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Pamela Donovan et Paul Lawrence

## Road Traffic Offending and an inner London Magistrates' Court (1913-1963)

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Pamela Donovan et Paul Lawrence

## Road Traffic Offending and an inner London Magistrates' Court (1913-1963)

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I

- 1 The development of motorised road transport was one of the most important social changes of the twentieth century. During the century motor transport transformed everything from military tactics to industrial production, from patterns of employment and housing to leisure activities and retailing. Motor transport also transformed the built environment with road markings, traffic signs, car parks, flyovers and underpasses, road-widening schemes, new roads and motorways, concreted suburban front-gardens and thousands of miles of paved road.
- 2 The profound social changes arising from motor transport inevitably affected crime and the criminal justice system. Motor transport contributed to 'traditional' crimes such as robbery, burglary and smuggling, and the police in turn used motor transport to combat crime. Motor vehicles themselves became the target of theft, criminal damage and fraud. Additionally, the high speeds and potentially destructive power of motor vehicles created new problems of traffic regulation as cars, motor-bikes and lorries multiplied on roads and streets designed for pedestrians and carts. Throughout the twentieth century the UK Parliament repeatedly passed new traffic legislation, a huge proportion of police time was spent dealing with motor vehicles and the courts experienced an enormous increase in the number of road traffic prosecutions.
- 3 A number of historians have debated the significance of twentieth-century road traffic legislation and its impact on the criminal justice system. William Plowden's account of the development of UK legislation relating to motorised road transport focused on government motor transport policy at the national level and the role of the various interest groups seeking to influence it<sup>3</sup>. Clive Emsley has compared the development of motor traffic regulation with three models of the criminal law: the whiggish view that laws are created to solve specific problems; the Marxist view that laws further class interests; and V. A. C. Gatrell's concept of the 'policeman state' in which the law is used to maintain 'order'<sup>4</sup>. Emsley concluded that road-traffic legislation was not primarily inspired by class interests and that the 'policeman state' model fits the evidence best<sup>5</sup>. However, Emsley's interpretation has been challenged by Sean O'Connell, who has demonstrated the important influence of motorists' organisations such as the RAC (Royal Automobile Club) and AA (Automobile Association), and of the nominally independent National Safety First Association, which he shows was substantially funded by the motor industry and played an important role in legitimating the high casualty rates associated with motor vehicles in the eyes of policy-makers and the general public<sup>6</sup>. O'Connell argues that government policy and legislation relating to motor traffic were heavily influenced by the class interests of capitalist manufacturers and the relatively wealthy owners of private motor cars.
- 4 While these historians have considered motor traffic legislation mainly from the point of view of legislators and policy-makers, Howard Taylor has examined traffic regulation from the operational perspective of the police<sup>7</sup>. Taylor pointed out that police resources have always been insufficient to deal with every crime which is committed and that the number of crimes prosecuted in the courts and thus appearing in the official statistics is controlled by 'supply-side' factors such as police budgets, priorities and politics, rather than by the 'demand-side' of actual offending rates<sup>8</sup>. In respect of traffic offences Taylor has claimed that in the period following the First World War the police deliberately switched their resources to prosecuting motoring offences rather than minor public order offences such as drunkenness and that police authorities manipulated traffic accident statistics in order to justify police staffing levels<sup>9</sup>. However, Robert Morris has criticised Taylor for over-stating the extent and character of

budgetary control on the police and for down-playing the organisation of policing into more than 100 separate local forces, which in his view rules out conscious manipulation of national crime figures<sup>10</sup>. Morris re-emphasises the importance of the rapidly increasing rates of car ownership and the high death rates from traffic incidents as key factors in the development of early twentieth-century traffic policing.

5 This article contributes to the debate on the significance of road traffic offending by examining the impact of the enormous increase in prosecutions for traffic offences on a hitherto neglected component of the criminal justice system, the magistrates' courts. A survey of the work of one central London magistrates' court is presented which demonstrates the manner in which a small local court influenced not only which offences were prosecuted but also their final disposal. This article will first demonstrate that the capacity of the magistrates' court acted as an additional 'supply-side' constraint on police prosecutions, limiting the total number of prosecutions which could be pursued. Secondly the way in which individual magistrates exercised their discretion in dealing with serious traffic cases will be examined. A key finding of this study is that the penalties imposed at Clerkenwell Court for serious traffic offences differed significantly from the national averages, and in the final section of this article evidence for the attitudes of magistrates and court staff towards offending motorists will be examined to see how far these attitudes explain the magistrates' discretionary sentencing decisions.

## II

6 The first petrol-driven motor vehicles took to the English roads towards the end of the nineteenth century but until about 1905 they were rare and expensive curiosities. Before 1912 private motor cars were luxury items<sup>11</sup>. During the inter-war period mass production reduced prices but cars remained expensive and full 'democratisation' of motoring did not occur until the 1960s<sup>12</sup>. Nevertheless, the number of private cars in Britain rose from just over 100,000 in 1918 to over two million in 1939, and the 1920s and 1930s can justifiably be viewed as the beginning of 'Britain's first era of mass motoring'<sup>13</sup>. The UK legislation which governs motorised road transport was mainly developed during this period. This survey of motoring offences covers the period from 1913, when the numbers of motorised buses and hire cabs in London had started to increase but private motor vehicles were still relatively uncommon<sup>14</sup>, to 1963, when a mass market for cars and utility uses for motor vehicles were well established and non-motorised vehicles had become a tiny minority on the roads<sup>15</sup>. This article deals with traffic offences heard at Clerkenwell Court in central London. A local survey of this kind allows the details of the impact of the social changes due to increasing motor traffic to be studied and complements the more general information provided by the national statistics analysed by other authors such as Plowden, Taylor, Morris and O'Connell.

