)

[560] Murray *et al* (2010) (n 558)

[561] Lessig (2006) (n 558); L. Lessig, 'The Laws of Cyberspace' (1998) Presented at the Taiwan Net '98 conference, Taipei, March 1998 available < https://cyber.harvard.edu/works/lessig/laws_cyberspace.pdf> last accessed 11.7.22

[562] *Ibid;* Murray *et al* (2010) (n 558)

[563] *Ibid*

[564] *Ibid*

[565]*Ibid*

For Lessig, markets function to constrain our behaviour through price related signals.[566] This can influence access to technological systems, as well as the ways that they are engaged with. Rulemaking related to price related controls is relevant to both my regulatory space and incorporated within my definition of regulation given the involvement of explicit standard setting, monitoring, and consequences for subverting those rules. Finally, architecture regulates by design.[567] For many this is the most effective regulator of behaviour because it limits our ability to choose.[568] Whilst one can chose to disobey the law, or to behaviour outside of accepted social norms, architectural regulation facilitates that, by design, certain options will no longer be available to us.[569] Cyber-literature has pronounced architectural regulation, or regulation through code in the context of internet technology as the most potentially effective regulator of behaviour.[570] According to Lessig, to effectively comprehend a regulation, we must acknowledge the 'sum of these four constraints operating together' thus it is their interactions and cumulative effect that we must engage with.[571] This leads us back to the idea of a 'regulatory space' and the need to consider regulation in context, in practice, and throughout time.

3.6 The State as Regulator

By identifying the issue with which we are concerned (telegraph facilitated crime), and the means through which we experience regulation according to Lessig, we can begin to consider the regulatory space concerned with telegraph facilitated crime, loosely guided by these categories. The state does play a significant role as regulator in response to telegraph facilitated crime. The role of the law is relatively self-evident in that we are concerned with rulemaking to prevent or respond to criminal behaviour. In terms of legislation, there is direct legislation relative to the specific technology, as well as legislation prohibiting specific offences. Legislation is also relevant in this context considering the regulatory authority it assigns to the Post Office.

3.6.1 *Legislation*

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[566] *Ibid*

[567] *Ibid*

[568] L. Lessig, 'Law Regulating Code Regulating Law' (2003) 35(1) Loyola University Chicago Law Journal 1-14; K. Yeung, 'Regulation by Blockchain: the Emerging Battle for Supremacy between the Law of Code and Code as Law' (2019) 82(2) Modern Law Review 207-239

[569] Lessig (2006) (n 558)

[570] *Ibid*

[571] *Ibid*

In practice, the regulatory impact of legislation is sometimes lacking, with historical evidence[572] supporting the claim that legislative attempts to regulate technology-facilitated crime often lag criminogenic innovation.[573] Additionally, literature has maintained that law and legislation throughout the period often overlooked white-collar offences, such as fraud, blackmail and insider trading given the perception that crime was a product of lower-class offenders.[574] Whilst suggestions implying a complete lack of oversight have been met with critique,[575] the approach of the law in responding to economic offences can be distinguished according to the offender. For instance, the development of the law relating to embezzlement highlights a persistent class dimension whereby its application was framed according to the specific role of the offender within the business environment as worker.[576] Where white-collar offences such as forgery, embezzlement and obtaining money by false pretences did emerge in a corporate context, the scope of legislation has also been interpreted as lacking, and unable to address the breadth or range of offending, in a shifting business environment.[577] Whilst in the context of the corporation developing legal responses have been acknowledged, the criminal justice response remained inconsistent.[578] In relation to workers, however, there is a long history of laws strengthening the authority of the employer in order to protect property, including money.[579] The evolution of the criminal offence of embezzlement originally protected specific employers such as the Bank of England, and the Post Office from employee appropriation of money, and was later extended to encompass businesses more generally.[580] Additionally, both common law and statutory offences of fraud[581] were available throughout the period, though the distinction between civil and criminal offences, as well as the boundaries between offences amounting to fraud and other thefts were sometimes unclear. The offence of

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[572] For instance, see the following chapter on the loopholes in gambling legislation.

[573] L. I. Shelley, 'Crime and Corruption in the Digital Age' (1998) 51(2) Technology and International Policy: Essays on the Information Age, 605-620

[574] B. Godfrey & P. Lawrence, *Crime and Justice Since 1750* (2015, Routledge: London); J. P. Locker & B. Godfrey, 'Ontological Boundaries and Temporal Watersheds in the Development of White- Collar Crime' 46(6) British Journal of Criminology, 976-992; H. Berhoff & U. Spiekermann, 'Shady Business: On the History of White-Collar Crime' (2018) 60(3) Business History 289-304

[575] J. Taylor, 'White- Collar Crime and the Law in Nineteenth-Century Britain' (2018) 60(3) Business History 343-360; S. Wilson, 'Law, Morality and Regulation: Victorian Experiences of Financial Crime' (2006) 46(6) British Journal of Criminology 1073-1090; Wilson (2014) (n 412)

[576] B.S. Godfrey & J.P. Locker, 'The Nineteenth-Century Decline of Custom, and its Impact on Theories of 'Workplace Theft' and 'White Collar' Crime' (2001) 38 Northern History, 261- 273

[577] Taylor (2018) (n 575)

[578] *Ibid*

[579] Godfrey and Locker (2001) (n 576)

[580] Specifically, from 1742 the Bank of England criminalised workers taking financial instruments, with similar legislation being applied to the Post Office in 1765, whilst a 1799 Act extended the scope of embezzlement to apply to servants and clerks more generally; See Godfrey and Locker (2001) (n 575)

[581] C. Griffiths, 'The Honest Cheat: A timely history of cheating and fraud following *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67' (2020) 40 Legal Studies 252-268 for a discussion of the history of fraud

forgery was also dealt with by a myriad of legislation, and developed piecemeal in relation to specific documents that could be forged.[582] Further, larceny laws prevented the seizing of something belonging to another, without their consent, and taking it away.[583] There was significant crossover between fraudulent offences and offences of forgery, larceny, and embezzlement in practice.

Whilst this thesis is largely concerned with economic offences, it is important to acknowledge that much of the legislative response to the type of offences with which I am concerned may fall out of ideas related to white-collar criminality given that the very definition of white-collar crime is problematic. Indeed, literature concerned with white-collar crime often overlooks 'everyday' offending in the workplace despite those offences being economic in nature.[584] This can produce a misleading presumption that legislation was unable to address economic offences effectively in a general sense. However, workplace offending, and dishonesty were familiar to the criminal law. Beyond these offences, specific legislation assigned and defined responsibility and authority for the telegraph network, and specific 'post office' offences were introduced to prevent and enable responses to crime against the institution.

3.6.2. *Legislation Assigning Responsibility and Authority*

Prior to nationalisation, legislation regulated the activities of private companies responsible for the developing telegraph network. Provisions asserted state regulatory control over the activities of private companies in establishing and operating telegraph networks.[585] Of note is a provision requiring 'punishment of officers of the company for misconduct respecting messages' which held that 'any person in the employment of the company' who wilfully or neglectfully omits or delays the delivery or transmission of a message or divulges the contents of a message would be 'liable to a penalty not exceeding twenty pounds.'[586] The same legislation assigned priority over the wires to any associated with Her Majesty's Government.[587] Additionally the Act explicitly provided for the government to take 'control over the transmission of messages' should

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[582] Forgery Act 1861 (24 & 25 Vict. c.98); Forgery Act 1913 (3 & 5 Geo. c.27)
[583] Larceny Act 1861 (24 & 25 Vict. c.96); Larceny Act 1916 (c.50) s 18
[584] Godfrey and Locker (2001) (n 576); Griffiths (2017) (n 387)
[585] Telegraph Act 1863 (Vict. c.112) s 1-40
[586] *Ibid* at s 45
[587] *Ibid* at s 48

a secretary of state justify such action on the basis of 'an emergency.'[588] The relevant power dynamics and the underlying state authority over the network was therefore formalised through legislation. In 1868 legislation conferred authority to the Postmaster General to acquire, work and maintain Electric Telegraphs, [589] with the 1896 Act bringing the network directly within the control of the state, and retaining the provisions regarding the outlined offences applicable to those working the network.[590] In this sense there is a clear legislative purpose which sought to control the introduction, expansion, and control mechanisms applicable to the network.

3.6.3 *Post Office Specific Legislation*

Legislation concerned with the Post Office introduced specific Post Office Offences in 1837,[591] which was updated in 1908.[592] These included interfering with the transmission of or divulging the contents of the post and telegrams. Legislation was also introduced to 'protect' the Post Office, arguably both in terms of revenue and reputation. The Post Office (Protection) Act 1884 was to be read in conjunction with the Post Office (Offences) Act 1837, and made it an offence for anyone who 'forges or wilfully and without due authority alters a telegram or utters a telegram knowing the same to be forged, or wilfully and without due authority altered, or who transmits by telegraph as a telegram, or utters as a telegram, any message or communication which he knows not to be a telegram.'[593] This was the case regardless of an intent to defraud, and anyone convicted could be imprisoned with or without hard labour for up to 12 months. Where the person was employed by a telegraph company, and improperly divulged the content of a telegram, they could be guilty of a misdemeanour and liable for either a fine of up to two hundred pounds or up to a sentence of imprisonment of up to one year.[594] More generally, legislation tended to be introduced in relation to specific developments associated with the Post Office, which whilst covering offences familiar to the criminal law, was presented in relation to specific aspects of the business, such as the post, money orders, the telegraph, and telegraph money orders. Additionally, despite prohibitions against embezzlement more generally, legislation introduced a

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[588] *Ibid* at s 52
[589] Telegraph Act 1868 (31 & 32 Vict. c.110) 2
[590] Telegraph (Money) Act 1896 (Vict. c.40) 2
[591] POST 120/450 'Legislation applicable to the Post Office'; see also Post Office (Offences) Act 1837 (1 Vict c.36)
[592] Post Office Act 1908 (7 & 8 Edw. c.48) 2
[593] Post Office (Protection) Act 1884 (47 & 48 Vict. c.76) s 11
[594] *Ibid*

specific offence prohibiting 'embezzlement by an officer of the Post Office.'[595] More broadly, the Malicious Damage Act 1861 made it a misdemeanour offence for anyone to unlawfully and maliciously prevent or obstruct the 'conveyance or delivery of any communication sent by telegraph,' punishable by up to two years imprisonment, with or without hard labour.[596] The Act also created an offence of 'attempting to injure' electric or magnetic telegraphs, punishable by up to three months imprisonment with hard labour, or a fine of up to ten pounds.[597] Thus attempts to protect the property associated with the telegraph, as well as the integrity of the network applied to both staff working within the network, and 'outsiders.'

There is some overlap with general broader legislation regarding the offences, but it is noted that given the position of trust and authority occupied by Post Office servants, the specific provisions in Post Office legislation tended to facilitate harsher sentences.[598] What is clear from legislation pertaining to relevant offences is that the specific context of these offences occurring against, or within, the Post Office demanded a distinct approach to legislating which accounted for the position of the Post Office as an arm of the state, but also the position of trust Post Office servants were interpreted as assuming. Additionally, the fact that the Post Office compiled and preserved the legislation reveals the extent of the powers associated with the organisation, emphasizing their role in delivering justice or regulating in practice.

3.6.4. *State Police*

Given the conception of regulation outlined above, we must also consider enforcement, and so the role of the police. As established previously in this chapter, throughout the period with which I am concerned we see the 'gestation' of the new police, and a gradual shift towards rationalisation.[599] In relation to the telegraph facilitated crimes outlined in the previous chapter, the state police are an obvious area of consideration given that they both enforced the laws applicable to the offences, but also policed activities committed in reliance on the network to contribute to efforts to cause political unrest, for example. Thus the (state) policing of the technology related to responding to offences committed using the network, as well as use of the network deemed a threat

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[595] Larceny Act 1861; 1916 (n 582)

[596] Malicious Damage Act 1861 (24 & 25 Vict. c.97) s37

[597] *Ibid* s8

[598] See, for instance, Post Office (Protection) Act 1884 (47 & 48 Vict. c.76)

[599] C. Emsley, 'The Birth and Development of the Police' in T. Newburn (ed) *Handbook of Policing* (2008, 2nd Edition, Cullompton: Willian Publishing)

to power dynamics, political stability, and traditionally conceived notions of hierarchy.[600] Indeed, literature examining the police and the electric telegraph tends to focus on how the police used the network to enforce control, and the impact of the telegraph on policing as opposed to the policing of telegraph facilitated crime.[601]

Literature has identified a focus within policing on lower class criminals, often in relation to the prioritisation of the protection of property.[602] Initially premised on a 'moral' view of crime, criminality tended to be initially situated within specific subgroups of society, with the stereotypical criminal poor inherently lacking in morality.[603] Whilst from the mid-nineteenth century onwards attitudes towards criminality shifted in terms of what produced criminality, from individualistic explanations towards broader social conditions which produced the offender,[604] a 'continual focus on crime as primarily located within the lower end of the male working class' meant that other offenders (and therefore offences) were marginalised from police practice to a degree.[605] Thus, the state as legislator and enforcer of the law is a relevant area of consideration, but given the broad patterns identified in relation to the focus and enforcement of the law at this time, it is conceivable that other regulations beyond state sponsored law and order played a significant role.

3.7 The Post Office

The role of the state as a regulator in this context is also significant when we consider the Post Office. Whilst the Post Office was technically part of the state throughout this period, I have justified evaluating the regulatory role and mechanisms of the Post Office as distinct, given the plurality that is evident within state sponsored regulation. The purpose of regulation is filtered through organisational aims and values that exist within the Post Office, rather than being attributable to the State as a whole. In terms of the regulatory capacity of the Post Office, it aligns broadly with Lessig's modality of markets in that it prioritised commercial aims.[606] As the following two chapters will demonstrate, price related signals were inherent to the regulatory approach adopted by

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[600] Mather (1953) (n 127); C.A. Williams, *Police Control Systems In Britain, 1775- 1975: From Parish Constable to National Computer* (2014, Manchester University Press; Manchester) Chapter 5

[601] Mather (1953) (n 127); I.R. Morus, 'The nervous system of Britain': space, time and the electric telegraph in the Victorian age' (2000) 33 British Journal for the History of Science, 455-475

[602] C. Emsley, *Crime and Society in England 1750-1900* (2010, 4th Edition, London: Routledge)

[603] B. Godfrey & P. Lawrence, *Crime and Justice Since 1750* (2014, 2nd Edition, London & New York: Routledge) See chapter 7

[604] M. Weiner, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914* (1990, Cambridge: Cambridge University Press) at 12

[605] Godfrey & Lawrence (2014) (n 603)

[606] Lessig (2006) (n 558)

the Post Office. In this sense they had control over an important regulatory tool which could be harnessed in their approach to risk management against the threat of crime. Additionally, given the nationalisation of the telegraph, the Post Office was not subject to market competition more broadly, and this offers important contextual information through which to interpret the subjective experience of regulation and its impact in practice.[607]

Within the institution we see rulemaking in relation to the processes and procedures that apply where there are suspected offences against the organisation, but also where it is suspected that staff have acted dishonestly (even without evidence of an offence). We witness the development of monitoring mechanisms, and formalised outcomes designed to respond to rule breaking. There is also evidence of the development of norms within an organisational culture that whilst more informal, had regulatory effect given the mechanisms of supervision and consequences for acting outside of those norms, even where formal rule breaking could not be evidenced. These are reflected in a culture of suspicion, evidenced in the following chapters, for instance. The Post Office also relied on the architecture of the network- the network design, infrastructure and rules controlling use, to attempt to prevent crime, or at least manage the risk.

Finally, we see internal enforcement mechanisms developed and expanded to facilitate an internal response to crime. As the following chapter details, an internal Investigation Branch (IB), collected evidence, apprehended offenders, and referred suspected offenders for either prosecution or institutionally mandated disciplinary processes. Beyond this, an internal branch was responsible for the private prosecution of offenders. Though inherently connected to the state as regulator given their status, these processes emerged outside of the usual mechanisms of control and oversight associated with the rationalisation of the criminal justice system, and therefore operated somewhat distinctively, allowing for the influence of institutional cultures and values as opposed to those associated with formalised state processes. This justifies treating the Post Office mechanisms of policing, surveillance, and control as distinct from those associated with the state in a formal context, given the significance to my approach of acknowledging influences such as culture and social context on the social life of regulatory practices.[608] There is duality in the overall approach within the Post Office that is reflective of Braithwaite's proposition that institutions incorporated risk management approaches towards the prevention of crime that have since migrated

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[607] Losoncz (n 552)
[608] Scott (2001) (n 433); Black (2001) (n 423); Hancher & Moran (n 432)

into formal state policy.[609] They both responded to offenders and sought to punish them, as well as worked proactively to prevent offences through a variety of means. There is a key distinction that must be made here between the types of behaviour the Post Office sought to control as opposed to the behaviours that fell within the realm of the state police more generally.

So far, we have witnessed regulation in the context of telegraph-facilitated crime control emerge directly or indirectly from the state, but also from the 'market' given that I am treating the Post Office as a regulator as distinct from the legislature and formal enforcement mechanisms associated with the state. Beyond the institutions with formal authority for regulating in this context, and drawing on the regulatory space metaphor, we can also hypothesise that the social incorporation of the telegraph gave rise to other sites and sources of regulation.

3.8 Self-Regulation

Self-regulation, or the emergence of norms within different communities, is relevant given my definition of regulation and the influence of regulatory space.[610] I will therefore consider the mechanisms of self-regulation from those who use the technology. I evaluate as far as is possible where norms determining use emerged from, and the influence of the formal regulatory system on the development of informal social rules.[611] We must also acknowledge plurality here, given that norms associated with use would vary depending on the community that they are associated with. Some 'norms' are formalised within financial and business sectors for instance.[612] These are essentially 'market' regulators, but rather than markets associated with control of the network, they are markets which incorporate the network into everyday use. The impetus behind establishing control mechanisms is the prevention of economic harm, and self-regulatory mechanisms such as the emergence of industry norms, cultures and rules operate within these communities and organisations.[613] I will therefore account for business practice, risk-management strategies, and preventative approaches.

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[609] Losoncz (2017) (n 552)

[610] Hancher & Moran (n 432); Scott (2001) (n 433)

[611] Lessig (2006) (n 557); Murray *et al* (2010) (n 557); for a wider discussion about the control of trust relationships in the context of personal relations see S. P. Shapiro, 'The Social Control of Impersonal Trust' (1987) 93(3) American Journal of Sociology 623-658

[612] Black (2001) (n 423)

[613] J. Braithwaite, 'Enforced Self-Regulation: A New Strategy for Corporate Crime Control' (1982) 80(7) Michigan Law Review 1466-1507; V. T. Covello & J. Mumpower, 'Risk Analysis and Risk Management: An Historical Perspective' (1985) 5(2) Risk Analysis 103-120

Others remain informal, for instance in relation to individual users in society more generally. This is an important aspect of consideration for my approach given that I maintain that to understand regulatory space, we must acknowledge the range of regulators, regulations, but also their social context. Chapter 1 has highlighted the process of social incorporation of the telegraph network, and within each of these spheres we see the emergence techniques to manage any perceptions of risk. There is also an important relationship to comment on here in relation to processes of responsibilization. Therefore, as far as is possible, I will take account of the role of users, processes that attempted to responsibilise them, and measures used when interacting with the technology to manage the risk of crime. The perceptions of risk fluctuate according to industry and user, but the distribution of preventative crime control measures in accordance with the social incorporation of the telegraph network is an important consideration that is often overlooked in the history of the regulation of crime and technology.

Whilst the role of the state is self-evident within the context of legislation, within the context of what Lessig would refer to as 'norms,' 'markets,' and 'architecture'[614] we see a diversification of regulators and regulation. The mapping of the regulatory space in turn allows for the identification of relevant archival material fundamental to my empirical approach. By tracing the social incorporation of the electric telegraph, I have identified various 'regulatory zones,' defined as such according to their proximity, power and authority, and self-perceived need to either manage the risk of crime or respond to telegraph-facilitated crime. By considering the regulatory modalities emerging from the law, the police, the Post Office, industry, and society more generally, we can evaluate not only the extent and form of the regulatory response to telegraph-facilitated crime, but also consider the interactions between crime, regulation, and regulators, and understand more about the social life of regulation in this context.

3.9 Conclusion:

This chapter has sought to outline and justify my approach to regulation, and therefore the foci of my archival approach. Engaging with regulatory scholarship, governance literature, regulatory criminology, and cyber-regulation literature, I have developed an approach to support the identification and analysis of the 'regulatory space' within

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[614] Lessig (2006) (n 558)

which telegraph-facilitated crime was managed. The 'definitional free for all' associated with academic applications and accommodations of regulation, meaning regulation is operationalised differently across and within varying contexts, does not necessarily produce incoherence,[615] and does not undermine my approach. This thesis accepts regulation as connected to a more specific goal, thus the broader regulatory regime that I am interested in is a 'means for achieving [those] regulatory goals.'[616] Whilst broader contextual considerations more traditionally associated with governance will be acknowledged (particularly in Chapters 4, 5 and 6) this will be for the purposes of interpreting and analysing the nuances of the relationship between regulation and crime in this context, as opposed to identifying mechanisms of governance more broadly. This approach accounts for regulation that has a 'crime control' goal but acknowledges the range of regulators and regulations that may contribute to this. Recognising the pluralisation of regulation and regulators both within and beyond the state in the 19th and 20th centuries is considered particularly essential given the tendency to emphasise departures and novelty in contemporary regulation and cyber scholarship.

Bearing in mind the significance of social context and having taken an approach to understanding the impact of the telegraph on crime as one that is driven by its social incorporation, these 'sites of use' have been interpreted as potential 'sites of regulation.' This has significantly informed my archival approach to identifying, mapping, and analysing the regulatory landscape. I have therefore outlined the relevant 'sites' of regulatory control, accounting for not only various regulators, but also various mechanisms of regulation. I have introduced the role of the state, the Post Office, and various (business and more informal) communities as regulators. Additionally, I have identified the range of regulatory mechanisms available across the regulators, including legislation, state police enforcement, Post Office policy and practice, Post Office enforcement and prosecution, architectural control of the network, self-regulation, and markets/ price related controls. The combination of regulators and regulatory modalities forms the 'regulatory space' with which my empirical archival research is concerned.

I maintain that by analysing these regulators and regulations in practice, accounting specifically for broader concepts of governance, I will take account of social, economic, and cultural contexts which can influence the interactions between crime,

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[615] J. Black, 'Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a 'Post Regulatory' World' (2001) 54 Current Legal Problems 103-47, 140
[616] May, P. J. 'Regulatory regimes and accountability' (2007)1 Regulation & Governance, 8-26, 9

communications technology, regulation, and regulators. Therefore, I aim to situate the relationship between crime, communications technology, and regulation in a historical context to allow for an analysis that avoids a schematic approach to history and the limitations of preoccupations with novelty. The following chapter will build on this by analysing the pluralised and fluctuating regulatory response of the Post Office towards telegraph-facilitated crime.

Chapter Four: Crime and Internal Post Office Regulation: Addressing Dishonesty in the Post Office

'Whenever a fraud or imposture of any remarkable character is brought under public notice, people begin to talk and write as if it were possible to eliminate the cheating element from mankind. Experience however, of many ages duration, teaches us to be far from hopeful of attaining such a result by any method that is practicable.'

Birmingham Daily Post, 1873[617]

4.1. Introduction

Whilst the previous chapter introduced my approach to regulation, and the sites and mechanisms of regulation that this thesis will consider, this chapter will consider regulation applied by the Post Office to either prevent, or respond to, telegraph facilitated crime. This chapter focuses on the internal, institutional approach to regulating telegraph-facilitated crime in the Post Office. It is therefore concerned with offences where the Post Office was conceived as 'victim' of the offence, or where a Post Office servant was suspected of dishonesty. It will consider the interaction between crime and regulation, the reasons for regulation, and the success of regulatory mechanisms. It is proposed that whilst some regulatory mechanisms were imposed specifically to combat the issue of telegraph crime, the internal approach to regulation was often concerned by economic and reputational concerns. Additionally, whilst there was legislation in place criminalising certain behaviours, Post Office staff were often not prosecuted for breaking the law; the issue tended to be dealt with as one of dishonesty, and prosecution was reserved for the most serious cases. Whilst we might assume that this demonstrates a tendency to trivialise 'low level' white-collar or workplace crime, the institutional response was still significant, and reflects an attempt to protect organisational reputation. Whilst from an economic and institutional perspective, this is understandable, to at least some degree, in practical terms it may have had far reaching implications on the social construction of 'everyday' white-collar frauds in particular. Additionally, in terms of the success of prevention, I argue that the system of regulation was incoherent due to differing aims and varying evaluations of risks posed by crime and the telegraph, across the branches of the Post Office. Finally, it is also maintained that where there is sufficient economic motivation for the imposition of regulation, regulation through control of the use and functioning of the network was most effective, in terms of preventing, detecting, and penalising offenders.

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[617] BNA, Birmingham Daily Post, 'Fraud' 27th August 1873

This chapter will consider various regulation events chronologically, demonstrating their purpose as either preventative or responsive, and evaluating the reasons for their imposition. Internal regulation was both multi-layered and multi-faceted. An internal 'policing' system developed over time, which, had the purpose of detecting and preventing crime. On a day-to-day level the system seemed concerned with understanding methods of telegraph-facilitated crime, for the purposes of effective regulatory responses in part, but additionally in ensuring institutional standards of efficiency and reliability were upheld. The relatively low level of prosecutions may seem surprising alongside the mechanism of the internal force designed to deal with crime in the Post Office, but it is proposed that when considered together, they provide evidence of the essentially internal approach to dealing with telegraph-facilitated crime, and the prioritisation of institutional reputation and effectiveness. It will be shown that where a high level of economic risk was associated with experienced or expected fraudulent behaviour, a more thorough approach to both prevention, detection and punishment was evident.

4.2 The Early Years of the Telegraph Network

It is firstly important to note that the Telegraph Network was initially operated privately and was not nationalised until 1870. Foreman-Peck describes the early telecommunications network as 'a curious exception in Victorian industrial policy' due to its initial social incorporation as a private system, which was nationalised after 24 years, 'because of public concerns about the service.'[618] Concerns relating to cost, inaccuracies and inefficiencies, and private companies operating the network having a monopoly on the news, lead to a process of nationalisation, whereby the 'Post Office saw an opportunity to remedy' these defects, by employing 'existing sub-post offices as telegraph stations in a Post Office- owned system.'[619] The Telegraph Act 1868[620] began the process of nationalisation, and in 1869, prior to the assumption of control over any of the telegraph lines, the Post Office was granted a monopoly on electric telegraphs.[621] The purchase was completed in January 1870, and control was assumed by the Post Office in February 1870. The result of nationalisation on a broader scale included the introduction of uniform tariffs, which in turn resulted in

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[618] J. Foreman-Peck, 'Competition, Co-operation and Nationalisation in the Nineteenth Century Telegraph System' (1989) 31(3) Business History, 81
[619] *Ibid*
[620] The Telegraph Act 1868
[621] The Telegraph Act 1869; M.S. Lehane, 'The Victorian Internet and Mallow' in L. Power, S. Crowley, K. Myers, J. Caplice, Rev. R. Forde, *Mallow Field Club Journal* (2002, No 20, Printed by Mallow Printing Works)

increased public use and accessibility, thus increased revenue.[622] The fact that public confidence and concerns regarding the privately operated 'communication monopoly'[623] contributed to the process of nationalisation is significant. The institution of the Post Office was therefore concerned with economic success, efficiency, and uniformity, as well as institutional reputation from the outset. This extended to an emphasis on increasing confidence in the service itself. More broadly, it must also be acknowledged that whilst telegraphy was encompassed within the Post Office, these organisational values pre-existing nationalisation, given the range of services already offered within that space and the status of the Post Office as an arm of the state.

The incorporation of the electric telegraph into the Post Office saw telegraph-facilitated crime encompassed within existing internal crime prevention and response mechanisms within the institution. As a result, some measures utilised to regulate telegraph facilitated crime pre-existed the nationalisation of the network. In particular, an internal investigatory mechanism was established in the Post Office in 1816; prior to that, investigatory work within the post office had been the responsibility of the Solicitor to the Post Office.[624] In 1816, responsibility for investigations was transferred to the Secretary's Office, where the investigators became known as the Missing Letter Branch.[625] From 1823 Bow Street runners supported the work of the Missing Letter Branch, and they were later replaced by Police Officers following the foundation of the Metropolitan Police in 1829.[626] Whilst initially the Missing Letter Branch took on general investigation duties, the introduction of the penny post in 1840 saw use of the postal network expand, and crime associated with it increase. As a result, in 1848 an office was created specifically for investigation duties under the Post Office Inspector General.[627] The Missing Letter Branch continued to operate simultaneously, but its work was restricted to missing letters only. However, following the abolition of the post of Inspector General in 1858, the Missing Letter Branch was reorganised, and strengthened by the incorporation of staff previously involved in investigations under the Inspector General. In 1869 it was further re-organised, and made a distinct unit of

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[622] Weller & Bawden (n 11) at 791

[623] BNA, Western Daily Press, 'State Telegraph' Monday 13th April 1868

[624] POST 120/149, 'Memorandum prepared for the Committee…' in *General Post Office, Committee on the Confidential Enquiry Branch of the Secretary's Office. Report and Proceedings. 1900-1901*

[625] *Ibid*

[626] *Ibid,* POST 122/ 8809, 'Post Office Board: The Investigation Branch' in *GPO Investigation Branch History & Report*

[627] POST 120/149, *General Post Office, Committee on the Confidential Enquiry Branch of the Secretary's Office. Report and Proceedings. 1900-1901* at 9

the secretary's office.[628] In 1883 the Missing Letter Branch was renamed the Confidential Enquiry Branch, and by 1901 the duties of the Confidential Enquiry Branch were restricted (in theory) to enquiries only, whilst other duties (such as suggesting adequate regulatory responses to criminal events) were transferred to other branches of the Secretary's Office.[629] The Prosecution Division of the Post Office Solicitor's Office was responsible for prosecutions; thus the staff of the Confidential Enquiry Branch was made up of travelling Clerks, managed by a director, whose role was to enquire as to suspicious or problematic use of Post Office services. In 1908 the branch was renamed the Investigation Branch, which in 1934, because of the reorganisation of the General Post Office, became one of the administrative departments of the Headquarters structure of the General Post Office.

The existence of this internal investigation mechanism is significant for the purposes of this thesis. Their role in investigating misuse of the telegraph network is important in that it highlights both the conceived complexity of telegraph-facilitated fraud and emphasises that the purpose of investigation was at least in part to facilitate more effective regulation. This is evident through the initial imposition of a feedback mechanism to the relevant departments of the Secretary's Office who could then impose regulatory changes.[630] These regulatory changes were often imposed at the design level; changes to the way that both staff and citizens could interact with and use the network. Thus, another important mechanism of regulation that will be discussed in this chapter is the use of the technology or network itself to regulate/ limit criminal use of the network.

Finally, post office rules, policy and regulations, and laws applicable will also be considered. I will argue that the combination of an investigatory body, alongside other branches of the secretary's office, the existence of internal regulation and policy, as well as externally imposed laws, sought to respond to the threat of, as well as instances of, telegraph facilitated crime through various means. However, outward measures taken were limited by reputational institutional concerns, and internal measures limited by cost and efficiency concerns. Hence, effectiveness of regulation was limited by determinants affecting use of the technology in a broader sense.

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[628] *Ibid*; POST 122/ 8809, 'Post Office Board: The Investigation Branch' in *GPO Investigation Branch History & Report*
[629] *Ibid*
[630] *Ibid*

4.3 Nationalisation

Through tracing the process of nationalisation, it is evident that the process was connected to ideals related to progress.[631] The main rhetoric in favour of nationalisation was one of increased efficiency, lower tariffs and enhanced development of the network.[632] Private telegraphy had developed under 'a conservative policy of expansion;' public access was uneven, and the private company emphasis on maximisation of profit was interpreted as undermining the potential to establish a 'comprehensive and efficient national system.'[633] The prevention of use of the telegraph to facilitate fraud came into the narrative in a very limited sense, although there is some evidence of nationalisation as a prevention against fraud being conceptualised in the wider public sphere. Newspaper articles advocating for government control of the network cited instances of fraud persuasively in favour of nationalisation.[634] From an internal and governmental perspective, The Committee on the Electric Telegraph Bill[635] referenced concerns in relation to the protection of privacy (secrecy) were the Network under the control of government, insinuating that public concerns also included whether government officials would divulge the contents of messages.[636] Indeed, a legislative emphasis on compelling staff not to divulge the contents of messages is evident both prior to, during, and after nationalisation. This was generally articulated as a means to secure the perception of secrecy of messages sent, and thus ties into notions of institutional reputation and efficiency rather than directly to crime prevention.

A report produced by Mr Scudamore, one of the Assistant Secretaries of the General Post Office, in July 1866, exploring the potential of nationalisation, engages to a very limited extent with the benefits of such a system from a fraud prevention perspective.[637]

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[631] Wenzlhuemer (n 8); I.J. Cohen, 'Towards a Theory of State Intervention: The Nationalization of the British Telegraphs' (1980) 4(2) Social Science History 155-205
[632] Special Report from the Select Committee on the Electric Telegraphs Bill; Together with the Proceedings of the Committee, Minutes of Evidence, and Appendix (16 July 1868) House of Commons 435
https://parlipapers.proquest.com/parlipapers/result/pqpdocumentview?accountid=14664&groupid=95672&pgId=29867910-e59f-4616-81be-a17071080d6e&rsId=16DC4AF7166
[633] Cohen (1980) (n 629) at 171-2
[634] BNA, Irish Times, 'State Telegraphs' 6.4.1868
[635] Select Committee on the Electric Telegraphs Bill (n 630)
[636] Select Committee on the Electric Telegraphs Bill (n 630) at 33
[637] F. I. Scudamore, 'Reports to Postmaster General on Proposal for transferring to Post Office Control and Management of Electric Telegraphs throughout the United Kingdom' (1867-68) (House of Commons Papers, No. 202) available

Reasons proposed in favour of nationalisation included: the cost of transmission of messages being too high under the private companies; inefficiency relating to transmission delays; a lack of diffusion in terms of granting access to the network to 'important towns and even whole districts;' the remoteness of telegraph offices;[638] the inherent focus on private profit as hampering development of the network from a user perspective; and that, under centralised control, the network could benefit both the public, and secure a large revenue for the state.[639] The report considered both the Belgian and Swiss nationalised telegraph systems, and found both to be developing much more rapidly. It attributed the 'feeble growth of telegraphic correspondence in the United Kingdom … to the fact that the managers [of the private networks]… regard the business…merely as a commercial undertaking.'[640] Concerns relating to the potential transfer included the ability of Postmasters to undertake greater responsibility and more challenging work relating to the operation of the network.[641] Highlighting the social perception of the technology as threatening, this public idea that Postmasters may be unable to appropriately manage the network also emphasises the unfamiliarity with the technology. Indeed, the purpose of the potential transfer of the network to the Post Office is posited as enabling telegraphs to be brought closer to the population, increasing interaction, familiarity and use, whilst simultaneously allowing for the development of the network which, prior to nationalisation, was performing and expanding at an unacceptably slow rate.[642] From the outset, the purpose of the nationalisation was tied up in notions of outward appearances; not wanting to 'fall behind' in terms of development as compared with other, less wealthy and, in the mind of Mr Scudamore, less developed, countries. Eminent concerns included lowering the costs to increase public use and widening the network in terms of its physical architecture. The future of the network, and the potential for Telegraph Money Orders to be incorporated, was envisaged from the outset, and the economic value that a State controlled network would bring underpinned much of the move towards nationalisation.[643] Whilst the private operation of the network had been criticised for its emphasis on profit,[644] public revenue was not absent from official thinking.

<<https://parlipapers.proquest.com/parlipapers/result/pqpdocumentview?accountid=14664&groupid=95672&pgId=55546c0c-9362-4dbf-8367-1da7fa3b1bb4&rsId=16DBF5B320A>> last accessed 4.11.2019

[638] Given that the private network expanded alongside the railway network, many telegraph offices were placed in rail stations, which were not considered sufficiently central for many towns.

[639] Scudamore (n 637) at 9

[640] *Ibid* at 18

[641] *Ibid* at 27-28

[642] *Ibid* at 29

[643] *Ibid*

[644] See Cohen (1980) (n 631)

The report mentions the possibility of fraud only once, and in regards to the possible introduction of a system of Telegraphic Money Orders (TMOs), which, at the time, had been incorporated into the network in Switzerland.[645] The report simply maintains that the TMO system would protect the business from 'fraud on the part of the public by the regulation which requires that no money order shall be paid unless it corresponds with a… telegraphic advice' in the same way that the ordinary money order system allowed.[646] Thus, whilst, as Chapter 2 indicated, by this time there were instances of business and markets in particular being defrauded over the network, the concern in relation to nationalisation was the institution becoming a victim of fraud, as opposed to users of the network more generally. Echoes of the *caveat emptor* doctrine, emphasising individual responsibility for protection from fraud, and associated victim blaming, perhaps go some way to explaining the lack of attention given to misuse of the network outside of the institutional context.[647] The potential for economic loss gave rise to reference to fraud prevention, but only where the 'victim' was the institution itself. It was the public who were conceived as the potential fraudsters, rather than those operating the network, and again, this was only in relation to the transmission of money orders.[648]

Importantly, whilst it is only discussed here in relation to potential incorporation of TMOs, discussion indicates an understanding that the network architecture and operation can be organised in a way that prevents crime. This will be discussed later in this chapter, but from the outset it is important to note that the incorporation of any architectural crime prevention methods inherent in the design of the network will operate on the basis of institutional constructions of the potential criminal and victim, hence from the 'designer's' perspective. In this case it seems that the potential criminal is the wider public, and the potential victim, the network itself. As a result, effective regulation from an architectural prevention method perspective is dependent, presumably, on an accurate assessment of potential crime and criminals. In this instance, prior to nationalisation, the network itself was arguably not sufficiently incorporated at a social level to understand the potential crime ramifications. Additionally, the technology itself was, at this time, still somewhat unfamiliar. Its potential for telegraph facilitated crime was being exploited, but by few, thus the potential victim group, as well as perpetrator group, was still small. Crime prevention does not appear to have been a concern, and this could be attributable to both the fact that the technology was not socially diffused, and the network itself could only be

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[645] Scudamore (n 637) at 16
[646] *Ibid*
[647] Van Driel (2018) (n 7)
[648] *Ibid*

conceived as a potential victim in the future (through the potential introduction of the TMO).

Inherent in the concept of institutional reputation, are notions of efficiency and reliability. It is important to acknowledge that the acquisition and expansion of the network under the Post Office was the ultimate priority for Scudamore, who was given responsibility for managing the telegraphs, and was 'driven to demonstrate the accuracy of his earlier predictions of his department's ability to operate a complex industry.'[649] In advocating nationalisation, Scudamore had made promises relating to the expansion of the network as well as a reduction in associated costs.[650] Expansion, efficiency, and the perceived economic success of the network drove the approach to and post nationalisation; Scudamore's 'drive to expand the system rapidly and his refusal to countenance any opposition'[651] reflected a separation between the lofty goals of the institutional 'white-collar' approach and the experiences of those outward facing staff and broader public social and economic accountability. Institutionally Scudamore's focus appears to have facilitated a blinkered or narrow approach to the development and expansion of the network, which, as will be argued in the following chapters, included a preoccupation with perceived efficiency, progress, and an emphasis on resisting external ideas or involvement with the operation of the telegraph network.

4.3.1. *Post Nationalisation*

Whilst crime prevention was not identified as a specific concern during the process of nationalisation, ideas about efficiency and reputation can arguably indirectly tie into ideas about crime prevention in practice. There is evidence to suggest that emphasis on efficiency, reliability, and upholding a good institutional reputation, may have impacted potential for effective crime prevention. In a report written in 1871, following nationalisation and large scale re-organisation of the network, whilst Mr Scudamore does not make direct reference to notions of crime or fraud prevention, his discussion of expectations and training for staff, in particular, indicates measures taken that should aid crime prevention in practice.[652] The report details the process of re-

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[649] C. R. Perry, *The Victorian Post Office: Growth of a Bureaucracy* (1992, Royal Historical Society: Boydell Press) 121
[650] *Ibid*
[651] *Ibid;* See also C.R. Perry, 'Frank Ives Scudamore and the Post Office Telegraphs' (1980) (12)(4) Albion: A Quarterly Journal Concerned with British Studies, 350-367
[652] F. I. Scudamore, 'Report on Reorganisation of Telegraph System of United Kingdom' (1871) Command Papers, C 304, available < https://parlipapers.proquest.com/parlipapers/result/pqpdocumentview?accountid=14664&groupid=95 672&pgId=70409254-6466-4d9f-aa96-9302c595ebce&rsId=16DBF5B320A> last accessed 1.11.19

organisation of the telegraph system of the United Kingdom, and its integration into the Post Office. Whilst much of the emphasis of the report is on the process of expanding the network, and lowering transmissions costs, to promote wider public use and dilute public fears associated with the network, there are elements which speak, though not directly, to the prevention of crime and misuse of the network by staff members.

The potential for staff to misuse the technology to facilitate criminal ends is not directly engaged with. However, particularly in reference to telegraph delivery boys, much emphasis was placed on ensuring they work according to strict rules and guidelines.[653] Whilst elements such as their outward appearance were deemed to be of particular importance, the report also discusses the value of training manuals and guidebooks instilling the correct processes in terms of their role in the network.[654] For example, instructions issued to Telegraph Boys specific to the delivery process included instructions never to write out messages for another person, and never to divulge any official information derived in their capacity as messenger.[655] Whilst prior to the transfer they were conceived as 'a set of irreclaimable scamps,' it seems that the imposition of, and adherence to a strict set of rules relating to proper appearance and behaviour had a positive effect on the delivery boys as a general rule.[656] These rules were not only imposed internally however; it appears the guidelines imposed on delivery boys were a mechanism of reinforcement as opposed to the only source of that rule. The prevention of divulgement of telegraph messages was imposed at a statutory level,[657] but the institutional mechanisms served to reinforce the responsibilities on staff.

It is apparent, therefore, that an inherent presumption within the organisation saw certain staff as a threat to institutional reputation. This echoes Hindmarsh-Watson's findings related to the telegraph boy, and the specific class-based concerns that emerged as a result.[658] Whilst services offered by the Post Office (particularly the telegraph) attracted the elite,[659] the service itself was facilitated by staff drawn from the lower ranks of society, facilitating a 'class-convention' collision.[660] To protect the reputation and revenue of the PO these interactions were heavily regulated, with the

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[653] *Ibid*

[654] *Ibid*

[655] *Ibid* at 81

[656] *Ibid*

[657] The Telegraph Act 1863, s 45

[658] K. Hindmarch-Watson, 'Sex, Services and Surveillance: The Cleveland Street Scandal Revisited' (2016) 14(6) History Compass 283-291; K. Hindmarch-Watson, 'Male Prostitution and the London GPO: Telegraph Boys' "Immorality" from Nationalisation to the Cleveland Street Scandal (2012) 51(3) Journal of British Studies 594-617

[659] Hindmarch-Watson (2012) (n 658) at 603

[660] Hindmarsh- Watson (2016) (n 658) at 289

lower class staff a potential threat to revenue and reputation.[661] Initially reflected through strict training manuals, codes of acceptable behaviour and uniform,[662] these concerns are also evidenced through the approach outlined by Scudamore.[663]

The same report also details technical training given to staff, so that they could operate the telegraph technology with more knowledge than simple use required. The purpose of this was so that they could fix small technical issues that arose and identify when something had gone wrong, essentially allowing for them to quickly respond to mistakes and errors and ensure efficiency.[664] Arguably, this would have the double effect of allowing specially trained staff to notice errors imposed for the purposes of facilitating crime. It also granted them greater technical knowledge of the system, which, as we saw in the previous chapter, facilitates greater manipulation of it for deviant purposes. It does not appear that a well-thought-out internal threat of crime was conceptualised from the outset; rather a focus on efficiency, institutional reputation, and reliability saw certain measures imposed that had the dual effect of preventing criminal use of the network, at least to some extent, although of course this is difficult to quantify. Changes in relation to telegraph boys, particularly the rules around not divulging messages or writing down messages do suggest a potential recognition however, that employees might be made use of to perpetuate low level fraud.

4.3.2 *Legislative attempts to protect the Integrity of the Post Office Network*

After nationalisation, initial security concerns related to the integrity of the network were sometimes conceptualised as emerging as a result of its international nature, and the potential for this to undermine legislative efforts to prevent disclosure of the contents of telegrams. Concerns emerged related to the potential for employees to divulge messages to third parties, and in particular, the press. The Telegraph Act 1863 was introduced prior to nationalisation and made it an offence for anyone working the lines to wilfully or negligently delay transmission or delivery of messages, or to improperly divulge the content of messages.[665] Post nationalisation, further legislation clarified that the provisions in the 1863 Act were applicable to those in the employment of the Post Office.[666] The provisions of the 1868 Act conveyed authority to the Postmaster General

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[661] *Ibid*
[662] Scudamore (1871) (n 652) at 81; Hindmarch-Watson (2012) (n 658) at 600-601
[663] Scudamore (1871) (n 652)
[664] *Ibid*
[665] Telegraph Act 1862 (s 34); See POST 78/ 848
[666] Telegraph Act 1868 (s 20)

(PMG) to 'make regulations to carry out the intentions of the legislation to prevent the improper use by any person in his employment acting on behalf of any knowledge he may acquire of the contents of any telegraphic messages'.[667] Legislation therefore implicated the staff of the Post Office, and also acknowledged the regulatory authority of the Postmaster General over employees.

However, the fact that the network was international led to issues with legislative capture. Specifically, whilst the Post Office enjoyed a national monopoly over the telegraph, numerous companies were involved in the transmission of telegrams to and from the United Kingdom, and those workers (even when located in the United Kingdom) would fall outside of the scope of provisions.[668] The legislation only applied to Staff working the lines, who were British, and working for a British Company authorised by Parliament to construct and maintain telegraphs.[669] The Solicitor General was therefore concerned that workers working for foreign companies, but situated in the United Kingdom would not be criminally liable for the disclosure of the contents of telegrams to a third party. Further, the Treasury Draughtsman wished to explore the potential of legislation to prevent disclosure outside of the United Kingdom.[670] This dilemma reflects the complexity associated with the development of an international network with a range of public and private bodies interconnected through the transmission and delivery of messages. Whilst it was accepted that a foreign subject could not be held criminally liable for disclosure outside of the United Kingdom, questions were raised as to whether a British subject could 'properly be punished' in the United Kingdom for an offence committed outside of the country, whilst working for a Telegraph Company domiciled elsewhere. The extent of the reach of the applicable law was therefore called into question by the increasing social and business complexity emerging alongside the development of the network. The Treasury Draughtsman proposed legislation that would be applicable to any company, corporation or persons working any telegraph, where transmission of the delayed or divulged message was to, or from, the United Kingdom, and thus extending the scope of legislation beyond the Post Office. Concerns were raised regarding a clause that acknowledged the legislation would only be applicable to British subjects, or those employed by a company domiciled in the United Kingdom. Whilst accurate in relation to the reach of the law, the Solicitor General recommended this clause be withdrawn, given that

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[667] POST 78/ 848, GPO; Solicitor General, 'The Case' in *Case for the law Officers: Disclosure of Telegrams* (1884)

[668] See Post 78/ 848, GPO, 'Reply of the Postmaster General' (1882) in *Case for the law Officers: Disclosure of Telegrams* (1884)

[669] *Ibid*

[670] *Ibid*

explicit exemption of foreign subjects may 'constitute an invitation to a dishonest telegraph company to employ foreigners.[671]

The threat was at once conceptualised as dishonesty emerging from rogue companies, and as will be demonstrable throughout this chapter, dishonesty remained at the centre of the internal narrative relating to telegraph facilitated crime, and crimes within the Post Office more generally. The challenges imposed by the international nature of the network are therefore evident not only in the rhetoric of 'foreign threats,' but also in terms of application of domestic law. Those with access to the content of messages were recognised as having access to valuable information that could be misused. The issue, however, was not discussed in terms of its potential to facilitate fraud, but rather its potential to facilitate breaches of privacy or secrecy, and thus violate the integrity of the network, although it was recognised that a response from the criminal law is what was most appropriate.

Throughout the same period, the Post Office was also concerned about imitations of Post Office property, and these concerns reinforce notions of reputational concerns and an emphasis on protecting the integrity of the network and Post Office authority. The Solicitor to the Post Office issued an opinion in November 1883 where he acknowledged the circulation of fictitious imitations of Post Office telegrams.[672] The technology itself was not being utilised in this instance, instead a 'person or persons trading under the mercantile style of 'Hermann Loog Limited'… distributed papers' which presented a 'close imitation to the forms of telegraph message used by the Department.'[673] The method of circulation was unknown, but as well as imitating the forms utilised by the department, the forms were enclosed in imitations of the envelopes used by the department in the delivery of messages. Efforts to distribute false information for the purposes of deceit could earn a level of credibility where information was seemingly distributed and delivered by the Telegraph Network. Regardless of the potential purpose of deceit, the Solicitor found, on the facts, that the imitations were 'exact', however, this did not fall within the scope of any existing Post Office legislation at the time. There was clearly, however, an 'infringement of the rights of the Postmaster General.'[674] In particular, use of the phrase 'Post Office Telegraphs' on the heading of the form constituted sufficient evidence to support the notion that the perpetrator/s were infringing the rights of the PMG to use that term, given that his right

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[671] POST 74/846, *Fictitious Post Office Telegrams Opinion* 24th November 1883
[672] *Ibid*
[673] *Ibid*
[674] *Ibid*

to do so was 'as exclusive as his privilege of transmitting telegraphic messages.'[675] The term 'Post Office Telegraphs' was conceived as property of the PMG, and the actions of the perpetrators were considered evidence of an 'intention to deceive.'[676] Given that the Courts in such a case would consider every circumstance affording evidence of an intention to deceive as indicating an intention to defraud in a legal sense, what was required was sufficient evidence of actual deceit of the public, and the case would be made out.[677] The 'public' affected by the fraud in this instance are described by the report as 'incautious,' though it recognised that those deceived had entailed serious inconvenience, and potential individual expense.[678] As a result, the PMG was advised to seek the aid of the High Court to restrain the parties complained of from adopting any imitation of the telegram as a means for advertising their goods, or for any other purpose. The recommendation was that, unless the parties desisted immediately from distributing the papers, the PMG should institute proceedings in the Chancery Division for an injunction against 'further infringement of his rights in the matter.'[679]

There are several important factors to consider here. Firstly, given that there was no directly applicable legislation available under the Post Office Acts, the necessary legal process was to conceive the use of verbatim imitations of telegram forms and envelopes as an infringement on the rights of the Postmaster General. To an extent this implies a 'legislative lag,' often associated with the incorporation of new technologies.[680] However in practice the existing legal framework (outside of the Post Office specific context) was applicable within this technology-mediated context. Rather than a lag, per se, it might be better explained as a process of adaptation. Second, the only relevance of those who had fallen victim to the fraud, was in providing an intention to deceive sufficient to demonstrate an intention to defraud in Court. Thirdly, and related, that those who had fallen victim to the scam were considered 'incautious' despite the report recognising that the imitations were essentially impossible to distinguish from the genuine forms and envelopes. This in turn correlates with broader approaches towards victims of fraud that have been acknowledged throughout the period, evidenced through the notion of *caveat emptor.*[681] Fourthly, in terms of the offence itself, it was not committed using the technology, but in reliance on its social incorporation, thus aligns with findings from Chapter Two related to social incorporation

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[675] *Ibid*

[676] *Ibid*

[677] *Ibid*

[678] *Ibid*

[679] *Ibid*

[680] Shelley (1998) (n 572)

[681] S. Wilson, 'Law, Morality and Regulation: Victorian Experiences of Financial Crime' (2006) 46 British Journal of Criminology 1073-1090

facilitating offending in some instances without the necessity for the technology to actually be used. Finally, the perpetrators of the offence were known to be involved in other litigation relating to their use of Trademarks;[682] this is significant to the extent that it indicates (mis)use of the network was part of a wider scheme intended to deceptively secure profit.[683] Internal mechanisms of prevention were not, in this instance, considered. Given that this fraud did not require actual use of the network, the Post Office were limited in any internal approach they could take to prevent it, or other similar occurrences in the future. Their response was reactive, and their reasoning behind it was tied up in notions of institutional reputation. It appears that the imitation was what was conceived of as fundamentally wrong, rather than the (potential) harm to members of the public; the crime was conceived only in terms of its impact on the Post Office rather than its wider social impact.

As social awareness of the misuse of the telegraph network for the purposes of fraud or criminal behaviour grew, the authority of the Post Office was enhanced. Further legislation was introduced, which intended to both protect the Post Office from offending and empower their internal regulatory efforts. The Post Office Protection Act 1884 made it a criminal offence for anyone to forge, alter or utter a telegram knowing it to be forged, or alter, transmit, or utter as a telegram any communication known not to be a telegram, whether or not they had the intention to defraud.[684] This therefore applied to outsiders as well as employees, and could be applied in instances where the intention to commit fraud was not found, and therefore extended the scope of Post Office powers.

The legislative approach provided the basis for proactive regulatory efforts on behalf of the Post Office, and also had the effect of framing the Post Office itself clearly as the victim of Post Office offences. Beyond this, legislation (acknowledged in the previous chapter, and discussed further in Chapter Six) prohibited various offenders by outsiders where the Post Office itself was not the 'victim.' This chapter is concerned specifically with the internal regulatory response, and therefore cases where the Post Office itself was the 'victim' of offending, or when offending related to Post Office workers. As we have seen, legislative framing of Post Office specific offences, and its interpretation by law officers was concerned with the revenue, reputation, and integrity

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[682] POST 74/846, *Fictitious Post Office Telegrams Opinion* 24th November 1883
[683] This is something that is reflected throughout the records of the Post Office, and discussion will return to this later in the chapter. The Post Office approach more broadly throughout the period demonstrates an understanding that they could be targeted in multiple ways by organised groups.
[684] The Post Office Protection Act 1884

of the Post Office network. Post Office regulatory efforts, facilitated by the legislative approach outlined, confirm that this approach was also reflected through the imposition of internal controls imposed on the technology, as well as internal responsive efforts to address telegraph-facilitated crime in the Post Office.

4.4 The Internal Regulatory Approach

Given, as evidenced in Chapter Two, Post Office servants were often best placed to facilitate offending and posed the most significant risk to both the revenue and reputation of the Post Office because of the nature of their offending, it is natural that internal regulatory efforts focused on controls applicable to staff. In particular, the operation of the Confidential Enquiry Branch[685] contributed to regulatory responses to crime from a range of perspectives. For the purposes of this chapter, the development of the branch both in terms of size, and responsibility, provides clear evidence that the Post Office acknowledged the 'crime threat' posed by Post Office servants. The role of the enquiry branch was initially to respond to inefficiencies, but it became one of responding to crime against the Post Office.[686] Whilst offences committed by staff or facilitated by the negligence of staff became a dominant concern, the skills and technical understanding of staff were sometimes called upon to support instances of crime that, whilst not against the Post Office, involved use of the Post Office network.[687]

4.4.1 *The Growth and Function of the Investigation Department*

The Investigation Branch (IB) of the Post Office provides the most obvious example of the internal regulatory efforts of the Post Office, and essentially amounted to an internal police force, whose role was to respond to crime committed against the Post Office. The name of the branch changed over time as it was reorganised, but for the purposes of this thesis, it is important to note that the Missing Letter Branch, Confidential Enquiry Branch (CEB), and Investigation Branch all refer to the same branch within the Post Office, through its shifting iterations. By 1870 the work of the branch included messengers and acting messengers who were attached to the branch for the purpose of watching suspected persons. Whilst originally (in 1866) the role of 'watcher' was informally taken on by a plumber from the office of works, whom the (then) Missing Letter Branch paid to check water closets, as they were being used to

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[685] At various times known as the Missing Letter Branch, Confidential Enquiry Branch, Investigation Branch
[686] POST 120/499, *Historical Summary Showing Origin and Growth of Force* 1870-1907
[687] *Ibid*

dispose of evidence, the role evolved into a full-time watcher after the plumber died.[688] By 1882 an internal role had specifically been created for the purposes of watching suspected persons. Surveillance, therefore, was seen as necessary for the purposes of gathering and protecting evidence, so that the CEB could effectively investigate, and as a result, support the (internal) process of prosecution or dismissal where necessary. The number of 'Watchers' increased to 5 by 1892.[689] Demonstrating the growth in workload, the force of 'watchers,' mostly working only when required by the CEB, continued to expand. 1912 saw the engagement of 5 further messengers/ watchmen.[690] By 1921 there were 8 permanent watchmen, 2 assistant head messengers, and 6 messengers, all supporting the work of the (then) Investigation Branch.[691] By 1948 there were a total of 55 staff, who supported the work of the IB, by watching suspected persons. Essentially, through the growth and revisions of the investigation department, we witness not only the development and expansion of a branch, designed to inquire into all cases of suspected criminal offences against the Post Office, but also a growing number of Metropolitan Police officers became attached to the branch to assist with investigative duties. They operated under the control of the Post Office; thus, their role was defined by the Post Office as opposed to the Commissioner of Police.[692]

The growth and development of the IB within the Post Office can be attributed to both an increase in crime, and the IB being, in practice, much more than an investigative body. Evaluation of the structure and operation of the branch also provides some indication of the type of their regulatory role. CEB records[693] between 1890 and 1900 emphasise the growth of PO work for which they were responsible. By this time, the branch constituted a stationary clerical staff, a travelling clerical staff, and a staff of plain clothed detectives and their assistants. The stationary staff were responsible for investigations 'conducted by correspondence… into cases of fraud of every description.'[694] Importantly, their role was acknowledged as extending to the telegraph as well as the post, and involving the detection of crime, but also the disclosure of

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[688] *Ibid*

[689] *Ibid*

[690] *Ibid*

[691] *Ibid*

[692] The complexities associated with the role of the Police attached to the Branch is discussed in Chapter 6 of this thesis.

[693] POST 30/812, *GPO, Secretary's Office: Confidential Enquiry Branch (Now Investigation Branch) Revisions and General Papers 1890-1900*

[694] POST 30/812, GPO, 'Secretary's Office: Confidential Enquiry Branch, Reorganisation: Copy of Letter to Treasury' 12th September 1890 in *GPO, Secretary's Office: Confidential Enquiry Branch (Now Investigation Branch) Revisions and General Papers 1890-1900*

defects in the network facilitating crime and the suggestion of remedies and regulatory reform.[695] Where correspondence was insufficient for the purposes of the investigation, the travelling branch would investigate further. Their duties involved investigations of a confidential and 'judicial' character, which were acknowledged as requiring special qualifications and were described as 'not always of a very palatable character.'[696] Specifically they were required to travel the United Kingdom, sometimes for sustained periods of time, investigating offences against the Post Office through various means such as watching, testing, and collecting and preserving evidence. Finally, the police attached to the branch were responsible where the offender had committed an offence against the Post Office but was an outsider. Between 1889 and 1893 the work of the branch increased by 32%, not only as a result of an increase in crime, but also due to the tendency for the CEB to take on work traditionally the responsibility of other branches.[697] In particular, given challenges associated with identifying whether an incident reported was an error or a criminal offence, increase in services and use saw the referrals to the CEB persistently increase. This led to increasing debate regarding the proper role of the branch.

In a report in 1900, the Secretary invited a review into the operation of the branch, maintaining that whilst the 'main function of the branch… is to enquire, it also advises on, and to a large extent carries out, the executive measures which are found necessary as a result of its enquiry.'[698] In essence, the branch was intended to be responsive; investigating and gathering evidence where offences were committed against the Post Office. However, in practice it sometimes took on administrative functions, and therefore functioned as a 'preventative body' given officers of the branch could be called upon to advise on the rules designed to enhance Post Office security.[699] It was felt that by pursuing functions beyond those of enquiry, the CEB were duplicating the workload of other branches of the Secretary's office.[700] In calling a Committee to consider the scope and proper function of the CEB, the Secretary was not raising questions about the efficiency of the branch itself, but rather broader

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[695] *Ibid*

[696] *Ibid*

[697] POST 30/812, GPO, 'Secretary's Office: Confidential Enquiry Branch. Stationary Force. Addition of 10 Third Class Clerks: Copy of Treasury Authority 1893' in *GPO, Secretary's Office: Confidential Enquiry Branch (Now Investigation Branch) Revisions and General Papers 1890-1900*

[698] POST 120/149, 'Secretary's Reference to the Committee' (1900) in *GPO: General Post Office, Committee on the Confidential Enquiry Branch of the Secretary's Office. Report and Proceedings* 1900-1901

[699] POST 122/8809, 'Investigation Branch: History & Report' in *GPO: Searching and Questioning Suspected Persons (File 71)* 1956

[700] POST 120/149 (n 698)

concerns related to principles of administration and successful divisions of labour, so the efficiency of the institution as a whole.

The report prepared by the Committee details how the CEB in practice, had been executive in the cases with which it deals; 'there (was) neither memory nor tradition of a time where its function was confined to enquiry.'[701] Evidence considered revealed that the workload of the branch was both substantial, and in practice, contributed to the process of preventative regulation. By feeding back to the administrative branches that controlled the relevant section of the Post Office[702] the results of enquiries, the CEB played a fundamental part in preventative regulation given that it was able to advise on mechanisms that could be imposed to prevent similar occurrences. The regulatory role of the CEB was therefore one that extended to advising on rules applicable to the operation and functioning of various Post Office services, including the telegraph, with the goal of preventing opportunity for crime. This was interpreted as potentially limiting the institutional efficiency of the organisation as a whole. Driven by an institutional prioritisation of efficiency, the Committee was therefore to consider the scope of functions devolved to the CEB, in relation to the operation and functioning of the Post Office as a whole. Essentially, the issue was whether the Branch should deal 'entirely with all cases of Post Office crime' and most cases of Post Office irregularity (generally conceptualised as a precursor for the effective identification of Post Office crime).[703] The alternative theory was that the other administrative branches of the Secretary's Office, for example the Telegraph Branch, should deal with crime in relation to the specific ambit of the branch, calling on the CEB only where necessary.[704]

The report emphasised that as the authority for dealing with Post office crimes and offences, the CEB had also naturally become 'a convenient agency' for handling cases which were connected to crimes of the public; thus it assisted the police in investigation, and became involved in matters beyond those of inquiry, including detective and quasi-legal matters.[705] The theory in support of this expanded role was that Post Office crime could most efficiently be dealt with by a branch specialising in

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[701] *Ibid* at 4; POST 120/149, GPO, 'Memorandum prepared for the committee….' In *Committee on the Confidential Enquiry Branch of the Secretary's Office. Report and Proceedings. 1900-1901*
[702] For example, the Home Mails Branch if the issue investigated related to the Post, of the Telegraph Branch if it related to use of the telegraph network.
[703] POST 120/149, GPO, *Committee on the Confidential Enquiry Branch of the Secretary's Office. Report and Proceedings. 1900-1901* at 4
[704] *Ibid*
[705] *Ibid*

crime, as opposed to the transmission of letters, or telegrams, for example.[706] However, the Committee concluded in agreement with the Secretary, that the role of the branch should be limited to that of enquiry. Of fundamental importance is the acknowledgement in the committee report that the 'repression of crime may… not be so highly organised as if all cases of crime and irregularity were focused in one branch.'[707] The shift was justified despite this, by the 'increased efficiency of general administration' that a system of 'enquiry only' on behalf of the CEB would provide.[708] Additionally, by shifting responsibility to individual branches as opposed to one branch focused on crime, it was felt that regulatory responses to crime would be much more effective. The 'feedback mechanism' would be unnecessary. It was deemed vital that branches responsible for postal orders, for example, be kept 'continuously informed of irregularities connected with them' so that any necessary changes in the administering of services could be met.[709] Hence it is apparent that, given the respective administrative branches had the formal responsibility for regulating in relation to their specific area of Post Office work, they should be armed with the requisite knowledge regarding offending, to enable them to fulfil their duty effectively. In turn, they would be able to balance any risk of offending with the broader aims of that branch and take an informed approach to regulating.

This division of labour, and the separation of inquiry from administrative roles also reflects the growing workload of the branch. As part of the consultation process in producing the report, it was noted that the Director of the CEB had been 'overwhelmed with the amount of extraneous work, that the primary duty of the Branch (detection and prevention of crime) suffered thereby.'[710] Additionally, the 'increasing difficulty of coping with crime,' which was seemingly 'an increasing factor in the Post Office' was cited as a justification for the separation of the extraneous work, whilst simultaneously the report acknowledged the potential for the severance to interfere with the efficiency of the branch in performing its primary duty.[711] Fundamentally, allowing the CEB to continue to deal with most cases of crime in the Post Office limited the ability of the separate branches to comprehend the threat posed by crime, and thus adequately respond.

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[706] *Ibid*
[707] *Ibid*
[708] *Ibid*
[709] *Ibid*
[710] POST 120/149, 'Report of Evidence Taken by the Committee; Mr Phillips Examined' (1990) in GPO, *Committee on the Confidential Enquiry Branch of the Secretary's Office. Report and Proceedings. 1900-1901* at 13
[711] *Ibid* at 14-16

Therefore, it was effective preventative regulation, alongside administrative efficiency of the institution, which provided the justification for limiting the role of the CEB.

It is important to distinguish between the perceptions of those called to give evidence to the committee from within the CEB, and those who were concerned with the operation of the organisation as whole. Those within the CEB prioritised an effective response to crime, whilst those outside of it saw a less effective response as preferred if it were to mean that the operation of the organisation as a whole was more efficient. This distinction in approaches will be returned to throughout this chapter. For now, it is important to note that from the perspective of the CEB, the ability of the separate branches to recognise criminal behaviour and refer it to them where necessary, in a timely manner, was seen as questionable if they became the initial point of contact. Additionally, the specialist travelling clerks employed in the CEB were trained to find out the facts about what had happened, but also to gather and protect evidence should a prosecution follow. The ability of the separate branches to maintain this procedure was called into doubt. It was also explicitly recognised that offenders may commit offences against the Post Office using various means. Criminal behaviour may not be restricted to one specific branch of the institution. The CEB, as it had previously operated, was able to identify offences across different sectors of the Post Office that may be linked. However, separation of the functions of the branch ran the risk of these links being overlooked, or the duplication of workloads. Other concerns related to the responsibility of the Post Office, and the CEB in particular, to assist Police and external users where there was an offence committed by a member of the public, as opposed to a member of staff.[712] This required another set of skills that the CEB had developed over time, and the CEB had become accustomed to the appropriate responses.[713] Finally, the expert skills of the CEB in identifying offenders and understanding the nature of the offences against the Post Office was emphasised.[714] By reducing their role in the crime identification/ investigation/ response process, there was a risk that crime could prosper, and would be inadequately responded to. In particular, the nature of the technology itself was interpreted as relevant to crime prevention and detection. It was the potential for the response time of the CEB to be significantly reduced that was seen as particularly problematic from their perspective. Not only were the staff in the branch trained to recognise criminal behaviour that might not be recognised by others,

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[712] POST 120/149, 'Report of Evidence Taken by the Committee; Mr Phillips Examined' (1890); 'Report of Evidence Taken by the Committee; Mr Gates Examined' (1890); 'Report of Evidence Taken by the Committee; Mr White, Principal Clerk in the CEB examined' (1890) in GPO, *Committee on the Confidential Enquiry Branch of the Secretary's Office. Report and Proceedings. 1900-1901* at 14-18
[713] *Ibid*
[714] *Ibid*

but they also had a thorough understanding of the way that technology was used to facilitate crime and could therefore respond much more efficiently. The perspective of the CEB reflects an understanding of crime as dynamic, often organised, and emphasises the value of an informed approach to both responding and preventing crime against the institution.

Nevertheless, a preference for efficiency, even at the expense of crime prevention, was clearly identifiable on behalf of the organisation as a whole. In 1901 a Second Report was produced by the Committee on the Confidential Enquiry Branch, confirming the decision to confine the functions of the CEB to investigating and reporting on cases referred to it from other Branches of the Secretary's Office, leaving all administrative action to those branches.[715] As a result the stationary part of the force would be transferred to other departments, reflecting a severance of their preventative regulation function from their responsive one. Depending on the method and target of Post Office crime, what would have previously been the administrative role of the CEB was redistributed amongst other branches, confining the role of the CEB in theory, to enquiry only. 'Money Order cases' for example, would now be referred immediately to the missing or unregistered letter branch, and cases of Savings Bank fraud would be referred to the Staff Branch, given that they were the most likely to involve the fraud of a Post Office servant.[716] The reorganisation was premised on a static conceptualisation of the crime threat posed to the Post Office. The stationary staff of the CEB were redistributed amongst the other branches. The organisation of the Secretary's Office and the various branches and their responsibilities is of fundamental importance in understanding the regulatory role of the internal 'enquiry' mechanism. Structurally, it is important to note that the distribution of 'criminal enquiry' workload was varied according to the type of offence it may have involved, type of offender, and the method used to facilitate the offence. Additionally, as more sectors of Post Office business emerged, more classes of crime emerged that were absorbed into the existing system. Significantly, what this process of enquiry reveals most clearly is firstly that the Post Office took both a preventive and a responsive approach to crime control within the organisation, and second that the broader aims of the institution, related to ideas about efficiency and reputation, were prioritised over the most effective crime control responses.

4.4.2 *The Investigation Branch and the Telegraph*

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[715] POST 120/149, GPO, *Committee on the Confidential Enquiry Branch of the Secretary's Office: Second Report and Appendix, 1901*
[716] *Ibid* 4

In relation to the telegraph specifically, the perceived technical complexity of the network and the range of ways it could facilitate crime influenced the approach of the Post Office. A report prepared prior to reorganisation of the CEB in 1901 indicates that telegraph facilitated crimes were managed on a micro level even prior to reorganisation, with responsibility for their investigation, prevention, and prosecution being divided between the Staff Branch, Telegraph Branch, and the Confidential Enquiry Branch, dependent on the suspected offender, suspected offence, and the harm done to Post Office Servants or Revenue.[717] The first category of offence the CEB detailed, was offences committed by Post Office Servants, in connection with their work, 'and against the interests of the Department, and when detection, prevention or prosecution by the Postmaster General (was) considered to be required.'[718] Where Post Office servants, in connection with their work, divulged the contents of telegrams, or forged, delayed, altered or destroyed telegrams, these cases were to be dealt with by the CEB at first instance.[719] The report recognised that such offences generally occurred in connection with an attempt to fraudulently obtain money. Where Post Office servants committed an offence otherwise than in connection with their work, where detection, prevention or prosecution by the Postmaster General was not considered to be required, cases would generally be dealt with as a matter of discipline by the Staff Branch.[720] Thus, in terms of prosecution on the part of the Postmaster General, it was Post Office Servants who committed offences *in connection with their work* that were to be prosecuted, where considered necessary. However, where the honesty of a Post Office Servant was impugned, the CEB would deal with all cases, regardless of whether the offence was committed in connection with their work. The fundamental importance attached to honesty is therefore evidenced once again here and will be returned to later in this chapter.

When, for the protection of Post Office Servants or Post Office Revenue, or because of negligence by Post Office Servants facilitating an offence, the detection, prevention, or prosecution by the Postmaster General was considered to be required, the CEB were to handle the case, unless the technology that facilitated it was the Telegraph.[721] For example, where indecent, obscene or grossly offensive words were sent by an outsider, whether facilitated by a Post Office Servant's negligence or not, if the content

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[717] POST 30/1012, 'Confidential Enquiry Branch' in *GPO, Secretary's Office: Confidential Enquiry Branch. Proposed Reorganisation. Division of Work. Mr Gate's Reports* 1900

[718] *Ibid*

[719] *Ibid*

[720] *Ibid*

[721] POST 30/1012, 'Offences Committed by Outsiders' in *GPO, Secretary's Office: Confidential Enquiry Branch. Proposed Reorganisation. Division of Work. Mr Gate's Reports* 1900

were distributed by Post it would be handled by the CEB. If the content were distributed by Telegram, identical cases would be dealt with by the Telegraph Branch.[722] Similarly, where Post Office property relating to the postal network was stolen the matter would be dealt with by the CEB. Where the property stolen had a 'telegraph purpose' the manner would be dealt with by the Telegraph Branch. This was despite instructions issued in 1898 that the CEB was to deal with all matters relating to theft, or attempted thefts. Within this category, instances involving the wilful retention of telegrams, criminal diversion of telegrams, and personation of addresses of telegrams were the responsibility of the Telegraph Branch. The same offence involving a different medium (the post, for example) was handled within the CEB. However, where the case involved the personation of Post Office servants, whether connected with postal or telegraph work, the matter was dealt with by the CEB.[723]

Bets made by post after the winner's name was known to the sender, where a Post Office servant had been fraudulent or negligent were handled by the CEB. However, with regards to the telegraph equivalent, it was dependent on the specific circumstances of the case whether the incident would be referred to the CEB or the Telegraph Branch. There was some confusion apparent in the process required with regards to this specific category, and whether the bet made could be classed as fraudulent or involving the negligence or fraud of a Post Office Servant. In accordance with the Post Office Protection Act para. 11, [724] all questions relating to the forgery of telegrams, and improper divulgement by telegraph company's servants of telegrams were to be referred to the Telegraph Branch, where it did not appear that a Post Office Servant had been negligent or fraudulent. However, all cases of forged telegrams sent to procure telegraph Money Orders were specially assigned to the CEB, and a minute was issued requiring that any case where there was suspicion or doubt of fraud or criminal activity should be reported at once to the CEB.[725] In practice, the Telegraph Branch dealt with cases of fraud or criminal irregularity that arose in the sections assigned to them, except in relation to forged telegrams sent to procure TMOs, and cases under the first section of offence discussed previously. The complexity of the organisational response is therefore evident.

A further category of offences committed by outsiders, which whilst connected with post office work, did not injure Post Office servants or revenue, did not require the

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[722] *Ibid*
[723] *Ibid*
[724] Post Office Protection Act 1884
[725] POST 30/1012, 'Offences Committed by Outsiders' in *GPO, Secretary's Office: Confidential Enquiry Branch. Proposed Reorganisation. Division of Work. Mr Gate's Reports* 1900

detection, prevention, or prosecution by the PMG. Within this category, the CEB managed cases where 'swindlers deny receipt of postal packets' for example, and their inquiry was limited to satisfying itself that no Post Office Servant was concerned in the matter.[726] The results of inquiries would then be placed 'at the service of justice' thus there was an interaction with external models of regulation and enforcement.[727] A final category of offence identified by the CEB in the report was offences committed by outsiders when the offences were wholly unconnected with the work of the department, and where no detection, prevention, or prosecution by the Department was required, and where assistance of the CEB was sought for purposes other than in 'the interests of the department alone.'[728] This category of offence captured duties of the CEB in regards to the issuance of warrants in the furtherance of criminal justice by the Secretary of State, or the prevention of the network (post or telegraph) being used for 'indecent wares.'[729] Additionally, the CEB managed requests for information related to the contents of post, postal packets, or Post Office documents, or information from Post Office servants for the purposes of gathering evidence to support outside criminal justice procedures. However, where the evidence required concerned the telegraph network, or the telegraph network and the postal service, the Telegraph Branch would deal with Telegraph business separately.

This is significant in terms of efficiency, and effective regulation. For example, the division of labour according to the type of offence seemingly assumes the categories of offence were not initially dealt with as potentially related. Additionally, it was only within the Telegraph Branch that a definitive line between the treatment of cases of fraud by Post Office servants and cases of fraud by outsides was drawn.[730] Suspected fraud by outsiders would be dealt with by the Telegraph branch, and the process was not considered to be laborious or particularly intricate.[731] Telegraph-facilitated fraud by Post Office servants, however, was identified as a more complicated matter, and was dealt with by the CEB. Interestingly where offences that had an 'equivalent' postal offence and were committed by outsiders were dealt with by the CEB, the offence, such as the use of indecent or grossly offensive words, would not be referred to the CEB but the Telegraph Branch. This indicates that in terms of regulation, the

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[726] *Ibid*

[727] See Chapter 6 for a full discussion of the interaction between the CEB and the police.