7 Clerkenwell Court was one of the 'Police Courts' established in the central London area following the Middlesex Justices Act 1792. From the end of the eighteenth century until April 1965 the London Police Courts were staffed by salaried Metropolitan Stipendiary Magistrates rather than by lay justices. This arrangement was unique to central London. Metropolitan stipendiary magistrates were qualified barristers from the upper social classes and hence came from a much narrower range of backgrounds than lay magistrates, who by the twentieth century included not only representatives of the land-owning gentry but also a wide range of professionals, the clergy, local councillors, successful manufacturers and tradesmen and even (from 1920) women<sup>16</sup>. Because of this difference Clerkenwell Court should not necessarily be considered typical of magistrates' courts for the country as a whole.

8 Clerkenwell Court was originally located in Hatton Garden but moved to a site on Kings Cross Road in about 1841 where it remained until it was closed in 1998<sup>17</sup>. Between 1913 and 1963 the court's divisional area covered parts of the four Metropolitan boroughs of Holborn, St Pancras, Finsbury and Islington<sup>18</sup>. This area had been completely and densely built over by 1870 and its street pattern has changed very little since that date. It was and remains a street pattern designed for pedestrians, hand-carts and horse-drawn vehicles, and the advent of motorised vehicles led to extreme traffic congestion which remains a problem to this day. Clerkenwell Court's divisional area included several important main roads, the major passenger and goods

9 railway termini at Kings Cross and St Pancras and a substantial industrial zone stretching up the Fleet valley through Clerkenwell itself and northwards parallel to the main railway lines. Several court Clerks who worked at Clerkenwell during the twentieth century have published memoirs and these provide a record of how the day-to-day business of the court was organised between the 1920s and 1970s<sup>19</sup>. The court sat 6 days per week except for public holidays. Clerkenwell was a 'two stipe' court, with one stipendiary magistrate sitting from Monday to Wednesday and the other from Thursday to Saturday<sup>20</sup>. During the summer a staggered rotation of vacation periods meant that one of the magistrates would work a four-day week while his colleague was on holiday, with the other two days being covered by magistrates from other inner London police courts<sup>21</sup>. Stipendiary magistrates from other courts might also sit at Clerkenwell if one of the local magistrates was ill.

10 Before 1955 Clerkenwell Court heard 50-60 cases per day on average, giving an annual caseload of around 17,000. In surveying the work of the court it is therefore necessary to sample the cases. Other historians researching the work of the lower courts have encountered the problem of the enormous number of cases and have employed a number of different sampling methodologies. In his study of Middlesex Quarter Sessions records Robert Shoemaker used a statistical sampling technique to ensure that his numerical results were representative<sup>22</sup>. In her qualitative study of Clerkenwell Court Gillian Tindall surveyed the court's work during a single week<sup>23</sup>. In the present study all the cases have been examined which came before the court during the month of July in three years: 1913, 1938 and 1963. These years span a fifty-year period before, between and after the two World Wars but do not include wartime or major socioeconomic upheavals such as the General Strike. From 1965 lay magistrates also sat at Clerkenwell and this major change formed a natural termination date for this survey. The month of July was selected for the samples as a long month of thirty-one days which includes no public holidays and when the number of traffic cases coming before the court is unlikely to have been affected by bad weather conditions. The number of motor vehicles on the road is reported to have been lower during bad winter weather<sup>24</sup> and this may have led to variations in the work of the court at different seasons of the year, but this factor is outside the scope of this study. The principal sources used in this survey were the manuscript court registers which are held by the Corporation of London in the London Metropolitan Archive (LMA)<sup>25</sup>. Additional material was obtained from memoirs published by court clerks and stipendiary magistrates who worked at Clerkenwell during the survey period.

11 The LMA collection includes approximately 1900 documents from Clerkenwell Court. The majority of these are the court registers covering the period 1905 to 1987, which record all the offences dealt with day by day. The court registers were divided into two parts in separate volumes. Part 1 contains the offences for which somebody was arrested and charged by the police. While these include the most serious criminal offences, such as robbery, theft and sexual assaults, arrests were also commonly made for minor public order offences such as drunkenness or begging in the street. Part 2 of the registers contains the offences originating by way of summons. In these cases there was no arrest but a formal complaint was made and the alleged offender was 'summoned' to appear at court. While many offences originating by way of summons were less serious, the Part 2 registers also contain assaults and high-value property offences where the complainant was a private individual or a civil authority with no legal power to make an arrest. Both parts of the register include the defendant's name, the offence, the date of the offence, the informant, the plea (guilty or not guilty), the magistrate's adjudication and the penalty. Part 1 additionally records the defendant's age and occupation. Traffic offences can be found in both parts of the register.

### III

12 The first question to be addressed by this study is how Clerkenwell Court handled the growing numbers of traffic cases during the period. In this section we will examine whether the overall caseload of the court increased to absorb the new traffic work, whether traffic cases displaced other types of prosecution and whether traffic cases were grouped together for administrative convenience, for example on certain days of the week. We will then go on to look at how

the sentences imposed by the magistrates at Clerkenwell Court for serious traffic offences compared with the average sentences imposed throughout England and Wales.

13 The total number of cases dealt with by Clerkenwell Court during each sample period is summarised in Table 1. Between 1913 and 1938 the court's capacity did not increase. Only one courtroom was operating, with an average caseload per sitting of 60.9 in July 1913 and 55.3 in July 1938. However, by 1963 a second courtroom had been opened following the appointment of a third stipendiary magistrate in 1955<sup>26</sup>. In July 1963 Court 2 sat on 12 of a possible 27 working days, increasing total capacity by 44%. The average caseload of the two courts in July 1963 was the same within statistical significance: 53.3 for Court 1 and 55.2 for Court 2.