[728] POST 30/ 1013 'Headings of Work not Specifically Dealt with in List of Offences' in 1013 *GPO: Secretary's Office, Confidential Enquiry Branch, Proposed Reorganisation; division of work; Mr Gate's Reports 1900*

[729] *Ibid*

[730] POST 30/1013 *GPO: Secretary's Office, Confidential Enquiry Branch, Proposed Reorganisation; division of work; Mr Gate's Reports 1900* at 16

[731] *Ibid*

technology that facilitated the offence was more significant than the offence itself. Even in cases where internally it had been agreed that particular offences (specifically theft from Post Office property whether used for Postal or Telegraph purposes) should be dealt with by the CEB regardless of the branch of technology, the Telegraph Branch continued to exert authority over cases arising out of telegraph property.

Offences internally were categorised in a minute manner, to facilitate organisation of the office in a wider sense and thus division of labour between branches, but breaking offences down to, for example, the removal of Post Office property dependent on the matter of the property itself, potentially overlooks the links between the micro categories of offence. It also appears to undermine the CEB's observation that the Post Office was often the target of 'organised gangs'[732] who targeted the organisation as a whole.[733] As was made clear in the 1901 Committee Report[734] there were individuals who carried out frauds relying on Postal Money Orders, Money Orders, Telegraph Money Orders, and Savings Banks.[735] Those who targeted the Post Office more generally would not necessarily be identified as doing so, without a centralised approach to crime detection, prevention and prosecution. Neither does it capture the range of smaller offences that might be committed to facilitate a fraud, for instance. The purpose of removal of telegraph forms, as we saw in Chapter 2, was often to facilitate fraud. Where a fraud may have been facilitated by the removal of property, and involved internal and external individuals in the process, the process of regulation would be fragmented, with the Telegraph Branch being responsible for the management and investigatory process of some of the offence, and the CEB for others. When we consider this as the response to the transformed criminal encounter (chapter 2) we see that the internal regulatory response fits the organisational structure of the Post Office, as opposed to the transforming criminal encounter. but rather splits it up and responds to aspects of it individually. Further, it appears that the CEB were well aware of this, and yet the Post Office chose to further fragment their approach to crime control into preventative and reactive approaches during the process of reorganisation.[736]

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[732] BT TCB/ 357, Letter from Mr Phillips (Confidential Enquiry Branch) to Postmaster General, in *GPO, Back-Coding of Telegrams: Course of Procedure. PMG's Minutes, Solicitors Comments* 1895
[733] *Ibid*
[734] POST 120/149, 'General Post Office, Committee on the Confidential Enquiry Branch of the Secretary's Office. Report and Proceedings. 1900-1901.' 14
[735] POST 120/149, 'Report of Evidence Taken by the Committee; Mr Phillips Examined' (1990); 'Report of Evidence Taken by the Committee; Mr Gates Examined' (1990); 'Report of Evidence Taken by the Committee; Mr White, Principal Clerk in the CEB examined' (1990) in GPO, *Committee on the Confidential Enquiry Branch of the Secretary's Office. Report and Proceedings. 1900-1901* at 14-18
[736] Discussed above

It is therefore important to consider how efficiency and effectiveness might have been hindered in practice. Inevitably understanding of the operation of this system in practice is somewhat limited by the available records. Much of this chapter is based on reports of the regulatory process, as opposed to evidence of the regulatory process in practice. However, reports submitted by the CEB during processes of reorganisation of the branch do present a perspective on the impact of regulatory processes in practice. Analysis is limited to an institutional perspective on organisation as opposed to effectiveness, but reports submitted to inform the process go some way to at least recognising the various impacts of the regulatory process experiences across different branches of the institution.

Whilst there was a designated response for individual offences, in practice those offences often contributed to one another. Delegating and separating investigatory and enforcement mechanisms to the various branches, dependent on offence, offender, or technology in this manner, means that in principle, the whole of the criminal encounter would be responded to and regulated in a fragmented manner. Even within the branches themselves, different members of staff had different areas of expertise; for example, the delay of a telegram would be dealt with by one member of staff, whereas telegraph fraud would be dealt with by another.[737] It is important to acknowledge that what may at first instance appear to be a delay in telegram transmission, may be a delay because of a telegraph-facilitated fraud. There is little acknowledgement in the arrangement for internal responses to crime against the Post Office at this time, that the various 'micro' offences often operated to facilitate broader (and largely fraudulent) offences. However, the acknowledgement of these 'micro' offences does suggest a recognition and a stretching of regulatory responses to cover 'preparatory' offences more adequately.

Structurally the involvement of the CEB was largely dependent on the harm done to the Post Office, whether it be revenue or Post Office staff that suffered a harm. The various categories of harm would also define whether the PMG would seek to investigate and potentially prosecute. Within the categories of harm, and with regards specifically to the telegraph, responsibility for managing and responding to offences was often distributed to the Telegraph Branch, despite the CEB being responsible for responding to the equivalent postal offence. This is arguably of importance for the purposes of this research for several reasons. Firstly, the distinguishing characteristics that determined to which branch offences or potential offences would be referred would need to be

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[737] POST 30/1013 *GPO: Secretary's Office, Confidential Enquiry Branch, Proposed Reorganisation; division of work; Mr Gate's Reports 1900*

identified from the outset, in what could potentially be complicated circumstances. For example, identifying whether a telegraph employee was implicit in a telegraph fraud may have been difficult to establish on the initial facts. Similarly identifying whether a fraud had been facilitated by a Post Office Servant divulging the contents of messages may not have been immediately clear. The fact that these elements of the offence determined the internal response raises questions about the effectiveness of the response.

Finally, the separate approach for crimes facilitated by, or against the telegraph network suggests that use of telegraph technology as opposed to post for example, was considered to require a different response, and one that the branch in charge of telegraph operation was most suitable to fulfil. This is evidence of the 'technicality' of the telegraph network and specifically the rules applicable to staff in operating the network as potential regulation against crime. Essentially, where a crime in relation to telegraphy became prevalent or increasingly problematic, it was implied that the Telegraph Branch would be best placed to respond by imposing controls on the rules around use.[738] Specifically, it was suggested that this was the case given that they could balance the need for the prevention of crime with the 'other interests' of the institution. Taking this, alongside the reasoning for the subsequent separation of enquiry from administrative functions within the Post Office, it is clear that other institutional concerns (related to reputation, efficiency, and revenue) could be prioritised through the distribution of responsibility for crime in, and against, the Post Office. The approach within the Post Office was multi-layered and influenced by a variety of concerns; crime prevention was one concern, but not being necessarily the most pressing. This is also echoed in the guidelines for prosecution, which will be explored in more detail in the final section of this chapter.

4.5 The Growth of Dishonesty

Following re-organisation of the CEB in 1901, and despite the theoretical separation of enquiry and administrative workload, the workload of the CEB continued to grow. Papers referred to the CEB for investigation increased from 2700 in 1890, to 4578 papers in 1902.[739] The number of cases in which Post Office Servants were prosecuted and convicted increased from 70 in 1890, to 154 in 1903.[740] Beyond this, many cases were handled internally in the Staff Branch as a matter of discipline, and did not result

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[738] BT TCB/ 357, 'Extract from Solicitors Opinion of 15th November on Back-Coding Fraud Case' in *GPO, Back-Coding of Telegrams: Course of Procedure. PMG's Minutes, Solicitors Comments* 1895
[739] POST 72/27, *GPO, Miscellaneous Papers Relating to the Secretary's Office* (1872-1909)
[740] *Ibid*

in prosecution.[741] The 'growth of dishonesty' was a concern raised by the Treasury in 1908 following a request for an increase in workforce, and further reorganisation in the CEB as a result of increasing workload.[742] In 1908 it was claimed that the work of the CEB was greatly in need of some additional provision; the workforce had not increased in number since 1903, and despite the reorganisation of 1901, duties were not clearly defined in practice.[743] Whilst administrative and executive duties had theoretically been withdrawn from the CEB, it was emphasised that 'in practice it had not been possible to separate the functions.'[744] The requisite knowledge and experience to initiate, execute, and decide on inquiries resided, in the mind of the CEB, with the branch itself. This was reflected in the way they were called upon to assist in both the initiative and executive functions that had been devolved to other branches, in theory at least. In practice, they had continued to inform preventative regulations in the respective branches given their expertise on fraud and offences against the Post Office.

The problem was framed by the Treasury, in response, as one of efficiency relating to the administration of various branches. Whilst the director of the CEB recommended that the disciplinary and administrative action, as well as the role of inquiry, rest with the CEB on all criminal matters, it was felt that separating crime responses from the work of the other branches was undesirable. A revision, however, was agreed. Given the number of cases referred to the travelling clerks had increased from 13984 in 1902, to 23360 in 1907, requests for an increase in staff and police connected to the CEB was approved, as was a change of name, to the 'Investigation Branch.'[745] Against this increase in workload, concerns were raised over an apparent 'increase in dishonesty' within the Post Office.[746] The fact that the figures reflecting an increase in crime were interpreted as reflecting an increase in dishonesty, was perhaps due to the connection between fraud, or cheating, and dishonesty.[747] The emphasis on institutional reputation and efficiency is perhaps a contributory factor here. Additionally, concepts of crime and criminality, and dishonesty as a particularly undesirable and threatening trait for a Post

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[741] POST 72/27, *GPO, Miscellaneous Papers Relating to the Secretary's Office* (1872-1909)

[742] POST 30/1971, 'Treasury reminder of enquiry as to apparent growth of dishonesty' 1908-09 in *GPO, Secretary's Office, Confidential Enquiry Branch 'Revision of Force: Proposals Submitted to the Treasury'* (1908)

[743] POST 30/1971, *GPO, Secretary's Office, Confidential Enquiry Branch 'Revision of Force: Proposals Submitted to the Treasury'* (1908)

[744] *Ibid*

[745] *Ibid*

[746] POST 30/1971, Secretary's Office, Confidential Enquiry Branch 'Revision of Force: Proposals Submitted to the Treasury' (1908); Secretary's Office, Investigation Branch 'Treasury reminder of enquiry as to apparent growth of Dishonesty (File VI) Consideration of Draft Reply' (1908-9) in *GPO, Secretary's Office, Confidential Enquiry Branch 'Revision of Force: Proposals Submitted to the Treasury'* (1908)

[747] Griffiths (2020) (n 581)

Office servant clearly motivated these concerns. A report produced by the CEB on the 'Growth of Dishonesty' in the Post Office took two years to prepare, largely due to the relevant information residing in the various branches, rather than the CEB having immediate access to the information.

In 1910 it was reported that the increase in workload of the (now) Investigation Branch (IB) was largely not due to the increased dishonesty of Post Office Servants or an increase in crime, but to the difficulty in identifying, from the outset, whether Post Office Servants were involved in an offence/ suspected offence.[748] This reinforces the earlier discussion in relation to the difficulty of separating the responses to crime amongst branches dependent on the potential offender. Whilst the IB were supposed to investigate offences involving staff dishonesty, whether staff were involved, or whether their involvement amounted to dishonesty was often not immediately obvious. Delegation of responsibilities at the time of investigation was therefore arguably counter intuitive, both in terms of increasing the workload of the IB, and in terms of reducing the ability of the Secretary's Office more generally to record and respond to reliable crime statistics.[749] In offering an explanation of the 'increase in dishonesty,' the Staff Branch specifically found 'no cause for alarm,' but recognised the need for contribution from other branches such as the Telegraph Branch and the Home Mails Branch, in order to furnish a more general opinion.[750] The following table was presented by the Staff Branch to demonstrate that, outside of prosecutions, the number of Post Office servants dismissed for offences under the heading 'dishonesty' had remained fairly consistent over the period 1899-1907.[751]

[748] POST 30/1971, Secretary's Office, 'Investigation Branch: Enquiry by Treasury as to apparent growth of dishonesty and cases requiring investigation' March 1910 in *GPO, Secretary's Office, Confidential Enquiry Branch 'Revision of Force: Proposals Submitted to the Treasury'* (1908)
[749] *Ibid*
[750] *Ibid*
[751] *Ibid*

Fig. 2.1: No. of Post Office Servants Dismissed for Offences Under the General Heading 'Dishonesty.'

Year	No. Of Post Office Servants Dismissed
1899	210
1900	269
1901	237
1902	237
1903	265
1904	237
1905	246
1906	224
1907	230

The final report sent to the Treasury on behalf of the Investigation Branch, delivered two years after it was requested, emphasises an increase in workload of the IB, which was not necessarily attributable to an increase in crime.[752] In terms of prosecutions on behalf of the Postmaster General, the following table indicates fairly consistent levels of prosecution overall, but an increase in the number of outsiders being prosecuted by the Postmaster General.

Fig. 2.2: Total Number of Persons Prosecuted by the Postmaster General 1902-1909

	1902	1903	1904	1905	1906	1907	1908	1909
No. of Post Office Servants	114	107	116	90	72	87	103	89
No. of others	72	92	97	100	102	88	133	116
Total	186	199	213	190	174	175	236	205

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[752] *Ibid*
[753] *Ibid*

Whilst the numbers do not give any indication of the number of offences reported or actually committed, it is interesting to note the fairly consistent levels of prosecution across the seven years, as well as the moderate increase in outsiders being prosecuted by the PMG. However, the figures do not suggest, in isolation, an increase in the offences against the Post Office, whether committed by outsiders or Post Office Servants, 'far greater than can be accounted for by the rate of growth of Post Office business,' as was the concern raised by the Treasury.[754] The increase in workload was largely due to the fact that mistakes within the operation of the network, or issues outside of the network (such as someone stealing post that had been effectively delivered) were difficult to identify as errors from the outset. Some investigation by the IB was often necessary to eliminate the possibility of Post Office servants being either negligent or fraudulent. Thus, as Post Office business, including communications technologies and networks grew more socially integrated and complex, identifying illicit behaviour on or against the network became more cumbersome. Additionally, following the transference of responsibilities previously assigned to the CEB to the other administrative branches, the report suggested that an increase in references to, and thus the workload of, the IB might be put down to 'a growing realisation of the practical need of its assistance.'[755]

However, in 'certain directions,' it was impossible to deny an increase in offences against the Post Office.[756] The report emphasises an increase in crime committed against the Post Office by outsiders as a result of the Street Betting Act 1906. Literature has acknowledged the impact of the electric telegraph system on off-course betting, with the network facilitating press access and the ability to publish results and starting price odds much quicker, thus 'mass gambling was made possible' by the social incorporation of the network.[757] Street betting, which at this time was 'largely confined to horse-racing,' came to be conceptualised as a serious 'social and economic problem.'[758] The National Anti-Gambling League, established in 1890, 'became one of the principal extra-parliamentary pressure groups of the late Victorian and Edwardian era,' and their activities helped to 'spur the formulation of the Select Committee on Betting of 1902.'[759] Betting was identified as a threat to both sport and

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[754] *Ibid*

[755] *Ibid*

[756] *Ibid*

[757] R. McKibben, 'World Class Gambling in Britain 1880-1939' (1979) 82 Past and Present 147-178, 148

[758] M. McIntire, 'Odds, Intelligence and Prophecies: Racing News in the Penny Press, 1855-1914' (2008) 41(4) Victorian Periodicals Review 352, 363

[759] *Ibid*

society, and opposition eventually culminated in the passing of the Street Betting Act[760] which prohibited betting with off-course bookmakers.[761] The legislation however, did not prohibit the distribution of racing news by the press, thus the racing news and odds continued to be circulated.[762] Additionally, despite the prohibition of off-course betting, 'Britain's mass betting culture' was not destroyed.[763] Thus, whilst it was an offence to 'frequent or loiter in streets or public places for the purpose of bookmaking or making or settling bets,'[764] licit and illicit routes around the legislation were developed.[765] The IB report indicated that the prohibition on betting had led to use of the post and the telegraph for betting transactions between the poorer classes of bookmaker, and the poorer classes of customers, which had previously been out on the street.[766] The practice of bookmakers accepting bets via telegram or post was found to facilitate fraud, particularly among Post Office servants.[767] Because the likelihood of Post Office servants being involved in such a process was considered high, the IB were required to investigate 'where any case of suspicion [was] presented to the Post Office by a bookmaker' in order to satisfy the PMG that no fraud or negligence on behalf of a Post Office servant had facilitated the fraud.[768] The likelihood of Post Office servant involvement was largely explained as a result of them 'succumbing to temptation' and the result was a significant number of dismissals.[769] It is interesting to note that the enquiry tended to result in the dismissal of staff, as opposed to the prosecution of staff. It is proposed that this is a result of notions of maintaining institutional reputation and efficiency,[770] as well as a tendency to conceptualise the frauds as the 'succumbing to

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[760] Street Betting Act 1906

[761] McIntire (2008) (n 758) at 363

[762] *Ibid*

[763] *Ibid* at 367

[764] 'Betting and Gaming Bill' Hansard Debate, 16 November 1959 Vol. 613 cc805-935 available < https://api.parliament.uk/historic-hansard/commons/1959/nov/16/betting-and-gaming-bill> last accessed 4.1.2020

[765] With regards to lawful measures designed to get around the Act, see the Hansard debate (n 758) on use of the telephone to place bets. Use of the telephone enabled bookmakers in an office to take bets on credit by telephone without contravening any of the provisions of relevant legislation.

[766] POST 30/1971, Secretary's Office, 'Investigation Branch: Enquiry by Treasury as to apparent growth of dishonesty and cases requiring investigation' March 1910 in *GPO, Secretary's Office, Confidential Enquiry Branch 'Revision of Force: Proposals Submitted to the Treasury'* (1908)

[767] *Ibid*

[768] *Ibid*

[769] *Ibid*

[770] And therefore, related to literature emphasising regulation of white-collar offences was often subsumed within business structures and cultures, with organisations turning to dismissal as opposed to pursuing prosecution which could negatively influence public perceptions/ reputation. See Wilson (2006) (n 681); Wilson (2014) (n 412)

temptation.'[771] The threshold for prosecution as opposed to dismissal will be discussed in more detail in the following section of this chapter.

With regards to the impact of the Street Betting Act, incorporation of the network into licit betting practices enabled illicit betting practices to flourish. Interestingly however, the post saw more misuse than the telegraph. Figures produced by the IB for the purposes of the report suggested that whilst use of the telegram to initiate fraudulent bets was initially more common that those made using the post, by 1909, use of the Post was over 6 times more likely.[772] This could be due to the lower cost associated with using the Post as opposed to the telegraph network, but additionally because use of the post was conceptualised as affording individuals more privacy,[773] thus reducing the likelihood of identification of criminal offences. Additionally, given that the process of regulation was de-centralised, the Telegraph Branch may have responded more adequately to the threat when compared with the Home Mails Branch.[774]

Betting remained an issue for the Post Office and the CEB. Essentially, whilst the Betting Act 1853 made it illegal to 'keep any house, office, room or place for the purpose of betting with persons resorting thereto, or receiving deposits on bets,'[775] keeping a betting office [was] not contrary to the law, 'so long as those making bets [did] not resort at the betting office for the purpose of making their bets; or, secondly, no deposit [was] made at the betting office to await the event on which the bet is to be decided.[776] In 1928 it was maintained that in practice, legislation had the effect of confining bets to telephone, telegram or letter, with the backer being allowed credit. Legislation left a 'ridiculous, anomalous position' whereby the bookmaker may carry on business and bet for cash or on credit with 'anybody on a racecourse, provided he does not appropriate or monopolise any definitive portion of it so as to constitute a 'place or office."[777] Simultaneously, a bookmaker could conduct his business in an office or a place anywhere on credit, 'as long as his clients only communicate with him

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[771]POST 30/1971, Secretary's Office, 'Investigation Branch: Enquiry by Treasury as to apparent growth of dishonesty and cases requiring investigation' March 1910 in *GPO, Secretary's Office, Confidential Enquiry Branch 'Revision of Force: Proposals Submitted to the Treasury'* (1908)

[772] *Ibid*

[773] *Ibid*

[774] Who were responsible for the postal network.

[775] The Betting Act 1853 (16 & 17 Vict. c.XIX)

[776] Hansard 'Racecourse Betting Bill; Order for Second Reading read' 16 March 1928, Volume 214 available < https://hansard.parliament.uk/commons/1928-03-16/debates/8f38f8d9-f2d8-4b5c-bb61-fc75d73a5eb2/RacecourseBettingBill> last accessed 14.1.2020

[777] *Ibid*

by letter, telephone or telegram, and do not resort to the office in contravention of the Betting Act 1853.'[778]

Essentially, given that the Betting Act 1853 was passed prior to the social incorporation of the telegraph or telephone, and prior to the establishment of the penny post, such a loophole had not been foreseen. Legislation, therefore, drove those wishing to make a bet to the communication networks offered by the Post Office. The cohesion between incidents of betting frauds, and regulatory responses was not consistent, given that Statutory provisions provided for the use of telegraph, telephone, and postal technology in the making of bets, albeit this loophole was ancillary to legislation that failed to foresee the developments in communication technology. As demonstrated in the previous chapter, the telegraph network became part of an ideal environment for the facilitation of betting frauds due to the speedy transfer of information over it. By sustaining the transfer of valuable information (racing results for example) and the practice of betting in the same environment, betting frauds were able to prosper. Whilst Post Office regulations and enforcement mechanisms attempted to overcome the issue, the inherent statutory limitations, combined with a necessity to maintain the privacy of the postal network, meant that attempts to effectively regulate were limited. The work of the CEB in this regard, however, remained significant, given that they were formally concerned with detection as opposed to prevention. Fundamentally, given the broader social context of legislative loopholes, alongside the proximity of staff to the network, it appears that betting frauds occupied a significant proportion of the IB's time.

Another example of the social conditions and acceptance of communication technology facilitating its misuse can be seen with telegraphic withdrawals from savings banks.[779] Withdrawals from savings banks were governed by their own regulatory mechanisms and security measures, which sought to balance the advantage posed by the technology against requisite risks to Post Office revenue.[780] Here again, it is the mechanism for offending that changes, as opposed to what is fundamentally criminal about the offence. It is suggested that the Post Office response, in attempting to distinguish between preventative and responsive approaches to crime, combined with the distribution of formal responsibility for offending on the basis of the offender, the nature of the offence, the extent of the apparent 'dishonesty,' and the specific area of

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[778] *Ibid*

[779] M. Campbell-Kelly, 'Data Processing and Technological Change: The Post Office Savings Bank, 1861-1930' (1998) 39 (1) Technology and Culture 1-32

[780] *Ibid,* see also Hansard Debate, 'Post Office Savings Bank- Telegraphic Withdrawals.' HC Deb 30th April 1908 vol. 187 c1406 available < https://hansard.parliament.uk/Commons/1900-03-23/debates/a79db6a6-107a-43c4-a41b-8402eee3a162/PostOfficeSavingsBanks—TelegraphicWithdrawals> last accessed 4.4.2022

Post Office business targeted could have meant that these continuities in patterns of offending were overlooked. Alternatively, the distribution of responsibility for crime among the branches of the Post Office allowed for crime and the appropriate regulatory response to be considered through a lens relative only to the institutional aims of that branch. Whilst taking a 'birds-eye' view of social incorporation allows for the identification of continuities in patterns of offending, as well as gaps in regulatory responses, the regulatory response in practice was inhibited by a potential to overlook those continuities across offences. Further, such an approach does not reflect the social complexity of offences, given then could include a range of individuals (both insiders and outsiders), a range of offences, and a range of Post Office services being relied upon to facilitate them.[781]

Beyond the limitations associated with a fragmented regulatory response, it is clear that the Post Office took both a preventative and a responsive approach to controlling crime in the Post Office. The following chapter, through an examination of the regulatory approach of the Post Office in relation to Telegraph Money Orders, will examine the preventive approach in more depth, considering how it manifested in practice. For the purposes of this chapter, it is sufficient to acknowledge that decisions as to the rules of use associated with the telegraph accounted for the perceived crime threat, and balanced this against broader commercial interests, and enhanced protective measures when the perceived risk of crime to the Post Office was high. The approach to prevention, specifically the recording and response to offending being organised according to the technology utilised and the way it was accessed is also reflective of 19th century ideas about the scientific criminal. Churchill has engaged with the relationship between ideas about security and understanding of the professional offender.[782] The approach of the Post Office in relation to managing risk versus reward and amending procedures and rules governing use in specialist branches, signifies the recognition of criminal professionalism emerging in 'increasingly technological terms.'[783]

4.6 A Culture of Suspicion

Despite attempts to limit the remit of the IB, records reveal that even after formal separation of their function of enquiry from their administrative function, their role

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[781] BT TCB/ 357, 'Minute no. 945, Back-coding of Telegrams: Course of Procedure' (24th January 1895) in *GPO, Back-Coding of Telegrams: Course of Procedure. PMG's Minutes, Solicitors Comments* 1895
[782] D. Churchill, 'Security and Visions of the Criminal: Technology, Professional Criminality and Social Change in Victorian and Edwardian Britain' (2016) 56 British Journal of Criminology 857-876
[783] *Ibid* at 859

remained significant, and particularly concerned with PO servants who 'in connection with their work and against the interests of the Department' committed offences. The IB, in practice, dealt with all cases where the honesty of a servant was impugned, regardless of the offence.[784] Where offences were committed by PO servants otherwise than in connection with their work, and where the honesty of the servant has not been called into question, matters were dealt with by the Staff Branch as a matter of discipline.[785] However, given that enquiry might be required to establish whether there was evidence of staff dishonesty, in practice the IB also dealt with matters related to disciplinary procedures.[786] The remit of their role therefore expanded beyond those accused of criminal offences to encompass all considered 'dishonest,' and that perception of dishonesty could arise as a result of accounting records, complaints, staff tips offs, watcher suspicion, missing items, and apparent network failures for instance.[787] It is argued that this contributed to a culture of suspicion within the branch, and the broader institution. This is reflected in concerns over staff dishonesty, and persistent emphasis on the need to ascertain the extent of dishonesty in order to determine the regulatory approach of the organisation.

This was also exacerbated by aforementioned concerns related to service staff posing a threat to institutional reputation. This chapter has already acknowledged the significance of the telegraph boy in this regard, and the associated 'class-convention' collision,[788] which was interpreted as justifying institutional regulation of these interactions. Initially reflected through strict training manuals, codes of acceptable behaviour and uniform,[789] the discovery of, and regulatory response to widespread prostitution among telegraph boys, culminating in the Cleveland Street Scandal of 1889, saw the gradual ushering in of increased surveillance and control of staff,[790] specifically service staff.[791] This control and surveillance extended beyond the workplace to service staff's home and private lives more broadly.

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[784] POST 30/ 1013, *GPO: Confidential Enquiry Branch, 'Proposed reorganisation. Appointment of Committee of Enquiry' 13th November 1900*; BT TCB, 10/2-7, *Reports of the Postmaster General on the Post Office* (1884- 1905); BT TCB 10/10, *Report of the Postmaster General on the Post Office* (1908); BT TCB, 10/18, *Report of the Postmaster General on the Post Office* (1915-16);

[785] *GPO: Confidential Enquiry Branch, 'Proposed reorganisation. Appointment of Committee of Enquiry' 13th November 1900*; BT TCB, 10/2-7, *Reports of the Postmaster General on the Post Office* (1884-1905)1900

[786] *Ibid*

[787] POST 122/8809, *GPO, Searching and Questioning of Suspected Persons, Investigation Branch: History and Report, File 71.* (1956)

[788] Hindmarch-Watson (2012) (n 658); Hindmarsh Watson (2016) (n 658) at 603

[789] Scudamore (1871) (n 652)

[790] Hindmarsh-Watson (2012) (n 658) at 615

[791] M.J. Daunton, *Royal Mail: The Post Office Since 1840* (London, 1985) 214; Hindmarch-Watson (2012) (n 658) at 600

The perception of 'service' staff as a threat was not reserved for telegraph boys. I have already acknowledged that the number of staff being dismissed for dishonesty between 1899 and 1907 was between 210 and 269 staff per year. During the same period between 72 and 116 staff were prosecuted by the PMG for offences against the Post Office. Records indicate an institutional concern over the number of staff being dismissed for 'offences under the general heading Dishonesty.'[792] When we look at the role of the IB in practice, there appears to be a contradiction between the organisations public minimisation of the issue posed by staff dishonesty, and the approach taken within the branch, and reflected across the institution more broadly that is only evidenced internally.

By 1927- 1932 though the level of staff being dismissed in relation to 'dishonesty' remains stable (between 198 and 235 per year) the number of staff being prosecuted increased to between 203 and 239 per year.[793] By 1945, the total number of PO staff dismissed, with or without prosecution for criminal offences against the PO increased to 806 per year.[794] Records up to 1963 indicate that between 510 and 864 staff were dismissed (with or without prosecution) for offences committed against the PO each year.[795] There is historic evidence then, that staff dishonesty, whether criminal or not, was a persistent issue within the institution. Staff were encouraged to report 'suspected dishonesty' among their cohort and were offered rewards for doing so.[796]

Maintaining a monopoly over the policing of PO servants also facilitated a greater level of 'discretion' for those working in the investigation department.[797] Whilst this appears to have gradually reduced over time, after being subject to judge's scrutiny,[798] it was deemed effective since 'far greater latitude [could] be properly taken in interrogating suspected persons by an Officer acting, ad hoc, as the Postmaster General's representative, than by a Police Constable.'[799] This was considered appropriate in light

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[792] POST 30/1971 Secretary's Office, Investigation Branch 'Enquiry by Treasury as to apparent growth of dishonesty and cases requiring investigation (File VI) Reply of 22 March 1910' (1910)

[793] POST 120/ 3084.1, *GPO: Investigation Branch: Annual Report* (1957-8)

[794] *Ibid*; POST 122/3084.2, *GPO: Investigation Branch. Annual Report* (1962-63)

[795] POST 122/ 13804, *GPO: Investigation Branch. Annual Reports* (1962-63)*; (1963-64); (1964-65); (1966-67)

[796] POST 120/39, *GPO: Instructions issued to staff: general* (1932-1948)

[797] POST 120/41, *GPO: Instructions for the Guidance of Officers of the Investigation Branch GPO* (April 1945)

[798] POST 120/335, *GPO: Questioning of Suspected Persons: Methods pursued by officers of the Investigation Branch* (1913); POST 120/302, *GPO: Questioning of Suspected Persons as to methods pursued by officers of the I.B.* (1910)

[799] POST 120/23, *GPO: Interrogation of Suspected Persons: Judges Remarks and Decisions Thereon: Instructions to Travelling Clerks* (1892)

of the relationship of 'master and servant' so long as the investigation was conducted 'in a spirit of fairness.'[800] In order to catch those staff suspected of dishonesty, 'tests' were used by the Investigation Branch, and could include leaving money on counters, sending dummy telegrams, and false letters.[801] These techniques were common with regards to domestic servants and other employees during the nineteenth century.[802] This latitude over investigation and interrogation is significant when the lack of oversight is acknowledged. Echoing the sentiment of a culture of suspicion, these 'tests' were designed to prove IB assumptions, and outside interference in processes was resisted.[803]

Historically, the origins of the Post Office as a department of state meant that it had broad powers to investigate and prosecute internally. This was deemed as necessary and appropriate given the status of the organisation but was also due to the conceived complexity arising out of developments in technology.[804] Arguably this served as a useful tool, and limited public scrutiny, allowing the Post Office to control the information available in relation to staff dishonesty, as well as means to commit fraud/forgery. In a contemporary sense, this has been criticised given the structure reinforces institutional cultures 'at work' on lawyers and PO decision-makers, allowing the 'blurring of responsibilities' between organisations and their legal experts.[805] The *extent* of the power afforded through law to the Post Office, as well as their internal regulatory efforts, facilitated an imbalance of power and information between corporate, white-collar staff, and those who provide service functions. These themes will be returned to in the following chapters, but for the purposes of this chapter it is important to acknowledge the impact on the regulation of staff that the concentration of power and authority within the institution was capable of having. Controls imposed on staff were not designed just to criminalise, but rather facilitated the careful management of the reputation of the Post Office, allowing them to respond to crime in the Post Office

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[800] POST 120/23, *GPO: Interrogation of Suspected Persons: Judges Remarks and Decisions Thereon: Instructions to Travelling Clerks* (1892)

[801] POST 120/41, *GPO: Instructions for the Guidance of Officers of the Investigation Branch GPO* (April 1945); POST 130/302, *GPO: Questioning of Suspected Persons: as to methods pursued by officers of IB* (1910)

[802] D. Churchill, *Crime Control & Everyday Life in the Victorian City: The Police and the Public* (2017, Oxford University Press: Oxford; New York) pp. 152-4

[803] The nuances of the relationship between the Police and the GPO are discussed in Chapter 6 of this thesis.

[804] This is discussed in more detail in Chapter 6

[805] R. Moorehead, K. Noakes, R. Helm, Working Paper I, *Issues arising in the Conduct of the Bates Litigation,* 21st August 2021, Evidence Based Justice Law, Post Office Scandal Project available < https://evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2021/08/WP1-Conduct-of-the-Bates-Litigation-020821.pdf> last accessed 20.11.21 at 46

quietly, whilst simultaneously controlling the information related to offending techniques so as not to enhance opportunities for offending. [806]

The institutional approach to prosecution was therefore guided by principles related to the degree of economic harm emerging as a result of offending, balanced against the risk to reputation associated with public awareness of 'dishonesty' within the institution and the perceived threat to the security of the network were more of the general public informed about the means with which offences could be committed.[807] Prosecutions were private- reflective of the broader shifting landscape of prosecution at the time,[808] but also the status of the Post Office as an arm of the state. In practice this reinforced institutional control over staff. Further, any cases of dishonesty that did not meet the institutional criteria for prosecution were dealt with by the staff branch, generally through dismissals.[809]

Related, whilst the IB, the Staff Branch, and the branch responsible for prosecution technically operated separately, the overarching commercial aims,[810] priorities and organisational culture (influenced by perceptions of victimhood) meant that in practice they operated in accordance with the broader aims and values of the organisation. In accordance with the challenges of distinguishing between commercial aims and legal responsibilities, it is proposed that the organisational structure and status also facilitated a blurring of the functions and status of the institution as victim, investigator, and prosecutor. Whilst this is to a degree functional, or dependent on organisational structures, it is maintained that it is also cultural. Hence the commercial priorities cannot be separated from the institutional response to crime and crime prevention, and the inquiry and prosecution functions cannot operate distinctively of one another. Ultimately where victimhood is perceived largely in relation to a specific suspect population, internal processes of investigation, discipline and prosecution operate *in accordance* with that perception, bearing in mind the commercial and reputational concerns. This is reflected in the historic process of investigation, which firstly prioritised identifying whether either suspicion about a member of staff can be confirmed, or whether following a crime committed against the Post Office, there is any

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[806] Locker (2005) (n 431)

[807] POST 120/41, *GPO: Instructions for the Guidance of Officers of the G.P.O.* (Revised 1945); POST 33/4797, *GPO: Information regarding Post Office Business which may be furnished to the police* (1935); POST 68/843, *GPO: IB Circulars* (1933-39)

[808] Churchill (2017) (n784) pp.190-7

[809] POST 120/41, *GPO: Instructions for the Guidance of Officers of the G.P.O.* (Revised 1945); POST 33/4797, *GPO: Information regarding Post Office Business which may be furnished to the police* (1935); POST 68/843, *GPO: IB Circulars* (1933-39)

[810] Which are evidenced from the outset, throughout the process of nationalisation.

evidence of staff involvement. This reinforces the notion that PO service staff were a 'suspect population.' The shared commercial and institutional aims and values also means that there was no formal separation of powers of investigation and prosecution, though the functions were carried out by different offices. By feeding back to the administrative branches that controlled the relevant section of the Post Office[811] the results of enquiries, the IB played a fundamental part in regulation given that it was able to advise on responsive actions (prosecution/ dismissal) as well as preventative mechanisms that could be imposed to prevent similar occurrences. Thus, the separation identified in previous sections of this Chapter relates to the various branches' formal functions and the preventive approach to crime control, imposed through rules related to the design and operation of the network. Culturally there is a continuity amongst Branches, given their collective focus on institutional revenue, reputation, and efficiency. This theme will be returned to in the following chapters.

4.7 Conclusion

This chapter has engaged with the internal response to crime in the Post Office, demonstrating the prevalence of both preventative and responsive approaches to crime control. Whilst preventative regulation was imposed in a somewhat fragmented manner, by specific branches responsible for particular services available within the Post Office, responsive crime control was largely under the remit of the Investigation Branch of the Post Office. Whilst the preventative strategies would arguably have been limited in their effectiveness given the fragmented approach facilitated the oversight of continuities in offending patterns and connections between offences, this was overcome to some extent by the fact that the IB in practice, did much more than enquire. However, organisational decision making was not driven by an attempt to eliminate all crime. The internal approach to crime control and prevention was conceptualised within the commercial aims of the Post Office, with only the Post Office as victim, and the prioritization of an internal approach facilitated the protection of reputation and revenue, potentially at the cost of more effective crime control and prevention.

Outside of preventive approaches, the influence of the IB remains clear. Responsible for enquiring into offences committed against the Post Office, a significant part of their role was to respond to inquiries and consider the potential for staff involvement in various offences. The force included watchers, and in practice operated like a private

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[811] For example, the Home Mails Branch if the issue investigated related to the Post, of the Telegraph Branch if it related to use of the telegraph network.

police force, with practice extending to the searching of suspects, suspects homes, the use of 'tests,' questioning, and recommendations for either prosecution or dismissal. This chapter has argued that the significance of this branch lies not only in their powers, but also their interactions with other branches of the institution, maintaining there is evidence both of the persistent pursuit of dishonest staff, and an institutional approach which sought to limit public access to information about crime in the organisation, underpinned by a developing organisational culture. Thus, the structure and organisation of the institution, its (commercial) aims, and its internal approach to crime control and prevention coincide and represent a cultural as well as a structural response to crime in the Post Office. Within the Post Office, the authority for responding to telegraph crime was designated according to the technology but framed according to the risk to revenue and reputation. The following chapter will examine these dynamics specifically through an analysis of the regulatory response to Telegraph Money Orders, and associated offending.

Chapter Five: Telegraph Money Orders and the Regulatory Response

"*This country is ruled by officials, who deal with all reforms as their own interest dictates. But every reform comes at last. The great change- the cardinal reform- which I should like to bring about is to put an end to the system by which the making of the postal laws is left in the hands of the officials who administer those laws"*[812]

Mr Hennicker Heaton, M.P.