**Table 1: Average caseload per sitting for July in each sample year**

Year	Number of sittings (days)	Total cases	Average Caseload per sitting
1913	27	1644	60.9
1938	26	1437	55.3
1963 Court 1	27	1440	53.3
1963 Court 2	12	662	55.2

14 Since the total court capacity did not increase between 1913 and 1938 any increase in traffic prosecutions during this period must have involved a reduction in other prosecutions. To examine this, all offences dealt with during the first six working days of the month were grouped into the five categories used by Shoemaker in his analysis of seventeenth- and eighteenth-century misdemeanor prosecutions, with traffic offences as an additional sixth category<sup>27</sup>. Shoemaker's categories are as follows:

- property offences (e.g. theft, fraud, trespass, criminal damage)
- vice offences (e.g. soliciting, keeping a brothel, indecent assault)
- regulatory offences (e.g. rates, Education Act, trading regulations, employment law, income tax evasion)
- poor law offences (e.g. bastardy, maintenance arrears, begging, vagrancy)
- offences against the peace (e.g. assault, public order offences, robbery)

15 No difficulty was found in fitting twentieth-century cases into Shoemaker's categories, indicating a remarkable continuity in the work of the courts over a two hundred year period. The results are shown in Table 2, with cases from both 1963 courtrooms combined.

**Table 2: Proportions of offence by category**

	Property offences	Vice offences	Regulatory offences	'Poor Law' offences	Offences against the peace	Traffic offences
1-7 July 1913	8%	3%	22%	7%	52%	8%
1-7 July 1938	19%	1%	12%	12%	15%	41%
1-7 July 1963	10%	1%	2%	9%	21%	57%

16 Table 2 shows a striking increase in the proportion of traffic cases, from 8% in 1913 to 41% in 1938 and 57% in 1963. This is in agreement with the trends in the national crime statistics discussed by Taylor and by Morris. The main category of offence displaced by traffic prosecutions was offences against the peace, which fell from 52% in 1913 to 15% in 1938 before increasing again to 21% in 1963. At Clerkenwell this decline was due to fewer prosecutions for drunkenness or disorderly behaviour, again in accordance with the national picture identified by Taylor<sup>28</sup>. However, Table 2 also shows a dramatic decline in regulatory prosecutions from 22% in 1913, to 12% in 1938 and 2% in 1963, which was not identified in Taylor's research on the national statistics. The origin of this decline is not clear. It may be a genuine effect, perhaps reflecting a peculiarity in the local situation at Clerkenwell, or it may be partly an artefact of the relatively small samples used in this study. The court registers show that regulatory offences, such as income tax evasion, tended to be prosecuted in sporadic batches rather than on a regular basis week after week, and it is possible that the July 1913

sample may have coincided with a peak in regulatory prosecutions and the July 1963 sample with a trough. A larger sample is needed to clarify this point, but regulatory offences are outside the main scope of this study and this point has not been addressed here. Prosecutions at Clerkenwell for property offences, vice offences and 'Poor Law' offences remained at a low but fluctuating level throughout the period.

17 The replacement of minor public order prosecutions by traffic prosecutions had a direct effect on the ratio of charges to summonses, as shown in Table 3. In July 1913 cases originating by arrest and charge comprised 60% of caseload, including large numbers of arrests for drunkenness. By 1938 the proportion had reversed because most traffic offences originated by summons. This reversal of the ratio of charges to summonses was sustained in 1963. 96% of all summonses issued by the Metropolitan Police across the whole of London during 1963 were for offences connected with motor vehicles<sup>29</sup>. Table 3 shows that during the first week of July 1963 147 out of a total of 155 summonses to Clerkenwell Court (95%) were for traffic offences. This excellent agreement with the London-wide average provides good grounds for considering Clerkenwell Court's traffic caseload to be typical of the London area.

18 At Clerkenwell charges and remands were listed in the mornings and summonses in the afternoons<sup>30</sup>. It follows from this that the Part 1 register would have been used in the morning, while in the afternoon the court would have finished any Part 1 cases left over from the morning before starting the cases in the Part 2 register. Apart from this, there is no evidence of the court attempting to group traffic offences together for administrative convenience in either 1913 or 1938. Similar offences were listed consecutively in the registers but would not necessarily have been heard in that order. Stanley French, who worked as a court clerk at Clerkenwell during the 1950s and 60s, notes in his memoirs that remands were entered first in the court register but were usually dealt with last, while Derek Wainwright, another former court clerk, records how police officers, probation officers and barristers or solicitors representing defendants would negotiate with the court for certain cases to be dealt with out of register order. The court did reserve certain sittings for husband and wife cases (mainly prosecutions for non-payment of maintenance). These cases were prosecuted not by the police but privately by one of the parties involved, usually the woman. Regulatory offences were also grouped together because they were brought by particular prosecutors. For example, a Mr. Seedridge prosecuted long lists of regulatory offences against the Education Act on three Wednesdays in July 1913.

19 However, the 1963 registers indicate that in the afternoons Court 2 acted essentially as a traffic court. Table 3 shows Court 2 dealing with the usual unpredictable arrests in the morning Part 1 list, but 95% of the summonses dealt with by this court during the afternoons were for traffic offences. Since traffic summonses made up 67.4% of all the cases dealt with by Court 2 during July 1963 it appears that two-thirds of the extra capacity created by the appointment of a third stipendiary magistrate and the opening of the second courtroom was taken up by road traffic prosecutions.