5.1 Introduction

The following case study facilitates further examination of the incorporation of communication technologies into existing social structures, and the corresponding regulatory approach of the Post Office. It provides an example of pro-active, preventative regulation on behalf of the Post Office. It maintains that despite an awareness of the risk of crime associated with Telegraph Money Orders (TMOs), and an initial emphasis on preventative regulation, competing aims of efficiency and financial profit were increasingly preferred, leading to a process of deregulation. This can be in part attributed to the inherently contradictory mechanisms of regulation required for the success of the network versus the embedding of crime prevention, and therefore relates to broader connections between governance and regulation established in Chapter Three. Additionally, whilst there was an awareness that incorporation of telegraph technology could facilitate crime in this specific social setting, the conception of the threat continued to be somewhat static and limited by a preoccupation with reputational concerns. Finally, as the TMO system became socially incorporated, embedded into existing social structures, and interacted with other networks, regulation becomes increasingly complicated, reflecting different aims, practices, and processes, whilst frauds facilitated by TMO become essentially accepted as part of the normal operation of the network. Despite this, a pressing need to maintain control over staff is retained, though this is institutionalised and generally managed internally. A conflict is evidenced between externally facing regulations, as opposed to the internal approach to a perceived inherent threat. As will be argued in the conclusion, this approach as arguably had significant, and long lasting, implications for Post Office workers.

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[812] POST 27/119, *Abolition of Postal Orders and Reform of the Money Order System: The Remedy for Crime in the Post Office* (1894, Leith)

This chapter will firstly introduce the Money Order, and the Telegraph Money Order systems. The pre-existing system of money orders provides important institutional context in relation to both the offending it facilitated, and the regulatory response of the Post Office. From there, it introduces the first TMO frauds, and identifies an institutional perception of potential economic risk emerging from their misuse. An analysis of the interactions between incidents of TMO fraud and the responsive approach to regulation reveals an initially successful preventative regulatory regime. However, increasing concerns from branches other than the IB about the impact that preventative mechanisms are having on network efficiency eventually lead to a process of deregulation. This chapter tracks this process, highlighting that the emphasis on profit and efficiency eventually saw a retreat from preventative regulation, with the crime control function being assigned more squarely within the IB, and executed through their emphasis on detection. This chapter draws largely on the archival records of the Post Office, thus represents a largely institutional perspective. However, as with the previous chapter, some nuance is reflected in the records of various branches evaluating the various regulatory processes.

5.2 Money Orders

Whilst this Chapter will focus particularly on TMOs, it is important to firstly introduce the concept of the money order, and its history within the Post Office. A money order is essentially a financial instrument facilitating the transfer of funds. Generally issued by either state of financial institutions, they could be purchased in a specific name (detailed on the order) and then handed in at participating institutions in exchange for the money they were purchased for. They essentially operate in a similar way to cheques, though they are pre-purchased for a specific amount. The Post Office Money Order was introduced in 1848[813] with the Postal Order System allowing for the transmission of money orders via post.[814] The system was reformed in 1881[815] to allow for the issue of orders for fixed sums. Orders were then issued with a 'blank space for the name of the payee, and another for the name of the office where they are to be paid' thus allowing the orders to be utilised like a piece of paper money.[816] Importantly, the Order would be the property of its holder; its 'bona fide owner being unaffected by the previous history of the note thus its legal position being the same as with coins.[817]

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[813] Post Office (Money Orders) Act 1848 (11&12 Vict c.88)

[814] S. W. Jevons 'Postal Notes, Money Orders and Bank Cheques' (1880) 38 The Contemporary Review 1866-1900, 150-161, 150

[815] Ibid, See Post Office (Money Orders) Act 1880 (43 &44 Vict c. 33)

[816] Jevons (n 814) at 152

[817] Ibid

Essentially, this allowed for both the name of payee, and the paying office to be filled in at any time. Additionally, if the Order was attributed to a particular payee, and the order bore a signature purporting to be the signature of the payee, "it shall not be necessary to prove that the receipt was signed by or under the authority of the payee."[818] Immediately after an order was paid by any officer of the Post Office, all potential liability associated with the order on behalf of the Post Office was discharged, 'notwithstanding any forgery, fraud, mistake, or loss in reference to such order… and not withstanding anything whatsoever.'[819] The relevant clause went so far as to free the Postmaster General and his officers from 'even his own regulations… [meaning that] within the department no bonds of law or equity are to be recognised in case of error,' whilst the outside public would be subjected to 'red tape' thus much more extensive regulation.[820]

Contemporary critique observed a lack of security associated with money orders, specifically when compared to bankers' cheques which essentially enabled the Post Office department to 'create a considerable circulation of paper currency, without providing any corresponding guarantees.'[821] Money Orders could be sent by post (postal orders) or withdrawn and physically handed from person to person. Records reveal the lax regulations related to signatures, or the ability to alter the amounts for which Money Orders were purchased facilitated offending by both insiders and outsiders.[822] Contemporary economists raised concerns regarding the lax regulation of what was essentially tender and considered the development of the scheme an attempt to compete with the Banks, but in the absence of any robust regulatory regime comparable to the ones they were subject to.[823] Needless to say, the introduction of the orders contributed to a proliferation of crime, of which the Post Office effectively shielded themselves from responsibility.

Whilst formal institutional responsibility for the misuse of Money Orders was discharged through legislation, the internal regulatory approach reveals an internal 'atmosphere of suspicion.'[824] Pertinently, it was shortly after the introduction of the reformed Money Order scheme that the then 'Missing Letter Branch' was reconstituted to become the

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[818] See 'Draft Regulations made under the Post Office (Money Orders) Acts 1848 and 1880' available < https://parlipapers.proquest.com/parlipapers/result/pqpdocumentview?accountid=14664&groupid=95 673&pgId=19a49d18-012b-42c5-8fea-3ff3398b9c3d> last accessed 29.9.2022, Clause 8
[819] *Ibid* at Clause 16
[820] Jevons (n 814) at 153
[821] *Ibid* at 154
[822] POST 120/ 421, GPO, *Money Order Series Fraud,* 1898- 1957
[823] Jevons (n 814) at 158-161
[824] POST 27/119, *Abolition of Postal Orders and Reform of the Money Order System: The Remedy for Crime in the Post Offic*e (Leith, 1894) 8

'Confidential Enquiry Branch.'[825] It is perhaps no coincidence that these two events coincide, given the increase in crime attributed to the system of Money Orders associated with the Post Office. By 1886, an increase of 13% in the workforce of the CEB was attributed in part to the introduction of the Postal Order, and issues inherent in the fact that Postal Orders did not require the name of the payee, or the office of payment, to be specified at purchase. A pamphlet published in 1894 intending to draw public attention to proposals to democratise Post Office decision making emphasised concerns that this lack of security was being overlooked by the Post Office.[826] The Pamphlet was a result of increased concern within the Edinburgh Chamber of Commerce, following their investigation of a scheme proposed by an ex-clerk in the Edinburgh Post Office to enhance the security of the Postal Order system, which had been rejected by the Post Office.[827] The pamphlet maintained the Post Office were overlooking important potential improvements to their services at social and commercial cost to the public. Seemingly then, accepting the increase in crime.

The pamphlet revealed correspondence between Mr James Scott (a clerk in the Edinburgh Post Office), Mr Kemp (Edinburgh Chamber of Commerce) and the PMG's private secretary, and emphasised the view that the Post Office was operating above the law in relation to Postal Orders, in a manner that was 'directly conducive to crime.'[828] It was suggested that were this a concern not attributed to a State Department, the law would have intervened.[829] Importantly, the published correspondence acknowledges the opportunities for the 'dishonest' postmaster to manipulate the scheme for his own financial advantage, and identified the increased volume of Post Office staff committing offences and being sentenced to penal servitude, or at least dismissal, as directly attributable to the introduction of the Postal Order system.[830] However, as mentioned previously, the regulations that accompanied the introduction of the new system saw that Post Office liability for individual financial loss was non-existent, even where loss was attributable to the fraud, forgery or theft of Post Office staff. The internal policing system, however, facilitated a 'constant atmosphere of suspicion… in the Postal Department' with the Confidential Enquiry Branch relying on 'demoralising espionage and trap letters' to deal with this problem

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[825] POST 27/119, *Abolition of Postal Orders and Reform of the Money Order System: The Remedy for Crime in the Post Offic*e (Leith, 1894) 8
[826] *Ibid* at 6
[827] The proposal is a little unclear, but seems to relate to the introduction of stamps on money orders
[828] *Ibid* at 12
[829] *Ibid* at 12-13
[830] POST 27/119, *Abolition of Postal Orders and Reform of the Money Order System: The Remedy for Crime in the Post Office* (Leith, 1894) 12-15; See also POST 120/ 421 (n 816)

population.[831] The responsibility for the threat of crime was seen to be situated with the service staff, rather than within the institution more broadly, and this responsibly was reflected in internal processes as opposed to outward facing legislation.

In practice, the reform of the Money Order system in 1881 ushered in plentiful opportunities for crime. The ability for customers to purchase money orders and leave both the payee name and the name of the Post Office of collection blank gave way to opportunities for theft of Postal Orders in particular; interception of a blank order would easily facilitate financial gain.[832] Given the Post Office staff were most connected, physically, with the network, there were not only multiple instances of thefts from the post by PO staff, but also a public awareness that this was a concern. [833] For those not inherently connected to the network, there were other methods of manipulation of the network in order to facilitate financial gain. Reports indicate that 'outsiders' were also stealing post, but also altering the Order or printing altogether forged forms.[834] Post Office records indicate numerous cases of Orders for 4s, for example, being altered to 14s. Orders were then generally passed on to tradesmen in exchange for goods or services.[835]

Offenders were also able to commit multiple offences, for example in 1898 two offenders obtained multiple orders for small amounts, from a variety of locations spanning from London to York.[836] Post Office records indicate that erasures were made by 'means of chemicals' and orders 'altered to higher amounts and passed onto tradesmen in payment of goods.'[837] Most recorded offences within the Post Office records indicate knowledge of offenders purchasing between 2 and 105 Money Orders which were then altered, with the timespan of recorded offences varying between 1 day, to 11 months.[838] Additionally, the records demonstrate that whilst many of these recorded offenders were caught and generally sentenced to penal servitude (sometimes with the addition of hard labour), on release some immediately involved themselves in another spate of frauds relying on the same techniques. For example, an Albert Ernest Davies (recorded as a habitual criminal) repeatedly partook in Money Order frauds lasting between 9 days and 1 month and 7 days, and on each of the

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[831] *Ibid* 12
[832] POST 120/ 421, GPO, *Money Order Series Fraud,* 1898- 1957
[833] POST 27/119 (n 830)
[834] POST 120/421 (n 832)
[835] *Ibid*
[836] POST 120/421 (n 832)
[837] *Ibid*
[838] *Ibid*

recorded 3 occasions served between 18 months hard labour, and 8 years penal servitude.[839] Upon release he quickly committed the same offence, suggesting at least that the offence was lucrative, and relatively easy to commit, if not to avoid eventual detection in his case. Records of the Post Office also reveal that Money Order offending persisted throughout, and following, the incorporation of the TMO. Against this background, it is natural that with the expansion into TMOs, concerns would be raised with regards to the potential for fraud against the network within the Post Office.

5.3 The Introduction of Telegraph Money Orders (TMOs)

It is first necessary to outline how the system of TMOs operated in practice. To facilitate the transaction, an individual would first need to attend a Post Office that offered the service. They would need to purchase a Telegraph Money Order Advice, for the specified amount. This office (the office of issue) would produce an A form on purchase, which would then be passed to the telegraphists for insertion onto the wire. The office of issue would also be required to send an ordinary Money Order Advice to the office of payment (the final destination of the TMO advising). This was essentially a confirmatory process to allow for the cross checking of TMOs that were paid against TMOs that had been issued. Given the relatively complexity of the available routes for the transmission of telegraphs, it is likely that prior to arriving at the office of payment, TMOs advising would pass through transmitting offices. On receipt of a TMO advising at a transmitting office, a B form would be produced. This would be passed from a receiving telegraphist to a transmitting telegraphist, who would then reinsert the message onto the wire. On arrival at the office of payment, receiving telegraphists inserted the message onto a C form, which was then handed to the counter clerks in the office for collection, and therefore payment.

On the 8th July 1888, a trial of systems of TMO was proposed by the Post Office, to the Treasury, to be undertaken at Chief and Branch Offices in London and in certain large towns.[840] In response to the initial proposal, the Financial Secretary to the Treasury, Mr. Jackson, felt unable to approve the trial system 'save under conditions which absolutely preclude(d) the risk of fraud.'[841] Whilst it was impossible to calculate the

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[839] POST 120/421 (n 826), Ref. 322367/08 'Albert Ernest Davies'; See also Ref. t18980620-424 Old Bailey Online, Trial account of Albert Ernest Davies and Frederick Mason available < https://www.oldbaileyonline.org/record/t18980620-424?text=Albert%20Ernest%20Davies%20money%20order> last accessed 4.4.2022

[840] POST 26/116, GPO, 'Enclosure A with Mr Gates Memorandum: Telegraph Money Orders, Forgery by Post Office Servants of Telegrams Advising: History of Safeguards Adopted Against' (1903) in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[841] *Ibid* (18th August 1888)

unknown risk associated with the potential for TMO frauds, a distinct lack of risk associated with systems operating in the Colonies, alongside a belief that the TMO system would not lend itself to fraud any more so than existing monetary transactions undertaken by the department, led to the official sanctioning of the trial by the Treasury in March 1889.[842] Demonstrating a cautious approach, the Treasury maintained than the trial could be undertaken if conditions were met that would secure the system against possible losses by fraud; in this case, the charge to the public for use of the system was to be put at such as rate as to insure against possible losses.[843] There existed both a public and an institutional sense that introduction of the TMO system could facilitate fraud, and this was conceptualised as a risk to public funds. Essentially, were TMOs forged or fraudulently altered, the loss would be felt by the institution, since they would not have received the funds from the purchaser in return for the amount that the order represented. The immediate approach appears to have been to ensure financial protection from losses, combined with a testing of the system which could then inform further regulation. 'Losses by fraud were an unknown quantity' and only after a 'long course of experience' was it felt that the [Post Office] department would be able to judge what rate to charge to the public for use.'[844] This suggests an approach whereby the fraud prevention response would be designed to balance potential financial losses to the institution, not prevent all frauds. It is important to note at this point that the risk was considered in economic terms.

The service was bought into operation on 2nd September 1889. The system (as with the postal order system) essentially allowed for the transmission of a Money Order. Rules were issued aiming to prevent fraud on or against the network in February 1890.The basic preventative measures at this stage were that whilst TMOs were to be paid upon receipt of the Telegram of Advice, the ordinary Money Order Advice should also be forwarded from the issuing office via post. If the ordinary advice was not received in due course, the Postmaster of the office of payment was instructed to report the fact by telegram immediately if the amount exceeds £1, or by post if it did not exceed £1, to the relevant branch of the Secretary's Office, who could then forward it to the CEB if necessary.[845] This was designed as a check on fraud, but was not preventative in nature. The idea of transmitting the ordinary Money Order Advice via post was that if anyone (staff in particular) had forged a TMO advising (without purchasing the actual order) or amended an existing order (perhaps transmitted through their office) this

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[842] POST 27/ 117, GPO, 'Memorandum' 7th May 1903, in *Telegraph Money Orders. Forgery by Post Office Servants of Telegrams Advising: History of safeguard adapted against*

[843] POST 26/116 (n 840)

[844] *Ibid*- see position of the Treasury (not numbered)

[845] POST 26/ 117 (n 842); POST 26/116 (n 840)

would be quickly identified. This rule was issued in acknowledgement of the fact that any delays in reporting actual or suspected fraud would hinder the possibility of catching those responsible. It is also possible, however, that this rule was related to measuring risk. In acknowledgement that the risk to revenue from fraud in this regard was perceived as unknown, this allowed the organisation to keep an active check on any potential misuse.

Following the issuance of the rules, the service was extended to all Head and Branch Offices where telegraph and money order business was transacted. In 1891 the network was further expanded to all sub offices. The lack of reported cases of fraud was cited in favour of this expansion.[846] It was not until 9th November 1891 that the first fraud against the network was reported internally. What followed was a period of responsive regulation. Safeguards were introduced that responded to individual (and at the time, isolated) incidents of fraud, aiming to prevent individuals from committing fraud against the Post Office.[847] It is inciteful to examine this process in more detail, as facilitated by the more extensive approach to record keeping within the Post Office in relation to Telegraph Money Order crime and the regulatory response.

5.3.1 *The First Fraud*

The first fraud (recorded by the CEB) is referred to as 'Bryant's forgery' throughout the records, and occurred on the 9th November 1891 (thus over 2 years after the introduction of the service, and 1 year and 7 months after the service was extended).[848] Bryant was a Post Office Servant, working as a telegraphist in the Central Telegraph Office. A report by the CEB indicates that during the course of employment, Bryant dealt with a genuine message advising a TMO from Canterbury to Folkestone on the 3rd November 1891 in Dover. On his return to the Central Telegraph Office on the 9th November, he forged a 'B' form[849] advising a TMO from canterbury to Borough High Street. He used the same office of issue and the same number as that which had appeared on the genuine message of the 3rd November, but 'added a fictitious office of payment, a fictitious remitter's name, and a fictitious amount.'[850] Being in the Central

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[846] POST 26/116, GPO, *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[847] *Ibid*

[848] POST 26/116, GPO, 'Enclosure B with Mr Gate's Memorandum of 7 May 1903: Telegraph Money Orders. Forgery by Post Office Servants of Telegrams Advising' p88 'Bryant's Forgery. Method of Commission' in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[849] B forms would be used at transmitting offices (repeating the original telegram so as to forward it to the next office)

[850] *Ibid*

Telegraph Office, he was then able to insert the message amongst some press messages. The message was sent on by an unassuming telegraphist, and Bryant was able to access the physical form, and destroy it, before going to Borough High Street to collect the order, using the false name he had inserted into the forged order, thus fraudulently appropriating the money. The matter was reported by the Money Order Office to the CEB some 8 days later. According to the records, the delay in reporting was a result of a 'slack' clerk in the Money Order Office. The aforementioned system of sending the ordinary Money Order Advice via post to the issuing office was in place at this time. This should have facilitated a system whereby the TMO could be cross referenced against the Money Order Advice. In this instance the 'slack' clerk failed to bring the matter to his supervisors' attention.[851] Additionally, the Borough High Street Office failed to telegraph the Money Order Office when it did not receive the advice of the Money Order the day after payment. As a result, the fraud remained undetected for some time.

The fraud was 'facilitated by there being no rule that on the arrival of a telegram of advice it was to be taken to a Supervising Officer to be authenticated by his signature.'[852] Whilst it was practice to have a TMO repeated (signalled back to the office from which it was received) this practice was designed to ensure the correctness of the text itself, rather than as a check on fraud. Bryant was in the Central Telegraph Office (CTO), thus a transmitting office. On receipt of the telegram from the office of issue, there was no requirement that that telegram of advice should be authenticated by the signature of a supervisor before transmission to the paying office. Additionally, it is worth emphasising that following the initial process of incorporation no frauds had been reported until this time, hence even measures designed into the system to enhance the detection of fraud may not have been consistently observed. As the Travelling Clerk (IB) who enquired into this case pointed out, the message requesting repetition would be a more effective safeguard against fraud if it were sent from the office of payment to the office of issue, as opposed to the connecting, or transmitting office.[853] This highlights that whilst the role of the IB at this time was inquiry, in practice it extended to contributing to regulatory processes, given their expertise. What followed was a process of amending and introducing rules controlling the interaction of operators with the network, and governing network processes, to prevent the same methods of commission of fraud being relied upon again. Hence in March 1892, when the network was expanded to all sub offices, the statutory regulations were

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[851] *Ibid*
[852] *Ibid*
[853] *Ibid*

amended,[854] to ensure that TMOs advising were countersigned at all *transmitting offices* by supervising officers.[855] Bryant, meanwhile, pleaded guilty to forgery at the Central Criminal Court.[856] Whilst his sentence was respited, he was dismissed from his job by the Post Office.

New regulation required Supervising Officers at transmitting offices to check the telegram of advice had been clearly signed by the receiving telegraphist, and additionally add his/ her signature to the B form.[857] In the absence of a countersignature, no telegram of advice was to be telegraphed on from a transmitting Office.[858] This response is specific to the facts of Bryant's fraud; he was situated in the CTO thus a transmitting office. Regulatory attempts therefore targeted the structure and function of the network itself, to actively prevent threats from fraud to institutional revenue. However, they responded to specific incidents as opposed to any conceivable general threat.

Throughout the process of updating the rules, it was suggested a message should be sent from the paying office to the office of issue to verify the issue of the Order.[859] This would have addressed, to a degree, the potential for Post Office Servants to insert forgeries at the office of issue. However, this measure was ultimately considered unnecessary given that there had only been one case of fraud, emphasising the limits of concern in relation to a broader threat at this time. Rather the threat of fraud appears to have been consistently conceptualised in relation to current events, rather than the clearly conceivable potential threats to the network. The regulations did not go so far as to encompass all conceivable preventative measures, reflecting the ever-persistent drive for expansion and efficiency.

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[854] POST 26/116, GPO, 'Statutory regulations dated 9th Feb 1892' in 'Enclosure A with Mr Gates Memorandum: Telegraph Money Orders, Forgery by Post Office Servants of Telegrams Advising: History of Safeguards Adopted Against' (1903) in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[855] POST 26/116, GPO, 'Mr Fischer's Report of 11th January 1892' in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[856] Old Bailey Online, ref. t18911214-86 'Samuel James Bryant. Deception; forgery. 14th December 1891' available https://www.oldbaileyonline.org/record/t18911214-86 last accessed 19.9.2021

[857] POST 26/116, GPO, 'Statutory regulations dated 9th Feb 1892' in 'Enclosure A with Mr Gates Memorandum: Telegraph Money Orders, Forgery by Post Office Servants of Telegrams Advising: History of Safeguards Adopted Against' (1903) in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[858] *Ibid*

[859] POST 26/116, GPO, 'Central Telegraph Office Reports accompanying Mr Fischer's Report of 11th January 1892' in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

Contextually, it is important to acknowledge the pressure on management to achieve economic success, clearly evidenced following processes of nationalisation. Tied into this was a pressing need to preserve the reputation of the Post Office. The need for economic viability and success following the incorporation of the Telegraph Money Order came against a backdrop of increased financial pressure, interpreted as producing a 'unique' mix of institutional objectives that incorporated both fiscal and social concerns.[860] Nationalisation of the telegraph was largely orchestrated by Frank Ives Scudamore in the Post Office, and his limited technical knowledge of the telegraph system, alongside his lack of management skills saw not only huge financial pressures emerge during and post nationalisation, but also led to critiques related to his tendency to overlook 'constitutional and legal niceties to achieve his goals.'[861] This led to a shift in relations between the Treasury and the Post Office, after his significant and unauthorised overspending in relation to the expansion of the telegraph network.[862] It also saw a sense of competitiveness embedded between Post Office departments, with those responsible for telegraphy advocating for its expansion and competing with the Penny Post, another department within the institution. Financial pressure on the telegraph branch persisted long after the significant overspend of Scudamore and was exacerbated by the profits and uptick in use associated with the post. Telegraphy was not a financial 'success' for the Post Office, though its social aims of connectivity were celebrated.[863] Arguably this background provides important context against which we should interpret the economic and reputational lens through which the incorporation of the TMO was envisaged. Particularly when we acknowledge the availability of Postal Money Orders, thus the persistence of competition between branches of the institution.

This in turn can inform the way we interpret the approach of the institution to regulating TMOs. There is a clear shift from conceptualising a potentially significant financial risk at the outset, hence the cautious introduction of the system, towards a sense of complacency following a distinctive lack of fraudulent activity on the network during the first few years of its operation. Bryant's fraud was not perceived as an indication of a broader threat to the network outside of his specific circumstances. Whilst it was acknowledged that more intense measures could be imposed that would prevent other methods of commission of fraud, they were deemed unnecessary, at least in part due to labour and efficiency concerns should they be introduced. They simply were not

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[860] D. Campbell-Smith, *Masters of the Post: The Authorized History of the Royal Mail* (2011, Allen Lane) Post Office Book 184

[861] F.R. Perry, 'The Rise and Fall of Government Telegraphy in Britain' (1997) 26(2) Selected papers presented at the forty-third annual meeting of the Business History Conference (Cambridge University Press) 416-425, at 422

[862] *Ibid*

[863] *Ibid* at 425

conceptualised as economically worth it, given the perceived limited risk associated with internally facilitated TMO fraud, and the potential for more cumbersome regulations to limit the efficiency (and therefore potential use of) the network.

Similarly interesting is that this approach comes against a background of Postal Order frauds and thefts. The Post Office had resisted outside interference relating to the prevention of Money Order facilitated crime, and preferred an internal approach, publicly minimising the threat of theft or fraud, whilst simultaneously yielding a strong internal response to staff who threatened the integrity of the network. The institution was recording, pursuing, and prosecuting cases of money order theft and fraud; it would therefore have been wholly conceivable that issues would emerge in relation to the telegraph. Perhaps attributable to the distinction in approaches between departments, acknowledging the legacy of Postal Money Order frauds reveals an organisational contradiction. On the one hand there is an evident concern regarding the introduction of the TMO at institutional level, but in terms of actual preventative action at branch level, there is a lack of action in terms of network design and organisation. Emphasis is instead placed on retaining control of the narrative around crime and the crime threat in the Post Office, and Telegraph Branch concerns we driven by a desire for 'successful' incorporation of TMOs, against that backdrop of competition with other branches of the organisation.

5.3.2 *TMO Forgery and A Responsive Approach to Regulation*

The second forgery reported by the CEB took place on the 23rd August 1892. David Davies was a Sorting Clerk and Telegraphist in Swansea.[864] Whilst on duty he forged a message on a C form,[865] purporting to be the advice of an Order from Thomas Harries in favour of D.D. Davies. He then put the form amongst others, and it was taken to the counter by a telegraph messenger. He then called at the counter himself and obtained payment.[866] As by the following morning the Swansea Office had not received an advice by post, they telegraphed in accordance with the existing rules to the Money Order Office. Papers were referred first to the Telegraph Branch, and then to the CEB. The process of investigation revealed Davies as the culprit on account of his handwriting on the C form. As noted by the then Director of the CEB, Mr Phillips, the

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[864] POST 26/116, GPO, 'Enclosure B with Mr Gate's Memorandum of 7 May 1903: Telegraph Money Orders. Forgery by Post Office Servants of Telegrams Advising' p91 'Davies's Forgery. Method of Commission' in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927
[865] C forms were produced in issuing offices (i.e., the final destination of the TMO)
[866] *Ibid*

Telegraph Money Order system left open considerable potential for fraud as it was currently operating.[867] Whilst there had been a rule introduced as a response to the first recorded fraud requiring Supervising Officers to countersign B forms, this was only the case at transmitting offices, and in an issuing office there was no such rule. The CEB emphasised the value of using confirmatory service telegrams which should be sent directly to the office of issue to validify the telegram advising. They also suggested no TMO advising should be acted upon unless verified by the signature of a supervising officer regardless of whether the telegram was issued or transmitted through the relevant office. Finally, they emphasised the necessity for a swift process of reporting suspicion of fraud to the CEB.[868] It was acknowledged that these suggestions would not effectively prevent all potential forms of forgery or fraud relating to TMOs. Reflecting a distinct conception of the crime threat, the Branch maintained that whilst only two cases of fraud had occurred since the introduction of the system, experience showed it took 'time for the possibilities of fraud to suggest themselves to the dishonest.'[869]

5.3.2.1 *Competing Institutional Aims and Values*

Of fundamental importance here are the competing concerns of the various branches within the institution. The CEB conceptualised the relationship between crime (or 'dishonesty') and communication technologies as fluid and developing throughout time, thus thought more intensive prevention mechanisms were justified. However other branches,[870] where crime, dishonesty or deceit were not the primary concern, favoured efficiency, increasing use, and expanding services, and had a more static conception or understanding of the threat posed by fraud, reflective of their broader function related to service provision and profit. This reflects pluralisation in terms of regulatory aims and intentions within the organisation, dependent on the branch. The controller of the Money Order Office, for example, in 1892, pushed back against a proposal for further preventative measures beyond the aforementioned counter signature checks.[871] Whilst the Director of the CEB advocated for the introduction of verification telegrams

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[867] POST 26/116, GPO, Mr Phillips, Director of the Confidential Enquiry Branch, 'Memorandum to the Telegraph Branch' 28th September 1892 in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[868] *Ibid*

[869] POST 26/116, GPO, Mr Phillips, Direction of the Confidential Enquiry Branch, 'Memorandum to the Telegraph Branch' 28th September 1892 in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[870] For example, the Money Order Office; The Telegraph Branch

[871] POST 27/ 117 GPO, 'Report of Mr Hanley, Controller of the Money Order Office' (10 November 1892) in *Telegraph Money Orders. Forgery by Post Office Servants of Telegrams Advising: History of safeguard adapted against*

sent from the office of transmission to the office of issue to confirm the receipt of a TMO, he felt that this measure was too onerous considering there had only been two cases of fraud amounting to relatively insignificant monetary loss.[872] Whilst he agreed with the introduction of verification of TMO forms by the signatures of supervising officers, his perception of the threat posed by fraud was framed clearly around previous incidents, as opposed to the Director of the CEB's more fluid, conception, accounting for an evolving threat. As a response to this specific fraud, countersignatures were introduced at every stage of transmission. Whilst more onerous measures were mooted, they were rejected on account of there being insufficient instances of fraud to justify them. Hence, in 1893, a notice was inserted in the Post Office Circular[873] detailing the introduction of additional precautions, notably the countersignature checks at all transmitting and paying offices. The measure was not perceived as problematic given that it did not insert into the process of transmission significant potential delays, thus prioritisation of efficiency was not impeded.

Throughout the period, the potential loss from TMO forgeries or fraud came to be conceptualised as minimal by the Money Order, and Telegraph Branches. A committee appointed by the Secretary in 1892 to enquire into issues relating to the Money Order Office confirmed this when they made a case for the reduction in the rates of TMOs.[874] Whilst rates were initially fixed at a level that would 'secure the department against the [unknown] risk of losses through fraud' experience was said to have shown 'that the rates charged have proved more than sufficient... [with] only two cases of fraud' coming to light, and incurring minimal losses.[875] As a result, rates were reduced, thus the cost of TMOs significantly lowered. This reflects the general emphasis of the organisation on expansion, economic growth, and international competition, discussed in the previous chapter. At this stage, it is also however important to consider cost as a barrier to use more generally, but also the possible benefit to this, being cost as a barrier to misuse. It was not until costs were lowered, and use of the TMO system was further incorporated socially, that a more series fraud threat was conceived by the organisation more generally.

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[872] *Ibid*

[873] POST 26/116, GPO, 'Post Office Circular 17th January 1893: Telegraph Money Orders- Rule 12' in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[874] POST 26/116, GPO, 'Report of the Committee Appointed to Enquire into Matters Connected with the Money Order Office' 23rd November 1893 in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[875] *Ibid*

5.3.3 *Systemic Frauds and the Shifting Fraud Threat*

In October 1894 a TMO fraud occurred that was conceptualised as a sufficiently significant financial threat to justify more intensive regulation and involved the forging of three TMOs advising, of £25 each.[876] In this instance there were several Post Office Servants, and an ex- Post Office servant involved in a more sophisticated, organised and, for a time, ongoing fraud. B and C forms were stolen during two Post Office servants (Sturman and Record) duty. Cooper (a third offender), who was not an officer in the Central Telegraph Office, forged all the forms as his handwriting was unlikely to be recognised. Sturman forged the signature of a supervising officer onto the back of all the forms. Record then bought the forms into the office, and assisted by another employee, situated the relevant C and B forms in the appropriate places for dispatch by telegraphists, or payment by counter clerks. As the forms already appeared to be signed by Supervising Officers at the fictitious offices of issue, they were then signed by Supervising Officers in the Central Telegraph Office and sent on to their recorded destinations or collected. A 'person unknown' was then able to obtain payment of the orders. Despite the Office of Payment not receiving the replica advice through the post the following day, they failed to telegraph the Money Order Office as was required by the regulations at the time.[877] As a result, there was a delay in initiating investigative action, and it was not until the Money Order Office undertook checks on the various Money Order accounts that the fraud was discovered, reported to the Secretary, and then to the CEB. Regulatory mechanisms (supervising officer's signature) were insufficient to prevent the fraud, and regulatory processes were not fulfilled appropriately, though it was noted that the previously mooted system of confirmatory telegraphs[878] could have potentially prevented this fraud.[879]

The Third Report of the Money Order Office Committee[880] acknowledged that as a result of this specific instance, there was now a possibility of serious loss arising out of

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[876] POST 26/116, GPO, 'Enclosure B with Mr Gate's Memorandum of 7 May 1903: Telegraph Money Orders. Forgery by Post Office Servants of Telegrams Advising' p92 'Forgery by Sturman, Record and Cooper. Method of Commission' in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[877] *Ibid*

[878] As proposed by Mr Phillips, Director of the Confidential Enquiry Branch

[879] POST 27/ 117, GPO, 'Memorandum' 7th May 1903, in *Telegraph Money Orders. Forgery by Post Office Servants of Telegrams Advising: History of safeguard adapted against*

[880] POST 26/116, GPO, 'Third Report of the Money Order Office Committee' 18th February 1895 in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

frauds such as this.[881] The forging of the supervising officers countersignature posed a significant challenge, and the Committee reported that, relying on these methods, there was nothing to prevent the forging of 'a number of such telegrams for £50 each' with the detection of culprits being extremely difficult.'[882] It was the potential scale of fraud that was seen to justify the introduction of further preventative measures, with the financial consequences for the Post Office also including the cost of investigation. They proposed that it should be a requirement for TMOs advising, where orders are to the value of £10 or more, to be verified with the issuing office. At the time, the number of telegrams issued for £10 or more made up 11.3% of the total number issued. Payment for these orders might necessarily have been delayed, however it was acknowledged that the impact on efficiency could be justified on account of the 'risk to which [the department] [was] now exposed.'[883]

The conceptualisation of risk shifted significantly. The fraud itself was not a new problem, but the amount itself was what was so troubling, and the potential for frauds of this nature to be systemic. Issues relating to the late reporting of missing telegrams of advice after payment were not responded to at this stage. However, a fourth fraud was reported before the committee's recommendations had been formally introduced. Once again, the fraud involved multiple individuals, both staff and non-staff, significant financial loss and in this instance, it 'continued at intervals' between 23rd July 1895 and 21st August 1895 and involved multiple offices of payment.[884] Again, delays in reporting irregularities and the failure to receive a duplicate advice by post caused significant problems in identifying the perpetrators for the CEB. The investigation was only successful thanks to a report by another telegraphist who had been asked to help facilitate the frauds.[885]

5.3.4 *Preventative Regulation*

The second incident of (serious) fraud was sufficient to justify a change in regulation, which the CEB had long called for. The Director of the CEB confirmed with the Financial Secretary that the measures suggested by the Committee should be adopted immediately, and maintained that they should apply to orders of £5 and upwards, as

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[881] *Ibid*

[882] *Ibid*

[883] *Ibid*

[884] POST 26/116, GPO, 'Enclosure B with Mr Gate's Memorandum of 7 May 1903: Telegraph Money Orders. Forgery by Post Office Servants of Telegrams Advising' p95 'Forgeries by Alltree, Taylor, Wilkinson and others. Method of Commission' in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[885] *Ibid*

opposed to the suggested £10.[886] Citing the recent (fourth) frauds at Manchester as justification, Mr Phillips emphasised the dangers the institution was exposed to.[887] Interestingly, the legal proceedings which were set to follow the fourth fraud were identified as a potential source of information for those who may wish to carry out similar frauds; they risked exposing 'the weak points in the department system… [inducing] other dishonest persons to go do likewise.'[888] He also stressed the importance of timely reporting to the CEB, highlighting the fleeting nature of these criminal encounters, and the possibility for 'perpetrators to get clear away with the [significant funds] before there is any possibility of the fraud coming to light.'[889] As a result, the 'confirmatory telegram' was introduced on the 27th August 1895, with a notice being inserted into a Post Office Circular stating that 'on receipt of a telegraphic advice of Money Orders to the value of £10 and upwards, a service message should be immediately sent to the issuing office to verify the amount; the orders are not to be paid until the reply is received.'[890]

Whilst preventative measures became more substantial, problems persisted with the detective efforts of the CEB because of the complex organisational processes correlating with structure, as discussed in the previous chapter. On the issue of timely reporting to the CEB, the system of reporting irregularities which may amount to criminal conduct required Postmasters to alert the Telegraph Branch, as opposed to the Confidential Enquiry Branch unless it was immediately clear that criminal conduct had been committed by Post Office Servants.[891] There was no central check on the TMO system, and the identification of irregularities fell to those working the telegraph, who could then report the issue to the relevant secretary's office. It was down to the Telegraph Branch to decide whether, and when, to refer the case to the CEB. This system operated poorly in practice, with Mr Phillips of the CEB stressing that prompt reporting to the CEB was essential for effective detection and prosecution.[892]

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[886] POST 26/116, GPO, Confidential Enquiry Branch, 'Letter from Mr Phillips (director CEB) to Financial Secretary' 23rd August 1895 Telegraph Money Orders: Cases of Forgery of Telegrams Advising 1888-1927' in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[887] *Ibid*

[888] *Ibid*

[889] *Ibid*

[890] POST 26/116, GPO, Post Office Circular of 27th August 1895, 'Telegraph Money Orders for £10 and upwards' in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

[891] POST 27/117, GPO, 'Memorandum of Mr Gates (Telegraph Branch)' 7 May 1903 in *Report to the Money Order Committee in favour of abolition of the system of sending confirmatory telegrams from the office of destination when the sum exceeds £10* (1903)

[892] POST 26/116, GPO, Correspondence between Mr Phillips (Director of CEB) and Mr Turner, Financial Secretary, 23rd August 1895 in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against* 1888-1927

The issue relating to delays in reporting suspected or actual incidents of fraud, on account of the non-receipt of a corresponding Money Order Advice by post was considered by the Money Order Office Committee in 1896. In their Fourth Report they proposed that 'when a Postmaster pays a Telegraph Order he should forward the Telegram of Advice the same day to the Metropolitan Office of the Country in which the order was issued.'[893] They could then be examined, and if the 'serial number of the order did not appear to correspond with the numbers then current at the Office of Issue, the circumstance would at once be reported to the Director of the CEB.'[894] This proposal would produce, in effect, 'an automatic check up on the payment of Telegraph Money Orders which would almost certainly bring to light any fraud by means of a forged telegram of advice on the first day after the money was paid.'[895] This would reduce the reliance on Postmasters of paying offices reporting the non-receipt of the ordinary advice, hence reduce delays as witnessed in several of the initial TMO frauds. The proposed system was introduced on 26th October 1896.

By 1896, this system, combined with a practice of acquiring supervising officer's signatures at every stage of the transmission process, and sending confirmatory telegrams to the Office of Issue where the value of the order was £10 or more had been established in a manner that was responsive to isolated incidents of fraud that had occurred during the first 6 years of the network's social incorporation. The regulatory measures that were imposed had initially favoured increasing use, efficiency and lowering costs. Cases incurring more serious financial loss led to the reflexive regulations that impeded on the efficiency of the network but were initially justified based on the 'grave threat' to institutional (thus public) revenue. However, throughout this process, different branches of the Secretary's Office proposed different regulatory measures, demonstrating their competing conceptualisation of the risks and threats posed to the network, but also reflecting their distinctive priorities within the organisation.

Whilst the CEB, from the outset, acknowledged that the impact of the network of crime would only be felt throughout time, but considered the proliferation of fraud in this environment inevitable, other branches did not share the same insight, and prioritised their functions, efficiency, increased use, and cost. The contradictory aims and

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[893] POST 26/116, GPO, 'The Fourth Report of the Money Order Office Committee' 21st February 1896 in *Telegraph Money Orders: Forgery by P.O. Servants of Telegrams Advising: History of Safeguards against 1888-1927*
[894] *Ibid*
[895] *Ibid*

purposes, and conflicting understandings about crime and the threat of fraud, contributed to the introductions of measures in an ad-hoc and responsive fashion that were not necessarily adhered to consistently. This was especially the case because the preventive measures were incorporated through instructions to staff, which were sometimes applied unevenly. What did emerge however, was effective at preventing TMO frauds in practice. After the fourth forgery of July 1895, the confirmatory telegram had been put into practice, and in 1896 the rules regarding reporting amended, meaning that the practice of committing fraud became more onerous, and the likelihood of detection increased. Measures imposed were therefore a combination of preventive network design relative to rules of operation, alongside responsive internal policing efforts. They appear to have been successful with no frauds reported in the years following, arguably leading to a degree of complacency regarding the fraud threat, and eventually a process of deregulation.

5.4 A Process of Deregulation

By January 1897, the Telegraph Branch was questioning whether, and to what extent, the requirement for confirmatory messages between the terminal office (office of payment) and the office of issue lead to delays in payment.[896] Concerns were raised over the delays discouraging the public from making use of the TMO system.[897] This is particularly pertinent in the context of existing systems of Money Order. The success of TMOs and the distinctive quality they relied upon for their success was their speed. Postal Orders were already in existence, and reasonably fast. To compete, the TMO network needed to offer a significant reduction in the time it took to send and receive orders, particularly given the extra costs associated with using it. The Director of the CEB, however, when questioned about the necessity of the confirmatory telegram given the potential for delays, insisted that the fact that there had been no frauds since the introduction of these measures was justification for them.[898] He stressed that beyond these measures, he had recommended other suggestions relating to the design and operation of the network to the Financial Secretary to further protect the risk to revenue.[899] The competing concerns of the various departments remain clearly

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[896] POST 26/116, GPO, Correspondence between Telegraph Branch and the Secretary's, December 1896 in 'Telegraph Money Orders, Forgery By Post Office Servants of Telegrams advising: History of Safeguards adopted against' *in Telegraph Money Orders: Cases of Forgery of Telegrams Advising 1888-1927*

[897] *Ibid*

[898] *Ibid*, See reply from Mr. Phillips (CEB) 12th January 1897

[899] POST 30/ 794A, GPO, Correspondence between the Money Order Office, the CEB, the Telegraph Branch and the Secretary's Office (1896) in *Telegraph Money Orders: Adoption of Special Envelopes and other precautions with a view to prevention of fraud 1896*

evident throughout a serious of interactions relating to the existence of the rule over the following two years.[900] The Telegraph Branch, and the Money Order Office continued to stress the importance of avoiding delays in issuance of orders, suggesting that a 'postmaster should be allowed at his discretion to pay a Telegraph Money Order without awaiting the receipt of the reply… where persons tendering are well known to him.'[901] It was also stressed that were this a private organisation, the approach would be to ensure the cost of transmission was sufficient to offer an insurance, and that the Post Office should operate more in line with this model.[902] This is a significant theme that runs through the decision making approaches of the branches in the office responsible for specific sections of the Post Office and reflects its relatively unique status. Whilst technically an 'arm of the state' its' specifical commercial and economic aims arguably situate it as neither a company nor an arm of the state as traditionally conceived. This has the dual effect of prioritising the pursuit of profit, whilst also affording the organisation substantial regulatory power and authority, within which we witness increasing pluralisation.

Of fundamental importance to the CEB was the measures apparent effectiveness (given that there were no reported TMO frauds for sums over £10 for 5 years following the introduction of these measures), and the inappropriateness of providing Postmaster discretion to issue orders without the necessary confirmatory telegram.[903] Two forgeries had been reported in 1898 whereby Sisley, a telegraph clerk, had signalled advises for £7 and £8 from a telegraph he was working on. Because the amount of the advises was below £10, and because he signalled directly onto the network as opposed to forging a form, both the confirmatory telegram and the countersignature check were inapplicable. However, this was not seen as particularly problematic given how easy it was to identify the perpetrator according to his method. He had not forged any paperwork and was legitimately working the technology when he sent the advice, hence it was easy to identify him as the culprit.[904] There was also an unsuccessful forgery of a telegram advising for £20 in December 1898, which failed because of the confirmatory telegram.[905] However, the perpetrator (White) had the potential to evade preventive measures. He was working the telegram alone and inserted the message

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[900] *Ibid;* Post 26/116 *Telegraph Money Orders: Cases of Forgery of Telegrams Advising 1888-1927*

[901] *Ibid*

[902] POST 27/117, GPO, 'Sisley's Forgeries of 19 and 28 July Central Telegraph Office' in 'Memorandum' (1903) in *Telegraph Money Order, Forgery by Post Office Servants of Telegrams Advising'* 1903

[903] *Ibid*

[904] *Ibid*

[905] POST 27/117, GPO, 'White's Forgery of 31 December 1808. Kilburn High Road Town Sub Office' in 'Memorandum' (1903) in *Telegraph Money Order, Forgery by Post Office Servants of Telegrams Advising'* 1903

straight on to it, and he was also in charge of the office meaning it was his countersignature that would be required. It was only because of a 'lucky accident' that he was not working alone when the message seeking confirmation arrived that the fraud was prevented.[906]

The preventative measures imposed as controls over the way Post Office servants interacted with the network were not failsafe; it was acknowledged that where a PO servant was essentially willing to identify themselves as the offender the preventative measures would not be effective.[907] However, where a PO servant wished to forge a TMO advise *and* wished to conceal their connection to the offence, the confirmatory telegrams would always prevent payment of the order, thus protect the institution from the financial loss associated with it. Whilst in very few recorded cases a PO servant seemed willing to risk obvious identification (for example, White, who intended to abscond immediately after commission)[908] the preventative measures in practice helped to prevent the kinds of systematic fraud by Post Office servants seen in earlier cases. Maintaining the position that with both preventative measures in place most frauds, and all systematic frauds could be prevented, the CEB felt that both measures should be continued, and be complemented by improved reporting of potential offences directly to the branch, to enable a more adequate response to those offences that did evade preventative regulation.

Whilst branches other than the CEB repeated concerns about the preventative measures in place negatively impacting the speed and efficiency of the TMO system, there was some consensus that the reporting system of suspected frauds was inefficient, potentially hindering detection. It involved reporting the issue first to the Telegraph Branch, who could then refer the case to the Confidential Enquiry Branch if they felt it appropriate.[909] The CEB preferred speed in this matter, and repeatedly emphasised that in practice, the sending of criminal cases to the Telegraph Branch worked poorly, implying resistance on their part.[910] In response, instructions issued in December 1989 required that all Telegraph Money Order cases, where there appears

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[906] *Ibid*

[907] *Ibid*

[908] *Ibid*

[909] Of the previously mentioned cases, several concerns had been raised about the ability of the Telegraph Branch to do so effectively. Note that at this time, the CEB had just been reorganised (see Chapter 4) and thus their administrative functions had been withdraw/ distributed among branches responsible for the specific Post Office service

[910] POST 27/117, GPO, 'Memorandum' (1903) in *Telegraph Money Order, Forgery by Post Office Servants of Telegrams Advising*' 1903

to be evidence of fraud, should be referred directly and immediately to the CEB.[911] However, this instruction was later entirely repealed by the Postmaster General[912] who maintained that "initiative should not rest with the Confidential Enquiry Branch; that it should merely receive cases judged by the branches to be proper for special enquiry; that it should conduct that enquiry and report the result to the referring branch."[913] Demonstrating an attempt to retain control over the organisational response to crime, the PMGs minute had the effect of requiring that any Money Order office 'would be forbidden to send the report direct to the Confidential Enquiry Branch and would have to send it addressed "Confidential: The Secretary"'.[914] The report would then be sent to one branch, or possibly two, before it would reach the CEB.

Acknowledging that throughout this period, the remit of the CEB was being reimagined, with their role limited to one of enquiry, the PMG appears to prioritise a command-and-control system of leadership, which saw decisions over crime control decided based on perceptions of organisational priorities as opposed to deferral to the CEB. This was the case even where other branches supported the case for speedy referrals of criminal cases, implying an attempt to exert control over the processes associated with PO servants committing offences against the PO. This pattern is reflected throughout the history of the Post Office. As the extent of the financial threat posed by fraud came to be perceived as manageable, records reveal an institutional approach that subsumed crime prevention approaches beneath commercial concerns. As is seen here, this was also at the expense of effective detective measures. The report of Mr Gates (Telegraph Branch) criticises the requirement to first report suspected fraud or forgery to the Secretary,[915] emphasising that whilst the CEB have proved themselves effective, their effectiveness is dependent in some instances on a quick response. Where this is inhibited, the potential fraud reward increases, thus there was a risk to the deterrent and detective effects of the CEB.

However, what the Telegraph Branch was advocating for in suggesting that the focus needed to be on the speed of reporting to the CEB, was for the removal of the system of confirmatory telegrams. Hence the approach in practice reflects an attempt to shift responsibility for crime control onto the CEB, which in turn furthered the agenda of the Telegraph Branch, where the prioritisation of efficiency and speed was favoured, to

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[911] POST 26/116, GPO, Sir Spencer Walpole, 'Instructions for the Reporting of TMO suspected fraud' 7th December 1898

[912] POST 27/117, GPO, Postmaster General's Minute (E 15460) 2nd August 1901; Note at this time the role of the CEB had shifted (see Chapter 5)

[913] Ibid

[914] POST 27/117, GPO, Mr Gates, 'Report to the Money Order Committee' May 1903

[915] Ibid

keep the technology competitive. As a result, he advocated for improving the reporting of potential fraud and forgery quickly and efficiency, and maintained that where this was achieved, the need for a confirmatory telegram would be reduced. In relation to the confirmatory telegram, it was felt that 'the apprehension which followed the Manchester forgeries of 1895' could 'no longer be justified.'[916] Therefore advocating for a 'relaxation of safeguards,' he argued that the confirmatory telegram was costly, caused delays in payment, and was unnecessary as a check against forgery of a message form advising TMOs where the countersignature check works effectively. The CEB, however, held that the confirmatory telegram was the only safeguard that could effectually prevent payment of forged telegrams where the forger takes care to remain concealed, remaining forward-looking in their approach.[917] The Telegraph Branch continued to push for the removal of the confirmatory telegram for several years, citing delays in payment and therefore efficiency of the network as the primary justification.[918] By 1890 the Money Order office were also advocating for a change in regulation.[919] Specifically, use of the confirmatory telegram being restricted to cases where telegrams advised sums in excess of £10, and Postmaster discretion to pay TMOs without waiting for the receipt of the reply from the office of origin when the person tendering was 'well known' to him.

In November 1899, the Director of the CEB took issue with the suggestion of postmaster discretion, maintaining that to devolve that level of responsibility to a Postmaster would be 'inconsistent with the principles of our Money Order system under which as regards the payee, the fulfilment of certain prescribed precautions relieves the paying officer of all liability.'[920] Referring back to the beginning of this section, it is important to remember that following payment of an order, the Post Office was immediately discharged of any liability under existing regulations. The Director of the CEB acknowledged that 'every large financial business must incur a percentage of loss by fraud' however he predicted that if the rule requiring that confirmatory telegrams must be received for orders of a value of £10 or more were amended or withdrawn, there will be a resurgence of fraud 'on a scale which… might even be gigantic.'[921] Additionally, he cited the huge costs associated with the costs of investigation and prosecution as a reason in favour of retaining the rule.

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[916] *Ibid*

[917] POST 26/116, GPO, Mr Phillips, Report of the Confidential Enquiry Branch' 1903

[918] *Ibid* at 48

[919] POST 26/116, GPO, Correspondence from Mr Manson, Controller of the Money Order Office, September 1899

[920] Post 26/116, GPO, Correspondence from Mr Phillips (CEB) (1899) in *Telegraph Money Orders: Cases of Forgery of Telegrams Advising 1888-1927*

[921] *Ibid*

Mr Phillips demonstrates a level of understanding and engagement with the way that frauds might be committed against the telegraph that does not appear to be shared throughout the other branches, where the risk was conceived economically and in terms of efficiency. He demonstrates a comprehension that those wanting to perpetuate fraud against the network will work to evade regulation, attributing them agency, intelligence, and an intention to remain undetected. Whilst the other branches almost present the perceived criminal as passive participants on whom regulation can be imposed post offence to punish and deter,[922] where necessary, but see the threat as amounting to much less in financial terms. What is particularly important appears to be the contrasting understandings of the perceived threat. Reinforcing the idea of a static crime threat, the branches concerned with efficiency and profit do not seem to account for processes of social incorporation as providing new and developing opportunities for fraud. On the contrary, the CEB demonstrate an understanding of crime as responsive to regulation; the concepts are fluid, and the offender intelligent. Indeed, the CEB conceived a person "contemplating a fraud [as] influenced by the main consideration of selecting as his objective the highest amount he can with the least risk of discovery"[923] thus demonstrated an understanding of the criminal as rational.

Despite the objections of the CEB, the regulations were amended in favour of the overall efficiency of the system, and on the 18th September 1900 a notice was inserted into the Post Office Circular stating that only orders *over* £10 would require a confirmatory telegram before they could be issued.[924] Therefore introducing what I will refer to as a period of de-regulation. This period saw the gradual reversal of earlier trends increasing security of TMOs; in May 1900 the rule relating to counter-signatures of supervising officers was amended so that in larger offices where telegrams are circulated from one division to another, telegrams advising would only need to be 'scrutinized and countersigned' in the receiving division as opposed to in both divisions.[925] From October 1900 'A' forms sent to the CTO by tube no longer needed to be countersigned on receipt.[926] In 1902 the maximum sum transmissible by a single Money Order was increased to £40 in response to growing demand, and perceptions about inefficiency where payees had to cover the cost of several £10 TMOs advising

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[922] This is perhaps reflective of broader perceptions of criminality, and criminals as somewhat simple/ habitual. See L. Radzinowicz & R. Hood, 'Incapacitating the Habitual Criminal: The English Experience' (1980) 78(8) Michigan Law Review 1305
[923] POST 26/116, GPO, Letter from Mr Phillips (CEB) 19th July 1900
[924] POST 26/ 116, GPO, 'Post Office Circular' 18th September 1900
[925] POST 26/116, 'Post Office Circular' 28th May 1900
[926] POST 26/116, GPO, 'Enclosure A, Telegraph Money Orders: Forgery by Post Office Servants of Telegrams Advising: History of Safeguards Against' 1888-1927'

where they wanted to send over this amount. In May 1903 the CEB reported that the taxpayer had only suffered as a result of forgery by Post Office servants of telegrams advising to the amount of £163 between 1889 and 1902, with the most serious frauds of 1894 and 1895 not being repeated on the same scale.[927] Between 1899 and 1902 there was zero cost to the taxpayer associated with PO servant frauds against the network.[928] This had the dual effect of suggesting the regulatory mechanisms imposed were effective, and to those less concerned with the prevention of fraud, implied regulation that was too extensive as compared to the perceived threat and the implications on network efficiency. Thus, the shift towards de-regulation gathered further momentum.

A report of the Money Order Committee advocating for further de regulation drew on complaints relating to delays to further their agenda, as well as careful breakdowns of the perceived economic cost to the institution and therefore the public purse resulting from the impact of the delays on use.[929] In 1905 the requirement to send a confirmatory telegram as a safeguard against TMO fraud was withdrawn, but express instructions emphasised the measure could be introduced on special instruction where the risk of fraud increased.[930] The need to improve the process of reporting suspected cases so as not to inhibit detection was also emphasised, positioning the responsibility for crime in the Post Office firmly with the CEB. Further, whilst the preventative measures imposed on the network were paired back, there is evidence of an increasing emphasis on staff to be vigilant, and to take steps 'where suspicious' to verify the telegram advising, preferably via telephone.[931] The emphasis on staff responsibilization is also reflected through the introduction of rules requiring them to verify the identity of persons making applications for TMOs.[932] In practice this required them to use their own judgement, and precise rules regarding what constituted evidence of identity were not given, though general guidelines were issues. Where staff failed to meet the standard expected, they could be punished. It is evident therefore, that a persistent pattern of assigning responsibility for detecting crime was situated firmly within the CEB,[933] and that preventive measures shifting gradually away from controls around

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[927] POST 26/116, GPO, 'Enclosure C with Mr. Gate's Report of 1 May 1903'
[928] *Ibid*
[929] POST 26/116, GPO, 'First Report of the Money Order Committee' 1902-3
[930] POST 27/121, GPO, 'Memo as to Rule 79 and Draft of New Rules' (27th Feb 1905) in *Rule 79. Forgery of Telegrams Advising Telegraph Money Orders and Safeguards Against*
[931] *Ibid*
[932] POST 27/121, GPO, 'Memo as to Rule 82 and Draft of New Rule' (27th Feb 1905) in *Rule 82, As to Identification of Persons to Whom Telegraph Money Orders Addressed to Post Offices to be Called for Are Made Payable*
[933] Though in practice this was inhibited by formal responsibility for referrals being the responsibility of the branches responsible for that area of Post Office business.

network design towards responsibilization of staff, who could be subject to discipline where they failed to meet the acceptable standards. It is suggested that this may have had the effect of strengthening the 'culture of suspicion' in relation to staff discussed in the previous chapter. That suspicion extended to them failing to discharge their duties appropriately and was conceptualised as them facilitating crime through their ineffectiveness or negligence.

5.5 Progress, Internationalisation and Responsibilisation

Throughout the same period, there was a persistent organisational emphasis on progress, and this is also reflected in a desire to expand the network outside of the United Kingdom. The opportunity to connect the UK network with Germany was explored, paying particular attention to the potential for such an expansion to facilitate fraud. The (then) Assistant Controller of the Money Order Office visited Germany and reported on the operation of the system in Germany, commenting specifically on the risk of forgery and the measures adopted there to prevent it.[934] Bearing in mind that this visit took place prior to the period of deregulation, there is a clear emphasis on minimising the risk for fraud. Mr Wickham's report details the measures in place to prevent forgeries, which he maintained were enhanced by a law dictating that Money Orders in Germany could only be paid to the payee in person or to some person duly authorised on his behalf. Where a payee was not personally known to a paying officer, he would have to present an 'officially authenticated document' to prove his identity or must 'get some known person to vouch for his identity by becoming surety for him.'[935] Regulations relating to the identification of payees were strict, and imposed liability for wrong payment on those delivering or paying the orders. This rule was held by Mr Wickham to 'constitute the security of the money order system in Germany' and he therefore advocated for an international exchange between England and Germany. Interestingly it was also the total absence of 'frauds by fictitious telegrams' in Germany, alongside the fact that a telegraphist was unlikely to send a fictitious TMO to another country given the distance would likely interfere with them 'getting their share of the spoils,' that were seemingly significant.[936]

It was acknowledged that 'the principal risk' would emerge from operators in London forging TMOs purporting to come from Germany for payment in England, though this

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[934] POST 26/ 116, GPO, 'Report of Mr Wickham of the Money Order Office' 9 March 1898
[935] *Ibid*
[936] *Ibid*

too was deemed to be a minimal threat. In terms of managing this threat, the Post Office again turned to embedding into the operation of the network a process of confirmation recording how many Money Orders had been sent between London and Germany each day. The process was designed to raise awareness should a forgery have been inserted, rather than to be preventative per se. However, on introduction of the network exchange, the Money Order Office felt that this precaution could be deferred unless it was found to be necessary.[937] Ultimately the PMG agreed that measures applicable to inland TMOs were sufficient at this time, with no further checks necessary.[938] A financial agreement was reached with the German Postal Administration whereby the cost of frauds could be shared between the two countries, therefore reflecting an economic approach concerned with meeting the costs of crime, whilst protecting network efficiency and progress.

An economic approach to the management of risk emerging from crime is evidenced persistently. Throughout what I refer to as the period of gestation, during which we witness the process of responsive regulation, and a balancing of the need to integrate, establish and progress the network, alongside the need to protect the institution financially from fraud, incidents of fraud were relatively isolated. The recording of the frauds is detailed and precise. Particular attention is paid to recording the losses to taxpayers because of fraud, and there is evidence of an attempt to recoup the financial losses from wages, for instance, with punishment for offenders varying from dismissal to imprisonment.[939] Following the shift away from prevention (the process of deregulation), there was an expectation that Post Office staff remain vigilant towards anything that could be deemed suspicious. The focus shifted from interactions between the technology and crime to those who were deemed an internal crime threat, either directly or through their negligence or carelessness. For instance, a forged TMO in 1905[940] was held to have been facilitated by Post Office staff at various branches and across various roles acting negligently.[941] Some of the conduct of Post Office staff in

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937 POST 26/116, GPO, Money Order Office Committee, 'Proposed Exchange of Telegraph Money Orders with Germany' 14th April 1898
938 POST 26/116, GPO, Post Office Circular, 'Instructions on the Exchange of Telegraph Money Orders with Germany' 25th October 1898,
939 See for example POST 26/ 116, GPO, 'Report of Mr Wickham of the Money Order Office' 9 March 1898; POST 120/41, GPO, Serial No. 7/45, Staff Branch Directive No. 50(a) 'General Disciplinary Powers and Treatment of Discipline Cases' (Revised and Re-issued April 1945) in *Instructions for the Guidance of Officers of the Investigation Branch G.P.O.*
940 POST 26/116, GPO, 'Soundy forgery. Method of Commission' January 1905
941 POST 26/116, GPO, 'Telegraph Money Orders: Forgery by Post Office Servants of Telegrams Advising; Continuation of the list of such forgeries, showing the cases which have occurred between May 1903 and May 1906'

this instance involved allowing conduct that was explicitly forbidden. In this instance a stranger was allowed into an instrument room, gained access to an instrument, and made private use of the wires, all of which was contrary to the rules. The Post Office also assigned a level of responsibility for the fraud to the Sub Postmaster at the receiving office, 'who might not unreasonably have had his suspicions excited by the high number of the advice and by the unusual occurrence of a TMO for £35 being sent from a place not more than 2 miles away.'[942] Similarly the Sorting Clerk who paid the Order was held to be unreasonable for not having being suspicious for the same reasons. Despite the shift away from preventative network design, PO staff were responsibilised as part of the network themselves to operate preventatively and with an awareness of an apparent risk to institutional funds. The process of responsibilization extended to fining Post Office staff where they were found to have acted negligently and in breach of rules regulating money order business, further assisting the PO in recouping financial losses incurred through fraud. Post Office staff were also rewarded if they assisted in detecting offences. A rewards system was introduced for the purpose of encouraging vigilance and honesty among the staff.[943] In some instances this extended to giving information respecting suspected dishonesty of colleagues, and then assisting the IB by testing and watching offenders.[944] Hence the shift from network to personnel in the approach to the prevention of crime in the Post Office is further evidenced.

5.6 Impact of Deregulation

From 1907 the records indicate a resurgence in cases whereby Post Office staff have either forged or facilitated a fraud in reliance on TMO technology.[945] The financial impact of the frauds was also more significant- for instance in May 1907 a Sub Postmaster was found to have facilitated TMO frauds amounting to £367 over a 4-day period, though he returned the funds on detection to avoid prosecution.[946] We also see more sophisticated attempts to conceal frauds, perhaps as a result of a known emphasis on detection, and a greater understanding of that system of detection. For instance, in Mansfield in August 1907, a Counter Clerk responsible for the Money

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[942] *Ibid*

[943] POST 120/39, GPO, Circular no. 7/34 'Awards for assistance in Detection etc.' (March 1934) in *Instructions: General. HQ Duty: Order Book. Folios 51-157. July 1932-Feb 1948 Part 2*

[944] POST 120/ 39, GPO, 'Memorandum: Awards to Post Office Servants in Detecting Offenders Against the Post Office' (September 1935) in *Instructions: General. HQ Duty: Order Book. Folios 51-157. July 1932-Feb 1948 Part 2*

[945] POST 120/423, GPO, *Telegraph Payment Order Frauds;* POST 120/421, GPO, *Money Order Series Fraud;* POST 120/ 422, GPO, *Telegraph Money Order Frauds*

[946] POST 26/116, GPO, Case: Ireland 1444/07 (1907) 'Telegraph Money Orders: Forgery by Post Office Servants of Telegrams Advising: Continuation of the list of such forgeries'

Order duty prepared what appeared to be a Telegraph Money Order received by telegram from other offices and drawn in his office, but which had not passed over the wires. Rather they were fictitious orders, which he then concealed by entering fictitious entries on the Money Order account sheet.[947] Further, there is also evidence of more persistent frauds (for instance, repeated forgeries reliant on several TMOs)[948] and telegraphists forging telegrams requesting TMOs from outsiders whilst assuming another's identity.[949] Additionally, the interception and diversion of genuine TMOs advising was also identified as a means of offending.[950]

It is also important to also return to the international TMO system here. The first recorded case of fraud in reliance on the International TMO system took place in April 1910. [951] This was significant given that the international system was first introduced in 1898, hence we see a significant period of gestation comparable to that which was identified in relation to the national system prior to any recorded fraud. Importantly, this was also the first case 'where no certain clue to the offender' was found.[952] Additionally, the need to correspond over the issue with the supposed country of origin (France) led to a two-month delay in reporting the case to the Money Order Department.[953] Forgeries involving the International TMO system led to efforts to enhance security by requiring the countersigning of international TMOs. Specific concerns related to attempts to alter the amount, payee, and office of payment on genuine TMOs advising. As a response, it was decided that countersigning officers would need to write on the back of the slip the name and address of the payee.[954]

Broadly, several themes throughout this period, are evident in the records. Firstly, whilst many instances of recorded forgeries and fraud of TMOs would not have been prevented by regulations controlling the operation of the network, there were several that could have been, but instead rules were not necessarily followed by staff, who were then deemed to be negligent. It is possible to hypothesise that, given the relatively small number of frauds compared to the total number of TMOs exchanged, laxities in following strict rules and regulations may be a result of a lack of a serious sense of threat, but also an emphasis on providing an efficient service to the public.

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[947] POST 26/116, GPO, Case: 381653/07 (1907) 'Telegraph Money Orders: Forgery by Post Office Servants of Telegrams Advising: Continuation of the list of such forgeries'
[948] *Ibid*
[949] POST 26/116, GPO, 'Case 155097/13' (1913)
[950] POST 26/116, GPO, Report to the Mails Branch (121884) 1925
[951] POST 26/116, GPO, 'Case of Sydney Ernest, 283 596/10' 19th April 1910, 'Telegraph Money Orders: Forgery by Post Office Servants of Telegrams Advising: Continuation of the list of such forgeries'
[952] *Ibid*
[953] POST 26/116, GPO, 'CTO Cable Room Case' (1910)
[954] POST 26/116, GPO, Report to the Mails Branch (121884) 1925

Therefore, perhaps reflecting the broader approach of the Post Office institution which prioritised perceptions of efficiency and provision of service.

Second, and related to this, was a strong emphasis on locating negligent staff, and holding them (financially) responsibly for their contributory negligence. Indeed, whilst the processes of deregulation described above shifted the emphasis away from complete prevention, prioritising expanding use of the network, and network efficiency, the operation of the network was one which did allow for the allocation of blame within the institution. For instance, the replication of forms, the rules governing countersignature checks, and the rules governing counter staff when individuals were collecting payment all operated to the effect of allowing internal investigators to locate responsibility within the organisation, whether that be for an offence, or for negligence. The role of the CEB was not therefore, in practice, purely concerned with crime, but also with staff discipline more broadly. Perhaps reflective of broader issues related to fraud as sitting on the boundary of civil and criminal law,[955] this manifested in extensive powers of surveillance, oversight, and authority which appear to have increased as a result of processes of deregulation.[956] In practice, throughout the 20th century the IB were deciding whether criminal cases were sufficiently serious to justify prosecution or should instead be dealt with in the staff branch.[957] Further, they would refer cases related to staff negligence to the staff branch for disciplinary action.[958] Therefore, staff who acted negligently were often dealt with by the institution in a similar way to those who had acted criminally. Many who were thought to have committed offences against the Post Office faced dismissal as opposed to prosecution.[959] The Post Office was often able to recoup the missing money from staff wages or by charging those who had acted negligently and could therefore have prevented the offence. The boundaries between criminality and negligence were also blurred by an institutional concern with dishonesty, with certain forms of dishonesty amounting to grounds for prosecution, whilst other forms were dealt with through disciplinary proceedings.[960] Prosecution came to be reserved for systematic frauds, repeated fraudulent betting, and offences

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[955] Griffiths (2017) (n 387)

[956] For a further discussion of powers of searching and questioning staff see Chapter 6.

[957] See for example, POST 120/41, GPO, Serial No. 7/45, Staff Branch Directive No. 50(a) 'General Disciplinary Powers and Treatment of Discipline Cases' (Revised and Re-issued April 1945) in *Instructions for the Guidance of Officers of the Investigation Branch G.P.O.*

[958] POST 120/38, GPO, *Instructions: General, HQ Duty; folios 1-50, Jan 1930-May 1932. Part 1* at 25

[959] POST 68/843, GPO, 'Evidential Test for Prosecution ("reasonable prospect of conviction")' in *IB Circulars 1933-39*

[960] POST 68/ 845, GPO, 'Staff Branch Directive No. 50: Revised and Re-issued April 1945: General Disciplinary Powers and Treatment of Discipline Cases' in *IB Circulars*

where a Post Office servant colluded with a member of the public.[961] Given that dishonesty encompassed a range of behaviours, with only some sufficiently serious so as to prosecute, the boundaries between the approach to discipline and prosecution were blurred. This is indicative of broader themes acknowledged in the literature related to private punishment, in order to protect the reputation of the institution and limit public knowledge related to internal offending.[962]

The prevention of fraud as an absolute is not as commercially attractive as it is cumbersome and intrudes on various economic institutional aims. It becomes more cumbersome when we acknowledge the range of methods used to commission offences. For instance, in the initial period of gestation we see TMOs being fraudulently inserted into the network, often in a transmitting office, purporting to have been sent from elsewhere. I have explained the initial response as focused tackling specific issues. Ultimately as different parts of the network were exploited, this required the layering of preventive mechanisms in order to keep it secure. This effect of 'layering' was to undermine the efficiency of the network. Ultimately this eventually led to the process of deregulation, but this process inevitable produces gaps or loopholes that can be exploited. These 'gaps' in regulations and network operation facilitated an increase in TMO fraud and forgery on behalf of Post Office staff specifically. Whilst in the late 19th Century we see those gaps initially closed, then reopened, the early 20th century sees the emphasis fall more persistently on network efficiency, with some responsive, soft regulation introduced periodically in response to more significant threats. For example, in 1910 records indicate that methods for fraudulently obtaining PO funds in reliance on TMOs had extended to altering genuine TMOs advising, both in terms of the amount, the payee name, and the payee office.[963] Whilst formal additional safeguards were not introduced, 'instructions' were issued 'showing in detail' how this should be dealt with, and requiring the countersigning officer to write over the slip at the back of the telegram of advice the name and address of the payee.[964] This appears to have been effective until rules were relaxed again to avoid any delays in transmission, and another incidence was reported in July 1925.[965]

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[961] POST 68/ 845, GPO, IB Circular 8/49 'Prosecutions. Committal for trial; when to be sought' (1945) in *IB Circulars*

[962] Locker (2005) (n 431)

[963] POST 26/116, GPO, 'Central Telegraph Office: Cable Room: Cases, 'Case of 18th November 1910''

[964] POST 26/116, GPO, 'Central Telegraph Office: Cable Room: Cases, 'Case of 18th November 1910''

[965] POST 26/116, GPO, Ref. 191978/16, 'Telegraph Money Orders: Forgery By Post Office Servants of Telegrams Advising. Office Concerned- Manchester Telegraph Office' 1925.

Given that the focus here is offences committed against the Post Office by insiders, we are considering informed offenders familiar with the network operation, but also the system of prevention and investigation in the Post Office. The informed offender can react to processes of regulation or deregulation, meaning that whilst we have a responsive process of regulation, we also have a responsive process of offending. Regulatory gaps can be opened or closed in a responsive pattern reflective of institutional perceptions of fraud trends and associated risks, but also with an awareness of broader commercial objectives. On the other hand, those seeking to exploit the gaps to offend are able to respond to this changing pattern, particularly from inside the organisation, as there is less information asymmetry than with 'outsiders;' and so begins a game of cat and mouse.[966] Expressive of the fact that crime is not a static concept, processes of offending as well as processes of regulating operate and develop in tandem, each responding to one another.[967] Key, however, is that the processes of offending have the goal of achieving the fraud/ forgery, and often of resisting detection.[968] Processes of regulating have multiple and often competing goals, perhaps accounting for the persistence of 'gaps.' For the regulators, it is a balancing act rather than a total and focused response to the potential for fraud. Therefore, reflections that crime outruns regulation are oversimplified; institutional regulation sought to manage the crime threat rather than eliminate it.

Alongside this it is important to acknowledge once again that introduction, and incorporation of communication technologies forms part of a broader process of social change and includes the changing and re-ordering of social relations.[969] This includes incorporation of technology into new spheres, and technology being put to different uses. All of this provides opportunities for crime, but also expands the potential regulatory landscape. On the former, in relation to money orders specifically we the first examples of forged telegrams being used to procure a TMO and obtain money from a member of public (where the offender is a member of PO staff) in 1912.[970] This emphasises the necessity of incorporation of the technology, so that such a message would not be unusual to the receiver. Where the TMO network expanded to include delivery of TMOs advising by messengers, this put 'distance' between the offender and

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[966] See G.R. Newman, 'Cybercrime' in M.D. Krohn, A.J. Lizotte, G.P. Hall (eds) *Handbook on Crime and Deviance* (2009, Springer: NY: New York) p.p. 551-584 on the persistence of this relationship

[967] Wall (2017) (n 410)

[968] Save in the exceptional cases; in this instance where PO servants have absconded (usually abroad)

[969] McGuire (n 1) 16; Carey (n 312) at 311

[970] POST 26/116, GPO, 155097/13 'Forgery of Telegrams Requesting Telegraph Money Orders: Central Telegraph Office (Cable Room) POST 26/116

the institution, proving problematic for purposes of identifying offenders.[971] The expansion into an international system also presented new opportunities, as discussed above. Finally, the introduction of the telephone presented new challenges, as it was incorporated into the network. This will be discussed in the following sections. What is clear is that expanding use, the developing network, and the pluralisation of regulatory aims within the institution, provided opportunities to exploit loopholes or gaps in the system and commit offences, particularly to those connected to the network in terms of proximity and institutional knowledge.

This is not to suggest that there were not continuing attempts to prevent fraud on behalf of the institution; the introduction of rubber stamps to replace the confirmatory signature of a supervising officer for example was designed to limit the opportunities for offenders to forge supervisors' signatures in the Central Telegraph Office, for example.[972] There was an emphasis on countersigning in ink as opposed to pencil, so as to limit the potential for forms to be amended or altered.[973] However, we consistently see offenders find means to work around these limitations; crime being a developing concept as opposed to a static one. From a crime perspective, offenders were able to respond to regulations, for instance by purchasing fake rubber stamps to evade having to request a stamp of a supervising officer to confirm the validity of a TMO advising.[974] Offenders close to the network were armed with the knowledge to overcome these limitations.

In a report prepared by the Investigation Branch to the Mails Branch in 1925 this was more or less accepted as the case.[975] In this instance, given an acknowledged increase in TMO fraud since the process of deregulation, and in particular since the abolishment of the confirmatory telegram, the Investigation Branch were revisiting the issue of safeguards to protect the institution from offences commissioned by staff, and therefore risking PO revenue.[976] 5 categories of offence were identified. Firstly, the signalling of forged Telegrams of Advice by the offender without a relative form advising. Second, the forging of B or C forms of a Telegram of Advice with or without the forgery of the requisite counter signature of a supervising officer. Third, the interception before

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[971] POST 26/116, GPO, 30936/21 'Forgery of Telegrams Advising Telegraph Money Orders: Birmingham Head Office' Case of Richard Edward Knight, February 1921.
[972] POST 26/116, GPO, Communication from the Money Order Branch to the Investigation Branch, 'Telegraph Money Orders' 2nd April 1927; POST 30/ 794A, GPO, *Telegraph Money Orders: Precautions with view to prevention of fraud* 1920
[973] *Ibid*
[974] *Ibid*
[975] POST 26/116, GPO, Ref. E 20948/03 Report of the IB to the Mails Branch, 28th July 1925
[976] *Ibid*

transmission of a genuine Telegram of advice and the diversion of payment by fraudulently altering the message. Fourth, the abstraction of the form of a genuine Telegram of Advice after transmission and its subsequent fraudulent alteration to represent an entirely different Telegraph Money Order. Finally, the sending of a forged Telegram of Advice by telephone at a call office or on a subscribers (private) premises, it being assumed that the messages were sent by a Post Office Servant from a Post Office.[977]

On the first four categories of offence, it was felt that the best possible method of prevention would be to reintroduce the confirmatory telegram. Though this was not fail-safe, it would have prevented the majority of frauds. However, it was acknowledged as cumbersome, time consuming, and inhibiting the fundamental goals of the TMO system of efficiency and speed. In light of the relatively small financial losses to the taxpayer, in part as a result of the Post Office recouping lost funds through the fining of negligent staff, and the recovery of funds from dishonest staff's wages, this measure was acknowledged as unlikely to be considered acceptable by the PMG.[978] It is also important to acknowledge that the mooted measures were largely intended to prevent staff from offending; broader patterns of offending were not a threat to Post Office revenue and therefore were not the concern of the organisation. The consequences of this will be returned to in the following chapter, but for the purposes of the investigation into the internal approach to regulating Money Orders, it is understandable that measures imposed were decided with regards to broader institutional aims, but also to acknowledge that there were organisational measures of control over staff that regulated their behaviour more generally and sought to establish control, though not necessarily remove the opportunity for offending by staff altogether.