20 Traffic offences were invariably prosecuted by the police or, in 1963, a traffic warden or park-keeper from Regent's Park. Table 4 summarises the types of traffic offence prosecuted by summons and by charge. In this table more than 50 different kinds of offence have been grouped into related categories to assist analysis. Some of the changes shown in Table 4 are clearly related to the replacement of horse-drawn by motor vehicles, some to changing legislation and some indicate changes in policing. Arrests for cruelty to horses appear only in the 1913 sample. One prosecution related to a horse-drawn vehicle in July 1938 but none in July 1963. The effects of changes in legislation are apparent between 1913 and 1938 (introduction of compulsory third-party insurance, driving licenses and pedestrian crossings, resulting in new offences) and between 1938 and 1963 (introduction of MOT tests and provisional licenses, again resulting in new offences not seen in the older registers). The 1938 sample shows a peak in prosecutions for speeding and also a large number of prosecutions of pedal cyclists who held on to moving motor vehicles, which suggests the police may have been conducting local campaigns against these offences at that time.

**Table 3: Percentages (numbers) of offences in each category originating by charge or summons**

	Property offences		Vice offences		Regulatory offences		'Poor Law' offences		Offences against the peace		Traffic offences		Totals	
	C	S	C	S	C	S	C	S	C	S	C	S	C	S
1-7 July 1913	6.2% (23)	1.9% (7)	2.4% (9)	0.3% (1)	1.3% (5)	20.7% (77)	1.3% (5)	5.4% (20)	43.3% (161)	9.1% (34)	5.4% (20)	2.1% (8)	60.5% (225)	39.5% (147)
1-7 July 1938	13.7% (50)	5.5% (20)	0.5% (2)	0.5% (2)	2.2% (8)	9.3% (34)	1.9% (7)	10.4% (38)	12.3% (45)	3.0% (11)	3.3% (12)	37.3% (136)	34.0% (124)	66.0% (241)
1-7 July 1963 Ct1	12.2% (30)	0.4% (1)	0.8% (2)	0% (0)	2.8% (7)	0.8% (2)	1.2% (3)	15.4% (38)	20.3% (50)	3.7% (9)	9.7% (24)	45.1% (111)	34.6% (85)	65.4% (161)
1-7 July 1963 Ct2	7.8% (17)	0% (0)	0.9% (2)	0% (0)	0.5% (1)	0% (0)	0% (0)	2.3% (5)	19.7% (43)	1.4% (3)	1.8% (4)	67.4% (147)	28.9% (63)	71.1% (155)

C= Charge

S = Summons

- 21 For traffic offences the ratio of arrests to summonses was very low. The only offence for which drivers were invariably arrested was drink-drive. In 1913 and 1938 these arrests included drivers of horse-drawn vehicles while in 1938 and 1963 they included pedal cyclists. The four occurrences of the very serious charge of reckless driving recorded in Table 4 for July 1938 all relate to one case in which the defendant was bailed to return weekly to the court and therefore appeared four times during the sample period.
- 22 Table 4 includes arrests in 1938 and 1963 for document offences. However, these offences were all associated with the serious charge of stealing the vehicle in question. By 1938 the police had established a policy of bringing several charges against the same driver, so that if they failed to convict on the most serious charge they might still convict on the others. In the July 1938 and July 1963 registers every charge of dangerous driving was backed up by a charge of careless driving and usually a third charge relating to the circumstances, such as failing to obey a traffic signal. This pattern of invariably bringing multiple charges against a single defendant was unique to traffic offending; the police only occasionally brought more than one charge against defendants in non-traffic cases.

**Table 4: Numbers of traffic offences grouped by type**

Offence(s)	July 1913			July 1938			July 1963		
	Number of summonses	Number of charges	Total	Number of summonses	Number of charges	Total	Number of summonses	Number of charges	Total
Cruelty to horse	0	18	18						
Ride cycle and take hold of moving vehicle				40		40			
Drink-drive		9	9		4	4		13	13
Reckless driving					4	4			
Dangerous driving	9		9	9		9	57		57
Careless driving				26		26	78		78

Inconsiderate / negligent driving				7		7	15		15	
Fail to stop / report accident				9		9	34		34	
Speeding	1		1	120		120	40		40	
Traffic signal/ sign				126		126	152		152	
Pedestrian crossing				37		37	49		49	
Obstruction (Parking)	5		5	203		203	411		411	
Condition of vehicle	7		7	19		19	58		58	
Drive while disqualified						2	2	2	1	3
No insurance				9	9	18	27	11	38	
Provisional licence							74		74	
No MOT certificate							7		7	
Other document offences	5		5	20	11	31	48	3	51	
Application to the court to remove disqualification							8		8	
Other	2		2	3	8	11	4		4	
<b>Totals</b>	<b>29</b>	<b>27</b>	<b>56</b>	<b>628</b>	<b>38</b>	<b>666</b>	<b>1064</b>	<b>28</b>	<b>1092</b>	

23 Offences originating by summons ranged from the serious (dangerous driving) to the trivial (staying too long on a parking meter). Parking prosecutions were virtually unknown in 1913 but comprise the largest category in 1938 and 1963. The 411 parking offences prosecuted in July 1963 would have accounted for approximately 8 days of courtroom time, which represents two-thirds of the extra capacity created by opening the second courtroom. These 411 parking summonses comprise 39% of the total traffic summonses for the month, suggesting that Clerkenwell Court heard a higher proportion of summonses for parking offences than the London average of 26.6% for 1963<sup>31</sup>. This is probably a reflection of the high traffic density and narrow streets of the inner-city area served by the court which would have made illegal parking particularly problematic for the local police whose aim was to keep traffic moving.