With regards to the final category of offence however, involving use of the telephone, including in private residences, there is evidence of a broader concern that those *other* than Post Office staff could pose a threat to revenue. Originally, all TMOs advising were transmitted over telegraph circuits, hence only Post Office Servants could perpetuate such a direct fraud against institutional revenue. The introduction, and (by 1925) extensive use of telephone circuits for the transmission of telegram made it possible for 'outsiders' to commit this class of fraud.[979] Whilst by 1925 only existing or ex Post Office servants had been recorded committing an offence through these means, it was acknowledged by the IB that all that was needed for the successful

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[977] *Ibid*
[978] *Ibid*
[979] *Ibid*

perpetration of fraud by this method… [was] knowledge of the prescribed formula of a Telegram of Advice.'[980] Given that this type of offence, specifically in reliance of the telephone as opposed to forging a telegram advising, promised the possibility of large gain and little risk of detection, the IB felt that when this 'scheme' became 'generally known to the criminal classes it [could] hardly be doubted that the Post Office would sustain very serious loss.[981] At the time of reporting, following the incorporation of the telephone into the network, of the five most recent series of forgeries, three had adopted this method, leaving the IB concerned that 'the possibilities indicated are becoming realised.'[982] They advocated for a proactive approach on behalf of the Post Office, suggesting a re-introduction of 'some form of regulation requiring confirmation of Telegrams of Advice, its potential introduction to be determined according to the risk to revenue compared to the trouble and expense such a precaution would entail.'[983] The Post Office eventually declined to take immediate action to minimise the threat. This approach is familiar to this thesis. Essentially the records reveal repeated periodic panics within the institution, leading to discussions of possible preventive mechanisms, only to arrive at the decision that they tend to be too cumbersome.[984]

What appears to follow from here on in is a broader acceptance of the existence of Money Order frauds, and whilst confirmatory processes continue to be mooted as a means to largely address the issue, they are not introduced even in the face of more systematic and lucrative frauds. For instance, records indicate that in 1957[985] a former staff member telephoned falsely coded TMOs advising to offices of payment, obtaining £1300. In the same year, an 'outsider' in collaboration with an officer employed in the Central Telegraph Office obtained over £2000 through forged TMOs.[986] Reflective of the general broad acceptance of TMO frauds, the recording of offences also shifts from the late 1920s onwards. Rather than detailed accounts, allowing for deep reflections on both what facilitated the frauds, and therefore measures that could prevent them, recording of offences shifts towards a system which prioritises the maintenance of evidence.[987] Indeed this is perhaps understandable given the increased volume in cases. Recording seems to include offences committed by both staff and 'outsiders,'

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[980] *Ibid*

[981] *Ibid*

[982] *Ibid*

[983] *Ibid*

[984] See POST 122/1292, 'Memo' *Telegraph Money Orders* (1950), on the risk emerging with the extension of the extension of the telegraph switching system and its influence on potential TMO fraud as another example of this

[985] POST 120/ 421, *GPO: Money Order Series Fraud* (1898-1957)*;* POST 122/30, GPO, Investigation Branch, *Annual Report* 1957-8.

[986] POST 120/ 421, *Money Order Series Fraud* (1898-1957)

[987] POST 120/422; POST 120/ 423; POST 120/421 *GPO: Money Order Series Fraud* (in total 1898- 1979)

though there is still a clear focus on detecting PO staff, and many cases involving outsiders also involve members of staff. The method of offending is often recorded as unknown, and emphasis tends to be on retaining evidence, such as handwriting, for the use of the investigation branch if required in the future.[988]

Finally, however, what remains persistent is the responsibilisation of staff, which extended not only to relatively onerous expectations in terms of crime prevention, but also a reward system for staff who assisted in the prevention or detection of offending.[989] Service staff then, occupy the curious position of suspect population, and responsibilised crime fighters. They are therefore increasingly situated within the 'culture of suspicion' identified in the previous chapter. This was exacerbated by the institutional emphasis on detection as opposed to prevention through design. Combined, this has arguably had longstanding consequences for the operation of the Post Office, and the treatment of staff, which will be discussed in the conclusion of this thesis.

5.7 Conclusion

This chapter has focused on the Telegraph Money Order, tracing the process of social incorporation, beginning with their cautious introduction. From the outset, it is evident that the introduction of the TMO was conceived as a risk to institutional revenue. The crime risk was seemingly firmly situated within the organisation, specifically within service staff working the telegraph network. Further, the legacy of Money Order frauds against the institution served to heighten the initial sense of risk associated with the introduction and incorporation of the TMO. However, it is also important to note broader institutional concerns related to profit and therefore expanding use of TMOs. This chapter emphasised the significance of competing systems facilitating the relative quick transfer of funds, in particular the Postal Money Order. This organisational context provides evidence of the broad regulatory aims of the Telegraph and Money Order Branches in particular.

Against this background, this chapter traces the first instances of TMO frauds and forgeries and reveals a regulatory response that centred around the facts of existing cases of TMO-facilitated offending. There is evidence of an initial responsive

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[988] *Ibid*

[989] POST 120/38, GPO, No. 78, 'Awards for Assistance in Detection' (March 1934) in *Instructions: General. HO Duty: Order Book. Folios 51-157* (July 1932-Feb 1948) (78)

preventative approach towards TMO-facilitated crime, founded on an economic approach to measuring the risk of crime. Measures were cautiously introduced that subject the network operation and functioning to various controls, designed to both prevent offending and facilitate detection of offenders. In practice, however, the effectiveness of these provisions led to a sense of complacency. Combined with increasing emphasis from various branches of the Post Office[990] on the prioritisation of efficiency, the risk of economic harm emerging from TMO-facilitated crime came to be seen as minimal, and therefore no longer justifying the use of preventative measures on the network. We therefore witness a shift from prevention to detection as the institutional approach to crime control. Competing branch narratives reveal different perceptions of crime and the criminal, with the CEB conceiving the crime threat as fluid and evolving, and the other branches appearing to rely on a static construction, and an economic model, of the risk of offending.

A process of deregulation was therefore acknowledged, which had the effect of facilitating offending in practice. However, this was justified in accordance with the broader aims of the institution and was combined with a persistent focus on detection of offenders, and the responsibilisation of staff to prevent offending in the course of their work. This approach has several significant consequences. Firstly, this chapter argues that this would have had the effect of enhancing the 'culture of suspicion' identified in Chapter Five. The institutional concerns related to staff extended beyond their potential to offend to their potential to negligently facilitate offending, both of which were dealt with in the CEB in practice. Second, by analysing the regulatory response alongside TMO-facilitated offending, this thesis reveals an initial approach to crime prevention that focused on the imposition of situation controls to prevent offending. Finally, by tracing the process of regulation through to the process of deregulation, this chapter suggests that 'loopholes' in regulation that facilitate offending are not necessarily reflective of an arms race between offenders and regulators, rather 'gaps' in the regulatory framework were in some instances preferred by the institution. This was generally reflective of an approach that favoured profit, wider social incorporation, and perceptions of efficiency. It is argued that this is significant, and a reminder of the value of accommodating broader concerns traditionally equated with 'governance' as opposed to regulation. Especially during processes of incorporation of new technologies, there is an underlying focus on promoting their use. Whilst crime prevention is both an economic and a reputational concern, it is not the only concern, hence is not persistently prioritised. The Post Office was able to shift internal emphasis

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[990] In particular the Telegraph Branch and the Money Order Branch

towards the detection of crime, and arrived at a position where they were able to accommodate a strong internal approach to detection, which in turn was interpreted as further limiting the need for effective, but disruptive, preventative measures. Chapters Four and Five have therefore outlined the institutional approach to crime control, highlighting their extensive capacity to both prevent, and respond to crime committed against the Post Office. The following chapter extends the analysis of the regulatory response to telegraph-facilitated crime and considers the significance of the police and other private regulators.

Chapter Six: External Regulatory Responses to Telegraph Facilitated Crime

"You will see, therefore, that the Post Office does not consider itself at liberty to do what you ask."

Solicitors Department of the GPO, to the Police in June 1913

6.1 Introduction

Having considered the internal approach to the regulation of telegraph-facilitated crime in the previous two chapters, it is appropriate to acknowledge and evaluate the interactions with regulators beyond the Post Office. The distinctions that were drawn by the Post Office between offences committed against Post Office revenue as opposed to outside victims, as well as their concern over retaining regulatory control of their staff, influence the regulatory response to telegraph facilitated crime more broadly. As has been emphasised in Chapter 4, in practice this distinction was often difficult to draw, with the internal procedures of the Post Office being triggered where there was potential for an insider to have been involved. In such cases the internal investigative branch of the Post Office would maintain a monopoly over the investigation until such suspicions had been rendered unfounded. Only then would the police be perceived as formally responsible for investigating offences which had been committed by outsiders, against victims other than the Post Office, where there was a willing prosecutor. Chapter Two has identified various categories of victim who would fall outside of the Post Office response to telegraph-facilitated crime, given both the incorporation of telegraph technology into business life, private life, and the 'layering' of technologies into various sectors such as banking and the stock market. This thesis therefore recognises these sectors as regulatory spaces, in accordance with the regulatory mapping exercise of Chapter 3. This in turn raises questions about their approach to regulation, and the interactions between regulators. This chapter therefore considers the regulatory role of the police, and their interactions with the Post Office. It also draws on the example of the London Stock Exchange to evaluate the regulatory approach of private regulators.

To support this Chapter, I have drawn on archival material from the Royal Mail Archive, the National Archives (including Home Office, Treasury and Metropolitan Police records), the London Metropolitan Archives (Stock Exchange Records at Guildhall

Library) and the BT Archives. It is argued firstly that the influence of the Post Office in investigating and prosecuting telegraph-facilitated offences was significant both because of the legislative framework, but also their near monopoly over formal crime control and prosecution mechanisms applicable to telegraph-facilitated crime outside of the context of private businesses throughout the period. Evidence suggests this authority was purposely sustained by the Post Office, lending itself to the protection of institutional reputation and revenue. The significance of the notion of privacy is also influential in this context, with Post Office practice not only retaining institutional control over many telegraph-facilitated offences, but also limiting police involvement where they sought to investigate relevant offences, often on the grounds of a duty to protect the secrecy of telegraphic dispatches. Whilst this chapter argues that overtime the relationship between the Post Office and the Police became more cooperative, this was largely on the Post Office's terms, and was mediated by the Home Office.

Beyond the role of the police in responding to telegraph facilitated crime, this thesis has stressed the importance of taking an approach to regulation that accounts for the regulatory power of institutions, and companies more widely. The consideration of telegraph-facilitated crime has, as established in Chapters Two, Three and Four, allowed economic offences to be considered outside of the context of middle, upper-class or corporate offending. When we shift the lens through which we conceptualise economic offences from one associated with large scale white-collar criminality to one concerned with dishonesty or misappropriation we can identify regulatory responses and preventive approaches beyond those usually associated with the prevention of white-collar crime in nineteenth and twentieth century England.[991] In particular, whilst scholarship has accounted for the range of offenders committing economic offences and attempted to explain their propensity for offending in this context,[992] engagement with the range of regulatory responses is less consistent.[993] Consideration of the efforts of the London Stock Exchange, for instance, reveal efforts comparable with those of the Post Office to maintain an internal and often private approach to regulation. Institutions, organisations, and companies took measures to protect themselves from economic and reputational harm, but also from the perceived threat of outsiders who risked destabilizing the established social order. This in turn may explain the limited scholarly attention which has been paid to 'everyday' frauds, and institutional

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[991] Locker (2005) (n431); For a broader discussion of white-collar criminality and its history, see Wilson (2014) (n 412); E. H. Sutherland, 'White-Collar Criminality' (1940) 5(1) American Sociological Review, 1-12; H. Berghoff & U. Spiekermann, 'Shady business: On the history of white-collar crime' (2018) 60(3) Business History 289-304; J. Benson, *White- Collar Crime in Late Nineteenth and Early Twentieth-Century Britain* (2019, Routledge: London)

[992] For instance, see Benson (2019) (n 991)

[993] Though it is not missing altogether; see for example Locker (2005) (n 431)

responses designed to mediate them, given measures fall outside of the traditional criminal justice process.

Whilst protecting the institutions and organisations from reputational harm, this further exacerbated the vulnerability of individual private citizens who were in some cases left outside of police protection, and institutional protective mechanisms, reflecting a socio-cultural belief that individuals should be protecting themselves from harm within this context.[994] Against this background then, we see a distributed and often disconnected regulatory landscape. Spearheaded by the expertise of the Post Office investigation branch, and underpinned by characteristically Victorian concerns about reputation, this chapter contributes to calls for analysis of a range of tools of crime control and regulation beyond those situated with the criminal justice state, through an historical perspective.[995]

6.2 The Police

Much of the literature relating to the telegraph and policing reflects that more scholarly attention has been paid to the incorporation of the telegraph into policing as opposed to the ways that the police responded to telegraph-facilitated crime.[996] The fact that telegraph technology was almost immediately adopted by the police, and its significance in relation to the interception and apprehension of criminals has been acknowledged.[997] With its publicised influence on the capture of criminals who, enabled through developments in transportation, were fleeing specific areas, telegraphy had an impact on organisation and information sharing within and between police forces immediately.[998] The significance of control of the network as a mechanism to prevent disorder was also evident from the outset, with legislation[999] facilitating government 'possession' of the network in times of national emergency, prior to nationalisation.[1000] Under these powers, the government was able to respond to perceived threats to public disorder, such as those presented by the Chartist movement, and use the

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[994] This belief is prevalent today; See C. Cross, 'No laughing matter: blaming the victim of online fraud' (2015) 21 (1) International Review of Victimology, 187-204; For historical prevalence See Griffiths (2020) (n 580) at 259

[995] Braithwaite (2003) (n 538)

[996] Marvin 1998 (n 171); Mather (1953) (n 127)

[997] M.R. McGuire, 'The laughing policebot: automation and the end of policing' (2021) 31(1) Policing and Society 20-26,

[998] Morus (2000) (n 601)

[999] Electric Telegraph Company Act 1846 (Vict. c. Xliv)

[1000] Mather (1953) (n 127)

network to disrupt Chartist communication, as well as strengthen its own.[1001] The threat of public disorder influenced the expansion of the network,[1002] thus reflecting the perception that the telegraph could be a shield and a sword; the power of information transfer and the ability of the network to mobilise and bring about collective action was acknowledged as both a threat and a tool.[1003] In relation to policing specifically, there was an institutional emphasis on ensuring police use of the network was efficient and effective, highlighting the value that speed of communication over distance facilitated within the Metropolitan Police, but also in connecting up local police networks.[1004] This was particularly significant given gradual processes of increased coordination of policing throughout the 19th and 20th Century. It was also framed as significant from the perspective of the police 'service' function, not just in the fight against crime.[1005] The telegraph also facilitated closer connection of national institutions such as the Metropolitan Police, the Home Office and the Post Office.[1006] Beyond national institutions, the development of submarine telegraphy facilitated an international approach to policing, with cablegrams used to inform national police networks of fugitives on steamships heading for Britain, with instructions related to extradition requests issued over the wires.[1007]

Police adaptation and incorporation of technology more generally has been perceived as contributing to an 'arms race' between criminals and law enforcement.[1008] This reflects an assumption that incorporation of technology by the police is essential given the inevitability of its misuse by criminals, but also desirable relative to ideas about efficiency.[1009] I have emphasised in Chapters 4 and 5 the significance of technological network design and infrastructure, as well as technological tools, in meeting the risks posed by telegraph facilitated crime within the Post Office. As a previous employee of the Investigation Branch of the GPO wrote in the 1930s, "it is fortunate that science, which has made available for the crook the telephone and the telegram, has also

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[1001] *Ibid*

[1002] C. Williams, *Police Control Systems in Britain, 1775-1975* (2015, Manchester University Press)

[1003] F. C. Mather, 'The Railways, The Electric Telegraph and Public Order During the Chartist Period, 1837-48' (1953) 38 (132) History, 40-53; See also the records in Kew (HO 45/2410, Correspondence between HO and Telegraph Companies) reflecting the concept of telegraphy as a sword and shield in the response to public disorder/ protest.

[1004] MEPOL 3/1500, Executive Branch Letter, 'Telegraphs and Telephones- Memorandum' 27th January 1906

[1005] For example, the return of missing children. See MEPOL 3/1500, *Ibid*

[1006] Williams (2015) (n 1002)

[1007] HO 45/ 10358/ 123249 'Chief Constable, Manchester, Extradition' 5th June 1907

[1008] P. Ekblom, 'Gearing up against crime: A dynamic framework to help designers keep up with the adaptive criminal in a changing world' (1997) 2(4) International journal of Risk, Security and Crime Prevention 249-265

[1009] McGuire (2021) (n 997) at 22

provided the crime-fighters with weapons to foil the men who misuse these inventions."[1010] Fundamentally it is not always the same technology as that which has been weaponised which is used in the 'fight' against crime, and technological developments such as the microscope, micro-photography and fingerprint analysis were mobilised to meet the evidential challenges posed by forgery and fraud.[1011]

I am concerned here, however, with the police response specifically to telegraph facilitated crime. As evidenced in Chapter 2, within this category there exists a range of 'everyday' frauds, that could be committed by a range of individuals via access to the network in a myriad of ways.[1012] Given that the Post Office introduced a completely internal response to offences where the institution was the victim, or where there was a possibility that a Post Office servant was involved, whether that be negligently or not, there were from the outset, restrictions on the number of cases where the Police would be wholly responsible for investigation and/ or prosecution. Reflecting back to Chapter 2, this might have included individuals or businesses being induced to send money orders via telegram, for instance, or telegrams sent to cause distress. However, it is fundamental to recognise that the police were involved in the policing of the telegraph largely under the official authority of the Post Office. In practice, I argue that this amounted to the marginalisation of the police as an autonomous regulatory agency. This is evidenced through both the role of the Metropolitan Police working within the Post Office in a formal capacity, as well as rules, policies and controls exerted on the police more generally.

6.2.1 *The Metropolitan Police and the Post Office*

The most explicit connection between the police and the policing of telegraph-facilitated crime was through the incorporation of Metropolitan Police Officers within the Investigation Branch.[1013] Initially the Missing Letter Branch consisted of four 'travelling clerks,' with two Police Constables from the Metropolitan Police acting as 'assistants.' Following reorganisation in 1883 the new Confidential Enquiry Branch, established that 'because of their size' police officers were not always best placed to take on 'watching'

[1010] F.C. Cartwright, *G-men of the G.P.O.: The Story of the G.P.O.s Fight Against Crime* (1937, Samson Low Marston, London) at 91

[1011] McGuire (2021) (n 988); J. Nickell, *Detecting Forgery: Forensic Investigation of Documents* (1996, University Press of Kentucky)

[1012] For instance, direct access was not a prerequisite; for a discussion of the significance of 'everyday' frauds in relation to the literature on white-collar crime, see; Griffiths (2017) (n 387); see also D. J. Cooper, T. Dacin, D. Palmer, 'Fraud in accounting, organizations and society: Extending the boundaries of research' (2013) 38 (6-7) Accounting, Organizations and Society, 440-457

[1013] Formerly the Missing Letter Branch, and the Confidential Enquiry Branch of the GPO

duties, therefore the appointed 'messengers' to take on this role. However, officers remained attached to the Branch, specifically making enquiries in relation to offences committed against the Post Office by outsiders. Their number gradually increased. Whilst in 1883 there were 10 police officers attached to the branch, by 1908 there were 15,[1014] and by 1956 there were 53.[1015] The staff of the Investigation Branch (IB) were divided into civil servants and Metropolitan Police officers, with the police officers seconded to the Post Office and therefore officially remaining under the administrative and disciplinary control of the Commissioner of Police. However, their duties were defined according to the control and direction of officers of the IB and the Post Office mandate for addressing offences against the institution.[1016] They were therefore subject to 'dual control,' with the Post Office paying the police for the officers, but with the police remaining responsible for payment to the officers themselves, as well as formal disciplinary control. Whilst all police officers were drawn from the Metropolitan Police, their work in practice covered the British Isles, and they were incorporated into the regional circuits defined by the IB.[1017] Whilst, in 1956, it was acknowledged that the IB worked closely with Scotland Yard and sections of the Metropolitan, Provincial and Railway Police,[1018] in practice the IB and the Post Office more broadly limited the role of the police in relation to responding to crime within the Post Office. Specifically, there is evidence of an emphasis on retaining institutional control not only of investigations and prosecutions, but also on information related to Post Office offences more generally. This is reflected in the role of the Police Officers attached to the Branch.

Firstly, as discussed previously, their role was to enquire into offences committed against the Post Office by outsiders. Thus, they were not involved in cases where Post Office servants were suspected. Their role of responding to offences committed by outsiders was limited to cases where the PO was the victim.[1019] In keeping with the discussion from Chapters Three, Four and Five, the concern of the Post Office in relation to the telegraph-facilitated crime was essentially institutional revenue and reputation, and this extended to the role of the police within this context. Whilst they were formally under the administrative control of the Commissioner of Police, their

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[1014] MEPOL 2/ 367, Correspondence between the Post Office and the Home Office re Officers sent to the GPO, 1985-1908

[1015] POST 122/ 8809, GPO, *Searching and Questioning of Suspected Persons; Investigation Branch: History and Report* (June 1956)

[1016] *Ibid*

[1017] See Chapters 3 and 4

[1018] POST 122/ 8809, GPO, *Searching and Questioning of Suspected Persons; Investigation Branch: History and Report* (June 1956)

[1019] MEPOL 3/537, *Investigation Branch GPO: Enquiry into Allegation of Misconduct of Police Personnel* (25th August 1938)

duties were defined according to the Director of the Investigation Branch, and their role within this context was not one of 'expert.' Rather, the travelling clerks, and the civil section of the Branch were perceived as the authority on crime in the Post Office. Whilst in practice some of the work of travelling clerks was devolved to Police Officers 'to effect some economy,' the specific technical expertise perceived as necessary to respond to more complicated cases involving employees was seen as vested with the travelling clerks.[1020] From the outset there is little sense of authority and no sense of autonomy vested with the Police Officers within the GPO.

Additionally, as established in Chapters Four and Five, the internal investigation department of the Post Office was responsible for inquiries regarding offences committed by insiders, and this extended to their 'questioning.' Evidence suggests an emphasis within the department on distinguishing themselves from the procedural limitations associated with the police, on their basis of their unique status (commonly) as victim and employer. Rules around questioning of suspected persons by the CEB developed piecemeal. Their somewhat unique status as employer and quasi-police organisation facilitated them both drawing on police practices developed in accordance with judges' rules, as well as distinguishing from them where their role as employer was perceived as more significant. The approach of the Post Office in its questioning and searching of suspected persons (staff) was to make themselves aware of relevant judges' rules regarding police investigations, and to interpret those in terms of their aims and status as employer to provide guidance to travelling clerks of the IB. Police practice therefore influenced the development of investigative methods in the Post Office, but not in the sense that the IB was required to simply imitate police practice.[1021]

Whilst the Post Office demonstrated a concern with, and an awareness of, police powers relative to questioning and searching of suspected persons, they tended to distinguish the role of the IB from that of the police on the basis of their position of authority, and their status as employer and /or victim.[1022] In particular their status as investigating on behalf of the PMG, where the accused is an employee, was interpreted by the IB as providing them a 'much wider latitude' than restrictions placed on what police officers could do.[1023] Procedural rules that had developed in relation to

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[1020] POST 30/1971, *GPO: Secretary's Office, Confidential Enquiry Branch. Revision of Force* (9th March 1908)

[1021] See chapter 4 for details on the IB

[1022] See multiple records of judges' comments on police practice/ IB practice, for instance: POST 120/198-203; POST 120/ 321-334; POST 120/ 302; POST 120/416; POST 120/395-404; POST 120/198-208

[1023] POST 120/23, *GPO: Interrogation of suspected persons: Judges Remarks and Decisions Thereon. Instructions to Travelling Clerks* (1892-1901)

formal policing, such as the requirement that a police officer warns an accused person that anything he say may be used in evidence against him, were not interpreted as applicable to the master-servant relationship which defined the terms of IB investigations. IB personnel were not required to warn the accused that anything said could be used against them evidentially but were required to conduct investigations in a 'spirit of fairness, aiming to elicit the truth.'[1024]

This perceived latitude appears to have had the effect of further limiting police involvement in questioning, whether they were attached to the Branch or not. In 1900, the Director of the CEB maintained that no police constable, whether attached to the branch or not, should be present at any interrogation of a Post Office servant, though could be on hand to assist with formal police work.[1025] Formal police work in such an instance might involve placing the accused in custody, but where the suspected offence was a felony, this could be done by anyone, without the need for a warrant or formal police involvement. Police Officers attached to the IB were responsible for the searching of suspects (both their person and their property).[1026] However, this was not done in accordance with formal police methods, but rather took place on a consensual basis borne out of the relationship of servant and master. Whilst formal police rules required suspects to be searched by police when in custody, and required warrants for the search of any property, the Post Office relied on their status as employer, and the construct of consent, to facilitate police searches outside of the police station.

Whilst preventive staff at other institutions such as Customs and Inland Revenue were empowered with exceptional legal powers in the prevention and detection of offences, the staff of the Post Office were not granted similar powers.[1027] As a result, they were required to rely on the ordinary law, as did the police officers attached to the branch, even within the Metropolitan Police District. Hence, the practice of the IB when searching suspected persons was to avoid the use of force, to allow for a clerk of the IB to question a suspect, and then, where appropriate, to ask for consent for him to be searched by a police officer. Similarly, if the clerk perceived a search of the accused's premises to be appropriate, he again would request consent from the accused, and the police officer would carry out the search. This amounts to a circumvention of the ordinary law in practice; the relationship between the accused and the Post Office and

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[1024] *Ibid*

[1025] *Ibid*

[1026] POST 122/ 8743, *GPO: Searching of Suspected Persons* (27th April 1910)

[1027] POST 120/23, *GPO: Interrogation of suspected persons: Judges Remarks and Decisions Thereon. Instructions to Travelling Clerks* (1892-1901); POST 122/ 8743, *GPO: Searching of Suspected Persons* (27th April 1910)

the role of consent was drawn upon to circumvent developing legal limitations on police powers. The attached police officers were apparently able to lend a sense of legitimacy to search practices, with the clerks of the IB developing methods to secure consent for the search. This included threatening to hand the individual over to the police where a search could be forced whilst in custody. Apparently, therefore, relying on a degree of institutional rapport to facilitate the search, this was deemed appropriate given the speed at which items such as telegrams or money orders could be destroyed were a search delayed by formal processes.[1028] Importantly, however, in conducting such searches, the police attached to the branch were not acting in reliance on specific police powers, and their role in searching suspects was defined by the travelling clerks of the IB.

Related to this, the police officer's role as 'non expert' was exacerbated by the limitations of their (police) powers given that their role extended well beyond London and therefore their remit as an officer with the Metropolitan Police. They were therefore deemed to be acting as 'Post Office Enquiry Officers' given that their police warrant cards did not assign them authority to act as police officers outside of the metropolitan district.[1029] This, in practice, rendered the police role sufficiently different within the Post Office. In an investigation into allegations of police personnel misconduct within the Post Office, officers reported being required to carry out duties that were not in accordance with normal police procedure, or duties which should not be performed by police at all. The latter included the collection of money from persons who had fraudulently obtained it from the Post Office. Fundamentally, the duties that were perceived as going against normal police procedure were related to the aforementioned system of 'dual control' that the Police Officers attached to the Branch faced in practice. Whilst police officers were interpreted as having an 'inherent instinct to arrest or prosecute,' by the Commissioner of Police, when operating within the IB, they were faced with an internal conflict, given that Post Office institutional priorities, particularly in relation to the cases they would be working on where the offence did not concern a PO servant, guided investigations and case outcomes.[1030] Significantly their role was to enquire, and to submit the results of their enquiry to the legal branch of the GPO for consideration and direction, rather than to arrest, even where the suspect had admitted the offence. The Solicitors Branch of the Post Office would consider, from this point onwards, case progression. The central guiding principle of case progression

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[1028] *Ibid*

[1029] POST 33/4796, 'Minute 11392/ 1935: Police: Information Regarding PO business supplied to' (June 1933)

[1030] MEPOL 3/ 537, *Investigation Branch GPO: Enquiry into allegation of misconduct of police personnel* (1938)

appears to have been the advisability (or otherwise) of giving publicity to the ease with which offences could be committed, balanced against the financial loss suffered by the Post Office.

Due to the wide legislative powers granted to the PMG[1031] the practice of staying proceedings in certain cases was often observed. Apparently, this sometimes placed Police Officers attached to the IB 'in a quandary,' given the internal conflict it could present between their instincts, or perhaps occupational culture, as police officers and the practical control imposed on them by the IB. This is further reflected in them being required to caution persons for offences such as forgery as opposed to initiating prosecutions.[1032] The Post Office retained the relatively unique status as victim, investigator, and prosecutor in relation to the offences with which they were concerned. As Randall McGowen has maintained in relation to comparable practices within the Bank of England, an internal organisational response to offences committed against them (such as fraud and forgery), comprising of an internal policing force and solicitors to bring cases allows for a powerful and well-resourced system of private prosecution.[1033] Hence, despite their connection to the state they were acting as a private prosecutor and therefore reflected their organisational aims within the legal processes. As Cerian Griffiths has maintained, assigning the Bank of England, or in our case, the Post Office the status of private prosecutor does not mean their role is comparable to an individual private prosecutor, given their resource, the extent of the criminal justice process which was essentially internal, and the high degree of influence publicly funded private prosecutors had on both legislative development and judges and juries.[1034] The authority of the Post Office is enhanced significantly by their status as prosecutor, and this facilitated a degree of control over investigations and prosecutions in which they were a victim which far superseded police power and authority in this context.

Finally, there was a suggestion from the Home Office that some men placed within the IB became 'out of touch with modern methods of dealing with the prevention and detection of crime' and were subject to inadequate mechanisms of control and

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[1031] Post Office Act 1908 (7 & 8 Edw. c. 48); Inland Revenue Regulations Act 1890 (53 & 54 Vict. c.21)

[1032] MEPOL 3/ 537, *Investigation Branch GPO: Enquiry into allegation of misconduct of police personnel* (1938)

[1033] R. McGowen, 'Managing the Gallows: The Bank of England and the Death Penalty, 1797-1821' 25(2) *Law and History Review* 241-282 at 245; R. McGowen, 'The Bank of England and the Policing of Forgery 1979-1821' (2005) 186 Past & Present, 81-116

[1034] Griffiths (2017) (n 387) at 157

discipline.[1035] Whilst not a persistent trend evident in the records,[1036] it is important to acknowledge given it emphasises their distinct role in responding to crime in the Post Office. It also suggests, perhaps, a perception within the police that the role officers attached to the Post Office carried out was distinct and left them outside of their traditional crime fighting capacity. They were subsumed beneath not only 'experts' who were attached to the civil division, but also required to distinguish between their police officer role both in terms of their powers, their organisation, and their operational role. On occasions, this led to complaints from both police officers themselves, and their superiors within and outside of the Post Office, who maintained a lack of control, professionalism, and discipline was tarnishing the reputation of the Metropolitan Police in this context.[1037] What is clear, however, is that police autonomy in this capacity was inherently limited. Metropolitan police officers attached to the branch were responsible for enquiry into specific cases, but their power, authority, and role in practice was delivered in accordance with the institutional aims of the Post Office. Police officers made up a significant proportion of IB personnel, and their role was deemed to be of fundamental importance to the Branch, as is reflected in their growing number, and their cost to the Post Office.[1038] There growing number reflects the increase in offences committed by outsiders discussed in Chapter 2. However, their role in responding to telegraph facilitated crime (and crime committed against the Post Office more generally) was defined in the Post Office's terms and was distinct from the role assigned to the police operating outside of this capacity.

6.2.2 *The Police Response to Telegraph Facilitated Crime*

Outside of the GPO, it is more challenging to gain a thorough understanding of the police response to telegraph facilitated crime. This is in part due to the nature of record keeping, and the difficulty in identifying relevant records,[1039] but also because police involvement was marginalised, with the Post Office having the monopoly on crime

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[1035] MEPOL 3/ 537, *Investigation Branch GPO: Enquiry into allegation of misconduct of police personnel* (1938)

[1036] Indeed, there are other instances where the quality of their work has been recognised, and work of 'expert' travelling clerks had been devolved to Police Officers

[1037] MEPOL 3/ 537, *Investigation Branch GPO: Enquiry into allegation of misconduct of police personnel* (1938)

[1038] In relation to their cost specifically, the PO paid more for their services than the Officers themselves collected in their wages, and also supplemented their salary with a plain clothes allowance, sustenance allowance etc. See POST 30/1971 and the proposed redesign of the Investigation Branch (1908)

[1039] For further discussion of this issue, see R. Dunley & J. Pugh, 'Do Archive Catalogues Make History?: Exploring Interactions between Historians and Archives' (2021) 32(4) Twentieth Century British History 581-607

control within this context. In practice, it is evident that the broader landscape of overlapping but distinct responsibilities, the necessity of a willing prosecutor, and Post Office controls over relevant evidence for police investigation may have further contributed to the marginalisation of policing in this context. Whilst it is clear that the police were responding to telegraph facilitated crime, this chapter argues that the Post Office remained the authority on the matter.

6.2.3 *Prosecutorial Willingness and Legislative Framing*

As maintained in Chapter Four, the difficulty in knowing from the outset whether a PO employee was involved in an offence meant that in practice, offences committed by outsiders were often initially investigated by the IB, even where the Post Office was not a victim. Whilst in these instances, the procedure was to 'place the results of enquiries at the service of justice'[1040] in practice the lack of a willing and enthusiastic prosecutor limited police initiative in this regard. Additionally, the legislative framing around offences prosecuted by the Post Office hinged on their status as victim as we saw in Chapter 3. Whilst economic offences were facilitated by telegraph technology, the legislation that facilitated their prosecution by the Post Office tended to be Post Office specific rather than relating generally to the offence itself. The legislative and common law development of economic offences (given the nature of offences committed by outsiders, against outsiders), and a particular public concern with corporate scandals, may have contributed to a lack of impetus for the prosecution for 'everyday' offences.[1041] Legislative development throughout the period often framed economic offences within the boundaries of the relationships through which they were facilitated. Both common law doctrines and anti-appropriation laws were often formulated in relatively specific terms constructed according to the relationship between offender and victim,[1042] which had the effect of blurring the boundaries between civil and criminal law. In the context of the factory, it has been suggested that legislative and judicial uncertainty had the effect of increasing the power of the factory over its staff.[1043] This therefore allowed employers to retain a degree of control over their employees' interactions with the criminal justice process. This chapter maintains that the

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[1040] POST 30/1013 'Secretary's Office, CEB, Proposed Reorganisation. Division of Work. Mr Gate's Reports. 1900

[1041] See Chapter 3 for some discussion of the relevant legislation, the blurred boundaries between civil and criminal law, and the range of legislative and common law mechanisms available throughout this period.

[1042] B. Godfrey & D. J. Cox, *Policing the Factory* (2013, Bloomsbury: London & New York) See Chapter 2

[1043] *Ibid*

marginalisation of policing, alongside enhanced organisational control over staff and outsiders, had comparable effects in the context of telegraph-facilitated crime.

It is firstly necessary to acknowledge the significance of processes of prosecution shifting throughout this period, and the potential impact this had on the police as investigator and prosecutor of telegraph-facilitated offences. As has been established, whilst the IB of the Post Office was concerned with offences against the revenue, or offences committed by Post Office servants, given the difficulty in knowing, from the outset, whether servants were involved, investigations sometimes initially concerned offences committed by outsiders against outsiders. Post Office records indicate that in cases such as this, where there are grounds to suspect, for instance, that a fraud has been attempted by an outsider, the facts should be reported to the appropriate police authority.[1044] Where there was an absence of a potential prosecutor (for instance, where a betting business did not want to prosecute), Post Office records reveal a perception that the police would generally take no further action.[1045] However, reporting of the facts to the police was perceived as a matter of duty on behalf of the Post Office, and it was therefore deemed appropriate that they notify the police of the ascertained facts, and report the police decision (whether or not to prosecute) internally. Where a police authority initially refused to prosecute, the Post Office refrained from referring similar cases to that authority, interpreting their earlier refusal as absolving them from the necessity of reporting similar cases to that force.[1046] Whilst this practice was later reversed, it is important to acknowledge that, against a background of shifting prosecution practices, certain offences might have been overlooked because of a lack of willing prosecutor. It is maintained that in practice, this combined with the sheer volume of offences investigated and prosecuted internally allowed for the Post Office in this context to influence understanding and practice relative to telegraph-facilitated crime more generally.