24 Having considered the proportions and nature of the traffic offences in the court's caseload, in the final part of this section we now turn to the sentences imposed for traffic offences by the stipendiary magistrates. Plowden gives information on the national average fine imposed for three serious traffic offences: dangerous driving, careless driving and speeding<sup>32</sup>. Table 5 compares these with the average sentences imposed at Clerkenwell Court during the three sample periods. Compared with the national average the magistrates at Clerkenwell were extremely lenient. In July 1938 eight out of a total of nine prosecutions for dangerous driving (89%) were dismissed and the defendant sentenced for careless driving. The average fine imposed for careless driving was only £1.6, compared with a national average of £2.1. For comparison, in the same month four men were sentenced at Clerkenwell for loitering in the

street for the purpose of betting. Two were fined £5 and two were bound over on two securities of £20 each or 2 months imprisonment.

**Table 5: Average Fines for Motoring Offences**

	1904/5	1913	1938	1963
<b>Dangerous Driving</b>				
Statutory maximum (£)	20	20	50	100
National average (£)	3.8	Not known	4.9	17.0
Clerkenwell Average (July only) (£)	Not known	1.5	0.0	11.2
<b>Careless Driving</b>				
Statutory maximum (£)	Not applicable	Not applicable	20	100
National average (£)	Not applicable	Not applicable	2.1	8.7
Clerkenwell Average (July only) (£)	Not applicable	Not applicable	1.6	5.1
<b>Speeding</b>				
Statutory maximum (£)	10	10	20	50
National average (£)	3.7	Not known	1.3	4.7
Clerkenwell Average (July only) (£)	Not known	0.3	1.1	2.9

- 25 The only dangerous driving allegation in July 1938 which was not dismissed was that of an individual named Gabriel Eyre. On his first appearance Eyre's case was adjourned. When Eyre returned to court he faced an additional charge 'that he did recklessly drive and unlawfully cause grievous bodily harm to John Faulkner, whereby he died'. Eyre pleaded not guilty, elected jury trial and was remanded on weekly bail on a £20 surety pending committal to quarter sessions.
- 26 In July 1963 Clerkenwell magistrates were treating dangerous driving only slightly more seriously than in July 1938. Nobody was reported killed, but 43 out of 57 cases (75%) were dismissed and only five offenders were disqualified. The fines imposed were still much lower than the national averages and nowhere near the full extent of the magistrates' statutory powers. Only one traffic case in July 1963 was deemed worthy of the criminal penalty of imprisonment. An individual named Kyriacos Nicolau was convicted of driving while disqualified and sentenced to 3 months. Imprisonment for this offence had been compulsory under the Road Traffic Act 1930 but this had recently been changed by the Road Traffic Act 1962 so this custodial sentence was at the magistrate's discretion<sup>33</sup>.
- 27 To conclude this section, the picture provided by the Clerkenwell Court registers shows that during the period between 1913 and 1963 road traffic offences impacted very significantly on the day to day work of the magistrates court, absorbing a growing proportion of the court's resources and completely reversing the ratio of charges to summonses. However, the relatively low penalties imposed by the stipendiary magistrates and the very high percentage of cases dismissed might suggest that the courts did not regard traffic offending as serious. The court registers cannot provide any information on magistrates' motivation in sentencing. In the following section this issue is explored using other sources particularly published memoirs, for information on the court staff's attitudes to road traffic offences and offenders. These sources support the view that Clerkenwell magistrates viewed traffic offences as 'regulatory' offences and used their discretionary powers to sentence accordingly.

#### IV

- 28 Almost everyone who worked in the magistrates' courts agreed that road traffic prosecutions were generally routine, simple and boring. The following quotation from Stanley French's memoirs is typical of the views expressed in their memoirs by former Clerkenwell Court clerks:

No one likes motoring cases. They are usually very boring; the defendants are far too respectable to be interesting. Evidence is tedious, advocacy prolix. In many careless and dangerous driving cases the task of the court, as Lord Chief Justice Hewart said, is to decide "how two cars stationary on opposite sides of the road came into collision with one another". This is not an enviable task<sup>34</sup>.

29 Some stipendiary magistrates felt that their skills as qualified and experienced barristers were wasted on the long lists of petty motoring offences and that these would have been better dealt with by lay justices<sup>35</sup>. Traffic cases were regarded as so straightforward that they were used as on-the-job training for newly-appointed clerks<sup>36</sup>. However, it must be recognised that road traffic offences were by no means the only kind of offence which the court staff regarded as dull and routine. For example, F. T. Giles found dealing with twenty to thirty thousand income tax defaulters every year 'mechanical and boring in the extreme'<sup>37</sup>. Three factors can be identified which shaped the attitudes of court clerks and magistrates to road traffic offences: the social class of the offenders, the time taken by the cases and the sheer number of trivial cases which were prosecuted. Each of these factors will now be considered in turn.

30 Emsley has pointed out that the development of road traffic legislation during the early years of the twentieth century represents the first time that the ruling élite used the criminal law to regulate the leisure activities of its own class. Until the 1960s ownership of a car was largely confined to the professional and business classes<sup>38</sup>. Although O'Connell has demonstrated that this picture must be modified to some extent by the existence of a market in second-hand cars and by the growing number of drivers of goods vehicles, before the mid-1960s motorists were still overwhelmingly upper- or middle-class<sup>39</sup>. This situation is reflected in the Clerkenwell Court registers for 1963 which specify whether each offender was driving a private or commercial vehicle. In spite of the industrial and commercial nature of the court's divisional area, with its high volume of goods traffic, in July 1963 commercial drivers accounted for only 18% of all traffic offences prosecuted. For the courts this had an important disadvantage: upper- or middle-class motorists furiously resented regulation and, unlike the vast majority of people brought before the magistrates' courts, they tended to plead not guilty and argue their cases. In doing so they were often represented by a lawyer, instructed either by themselves or by the Automobile Association or R.A.C. which provided legal representation in motoring cases for their members<sup>40</sup>. Before the introduction of legal aid in 1934 very few defendants were represented in the lower courts<sup>41</sup>. The appearance of barristers in motoring cases, rather than solicitors, was particularly unwelcome. Court staff resented the condescending attitude displayed by barristers who considered themselves to be 'slumming' and also disliked their attempts to get their clients' cases dismissed on the basis of tricky legal arguments when the facts of the case were clear<sup>42</sup>. The Police Courts prided themselves on being business-like, down-to-earth and in touch with the daily concerns of ordinary people, particularly in their matrimonial and regulatory work. The resulting clash of cultures is illustrated by the following extract from Giles' memoirs:

Another time [Mr Francis] was trying a motorist charged with driving whilst under the influence of drink. Being well-to-do, he had instructed King's Counsel. This great man invaded our unassuming precincts with the small band of retainers who always trail eminent lawyers round the Courts bearing with them impressive bundles of law books. These, placed prominently in front of the leader and his junior, are intended to soften up the resistance of the bench to the oncoming forensic attack.

However, though counsel wrestled with Mr Francis as tenaciously as did Jacob with the angel, he could make no impression. "But he ran into a post," His Worship kept repeating... This was the one point eminent counsel could not meet<sup>43</sup>.

31 A second reason why contested traffic cases were deeply unpopular with court staff was the amount of time they took up. The essence of summary justice was speed. In his memoirs Giles compared the stipendiary magistrate to a circular saw, slicing through cases at high speed and 'getting through the drunks with the customary peremptoriness of two a minute'<sup>44</sup>. Stipendiary magistrates sometimes over-did this 'peremptoriness', for example Derek Wainwright wrote of Edward Robey, one of the Clerkenwell stipendiary magistrates, that 'On the bench his most marked characteristic was his rush to judgement to get off the bench in the shortest

time possible'<sup>45</sup> and Robey himself was proud of having 'polished off' sixty-six drunks in a few minutes'<sup>46</sup>. However, the clerks generally welcomed swift decision-making since most magistrates would continue sitting until all the cases in the day's list had been dealt with. The presence of an advocate lengthened proceedings considerably and made it difficult for the court to get through all the cases in the available time'<sup>47</sup>. Robey records in his own memoirs that on one occasion he came into the courtroom to find no barristers or solicitors present and Giles, who was clerking, remarked, 'Seeing that there are none of your learned profession to assist you we ought to get on very nicely'<sup>48</sup>.

32 During the 1930s, with the support of the A.A. and the R.A.C., the memoirs suggest that motorists were making 'state trials' out of prosecutions for even minor traffic offences'<sup>49</sup>. It appears that the time taken by defence advocacy was a key factor contributing to the dismissal of dangerous driving charges. Giles explains as follows:

Of an afternoon we usually had a list of six or seven 'Dangerous Drivings'. A contested 'Dangerous Driving' can easily last an hour but very often counsel would suggest that his client would be prepared to plead guilty to the minor charge of 'Careless Driving' and so avoid the risk of conviction for the much more serious offence of 'Dangerous Driving'. Mr Davis was always chary of accepting these invitations and if, on a short recital of the facts, he thought the case ought to be dealt with as 'Dangerous Driving', he insisted on dealing with it as 'Dangerous Driving' and let the clock do its worst ... Mr Davis often kept us in till five'<sup>50</sup>.

33 Giles is clearly implying that Mr Davis was unusual and that other magistrates would generally have accepted counsel's invitation. The court registers show that although Mr Davis was one of the Clerkenwell stipendiaries in 1963 he did not sit during the sample period chosen for this study. The four magistrates who sat at Clerkenwell during July 1963 were Lance E. Barker, Frank Powell, W. H. Hughes and J. Denis Purcell, but the majority of the dangerous driving cases came before either Mr Powell or Mr Purcell. The outcomes of these cases are summarised in Table 6, which indicates a striking difference in practice between these two magistrates. In Powell's court 89% of dangerous driving allegations were dismissed, not proceeded with or adjourned *sine die* and only one motorist who contested the charge was found guilty and sentenced. In Purcell's court only 50% of the allegations were dismissed and 35% of defendants were found guilty after a trial. Possibly Powell, like Robey, felt under pressure of time while Purcell was prepared to sit for as long as was necessary, but another possible explanation is suggested by the memoirs of Claud Mullins. Mullins was a stipendiary magistrate at the North London court who occasionally sat at Clerkenwell during vacation periods. He was unpopular with the motoring organisations because he had the reputation of being severe with road traffic offenders and applied the law strictly in cases of careless driving. In spite of this severity he was reluctant to convict on dangerous driving charges because 'it necessarily involved the question of suspending the driver's licence for a long period'<sup>51</sup>. By 1963 disqualification was discretionary in dangerous driving cases. Of the twelve drivers in Table 6 who were sentenced only five (two motor-cyclists and three car drivers) were disqualified and none of the four convicted goods vehicle drivers lost his licence.

**Table 6: Outcome of Dangerous Driving Cases in July 1963**

Stipendiary magistrate	Frank Powell	J. Denis Purcell	Lance E. Barker	W. H. Hughes
Sentenced following guilty plea	1	2	0	0
Sentenced following not-guilty plea	1	7	0	1
Adjourned to another hearing date	1	1	0	0
Dismissed, not proceeded with or adjourned <i>sine die</i>	25	10	5	3
Totals	28	20	5	4

34 The third factor influencing the attitudes of magistrates and court staff to road traffic offences was the sheer number of prosecutions. French notes in his memoirs that over time drivers gradually came to accept regulation and the number of contested cases and the time taken per case both decreased. This tendency would have been furthered by the development of case law relating to the new offences, reducing the scope for advocates to mount a 'state trial'. However, these gains were outweighed from the point of view of the court by the increasing number of prosecutions. The number of motor vehicles on the road was increasing and proliferating legislation relating to motor transport created an enormous number of new offences relating to insurance, provisional licences and the construction and maintenance of the vehicles<sup>52</sup>. It has already been noted that at Clerkenwell two-thirds of the extra capacity created by the appointment of a third stipendiary magistrate was immediately absorbed by traffic prosecutions and that afternoons in Court 2 were virtually dedicated to traffic summonses, many for trivial parking offences where defendants pleaded guilty in writing and did not attend court. It is not surprising that magistrates and court staff found doing this work day after day desperately dull.

## V

35 Shoemaker concluded from the results of his investigation of seventeenth- and eighteenth-century Quarter Session records that the number of minor offence prosecutions was determined by 'prosecutorial initiative' rather than by offending rates<sup>53</sup>. This was particularly true of 'victimless' regulatory crimes, where prosecutions might result from a campaign against a particular offence<sup>54</sup>. Taylor extended this argument, suggesting that recorded offending rates are a construct of policing policies, although he has been criticised for over-stating the case<sup>55</sup>. The results of this survey tend to support both Shoemaker and Taylor's conclusions. Table 1 demonstrates that court time was a finite and fixed resource. In England and Wales every criminal prosecution must be brought to the local magistrates' court serving the area where the alleged crime occurred. Although the London Metropolitan Police could have brought prosecutions before the local lay justices they never took this route, always choosing to prosecute in the police court in the areas where one was established, so that between 1792 and 1965 the lay justices of inner London undertook virtually no criminal work<sup>56</sup>. Table 1 therefore represents the total court resource used by the Metropolitan Police in the Clerkenwell divisional area, and Tables 2, 3 and 4 show the police choosing to use this resource differently at different times. Table 4 also shows the effect of prosecution campaigns, for example a campaign in 1938 against cyclists holding onto moving vehicles.

36 Court records thus provide indirect information on policing priorities. In the Clerkenwell division these priorities changed with the development of motor traffic. In July 1913 the police were only prosecuting a small number of traffic offences. Although Metropolitan police notebooks indicate that traffic regulation occupied a substantial proportion of police time, and contemporary photographs indicate obstruction by horse-drawn traffic could be severe, relatively few cases were brought to court<sup>57</sup>. By contrast, in July 1938 and July 1963 traffic offences formed 41% and 57% respectively of Clerkenwell Court's caseload and the largest group of prosecutions related to parking. While Emsley has argued that the police viewed the day-to-day regulation of motor traffic on the streets as a natural extension of their existing role in the regulation of horse-drawn and foot traffic, Taylor has argued that the change in their prosecution policy was led by budgetary considerations<sup>58</sup>. This survey cannot provide information on the motivation of the police, but does provide information on how the court personnel perceived their own role in the regulation of motor traffic.

37 It is clear from this survey that Clerkenwell's stipendiary magistrates did not regard traffic offences as intrinsically serious. In 1938 the magistrates were dismissing allegations of dangerous driving, possibly because of time pressure or possibly because of reluctance to disqualify people from driving. In 1963 they convicted in a minority of dangerous driving cases but imposed penalties considerably less than the national average. The fines imposed for careless driving and speeding at Clerkenwell were also lower than the national averages. During the early years of the twentieth century magistrates were criticised generally for

imposing low penalties for motor traffic offences<sup>59</sup>. Several historians have attributed this to class prejudice, noting that motorists were generally middle-class, educated and articulate and did not fit the stereotype of a 'criminal' as a working-class outsider<sup>60</sup>. However, as noted above, the Clerkenwell magistrates disqualified five out of twelve drivers sentenced dangerous driving in July 1963 but none of the four convicted goods drivers. Far from suggesting class bias, this indicates reluctance on the part of the magistrates to take away working-class drivers' means of earning a living. In response to criticisms of 'light' sentencing G. S. Wilkinson, a court clerk in Cambridgeshire with a special interest in road traffic cases, pointed out that fines imposed for motoring offences were often higher than those imposed for felonies and crimes of violence<sup>61</sup>. From their memoirs it appears that the Clerkenwell magistrates and their clerks were in no doubt that traffic offences were crimes, that offending drivers were criminals and that their court was an appropriate forum to deal with them, but they nonetheless did not view traffic offending as 'serious crime'. For example, French wrote

Motorists are now the largest criminal class and in England and Wales there are three convictions for motoring offences for every two of other kinds of crime. In the Metropolitan courts this has imposed a very heavy burden indeed on magistrates and staff and has made it difficult for them to cope with the constantly expanding lists of serious crime<sup>62</sup>.