Some crime historians[1047] have assumed a transition from private prosecution to police prosecution throughout the 18th and 19th centuries, perceiving the New Police as taking control over criminal prosecution.[1048] However, our understanding of prosecution throughout the 19th and 20th Century is limited, with the role of the police specifically

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[1044] POST 68/843, 'Circular no. 18,' (1933) in *GPO: Investigation Branch Circulars* (1933-39) Circular no. 18, 1933

[1045] *Ibid*

[1046] *Ibid*

[1047] For instance, D. Hay & F. Snyder (eds) *Policing and Prosecution in Britain, 1750-1850* (1989, New York: The Clarenden Press, Oxford University Press) pp. 43-47

[1048] Churchill (2014) (n 523)

having been identified as developing in a 'piecemeal' fashion with victims of crime continuing to play a significant role in bringing cases to court.[1049] In the 19th Century the criminal justice system relied largely on victims playing a significant role in the prosecution of crime.[1050] However, between the 1880s and 1930s the police were increasingly acting as prosecutors,[1051] and the Prosecution of Offences Act 1879 created a Director of Public Prosecutions to advise the police, and personally prosecute in sufficiently serious cases. Devlin has estimated that even in to the 1950s, the Director of Public Prosecutions was only pursuing approximately 8% of indictable offences.[1052] The police therefore increasingly became prosecutors of both serious felonies as well as offences heard in the magistrates' courts, and technically continued to act in the capacity of private prosecutor, reflecting a prioritisation of a system of private prosecution.[1053] This has implications for this thesis given that whilst the introduction of the Metropolitan Police saw them increasingly take over the responsibility of prosecution in a formally private capacity, this has been interpreted as a response to private citizens unwillingness to exercise their right to private prosecution.[1054] Devlin explains this through reference to the increasing complexities of the legal system, and increased costs associated with hiring those with legal expertise to manage the process.[1055]

Bearing in mind the specific offences which would fall outside of the remit of the Post Office system of investigation and, where deemed appropriate, prosecution, there remains some specific categories of offence for which the police role may be more significant. Generally falling into categories of what we would now conceptualise as fraud, these offences included cheating and obtaining goods by false pretences. However, given an implied police reluctance to prosecute in some of these cases, alongside a potential reluctance of private citizens to prosecute in accordance with the legal complexity and costs associated with legal representation, it may well be that some of the relevant offences were not actively pursued through the criminal justice process. This may have been exacerbated by some reluctance on behalf of victims to

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[1049] *Ibid*; See also B. P. Smith, 'The Emergence of Public Prosecution in London: 1790-1850' (2006) 18(1) Yale Journal of Law & the Humanities 29-62; B. Godfrey, 'Changing Prosecution Practices and Their Impact on Crime Figures, 1857-1940' (2008) 48 British Journal of Criminology, 171-189

[1050] B. Godfrey, 'Changing Prosecution Practices and Their Impact on Crime Figures, 1857-1940' (2008) 48 British Journal of Criminology, 171-189

[1051] *Ibid*

[1052] P. Devlin, *The Criminal Prosecution in England* (1958, Yale University Press, New England)

[1053] Though it should be noted that whilst technically private prosecutors, the process of police prosecution was distinct from earlier processes. See Yue Ma, 'Exploring the Origins of Public Prosecution' (2008) 18(2) International Criminal Justice Review 190-211, at 195-6

[1054] Yue Ma, 'Exploring the Origins of Public Prosecution' (2008) 18(2) International Criminal Justice Review 190-211, at 195-6

[1055] Devlin (1958) (n 1043)

give evidence as witnesses, where the circumstances of their being defrauded were considered embarrassing.[1056]

Legislative complexity and ambiguity may also have impacted both private citizens and police decision-making relative to prosecution. Griffiths has pointed out the overlapping boundaries between civil and criminal conceptualisations of fraud, and a cross-over between a range of offences including 'embezzlement, forging and uttering, larceny, and fraud offences such as cheating, obtaining goods by false pretences, false personation and fraudulent offences against public bodies.'[1057] The variety of legislation, the vagueness associated with the ontological boundaries of economic offences such as fraud, and the range of victims impacted by telegraph-facilitated economic offences has served to complicate contemporary understandings of economic offences and their distinction from white-collar offences.[1058] Sometimes conceptualised as mutually exclusive, this has the effect of assuming a "homogeneity of crime against business."[1059] Such a categorisation fails to reflect the range of offences, but also the range of offenders, imposing assumptions about the social class of the offender within the definition. This in turn can exclude the potential for individual private citizens to be perceived as a victim of economic offences, or individual offences to be perceived as economic offences, and certainly white-collar offences. The long history of normative and ontological vagueness associated with the types of offences with which this thesis is concerned at least implies that against the backdrop of shifting prosecution practices, some categories of economic offences may have been overlooked at times in the absence of a willing (private) prosecutor. There is evidence that the police attempted to pursue some telegraph-facilitated frauds, but, in some cases, Post Office regulations impeded efforts to prosecute.

6.3 Interactions Between the Post Office and the Police

As established in the previous section, the Post Office practice where offences had been committed by outsiders and detection, prevention or prosecution by the PMG was not considered to be required, the results of inquiries could be placed 'at the service of justice.' Where the police did attempt to investigate offences committed using telegraph technology, or where telegrams or telegraph money orders might be significant

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[1056] Churchill (2017) (n 796) Chapter 8
[1057] Griffiths (2020) (n 580) at 257
[1058] P. Johnstone, 'Serious White Collar Fraud: Historical and Contemporary Perspectives' (1999) 30 Crime, Law and Social Change, 107-130
[1059] M. Levi, *Regulating Fraud: White- Collar Crime and the Criminal Process* (1987, Tavistock Publications: London)

evidence in relation to an investigation, there was in several instances a conflict between the Police and the Post Office. The Post Office were to assist the police with: requests for evidence to be used in criminal proceedings; requests for information to detect criminals in relation to matters which the Post Office were unconcerned with; and in relation to matters where no criminal offence was alleged but that might relate to a separate police matter such as a missing person.[1060] It is in relation to evidence that we witness a conflicting approach between the police and the Post Office. Significant in this context are institutional concerns relative to protecting privacy, as well as public perceptions about the integrity of the telegraph network.

6.3.1 *A Culture of Secrecy*

There are records related to several instances of police requests for information from the postal authorities to assist them with tracing a suspect being subject to delay, or a refusal to cooperate. In June 1900, for instance, Liverpool City Police requested information related to an individual suspected of fraud, but their request was denied by the Liverpool Post Office. The sharing of information about service users in the Post Office was against regulations, with the institution 'unable to make special exception.'[1061] The Head Constable of Liverpool City Police then contacted the Under Secretary of State (Home Department), maintaining that the information they requested would not violate the 'secrets of the Postal Service, and would materially assist the ends of justice.'[1062] In this instance the Home Office intervened, requiring the PO to share the information with the Police. They also recommended that, in future, applications should give full details as to what is required in the interests of criminal justice, and suggested that where the information is granted, it is telegraphed to the local Postmaster to get it to the police as quickly as possible.[1063] However, the Head Constable at Liverpool wrote again to the Home Office, stressing that delays arising out of the need for Home Office intervention to compel the PMG to share the information with police rendered the information in the case specified 'valueless'. He therefore requested that their local Postmaster be approved to grant future applications to avoid delays associated with Home Office interventions. He asked for assistance in 'inducing the Postmaster General' to reconsider his decision that this could not be managed at a local level and that any relaxation of the rule against sharing information had to be

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[1060] POST 30/1013, Secretary's Office, Confidential Enquiry Branch, 'Proposed Reorganisations: Division of Work. Mr Gate's Reports' 1900

[1061] HO 144/ 467/ V32390, Home Office, 'Information from the Postal Authorities' 16th June 1900

[1062] HO 144/ 467/ V32390, Home Office, 'Information from the Postal Authorities' Letter from Head Constable at Liverpool to the Under Secretary of State (Home Department) 16th June 1900

[1063] HO 144/ 467/ V32390, Home Office, 'Information from Postal Authorities to assist the ends of Justice: Requests H.O. to induce the Postmaster General to Reconsider his decision' 31st July 1900

mediated through application to the Head Office.[1064] In this instance, the PMG was unwilling to devolve responsibility for decision-making to local Postmasters, but did agree that police authorities could contact him directly to request information, rather than having to go through the Secretary of State. It was implied that the issues of delay reported in the Liverpool case were a result of Home Office intervention, and this was as far as the PMG was willing to go in meeting the need for a quick response whilst also maintaining the regulations of the Post Office regarding information sharing with third parties.

It is significant in this instance that the police authorities were not afforded a 'special status,' and that Post Office regulations were interpreted as applying to protecting the secrecy of correspondence in contexts including where a public authority requested information.[1065] The matter came before the Home Office again in 1913, where a police officer's request for information about a telegraphic address was denied by the Post Office. The Secretary of State supported the request, and felt that given the important public purpose attached to the request of the police authority, the police should be furnished with the information.[1066] Specifically, the Secretary of State felt that in instances where someone is known or suspected of criminal practice, 'any public department which comes into possession of information which would assist in the detection or prosecution of the offender ought to disclose that information on the request of the responsible police authority.'[1067] Indeed it was stressed this would be a duty for even a private citizen, and it was felt that a public department of the government could not be under a lesser obligation than a private citizen in this context. Given the lack of a special fiduciary relationship,[1068] and that disclosure was within the public interest, the limitations imposed by the Post Office in this context were perceived as unreasonable.

The Post Office, however, maintained that any disclosure was a breach of confidence; police authorities constituted a third party, and given that registrants were able to object to their telegraphic address being published in a directory, this needed to be

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[1064] HO 144/ 467/ V32390, Home Office, 'Information from Postal Authorities to assist the ends of Justice: Requests H.O. to induce the Postmaster General to Reconsider his decision' 31st July 1900, Letter from the GPO on behalf of the PMG
[1065] This perhaps reflective of ideas related to an emergent and pervasive culture of secrecy or confidentiality in government and private sectors; See D. Vincent, *The Culture of Secrecy: Britain, 1832-1998* (1998, Oxford University Press: Oxford)
[1066] HO 45/10703/238000, Home Office, 'General Post Office' 12th June 1913
[1067] HO 45/10703/238000, Home Office, Letter to The Secretary, General Post Office. 15th August 1913
[1068] Such as one between a solicitor and his client

upheld unless they consented otherwise.[1069] Whilst original documents could be produced in a Court of Law under a writ of subpoena, they were not to produce them to aid with investigation. Specifically, the Solicitor's department of the Post Office maintained that it had always been the case that information would be kept secret where the individual concerned had objected to the publication of his name and address, having refused previous similar requests related to betting telegrams. As a result, the Post Office did not 'consider itself at liberty to do what [was] asked.'[1070] Specifically, the Law Officers attached to the Post Office had offered advice relative to the disclosure of betting telegrams transmitting Money Orders to the police, maintaining that the PMG should not disclose information of their own accord, or even on a warrant of the Secretary of State. This was framed as a breach of s56 of the Post Office Act 1908, which only allowed for disclosure for evidence in court under a subpoena.[1071] Rather, the Post Office suggested that the police should use other mechanisms, such as bogus telegrams, or should shadow telegraph boys and offer rewards for information to persons other than Post Office employees.

Ultimately, they appear to be proposing that the police develop methods of investigating that mimic their own methods, rather than rely on them for information and support. The Post Office approach was one that prioritized the privacy of its users, in order to protect its reputation and revenue. This is natural in that 'telegraphic communication violated norms of privacy.'[1072] As was argued in Chapter 3, statutory emphasis on the risk posed by increased access to private and commercial information saw the development of laws designed to both protect the network from interference and reinforce public perceptions about the security of telegraphic communication. Internally the institution does not appear to have afforded the same level of protection to the contents of communications, neither to conceptions of privacy related to their staff. This was made possible by the creation of an internal detective branch; internal information sharing would not violate the legislation as the force did not constitute a third party. Further, their monopoly on public communication mechanisms was interpreted as imposing an obligation on them to protect the integrity of messages from interference by outsiders. As a result, a particular construct of privacy emerged which applied specifically to outside users of the network, as opposed to an approach to communications more generally. Of course, Post Office legislation imposed legal

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[1069] HO 45/10703/238000, Home Office, Letter from the GPO to the Secretary of State (Home Office) 13th June 1913
[1070] HO 45/10703/238000, Home Office, Letter from the Solicitors Department of the GPO to the Home Office, 20th June 1913
[1071] HO 45/10703/238000, Home Office, Law Officers Department, 30th August 1911, Report submitted to the Home Office 26th June 1913
[1072] Morus (1996) (n 171)

standards on the staff of the Post Office, for instance forbidding them from disclosing the contents of telegraphic communications. In this instance the obligation was interpreted as one which applied to disclosure to outsiders, not to other branches of the Post Office.

At the same time, the IB did expect collaboration from the police, both in relation to their powers of arrest, and any local information they might have that could assist them. Related to their powers, local police were called upon to support the IB by making arrests or serving a summons. This was required in cases where the suspected offence was not a felony, and they provided this service to the Post Office as they would to any other employer wanting to prosecute a member of staff at the time.[1073] Given their concerns related to revenue and reputation, and where inquiring about potential Post Office servant involvement in offences, the Post Office expected the police to furnish information related to occupants of addresses, in order to check that no Post Office servant lived there. In relation to betting frauds, there appears to be an expectation of collaboration from the police, but no persistent corresponding duty on the IB detectives to refer cases to the police if they are satisfied no Post Office servants were involved, unless the scale of the frauds was considered substantial.[1074] The police were also compelled to submit reports to the Post Office respecting serious crimes committed on Post Office property, but not harming Post Office revenue or staff.[1075] The boundaries of the interactions between the Post Office and the police were defined according to the Post Office mandate and their status as expert. This also allowed them relatively tight control over the process of crimes impinging on the Post Office's reputation, given the limited crime narrative that could emerge out of police responses to crime in the Post Office. However, given the increase in use of telegraph technology, as well as other technologies associated with the Post Office, produced more potential victims of crime,[1076] it was somewhat inevitable that the police authorities would eventually demand access to both information and evidence in order to be able to respond to offences impacting 'outsiders.' Bogus betting businesses in particular seem to have been a concern, and it is through complaints relative to cases such as this that the interactions between the Post Office and the police become increasingly cooperative.

[1073] POST 33/4797, GPO: Minute 11392/1935 'Police: Information regarding PO business supplied to. HO request closer co-operation between IB and provincial police' (1933)
[1074] POST 120/39 'IB Circular 102: Bets By Letter- Procedures as Regards Enquiry' (1936) in *GPO: Instructions: General. HO Duty: Order Book. Folios 51-157* (July 1932-Feb 1948)
[1075] POST 68/843 'IB Circular 8/35' (1935) in *GPO: IB Circulars 1933-39*
[1076] As discussed in Chapter 2

It was not until December 1913 that the Post Office agreed to disclose more information, after being subject to significant pressure by the Home Office. The PMG, in doing so, stressed that the Secretary of State's argument maintaining that obligations of Government Departments cannot be less than those imposed on private citizens was flawed in this context. Firstly, the specific offence in question at that time was not perceived as 'serious' by the PMG. Perhaps given the lack of threat to Post Office revenue and reputation, it was described as a 'mere statutory offence [of] carrying on a betting business in some way which has been declared contrary to law.'[1077] Second, the Post Office perceived themselves as occupying a different position to that of an ordinary citizen in the context of information in their possession relating to business of private affairs, given the PMG's monopoly of the means of communication between members of the public by post or telegraph. Fundamentally, this monopoly was presented as compelling the public to use Post Office services and therefore disclose their business and private affairs, and this in turn implied an entitlement that that information is confidential. Given the emphasis throughout this period on widening use of the telegraph network, and the emphasis on the financial success of the institution, it is not surprising that this was the approach. Specifically, it is clear from Chapter One that initial incorporation of the network was primarily situated within the business context, and the institution had worked to sustain perceptions of integrity given concerns about private information being disclosed or getting into the wrong hands. However, in reaching a decision to share the requested information with the police, the PMG did agree that it was not desirable for the business of the Post Office that confidential relations with the public were abused by the transaction of illegal business.[1078] He therefore agreed to share the information requested the previously, but justified this given that the Post Office was being 'used to promote an offence against the law' and the Secretary of State gave assurances that the application was a 'proper one.'[1079] Hence, whilst agreeing to comply with the initial request from the Police, the PMG felt that, to ensure that information was not shared inappropriately, the Home Office should again mediate police requests to the PMG. This implies some doubt about both the appropriateness of police requests for information, and concerns related to how that information will be used and shared. Indeed, this prompted complaints from the police who were concerned that the Post office appeared to lack trust in them.

[1077] HO 45/10703/238000, Home Office, Letter sent from the GPO to the HO (Secretary of State) 2nd December 1913
[1078] *Ibid*
[1079] *Ibid*

Reflective of a relatively persistent undercurrent of tension between the police and the Post Office regarding information sharing, the above compromise does not vest authority with the police for matters relating to telegraph facilitated crime. Indeed, this somewhat dismissive 'attitude' towards the Police, as it was described by a Chief Constable,[1080] is evident in other interactions, as well as in the regulations of the Post Office more generally. This emphasises what was identified in Chapter Three as a distinction between state regulator's perceptions, responses, and approaches to managing crime. Specifically in this instance there is an institutional emphasis on secrecy which facilitates an information imbalance between the police and the Post Office, with the Post Office retaining their status as the leading authority in this context. Whilst in the context of offences committed against the Post Office, or by Post Office servants, their expertise facilitated the detection and prevention of crime, outside of these specific circumstances the Post Office operated in a manner which could undermine efforts to address crime.

6.3.2. *The Extent of Post Office Authority*

It is also important to note that the operation of the IB did require support from police officers, but their role was determined according to the Post Office investigation and officers of the IB. In 1933, a letter to the Post Office from the Home Office revealed a sense of frustration within local police forces where detective staff of the IB failed to inform local police they were carrying out investigations in their area.[1081] A county Chief Constable had complained to the Home Office that the first his force heard of the investigation was when they were asked to serve a summons. They did so, and the man was prosecuted for a relatively minor offence, but in supporting the work of the IB and the subsequent prosecution, the police were unable to prosecute for a much more serious offence.[1082] Demonstrating a perception within the Home Office of an expectation of collaboration and information sharing, the letter noted that where police forces are carrying out investigations in another force's area, normal police practice would require them to notify the other force, which would also have the benefit of facilitating information sharing between forces. The Post Office, again, maintained the importance of strict secrecy in IB inquiries, distinguishing themselves from the ordinary police. Usual practice was to only inform the police if they wanted help from them, and

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[1080] HO 45/10703/238000, Home Office, 'General Post Office' 12th June 1913
[1081] POST 33/ 4797 GPO, 'Information Regarding P.O. Business which may be Furnished to Police' 22nd May 1935, Letter from the Home Office to the Investigation Branch, May 1933
[1082] *Ibid*

they suggested that informing them any further risked their investigations.[1083] In this context, the relationship between the police and the Post Office was transactional, but with the terms controlled by the Post Office. Where the offence concerns an outsider, they were more likely to inform the local police in advance, but where it is unclear if a PO servant is involved, strict secrecy was prioritised. This Post Office perceived itself as the authority and expected to be able to operate in many cases, on its own terms.

As established previously in this chapter, at the outset of an investigation it could be difficult to establish whether a Post Office servant was involved in the offence, suggesting that cases where police involvement would have been appropriate to the facts of the case may in practice have been limited. The Home Office reported that beyond the specific case referred to above, there were frequent reports of the police not being communicated with or struggling with local postmasters for information. Reflective of their distinctive aims and roles, the Post Office and the Police operated collaboratively only on the PO's terms. Whilst the Home Office called for closer cooperation between the IB and provincial police, in practice the monopoly assigned to the Post Office over communications extended to crime fighting efforts relative to telegraph -facilitated offences.

A CCoCC meeting held in 1934 attempted to address the issue of collaboration. The minutes reveal continuing discord between provincial police forces and the GPO, despite earlier amendments to information sharing, but closer collaboration with the Metropolitan Police. Specifically, concerns were raised in relation to cases where the offence did not exclusively relate to Post Office work or where the Post Office was likely to disclose an ordinary criminal offence.[1084] The Metropolitan Police asserted that, except in cases concerning purely post office offences, the IB officers co-operated closely with the Metropolitan Police, and 'mutual assistance' was given.[1085] This is perhaps unsurprising given that Metropolitan Police officers were employed within the IB, and inquiries taking place in this area that were not concerned with Post Office staff would be covered by them. Police officers from Cardiff, Birkenhead, Oxford, and Derby, however, reported a lack of communication and assistance granted to them by the Post Office. It was noted that this not only limited their ability to respond to offences that fell

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[1083] *Ibid*

[1084] POST 33/4797, 'Extract from the minutes of a Central Conference of Chief Constables held at the Home Office on 22nd February 1934'

[1085] POST 33/4797, 'Extract from the minutes of a Central Conference of Chief Constables held at the Home Office on 22nd February 1934,' Mr Norman Kendal (Metropolitan Police)

within their remit, but also that it could undermine IB investigations, where the local police were party to information that could be useful to them but where they failed to disclose this.[1086] The obligation on local postmasters to report irregularities, as well as certain classes of offences to their own headquarters, and to not disclose information directly to the police, was also cited as continuing to impede police work.[1087]

6.3.3 *Post Office Control over Evidence*

It is important to remember that Post Office control over the response to telegraph-facilitated crime did not just extend to investigations, but also to prosecution. Even where the PMG had chosen not to prosecute, and the offence did not concern the Post Office alone, in practice it was up to the IB to decide whether the case should be handed over to the police.[1088] Similarly, the IB had discretion to decide whether applications from the Police for assistance would be met. These included requests to inspect Telegraph Money Order forms, requests for statements from PO servants, and requests to keep observation at a Post Office. The rules governing the IB maintained that assistance should only be granted when: the police were acting on behalf of the sender or payee of a money order; a warrant had been issued for the arrest of the offender; the police were acting under the instructions of the DPP or another government authority; or a serious criminal offence had been committed and the information was required in the interests of justice.[1089] Hence, Post Office control of the response to telegraph-facilitated crime extended to prosecution, as well as investigations. Ultimately it was up to the discretion of the IB whether cases would be passed to the police where the PMG was not intending to prosecute, and the case concerned an outsider. Hence even in instances where the formal rules deemed cases to fall within the remit of police work, given that processes of inquiry were often initiated by the IB to rule out PO Servant involvement, in practice these cases may have fallen outside of formal processes of police investigation and prosecution.

In regard to continuing upset related to IB assistance to the police, the policy holding that local postmasters were unable to cooperate with police investigations without a

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[1086] POST 33/4797, 'Extract from the minutes of a Central Conference of Chief Constables held at the Home Office on 22nd February 1934,' Mr J.A. Wilson (Cardiff)

[1087] POST 33/4797, 'Extract from the minutes of a Central Conference of Chief Constables held at the Home Office on 22nd February 1934,' Captain Rawlings (Derby)

[1088] POST 33/4797 GPO, 'Information Regarding P.O. Business which may be Furnished to Police' 22nd May 1935

[1089] POST 33/4797 GPO, 'Information Regarding P.O. Business which may be Furnished to Police' 22nd May 1935, Investigation Branch, 19th October 1931

warrant signed by the Secretary of State, continued to impede investigations.[1090] Police authorities again requested that local Postmasters be granted the authority to share information (specifically the contents of telegrams) with them. However, S 56(2) of the Post Office Act 1908 made it an offence for an officer of the Post Office to open, detain or delay any postal packet (which also incorporated telegrams) except under the authority of a warrant of the Secretary of State. Despite the aforementioned position of the Law Officers that any disclosure of telegrams would be illegal, the practice had persisted, but only with the support of the Secretary of State and the issuance of a warrant, and access could not be granted by local postmasters. By 1924, the police were increasingly being shown telegrams confidentially in serious criminal cases as a matter of policy, without the need for a warrant, provided no public use of the knowledge obtained would be made without a Secretary of State's warrant; but the authority to share the contents was not devolved to local Postmasters. Requests to grant local Postmasters the authority to cooperate with police continued to be resisted for a period. The legality of the practice was still considered doubtful by 1932, and the Post Office felt that granting the authority to Postmasters to share the contents with the police wouldn't resolve the issue anyway. Telegraph forms would often no longer be with local Postmasters by the time the police requested to see them.[1091]

Eventually, the Post Office conceded; Postmasters could disclose information to the police where they were acting on behalf of the sender or addressee of a money order, with a warrant, under the instruction of the DPP or where a serious offence had taken place.[1092] Yes, this was still agreed on the Post Office's terms. Where the sendee or addressee did not consent, the police would still be required to apply to the IB by telephone to inspect the forms. Instructions issued to Postmasters reveal that where police could inspect telegraph forms related to bogus requests for funds, as well as Money Order forms, they could not 'pass into the hands' of police, though tracings of handwriting could be taken,[1093] and eventually photographs.[1094] It is important to note that the persistence of Post Office concerns about cooperation with the police was tied

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[1090] POST 33/4797 GPO, 'Information Regarding P.O. Business which may be Furnished to Police' 22nd May 1935, GPO, Staff Branch 'Memorandum: Disclosure of contents of telegrams to Third Parties' November 1934

[1091] POST 33/4797 GPO, 'Information Regarding P.O. Business which may be Furnished to Police' 22nd May 1935, GPO, Staff Branch 'Memorandum: Disclosure of contents of telegrams to Third Parties' November 1934

[1092] In 1934

[1093] POST 33/4797 GPO, 'Information Regarding P.O. Business which may be Furnished to Police' 22nd May 1935, 'Tentative draft of instructions to be put into Postmasters' Manual E'

[1094] POST 33/4797 GPO, 'Information Regarding P.O. Business which may be Furnished to Police' 22nd May 1935, IB Circular 4/35, 'Cooperation with Provincial Police' April 1935

up in concerns about confidentiality or secrecy extended to users of the network. Specifically, the fact that the Post Office was not interpreted as having the legal authority to disclose the contents of a telegram without the consent of the sendee or addressee created a persistent limitation on police work in this context. What is particularly interesting is that in practice, more information sharing did take place against the advice of the law lords, but efforts were made to keep this out public knowledge. This implies that whilst there was an emphasis on secrecy, this was also connected to concerns about institutional reputation. The prioritisation of secrecy helped to preserve the reputation of the Post Office as reliable. When they acted contrary to the presumption of confidentiality, even in matters related to justice, they were concerned about the effect this could have on public perceptions about the security of the network.[1095]

It appears that by 1935 a middle ground was reached, on the Post Office's terms, to improve efficiency, maintain their reputation, but also ensure that provincial police forces had 'no legitimate cause of complaint of either efficiency or courtesy.'[1096] They accepted that IB officers, where investigations concerned an 'outsider,' should introduce themselves to the controlling officer of the local police, and share contact details. The IB retained complete autonomy with cases concerning 'insiders.'. Considering the findings from Chapter 2, by this time TMO frauds and forgery were impacting individuals and businesses as well as the Post Office. The proliferation of potential victims presumably goes some way to explaining police insistence regarding access to evidence. In such instances, for complaints to the police to be processed and potentially prosecuted, more collaboration with the Post Office was essential. Considering that in cases of TMO fraud the only relevant evidence would be situated with the GPO, it was expedient that police be able to access it. In this instance, it was HO intervention and persistence that led to further, and more meaningful collaboration. This in turn came with obligations for the police to 'take any necessary steps to ensure that all possible facilities are given to Investigation Branch officers who make their presence known to the police, whether they are engaged on a matter with which the police will be actively concerned or not.'[1097]

Whilst by 1935, the GPO and the police had arrived at a position of increased mutual cooperation, in relation to expertise on telegraph-facilitated crime specifically, it is apparent that the GPO maintained significant control. Formal policing of the electric

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[1095] *Ibid*
[1096] *Ibid*
[1097] POST 33/4797, GPO, 'Information Regarding P.O. Business which may be Furnished to Police' 22nd May 1935, HO, Whitehall, May 1935

telegraph, whilst less marginalised, still hinged on a willing prosecutor, and available evidence (and thus Post Office cooperation). Post Office cooperation with regards to evidence was more limited. In practice, there was disagreement between the police and the Post Office about the type of offence that was considered sufficiently serious so as to justify them sharing the contents of telegrams. Within the Post Office, this status of severity was generally assigned to systemic frauds and forgeries, such as bogus businesses. This had the effect of limiting the types of offences police could successfully investigate and prosecute. Between 1931 and 1947 there are records of police requesting copies of telegrams to support investigations into burglary, effecting a public mischief, conspiracy to defraud an insurance company, obtaining (a significant sum of)[1098] money by false pretences, and large-scale frauds, as well as some smaller frauds. In most cases, warrants were granted by the Secretary of State which have the effect of compelling the Post Office to cooperate. In other cases (where the offences were of a smaller scale) the Post Office questioned whether the divulging of the telegrams was justified given that the offences did not seem to meet the criteria of 'seriousness' required under the guidelines.[1099] There was a concern that the practice might one day be 'challenged,' and it was therefore suggested that only cases where the offence was 'really serious,' and where there police believed that the requested information would prove pivotal to investigations, could applications under the category of 'seriousness' be met.[1100] Given that the legislative imposition not to disclose contents was still officially interpreted as applying to the Post Office,[1101] and the police continued to be understood as a 'third party,' police work was still subject to limitations. The requirement of 'seriousness' meant that offences that were not perceived as systematic, or sufficiently serious,[1102] yet hinged on telegraphic evidence, would be difficult to progress.[1103] This in turn could further marginalise individual victims from access to justice in this context. It also had the potential to influenced perceptions about whose responsibility it was to respond to telegraph-facilitated crime, and it is notable that it was the Post Office's standard of seriousness which was imposed on the policy.

[1098] Total amount believed to be £16, 700 (1939)

[1099] HO 144/22989, HO, 'Production of telegrams on application by police' GPO Letter to Home Office (May 1932)

[1100] HO 144/22989, HO, 'Records of Telephone Calls: Criminal Investigation' (1932) Letter from the GPO

[1101] Despite this occurring in accordance with the policy set out above in practice, and outside of public attention.

[1102] Sufficiently serious seems to have implied they would be either larger scale, or systematic.

[1103] Although there is some variation, there is limited evidence of individual complaints being investigated which involved access to GPO held evidence.

Further, in several instances telegrams could not be produced even under warrant given the lapse of time between their sending, and the investigation. In July 1939 police requested access to telegrams sent the previous March related to the offence of obtaining money by false pretences.[1104] Given the lapse of time between the offence and the investigation, the telegram could no longer be made available. The original form handed in by the sender would only have been preserved for three months from the date of dispatch, and one month in the office of delivery. In order to attempt to trace a telegram sent at that time from an unknown office, it would be necessary for the Post Office to search through over four million telegrams dispatched in England in that month. As a result, the Secretary of State failed to issue the warrant. Similarly, in 1947 a warrant was requested to facilitate access to a number of telegrams related to a systemic fraud.[1105] A warrant was granted, requiring that the telegrams be forwarded to the Chief Constable, but only some of the telegrams were available given the limited period of preservation of forms. Whilst it is clear that the police were investigating offences committed using telegraph technology, the standard of seriousness required to justify access to evidence, as well as issues with the retention of telegraph forms, had the effect of impeding investigations or prosecution.

Alongside this, there is also a suggestion that the police at times misunderstood the criteria justifying information sharing and failed to apply on the basis of the consent of the sender or addressee. It was agreed that there may be, in some cases, 'good reason' why the police were not seeking the consent of the sender or addressee, thus mediating the necessity of applying for either a warrant or directly in accordance with the seriousness of the offence.[1106] However, there is evidence of some confusion where the addressee only was working with the police. For instance, the Chief Constable of West Suffolk applied for a warrant from the Secretary of State to produce a telegram sent to a victim of a burglary.[1107] The Home Office emphasised that this was an instance where the police could make a direct request to the GPO, supported by a letter of consent from the addressee. Records indicate similar outcomes in 1934,[1108] and reflect a similar degree of confusion regarding the process of application among

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[1104] HO 144/22989, HO, 'Herefordshire; Fraudulent Activities: Requests issue of warrant for inspection of undelivered telegram.' July 1939

[1105] HO 144/22989, HO, 'George Virgo- Fraudulent Activities: Requests Issue of Warrant for Inspection of Originals, of various telegrams' May 1947

[1106] HO 144/22989, HO, 'Inspections of Telegram by the Police,' Letter from the GPO, March 1932

[1107] HO 144/22989, HO, 'Burglary at Holbeck Park: Production of Telegram: Asks for issue of SoS Warrant' December 1932, Letter from Chief Constable of West Suffolk Police to the Under Secretary of State, 22nd December 1932

[1108] HO 144/22989, HO, 'Telegram sent in name of Boyd: asks for production to police of original telegram sent from Lymington 7th Sept,' September 1934

the legal profession more generally.[1109] This is perhaps reflective of a lack of familiarity with the process. The records do not imply that a huge number of offences were being dealt with by all forces, particularly small forces. This could go some way to explaining the lack of clarity. It does however emphasis the significance of the Post Office authority within this sphere and a lack of police autonomy.

Throughout the 1930s it does appear that the police and the GPO arrived at a position of increased collaboration, whilst simultaneously maintaining the division of labour according to the suspected offender, and the victim of the offence. There is evidence that the police were pursuing telegraph-facilitated crime, but in practice, the extent of offences investigated would have been contained by a combination of the limited number of offences for which they were responsible for investigating, changing practices of prosecution, and the potential lack of a willing prosecutor or prosecutions that required police involvement. Within the cases they did investigate, there is initially evidence of the Post Office resisting collaboration in relation to evidence in particular, and even when increased cooperation was evidenced, legislation prohibited uninhibited sharing of information, with the terms of this cooperation defined largely according to the Post Office mandate.

6.4 Businesses

Given that this thesis acknowledges a range of offences facilitated by the electric telegraph, as well as the different categories of potential victim, it is pertinent to consider the relevance of these categories to the regulatory response. We have seen that the Post Office's status as victim or employer triggered an internal response to telegraph-facilitated crime. Given their closeness to the network they were able to regulate preventatively as well as responsively. There is evidence of the police acting on behalf of private citizens or smaller business, though their response was subject to limitations. As evidenced in Chapter Two, bigger businesses, and state institutions outside of the Post Office, were also victims of telegraph-facilitated crime. This was particularly the case after the introduction of Telegraph Money Orders, following the layering of telegraph technology into industries such as banking and the Stock Market, and in the context of the betting industry.[1110] Given the approach to regulation

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[1109] For instances, in regard to solicitors advising private citizens pursuing prosecution
[1110] See Chapter 2

discussed in Chapter Three, and particularly Braithwaite's assertion that the role of institutions and organisations in the regulation of crime historically have been overlooked, it is appropriate to emphasise this final category of victim.[1111] Particularly, where big business and state institutions were concerned, the long history of private prosecution combined with the need to manage perceived (often economic) risk facilitated a range of regulatory regimes which operated to protect the interests of the institution from which they emerged. We have seen with the Post Office that the police were marginalised from this process from the outset, so we see the most concrete preventive and responsive regulatory mechanisms emerging outside of the public criminal justice processes. There is evidence however, that other organisations and businesses beyond the Post Office developed preventative and detective methods in response to the risk posed by telegraph-facilitated crime.

With regards to the betting industry, Post Office practice relative to betting frauds was to eliminate the possibility that a Post Office servant was involved, and where prosecution was not recommended by the PMG, offer advice to betting agents should they wish to prosecute privately. There were policies governing the extent of information that could be disclosed, but they were able to convey the facts of the case to agents, should they wish to proceed with a prosecution.[1112] It was stressed that the IB was not to share their report freely with the bookmakers and betting agents, however it was also acknowledged that without being able to access information regarding available evidence, it would be difficult obtain legal advice relative to the decision whether or not to prosecute. Given this dilemma, it was agreed in the Post Office that where bookmakers indicated a willingness to prosecute, specifically given that the police were unlikely to prosecute on their behalf, the IB could supply proofs of evidence of necessary witnesses, and a copy of the statement made by the accused, so long as details of their solicitors were provided.[1113] Whilst the landscape of prosecution had shifted, it is evident that private prosecution still remained prevalent in this context, requiring businesses such as betting agents and bookmakers to demonstrate a willingness to prosecute in order to be furnished with the evidence.

In the context of white-collar criminality, Robb has argued that in the early 20th Century despite 177 firms being known or suspected of engaging in securities fraud, City of London Police only proceeded with 37.[1114] Citing a reluctance to pursue fraud unless

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[1111] Braithwaite (2003) (n 537)
[1112] POST 68/ 854 IB Circular 5/47 (1947)
[1113] POST 68/ 854 IB Circular 5/47 (1947)
[1114] Robb (1992) (n 412) at 162

prosecutions were mounted at the victims expense, alongside a leniency associated with the privileged position of the white collar criminal, Robb also acknowledges that the 'harshest sentences in cases of white-collar crime were reserved for embezzling clerks.'[1115] This corroborates with the suggested influence of class dynamics on the regulatory approach of the Post Office which perceived the lower class staff as a threat to reputation and revenue. Regulatory efforts that emerged throughout the period within businesses and organisations to control perceived threats to their reputation or revenue often fall outside of the focus of literature concerned with the history of white-collar crime. This is perhaps explained by what Cerian Griffiths has referred to as a perception that white-collar crime constitutes a breach of trust, which in turn can facilitate a preoccupation with middle- and upper-class offending, as opposed to an understanding of fraud which captures the range of activities and offenders from lower classes.[1116] This section seeks to contribute to the literature focused more exclusively on white-collar fraudulent offences by acknowledging the regulatory power of institutions such as the GPO, but also businesses in regulating their staff and private citizens to manage the risk posed by economic crime.

In the context of financial markets, economic transformations enabled by innovations in communication, among other factors, have been interpreted as providing pre-conditions for 'dubious business practice' and fraud.[1117] Against this backdrop, traditional norms that governed business transactions were replaced by more 'impersonal' economic relations.[1118] With financial markets and transactions increasingly done at a distance, traditional mechanisms of accounting for trustworthiness within those transactions were limited.[1119] Whilst literature has maintained that weak standards of conduct within the big business environment in the nineteenth century facilitated corporate fraud,[1120] there is evidence of mechanisms being developed within organisations and institutions to prevent them from becoming a victim of fraud, or susceptible to economic offences. Broader processes of responsibilization,[1121] alongside organisational emphasis on incorporating technologies in a manner that both facilitated progress and managed risk to its revenue are evident across different business contexts. Additionally, as we have implied in relation to the betting industry, there is evidence that IB work would also permeate these

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[1115] *Ibid* at 164
[1116] Griffiths (2017) (n 387) at 10
[1117] Van Driel (2018) (n 7) at 1268
[1118] *Ibid*
[1119] *Ibid*
[1120] Robb (1992) (n 412)
[1121] See Chapter 3

organisations where concerns over PO staff were present. Hence records reflect IB practices such as the use of test packages[1122] or communications appearing to originate from bank branches were deemed acceptable by banks, so long as they were informed by the IB prior to the testing.[1123] Simultaneously banks and other businesses developed measures (often related to verification of communications via telegram) to protect their revenue from fraud and forgery in particular.[1124] This also included the enhanced monitoring of their staff, given that they were exposed to 'temptation on a wide scale.'[1125]

It is maintained that these findings corroborate the notion that not only is 'everyday' fraud under-researched, but that as a result, we overlook historical regulatory responses that supplemented or supplanted the traditional criminal justice process throughout the 19th and 20th centuries. If, as is suggested in relation to the Post Office, everyday frauds and everyday (lower-class) offenders were perceived as a threat to revenue or reputation, institutional responses in managing associated risks are relevant to our understanding of the relationship between crime and regulation in this context. As Griffiths as maintained in relation to the 18th Century, we witness prosecutions initiated by state institutions that are related to 'everyday' frauds.[1126] Beyond invoking the criminal justice process, and outside of the context of the Post Office specifically, there is evidence that businesses, and eventually individual users also developed mechanisms to manage the perceived threat of insecurity or economic and reputational harm emerging from 'everyday' fraud. There is an argument for further research in this context. This thesis provides an example of the mechanisms imposed by the London Stock Exchange, but the research process has also highlighted the significance of banks and the betting industry, and big business more generally which arguably warrants further attention.

6.4.1 *The Stock Exchange*

Records of the Stock Exchange provide valuable insight into mechanisms invoked outside of the GPO and the Police to manage the perceived risk associated with the incorporation of telegraph technology. The Stock Market was selected for this research given that it was identified as a target of telegraph-facilitated crime and deviance in

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[1122] See Chapters 4 and 5

[1123] POST 68/845, IB Circular 8/46, 8th May 1946

[1124] R. Slater, *Banking Telegraphy: Combining Authenticity, Economy, and Secrecy. Being A Code for the Use of Bankers and Merchants* (1976, London: W.R. Gray, Change Alley, Cornhill)

[1125] F.C. Cartwright, *G-men of the G.P.O.: The Story of the G.P.O.s Fight Against Crime* (1937, Samson Low Marston, London) p. 35

[1126] Griffiths (2017) (n 387)

Chapter 2. It is important to note, however, that the review of regulatory procedures in the London Stock Exchange is more of an overview when compared to the depth of analysis in relation to the Post Office. This section will focus on the introduction of the tickertape and the resulting controls around use that emerged to manage risk posed by 'outsiders.' The tickertape allowed for the transmission of price information over the telegraph lines, thus the transmission of information beyond the Stock Exchange floor. Reflective of the challenges of mediating business relationships and establishing trust in an international, distributed market, information imbalance initially contributed to members of the public being at risk of market manipulation.[1127] The introduction of the 'tickertape' was an attempt to improve the distribution of price quotations.[1128] It allowed for 'the continuous, simultaneous distribution of price information over large geographical areas, [permitting] broad public participation in financial markets…eliminating both informational asymmetries and price discrepancies."[1129] Reporters on the trading floor recorded current prices of specific securities, which would then be telegraphed by operators on the floor to a central office located close by, which then transmitted the price related information over various circuits to connected tickertapes.[1130] Stockbrokers would be able to have tickertapes within their private offices, and to share the information with brokers, clerks and investors.

The operation of the tickertape was initially under the management of the London Stock Exchange; the rationale being that they could exert significant control over both the content of information transmitted, but also to whom it was transmitted.[1131] Following their formation in 1872, of Extel, a private company, requested access to the London Stock Exchange to expand tickertape services in England. Whilst their application was initially refused,[1132] the Exchange was under pressure from their members to accept, and eventually agreed to a one-month trial. This had the effect of granting Extel what amounted to a monopoly over the information and its distribution.[1133] From the outset, there was a clear institutional emphasis on retaining control of the information transmitted by wire, and specifically concerns that its incorporation might provide access to financial information to those other than recognised brokers.[1134] Thus the granting of access to Extel came with conditions,

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[1127] Robb (1992) (n 412) at 90
[1128] *Ibid*
[1129] J. Handel, 'The Material Politics of Finance: The Ticker Tape and the London Stock Exchange, 1860s-1890s' (2022) 23(3) Enterprise and Society, 857-887, at 858
[1130] *Ibid;* R. Michie, *The London Stock Exchange, A History* (1999, Oxford University Press)
[1131] Handel (2022) (n 1119) at 862
[1132] Michie (1999) (n 1120)
[1133] Handel (2022) (n 1119) at 862
[1134] MS 19297/ 6, LSE, *Trustees and Managers Minutes* (1868-1872)

namely that only members of the house could receive information on prices. Further the Post Office[1135] required that Extel could only operate within 900 yards of the Stock Exchange so as not to threaten the Post Office monopoly on telegraphy, and imposed controls about where prices could be distributed to.[1136] Both the approach of the Post Office and the London Stock Exchange reflect an attempt to manage these risks preventatively, through the imposition of control mechanisms on insiders and outsiders. Further, there is evidence of Extel taking an internal responsive approach to rule breakers, removing (forcibly) their access to the network.[1137]

In regard to the internal control of workers,[1138] specifically the potential for incorrect information to purposely be transmitted by Extel staff, and related opportunities for fraud, the Exchange introduced methods of verification to legitimise distributed prices. Concerns about internal frauds or deviance were conceptualised as having the potential to influence the reliability and reputation of the system. Managers of the Stock Exchange favoured an internal verification system which would require the countersigning of price slips prior to their transmission by members of the exchange who would confirm the price being sent out.[1139] As with mechanisms designed to embed methods of verification and control in relation to Telegraph Money Orders within the GPO, the introduction of systems of verification came with the risk that the transmission of price related signals would be delayed, but the Exchange saw this as offering a risk-management strategy against Extel 'outsiders' and therefore introduced a system of double verification.[1140] The ever-present perception of a conflict between technology as advancing efficiency whilst also posing risks to institutional boundaries is clear. Some potential inhibitions on speed and efficiency were justified given their preventative capacities.

In order to manage access to information outside of the Exchange floor, the Sub Committee appointed to confer with Extel prioritised limiting the capacity of

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[1135] Relevant given processes of nationalisation saw them protecting their monopoly over telegraph services.
[1136] POST 30/ 371A, *GPO: Memorandum: Exchange Telegraph Company* 'Licencing' (1874)
[1137] As reflected in the records of the London Stock Exchange; MS14608/01, LSE, 'General Purposes Committee: minutes of subcommittee appointed to confer with the Exchange Telegraph Company' 1886-1894; MS14608/02, LSE, 'General Purposes Committee: minutes of subcommittee appointed to confer with the Exchange Telegraph Company' 1894-1899; MS14608/ 03, LSE, 'General Purposes Committee: minutes of subcommittee appointed to confer with the Exchange Telegraph Company' 1899-1909; MS14608/ 04, LSE, 'General Purposes Committee: minutes of subcommittee appointed to confer with the Exchange Telegraph Company' 1909-1942
[1138] Robb (1992) (n 412) at 90
[1139] MS/ 14608/ 03, LSE, *Minutes of the Subcommittee relating to the Exchange Telegraph Co* (1899-1909) at 54-55
[1140] *Ibid*; See also Handel (2022) (n 1119) who discusses this in depth (pp 865-867)

'undesirables' gaining access to information.[1141] This is reflective of the dual emphasis on technological improvement whilst simultaneously controlling progress so that "the privileges of the tape" would be withheld "from certain undesirable subscribers."[1142] Framed in a manner comparable with the Post Office, the Stock Exchange perceived risk emerging from the informed outsider. There is also evidence of a perceived potential 'class-convention' collision.[1143] Committee minutes from 1886 reveal member dissatisfaction in relation to 'many of very objectionable character' being able to trade upon Stock Exchange prices, requesting that Extel 'remedy the evil' by restricting the communication of prices to outsiders.'[1144] There were also concerns about insider subscribers colluding with outsider subscribers, and the difficulties associated with detecting the transmission of prices by collusion.[1145] Prior to this point Extel had entered into contracts to supply ticker-tape machines to outsiders, and this led to difficulties in managing the concerns of the London Stock Exchange. They agreed, however, to gradually eliminate the most objectionable subscribers acting as advertising brokers- essentially those subscribers who were not members of the Stock Exchange. Further, contractual rules applied to those clerks employed by Extel to collect prices on the floor for transmission, imposed conditions on the clerks to prevent them from using or sharing information accessed during the time of their engagement.[1146] This included the policing of access to ticker-tapes, with Extel removing machines from subscribers acting beyond their contractual capacity.[1147] Corroborating Handel's research on the significance of the ticker-tape, it is clear that attempts to control access to the information reflected concerns related to social hierarchies.[1148] The infrastructure and rules surrounding use were initially used as mechanisms to 'police the flow of financial information or determine the boundaries of the stock market.'[1149] When this became problematic from the perspective of it impeding progress within the London Stock Exchange, we witness a shifting emphasis towards preservation of the Exchange and protection from competitors. Thus, commercial interests related to the preservation of revenue began to outweigh the

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[1141] MS/ 14608/ 01, LSE, *Minutes of the Sub Committee appointed to confer with Extel* (1886- 1894) at 2
[1142] *Ibid*
[1143] Hindmarsh- Watson (2016) (n 655) at 289; See Chapter 4 for a discussion of this in relation to the Post Office and the Telegraph
[1144] *Ibid* at 4
[1145] *Ibid* at 5
[1146] *Ibid* at 25
[1147] MS/ 14608/ 02, LSE, *Minutes of the Subcommittee appointed to confer with Extel* (1894-1899); This included the use of prices to generate gambling opportunities, an issue often situated within the lower classes of society.
[1148] Handel (2022) (n 1119); see also Wilson (2014) (n 412)
[1149] Handel (2022) (n 1119) at 883

perceived risks posed by outsiders, not least given that Extel had worked to remove access by those conceived as most objectionable.

Controls imposed on network infrastructure and composition and operation, were also combined with internal policing efforts within Extel to remove machines from undesirables.[1150] This therefore provides an example of a regulatory approach, reflecting the aims and cultures of the relevant institutions, which in effect had an impact of risk prevention and management alongside an internal responsive approach. The approach of Extel, under the explicit instruction of the Exchange, enforced control by limiting access, contractually defining the terms of that access to those who achieved it, and by responding to reports about misuse of machines, forcibly removing them where it was deemed appropriate. Their regulatory approach was both preventive and responsive and echoes the institutional approach of the Post Office in that it balanced progress, technological innovation and financial success against risks posed to revenue and reputation.

As with banking, the betting industry, and within the GPO, we can see that the layering of technologies onto existing business networks and infrastructures presented a business opportunity as well as an economic and reputational threat. For the purposes of this research, the electronic distribution of prices, telegraphic withdrawals, telegraphic instructions issued to bankers, electronic fund transfers, and electronic betting were incorporated into industries and perceived as facilitating progress and efficiency. With their incorporation came a risk to revenue and reputation posed by insiders and outsiders. Within these business contexts staff[1151] as well as outsiders were seen to generate and sustain this risk. Internal control mechanisms and regulatory systems designed to manage the threat posed by insiders were a response to a perceived threat of everyday fraud and deviance which appears to have had a class dimension. It is arguably significant that when we shift the gaze from corporate and white-collar offences towards an approach that captures the extent and range of

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[1150] As reflected in the records of the London Stock Exchange; MS14608/01, LSE, *General Purposes Committee: minutes of subcommittee appointed to confer with the Exchange Telegraph Company* (1886-1894); MS14608/02, LSE, *General Purposes Committee: minutes of subcommittee appointed to confer with the Exchange Telegraph Company* (1894-1899); MS14608/ 03, LSE, *General Purposes Committee: minutes of subcommittee appointed to confer with the Exchange Telegraph Company* (1899-1909); MS14608/ 04, LSE, *General Purposes Committee: minutes of subcommittee appointed to confer with the Exchange Telegraph Company* (1909-1942)

[1151] In particular clerks and roles within the company that were not generally associated with those in authoritative positions

economic offences, we uncover systems of regulation that might otherwise be overlooked. These interactions are significant not least because they operate outside of the formal criminal justice process and systems of state-centric regulation that we often associate with this period.[1152]

6.5 Conclusion

This chapter has engaged with regulatory efforts to manage the risk of and respond to telegraph-facilitated crime outside of the GPO. Specifically, I have stressed the importance of acknowledging the 'everyday' nature of telegraph-facilitated offences discussed in Chapter 2 in evaluating the regulatory approach. This in turn has revealed a distributed, sometimes interconnected regulatory landscape, comprising a range of regulatory responses varying according to the victim of the offence, the suspected offender, and the context within which it occurred. Whilst the police were most explicitly connected to telegraph-facilitated crime through their integration with the IB branch of the GPO, there is evidence that the police did investigate and prosecute telegraph-facilitated or related offences independently.

Policing played a role in the regulation of telegraph-facilitated crime but taking the findings of this chapter alongside Chapters Four and Five, it appears that the management of everyday fraud often took place beneath the cloak of large institutions and organisations. Acknowledgement of a contextual emphasis on progress emphasises the inherent contradiction occurring within these sites of regulation; namely the need to prioritise economic growth and institutional reputation and efficiency whilst also protecting themselves from the risk posed by telegraph-facilitated offences, both internally and externally. As I have argued in relation to the Post Office,[1153] this facilitated the 'construction of a disciplined and ordered' internal world comparable to that which we see emerge within the factory.[1154]

Alongside the presence of relatively sustained and authoritative institutional regulatory regimes, we must acknowledge that this has the effect of limiting the role of the police in this context. This thesis associates this with the shifting system of prosecution, the requirement for a willing prosecutor, the evidential limitations associated with

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[1152] See Chapter 3 for a discussion of the state monopolisation thesis and relevant critique.
[1153] See Chapter 4
[1154] Godfrey & Cox (2013) (n 1032)

telegraph-facilitated crime, the PO monopoly on crime control, as well as manage the risk posed to organisational revenue and reputation. Relevant here is an institutional tendency to want to limit the information available to the public about offences committed against them. This was arguably borne out of both a belief that making public the ease with which offences could be committed posed a risk of increasing the number of offences perpetrated, but also that public awareness could lead to a decline in institutional reputation and therefore revenue. Additionally, fraud prosecutions often hinged on whether there was a public interest in prosecuting, which was framed in relation to harmfulness- that harm being a significant and a public one. Serious financial scandals would naturally become the focus of public attention, leaving everyday economic offences subsumed beneath emerging concerns about serious business crime. This is, however, not to suggest that they went unregulated. Rather the regulatory emphasis is witnessed most directly and consistently within institutional approaches to managing risk, both preventatively and responsively. This therefore reinforces McGowen's warning to avoid conflating the 'institute of the police with the policing function more broadly conceived'[1155] and that this warning extends into the late 19th and 20th Centuries.

[1155] McGowen (2005) (n 1023) at 114

7. Conclusion

This thesis was concerned with the social incorporation of the telegraph, the extent and ways in which it facilitated crime, and the regulatory response. By analysing the relationship between crime, communication technology and regulation through an historical lens, this thesis aimed to provide oversight of the process of incorporation and the social life of telegraph-facilitated crime and regulatory responses in order to understand the nuances of that relationship. My approach was justified according to the value of an historic approach in this context. Tendencies to analyse the relationship between crime, communication technology and regulation through a contemporary, cyber- lens facilitate an internet centric approach. This overlooks both the significance of social context and the social settings within which technologies are incorporated, as well as continuities in the relationship that persist throughout time, and across technologies. The thesis therefore makes a methodological contribution, as well as a conceptual contribution to understanding the nuances of that relationship.

The fundamental questions that this thesis was concerned with were firstly the impact of incorporation of telegraphy on crime. Both the way that the telegraph facilitated crime, and the types of crime that it facilitated, were therefore of initial concern. From there, I identified a range of regulatory responses to understand who regulated telegraph-facilitated crime, and how. This analysis had two central functions. First, it helped to understand the range of regulators and regulatory mechanisms deployed to respond to, or prevent, telegraph facilitated crime. Second, by accommodating for a range of regulators beyond the formal criminal justice response, it contributed to a longer history of regulation, highlighting particularly the role of institutions, beyond the formal criminal justice state that had significant regulatory authority and effect. It therefore extends the temporal boundaries of communication technology-facilitated crime and regulation scholarship.

This thesis was particularly concerned with three central questions: first, how the social incorporation of the electric telegraph facilitated crime; second, what types of crime that were facilitated by telegraphy; third, how to identify and understand the regulatory response to telegraph-facilitated crime. The remainder of this chapter will reflect on each of these research questions.

7.1 The Social Incorporation of Telegraphy and the Facilitation of Crime

This thesis was concerned with the impact the incorporation of telegraphy on crime. Chapter One highlighted contemporary use of telegraph-facilitated crime as an antecedent of internet-facilitated crime and suggested that this tendency to locate a comparator to the internet effect led to a reductive understanding of telegraph-facilitated crime. Drawing on McGuire's intuition,[1156] the thesis sought to address this question systematically through archival research, grounded in an understanding of social use of the technology and the broader process of its incorporation. Chapter One therefore provides some vital social context regarding the gradual process and of incorporation, tracing it through the stock market, financial sectors, business sectors, and then towards wider public use. From the outset, these social conditions provide important context through which to analyse the relationship between the electric telegraph and crime. Chapter Two presents the archival research findings, drawing on records from the British Newspaper Archive, illustrates the emergence of telegraph-facilitated crime. Combined, they stress the methodological value of considering this relationship through an historical lens. Looking back allows for an understanding of broader social context that cannot always be accounted for in evaluating the nuances of the relationship in contemporary terms. Further, taking Chapters One and Two together highlights a fundamental underpinning to the approach of this thesis; the recognition that social use of the technology precedes misuse. Licit use therefore lays the foundations, and indeed the social conditions, for illicit use.

Chapter Two identifies several ways that telegraphy facilitated crime. Firstly, broader social changes associated with the incorporation of the electric telegraph, particularly in an increasingly fast paced business and financial environment, laid the foundations for early telegraph-facilitated crime. The 'novelty' associated with initial social incorporation facilitated offending, largely due to the transformation of communication within this context, and the lack of techniques associated with verification of information and identity in the mediation of social and business relationships. In this instance, it was not necessarily illicit use of telegraphy that facilitated crime, but rather legitimate use for illegitimate purposes. Hence it was not necessarily misuse of the network initially, rather ordinary use which created the conditions for offending. Whilst incorporation initially created opportunities to exploit the changing social boundaries, relationships, and expectations, thus the novelty of the technology was conducive to

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[1156] McGuire (2007) (n 1)

offending, over time we see a shift whereby reliance on the technology to facilitate offending became more direct. This was reinforced by a persistent information imbalance that saw those closest in proximity to the network most easily able to use it to facilitate offending. As a result, this thesis identified the persistence of telegraph workers as offenders, and the Post Office as victim of crimes emerging alongside incorporation. However, it should also be emphasised that expansion of the network facilitated increased misuse by a range of offenders, both internal and external to the Post Office, as well as a range of victims including businesses and individuals. The proximity of the network to offending varied, but those internal to the organisation were able to profit from their direct access, but also their informed approach to offending.

Chapter Two argued that the impact of incorporation was to disperse the criminal encounter. Whilst the offending was facilitated by either the technology directly, or the shifting social dynamics associated with incorporation, the effect of the technology was to distance perpetrator from victim, and from the resultant harm. Reflecting back to the intuition of McGuire and taking the shifting social conditions alongside the increasingly distributed criminal encounter, the records imply a process of hyperspatialisation that facilitates offending that capitalises on the renegotiation of social relations within the networked space.[1157] Key, however, is that the way that the technology-facilitated crime shifted over time. It ranged from technically licit use (for instance to develop a fraud narrative), to the targeting of the physical infrastructure for protest or disruptive purposes, the distribution of false information, the manipulation of information, illegitimate access to information, or finally more towards a more direct offence that facilitated financial gain following the incorporation of the telegraph money order (TMO). Chapter Five developed this further, through an analysis of the impact of the TMO on crime. With the introduction of the TMO we see the emergence of increased reliance on the technology for the commission of the offence itself. In essence, the criminal encounter takes place over the network, and in reliance of the network. The introduction of a system of financial exchange, and the legal status afforded to TMOs as essentially amounting to legal tender, provided for a more lucrative offence, particularly for those with access to the network.

[1157] McGuire (2007) (n 1); Carey (n 312) at 311

7.2 The Types of Crime Facilitated by the Incorporation of the Electric Telegraph

This thesis has identified a variety of telegraph- facilitated crimes, from fraud, forgery, to acts of civil disobedience. Chapter Two drew attention to a variety of offences that relied on different aspects of the network and stressed the significance of the network in facilitating fraud and forgery in particular. Whilst the victims of offending were largely defined by patterns of use of the technology, the offences themselves were somewhat familiar. By highlighting the persistence of offences relying on information, whether that be the interception of, the manipulation of, or the falsification of information, continuities in the nature of offending facilitated by communication technologies are revealed. Further, the ability to transmit false information is also important; Chapter Two emphasised familiarity of the fraud narrative, intended to induce some positive behaviour on behalf of the victim as being particularly evident in offences reliance on public use of the technology. Additionally, the organising capabilities of the technology influenced perceptions of authority; they were capitalised upon from a crime control perspective, but also by those wishing to organise protest, or disrupt policing efforts.

Deception and dishonesty were facilitated by telegraphy, and this thesis reveals the persistence of shifting forms of fraud and forgery throughout process of incorporation, and crucially, the layering of the network into various sectors and with various technologies. Building on the findings related to the ways in which the telegraph facilitated crime, the societal shifts developing in line with incorporation provide conditions that can facilitate deception and dishonesty. With regards to fraud specifically, the distance between offender and victim, the renegotiation of social expectations and boundaries, and the unfamiliarity with the technology laid the foundations for fraud. Research has highlighted the challenges associated with maintaining relations of trust in shifting social settings and dynamics.[1158] The electric telegraph facilitated fraud precisely because of that unfamiliarity and renegotiation, which allows for dishonesty in the absence of traditional social cues. Similarly, forgery was facilitated given the separation of communication from transport, and the potential for the informed offender to present seemingly legitimate communications and target specific business or individuals on the basis of intercepted or otherwise available information. Further, the paper trail that the network produced was capable of being faked, forged, stolen, or intercepted, therefore provided opportunities for forgery.

[1158] Shaprio (1987) (n 609); (1990) (n 316)

The approach of Chapter Two, which traces the incidents of reported fraud through various social sectors (from the financial markets to the business environment initially) emphasises the persistence of fraud, and also its inherent connection to forgery in this setting. Forgery (an offence in itself) was often the method through which fraud could be initiated. The difficulty in verifying information or identity exacerbated this. There is an element of a transformation of fundamentally familiar offences, which reinforces the idea that extending the temporal boundaries of analysis of the relationship between crime and communications technology highlights the persistence of associated crime-transformations over time. Both fraud and forgery were also facilitated by the potential to access, amend, and distribute information. Thus, the availability of information provided conditions conducive to offending, but crucially also reduced the likelihood of detection, given that information travelled separately to transportation. By acknowledging situational factors such as access, likelihood of detection, and potential reward, there is a connection between physical separation facilitated by the network, the reorganisation of social spaces emerging as a result, and the potential for offending to be lucrative, quick, and distanced.[1159] Chapter Five builds on this further, acknowledging the direct effect that the introduction of the TMO had on the potential for fraud and forgery. The financial value of the orders is significant here. Whilst Chapter Five identified a range of ways to facilitate fraud against the TMO system, ranging from forging forms, fraudulent redirection, theft, and signalling directly onto the line. The offence was economic in nature, and thus caused a heightened sense of risk within the institution.

Both Chapters Two and Five reveal a distinction in the nature of offences committed by various categories of offenders. Specifically, those within the Post Office, or outsiders working in collaboration with a Post Office worker, were able to commit more complex frauds and forgeries, given their access to the network and the information it transmitted. This is particularly evident in relation to TMOs, and Chapter Five engaged with the range of ways that Post Office Servants were able to manipulate or misuse the system to facilitate financial gain via forgery and fraud. This connects to the notion of the informed offender. Whilst an information imbalance was found to enhance the potential success of frauds more generally, given a general lack of familiarity with the network, it also facilitated an informed approach to offending among Post Office staff.

[1159] Keep (2005) (n 408)

This manifested not only as increasingly technical offences, but also allowed for an approach to offending which reduced the likelihood of detection.

This therefore highlighted continuities through processes of incorporation of technology and the range of ways that it facilitated offending. Whilst the offences themselves often constituted what might amount to a 'white-collar' offence, this thesis has stressed the everyday nature of offending, implying these types of offences are sometimes overlooked as they straddle the boundary of civil and criminal, white-collar and traditionally 'every' offending. By acknowledging their status as 'everyday' this thesis expands on the work of scholars such as Griffiths who emphasised that 'fraud offences were not the preserve of the middle classes'.[1160] The social life of the telegraph is therefore central to understanding how it facilitated crime, and by whom. By tracing the process of incorporation, this thesis highlighted the range of offences that were facilitated by this process and are often 'everyday' in nature.[1161]

7.3 The Regulatory Approach to Telegraph-Facilitated Crime

In turning to understanding the relationship between telegraph-facilitated crime and regulation, it was first necessary to outline the approach of this thesis towards conceptualising regulation. Chapter Three introduces the approach to regulation. Founded on the premise that the regulatory space is inherently connected to the social spaces of incorporation, and in recognition of the range of regulatory mechanisms that could be harnessed to address what often amounts to inherently social criminality, the approach of this thesis was to move beyond the ontological boundaries of the criminal justice response. An evaluation of regulatory scholarship revealed both the limitations to internet-centric approaches to understanding the regulation of crime and technology, but also the long history of regulatory pluralism that is sometimes overlooked given the focus on the post 1990s shift towards a 'regulatory state.' This thesis attempts to shift these boundaries beyond narrow normative accounts of the regulation of crime historically, towards an approach that acknowledges regulatory pluralism throughout time.

[1160] Griffiths (2017) (n 387) at 3; See also H. Yeomans, 'Illicit Alcohol Markets and Everyday Crime: A Historical Reconceptualisation' (2023) The British Journal of Criminology, 1-20
[1161] S. Karstedt & S. Farrall, 'The Moral Economy of Everyday Crime: *Markets, Consumers and Citizens'* (2006) 46(6) British Journal of Criminology, 1011-1036

This thesis identified a regulatory role for the criminal justice state, the Post Office, private business, and private citizens. Further it maintained that regulation can be imposed through laws, norms, and network design and architecture.[1162] Key to my approach is an understanding that within those regulatory spaces there is pluralisation. Hence the nuances of regulation are not static, and vary according to regulator, regulatory modality, perceptions about crime, and broader institutional and organisational concerns beyond those associated with crime control. This approach is reflected in my selection of archives, which included records from BT, select committee reports, legislation, The Post Office, the police and The Home Office, the stock market and newspaper articles. The purpose of embedding a range of regulators into the methodology was to account for the complexity and range of responses to crime historically.

Chapter Four began the process of unpacking the regulatory response and reveals the scale of regulatory authority situated within the Post Office. Given that they were often conceived as 'victim' of telegraph-facilitated offences, and that Post Office staff were particularly able to commit offences reliant on the technology, there is evidence of a persistent organisational concern regarding the potential for offences to be committed against the revenue. The growth of the Confidential Enquiry Branch reveals a system of internal policing efforts designed to respond to offences committed against the Post Office, whether the offender was an insider or an outsider, and all cases where the honesty of a Post Office servant was in doubt. Chapter Four identified a culture of suspicion whereby service staff were perceived as a threat to revenue and reputation. In particular an institutional preoccupation with dishonesty among staff is revealed, which manifested in extensive powers of surveillance. In practice the Investigation Branch were granted wide discretion to investigate and monitor staff, which had the dual effect of maintaining that culture of suspicion, but also allowing the organisation to control the narrative around crime in the Post Office. Chapter Six reveals an emphasis on keeping the process of investigation and prosecution or dismissal internal, limiting reputational harm as a result. In effect this meant that in the majority of cases with which the Investigation Branch was concerned, the Post Office was victim, investigator and, where deemed necessary, prosecutor. This status was maintained through legislation, and in practice the Post Office exercised considerable control over service staff, with the Investigation Branch increasingly at the heart of this.

[1162] Lessig (2006) (n 557)

Beyond their internal approach to detection, there is also a fluctuating emphasis on prevention of crime within the institution. This was particularly evident following the introduction of TMOs, and the awareness that they posed a financial risk to the Post Office. As argued in Chapter Five, this triggered the introduction of preventative measures imposed into the network to both limit the opportunity for offending and facilitate detection of offenders. In practice, due to the organisational structure, and an increased emphasis on profit and efficiency, a process of deregulation occurred, which was justified on the basis of limited financial losses due to fraud and the urge to increase use and efficiency of the network. The institutional structure, and its impact on decision-making, is important in this instance, as it reflected the economic aims of the organisation as opposed to the aim of crime prevention. Competing internal perceptions and concerns related to the fraud risk saw the branches of the Post Office concerned with profit and competition overrule the Investigation Branch and a retreat from preventative measures was initiated. Simultaneously, the emphasis on control and oversight of staff was enhanced. The work of the Investigation Branch extended beyond investigation to include recommendations on prosecution or dismissal, and the staff themselves were increasingly responsibilised to assist in the detection and prevention of crime. This manifested in staff rewards for assistance, and discipline or dismissal for those staff whose negligence was deemed to have facilitated offending. Combined, the institutional culture and organisation allowed for the construction of an internal world, which prioritised discipline, order, and the preservation of institutional reputation.[1163]

The authority, influence, and economic and reputational aims of the Post Office did not only impact their approach to detection and prevention, but also the ways in which other regulators could respond to crime. Chapter Six of this thesis argues that the monopoly on telegraphy extended to a near monopoly on the response to telegraph-facilitated crime. The police were most explicitly connected to telegraph-facilitated crime through their work within the Investigation Branch, where they were responsible for investigating offences committed against the Post Office by outsiders. However, this role was fulfilled in accordance with the Post Office mandate, at their instruction. In practice, records reveal a sense within the police that this did not amount to fighting crime, per se. The role of the police, both within and outside of the Post Office, appears to have been limited by Post Office authority, evidential limitations, the shifting landscape of prosecution, and the lack of a willing prosecutor. It is argued that the Post Office emphasis on retaining control of the narrative around crime in the institution

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[1163] K. Hindmarch-Watson, *Serving a Wired World: London's Telecommunications Workers and the Making of an Information Capital* (2020, University of California Press)

extended to limiting the autonomy of the police in responding to crime committed against outsiders. This has the potential to have marginalised specific victims from prosecution, through further research is warranted in order to sustain this claim.

There is, however, evidence that organisations and businesses beyond the Post Office also had regulatory authority in this context. This is witnessed most explicitly through institutional approaches to managing risk emerging from the incorporation of telegraphy, both preventatively and responsively. Hence the reference to the London Stock Exchange in Chapter Six provides a comparable approach to managing telegraph-facilitated crime to the one that is witnessed within the Post Office. The development of controls imposed onto the network infrastructure and composition, as well as internal policing efforts were also evidenced in this sector. This thesis therefore highlights the regulatory power and authority of institutions beyond the criminal justice state throughout the 19th and 20th Centuries and reinforces the necessity to acknowledge the long history of pluralisation of, and within, regulators.[1164]

7.4 Concluding Remarks

This historical analysis of the relationship between the electric telegraph, crime and regulation has drawn attention to continuities in the relationship between crime and communications technology, revealing a familiar yet distinct narrative related to the transformation of crime. Specifically, it situates this transformation within its social context, and explored both the ways in which crime developed and shifted, and the range of offences that emerged following incorporation of the technology. By connecting the social life of telegraph-facilitated crime to the regulatory process identified as a result, this thesis identifies several trends that influence this relationship throughout time.

Where the regulatory landscape concerns a range of regulators with distinct aims and purposes beyond crime control, 'gaps' in the regulatory response to crime emerge. This is exacerbated by the dominance of the Post Office which had the effect of limiting the regulatory authority of the state outside of institutional boundaries. The role of institutions beyond the criminal justice state is significant. Whilst this has been acknowledged in relation to white-collar criminality, this is often conceived as corporate

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[1164] Shearing (2006) (n 429); Braithwaite (2003) (n 537)

criminality. Literature has emphasised the role of institutional regulation of white-collar criminality,[1165] and this thesis emphasises that this approach extended to behaviour that sits on the boundary of determinations of white-collar crime. Further the largely organisational response to telegraph-facilitated crime has potentially long-term consequences related to perceptions of whose responsibility it is to prevent and respond to these types of offences, and the ways in which they should be prevented or responded to.

Neither the institutional nor the regulatory landscape more broadly map directly onto crime- rather they initiate more intensive and effective preventative regulation where deemed economically necessary, and otherwise rely on internal mechanisms of responsive crime control to meet organisational needs. There is also evidence of a lack of cohesion and collaboration across regulators, though this fluctuates across time. Finally, in understanding the nuances of the relationship between telegraph-facilitated crime and regulation, whilst there is some evidence of legislative lags and a 'cat and mouse' relationship when considering the development of crime and regulatory innovation, the emergence of gaps is not necessarily always as a result of this. Rather, regulatory gaps were sometimes preferred as they allowed for the prioritisation of other institutional aims. The specific victim group that remains potentially overlooked in this relationship is the private user. This was maintained by a persistent information imbalance, and a sense of responsibilisation on users of technology, and was exacerbated by the prosecutorial landscape at the time. There is a continuity here which can be connected to contemporary regulatory debates that stress the importance of education in protecting individuals from technology-mediated offences.[1166]

Beyond the immediate research questions this thesis set out to answer, this research also has contemporary implications related to the role of the Post Office specifically. The recent Horizon Post Office scandal and ensuing legal action has bought significant attention to the working culture, as well as the organisational structure of the Post Office. Between 1991 and 2015 the Post Office bought 918 successful prosecutions against sub-postmasters and sub-postmistresses, their assistants and other

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[1165] Locker (2005) (n 431)

[1166] P.J.R. Macaulay, O.L. Steer, L.R. Betts, 'Factors leading to victimization' in V. Benson & J. Mcalaney (eds) *Emerging Cyber Threats and Cognitive Vulnerabilities* (2020, Elsevier: London)

employees[1167] based on information from their computer network, Horizon.[1168] Under the system, shortfalls were identified where branch income failed to match Horizon transactions, and Post Office Ltd (POL) contracts with Sub Postmasters (SPMs) determined that they were liable for shortfalls where they were negligent.[1169] However, in practice, POL 'treated any shortfall as the Sub Postmaster's legal responsibility' as in order to continue trading SPMs would have to accept the shortfalls as statements of account.[1170] Despite SPMs disputes and concerns, POL continued to seek to enforce shortfalls as debts, as well as criminal prosecutions.[1171] The prosecutions arising out of this approach have been heavily criticised for their presumption that, where Horizon showed a shortfall, 'that shortfall… must have been caused by the sub-postmaster, either through mistake or dishonesty.'[1172]

A civil action against the Post Office led to two High Court trials: the 'Common Issues' trial concerned with SPM contracts with POL,[1173] and the 'Horizon' trial focused on the Horizon system, supplied by Fujitsu, and its robustness (and therefore the reliability of evidence used to convict SPMs).[1174] Across both trials, Mr Justice Fraser was critical of POL's oppressive behaviour towards SPMs, maintaining that POL paid little attention to evidence, "taking an extraordinarily narrow approach to relevance, generally along the lines that any evidence that is unfavourable to the PO is not relevant." [1175] He also described the PO as "fearing objective scrutiny of its behaviour" and "operating with a culture of secrecy and excessive confidentiality."[1176]

Throughout the legal process, several important issues emerged with regard to internal PO culture. Firstly, there were clearly articulated concerns about the treatment of staff, as evidenced by the sheer number of prosecutions and continued reference to the PO withholding information from staff. This was evidenced by a culture of secrecy and

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[1167] House of Commons Justice Committee, *Private Prosecutions: Safeguards,* Ninth Report of Session 2019-21, 29 September 2020 available < https://committees.parliament.uk/publications/2823/documents/27637/default/> last accessed 11.11.21 p. 5

[1168] *Ibid*

[1169] R. Moorhead, K. Noakes, & R. Helm, *Issues arising in the Conduct of the Bates Litigation* (2021) The Evidence Based Justice Law, Working Paper I, Post Office Scandal Project, available < https://evidencebasedjustice.exeter.ac.uk/wp-content/uploads/2021/08/WP1-Conduct-of-the-Bates-Litigation-020821.pdf> last accessed 20.11.2021 p. 5

[1170] *Ibid*

[1171] *Ibid* at pp. 5-6

[1172] *Bates* v *Post Office Ltd* [2019] EWHC 606 (QB) at 10

[1173] *Ibid*

[1174] *Bates* v *Post Office Ltd* [2019] EWHC 3408 (QB)

[1175] *Bates* v *Post Office Ltd* [2019] EWHC 606 (QB) at 34

[1176] *Ibid* at 36

confidentiality among 'white collar' staff.[1177] Importantly, the prioritization by the Post Office of reputation and profit, and the pursuit of this in defiance of the law, was stressed.[1178] Second, a lack of internal or external oversight of the PO approach to prosecution was identified as particularly problematic, with the judgement in the appeal case maintaining 'we are driven to the conclusion that throughout the period covered by these prosecutions, POL's approach to investigation and disclosure was influenced by what was in the interests of POL, rather than what the law required.'[1179]

The scandal has raised questions about the integrity of the Post Office, the organisational culture, and their ability to privately prosecute whilst also being victim and investigator. This thesis reveals a long history of a culture of suspicion and emphasises that institutional economic and reputational concerns have long interacted with the internal approach to crime control and prevention, often with the effect of limiting outside involvement and prioritising regulatory approaches that protect the institution at all costs. There is a clear continuation of the approach identified in this thesis concerning financial recovery for losses as a result of PO staff, alongside a propensity for prosecution. Further this thesis has identified an institutional culture of suspicion in regard to telegraphists, and an emphasis on holding police at arm's length. This thesis therefore has implications for this contemporary scandal. Indeed, historical evidence suggests a long history of an internal focus on service staff and a perception that they are a threat to revenue and reputation, whether that be through negligence or dishonesty. The merit of a historical approach in this instance speaks directly to the issue of the longevity of the problematic culture of suspicion, and the proliferation of practices within the institution that eventually facilitated the most significant miscarriage of justice in English history.[1180]

[1177] *Hamilton & Others v Post Office Ltd* [2021] EWCA Crim 557

[1178] *Ibid*

[1179] *Hamilton & Others v Post Office Ltd* [2021] EWCA Crim 557 at 129

[1180] This is being developed in my further research on the Horizon scandal in historical perspective

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