- 38 Here French is drawing a distinction between 'serious crime', which from the court's point of view originated in an arrest by the police and was dealt with in the morning list, and regulatory offences which originated by way of summons and were dealt with in the afternoons. He notes that 'Often it was impossible to complete the morning list .... so that unheard summonses for motoring offences piled up alarmingly'<sup>63</sup>. Clearly the court was prioritizing its own resources to deal with 'serious crime' at the expense of timely hearings of 'regulatory' traffic prosecutions.
- 39 Magistrates had a long history of dealing with offences which while technically criminal they viewed as essentially regulatory. Shoemaker notes that in eighteenth-century Middlesex, 'On the whole, plaintiffs and justices of the peace were far less interested in obtaining formal convictions and punishments than they were in stopping the defendant's offensive behaviour'<sup>64</sup>. Similarly, Tindall remarks that nineteenth-century Hampstead justices 'were busy not so much conducting trials as «keeping the peace» in a much more general sense, arbitrating in domestic wrangles, trying to ensure that everyone behaved more or less within acceptable limits and making sure the ratepayers' money was not squandered'<sup>65</sup>. Jennifer Davis has noted that nineteenth-century London stipendiary magistrates resisted criminalisation of costermongers, prostitutes and parents who failed to send their children to school because they did not regard the offending behaviour of these groups as 'real' crimes<sup>66</sup>.
- 40 Similarly, twentieth century magistrates saw their role in traffic prosecutions primarily as a means of ensuring that everyone behaved acceptably, rather than punishing 'real' crime. Magistrates viewed road traffic legislation as deterring inappropriate behaviour and their primary purpose in sentencing was deterrence rather than punishment. This interpretation is supported by the court's response to traffic cases with serious consequences, such as Eyre's. If the victim of this incident had not died the dangerous driving charge would undoubtedly have been dismissed and Eyre would have been fined for careless driving. Only its tragic consequences turned this offence into a 'real' crime to be tried before a judge and jury. Nicolau was sentenced to imprisonment for driving while disqualified although there is no record of him hurting anyone. Nicolau had treated the law with contempt by ignoring a court order, and in the eyes of the magistrate this was a greater crime than any mere traffic offence.
- 41 The primary role of traffic legislation as a deterrent to unacceptable behaviour was openly acknowledged in magistrates' courts throughout the period covered by this study and beyond. For example, in 1976 the *Justice of the Peace* commented on a report recommending extending police powers to administer breath-tests. After acknowledging that police resources are insufficient to prosecute every offender the author discusses the prosecution rate required for effective deterrence. He notes that, 'The Committee believes that the law is too weak, not because penalties are wrong, but because they cannot deter when people no longer expect to be caught'<sup>67</sup>. French discusses in his memoirs the difficulties caused at Clerkenwell Court when

different stipendiary magistrates imposed inconsistent sentences. Significantly, he considered that a fixed sentencing tariff could only be applicable in 'motoring cases like exceeding the speed limit and disobeying traffic signs'<sup>68</sup>. This again highlights his perception as a court clerk of the essentially regulatory nature of traffic legislation and the distinction between traffic offences and 'real' crime.

42 A number of authors have highlighted how unpopular the use of the criminal law to regulate motor traffic was with the early owners of motor vehicles. From the beginning of the twentieth century motorists and motoring organisations argued forcefully that no formal regulation of motor vehicles was needed since drivers could be trusted to regulate themselves and, secondly, that any specific form of regulation proposed by central or local government, such as speed restrictions, was unnecessary, ineffective and an infringement of motorists' civil liberties. Early twentieth-century motorists were wealthy and politically powerful and their pressure groups succeeded in influencing the development and application of legislation both overtly and covertly<sup>69</sup>. Throughout the twentieth century there were repeated calls for decriminalisation of motoring offences. These came not only from motoring groups, who resented being regarded as a 'criminal class', but also from magistrates and others within the court system who agreed with motorists' views or disliked the boring and routine nature of traffic work<sup>70</sup>. By the beginning of the twenty-first century many minor traffic offences, including speeding and failure to observe a traffic signal, had been decriminalised and are now dealt with administratively outside the court system by imposition of a fixed penalty. Parking control is now usually the responsibility of local authorities who find the revenue it provides a useful supplement to council tax income.

43 Even where it has been decriminalised the regulation of motor traffic remains a highly contested and emotive issue. Parking control is a contentious topic which regularly features in local and national newspapers. Motorists continue to resent any form of regulation which restricts when, where and how they can drive their vehicles or where they can leave them. The one circumstance in which a road traffic offence is popularly accepted as criminal is when somebody is killed. As with Mr Eyre's case at Clerkenwell in 1938, a death in a road traffic incident still leads to calls for the criminal penalty of imprisonment.

## VI

44 The results of this study support Taylor's argument that during the 1920s and 1930s the police switched their resources from prosecuting vagrants and drunks to prosecuting motorists in such a way that the total number of prosecutions remained constant<sup>71</sup>. At Clerkenwell Court the average number of cases remained remarkably constant between 1913 and 1963 while the proportion of road traffic cases increased dramatically and the proportion of minor public order offences and regulatory offences fell. However, while Taylor presented his argument entirely from the perspective of the police and was forced to postulate deliberate police manipulation in order to account for the constant number of prosecutions, this study offers an alternative insight. The capacity of the magistrates' courts acted as an additional constraint, limiting the number of cases which could be prosecuted. It appears that the police viewed court prosecutions as a fixed resource and chose to use this resource differently at different periods. This demonstrates that in considering the impact of 'supply side' considerations on prosecution policies it is necessary to consider the resources of local courts as well as the resources of the police.

45 Once a traffic offence had been brought to court the magistrates exercised considerable discretion over how they dealt with it. This study has demonstrated that the stipendiary magistrates at Clerkenwell chose to dismiss a high proportion of the charges for dangerous driving brought by the police and to accept 'plea bargain' admissions of guilt to lesser charges. Magistrates exercised their discretion to prioritise work which they viewed as important and to adjourn or dismiss cases they did not view as 'serious crime'. Different magistrates chose to handle apparently similar cases differently. The financial penalties imposed at Clerkenwell Court for serious traffic offences were substantially lower than the national average, which implies that courts elsewhere must have been imposing fines substantially higher than the

average. All this evidence shows that the magistrates' courts were not mechanistic institutions, handling offences according to set formulae, but highly discretionary and individualistic.

46 This study has demonstrated that national statistics on crime and sentencing provide an incomplete view of how justice was actually administered. Not only do national averages conceal substantial local variations in practice, they also mask the crucial impact of decisions made by individual police officers and individual magistrates. In order to understand the process of criminal justice it is necessary to examine events at the local level. Even national policies are administered by individuals, and even dealing with regulatory traffic offences in the magistrates' court provided opportunities for magistrates to exercise individual discretion.

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Court 2 Part 1	1963	July	PS/CLE/A/01/268C
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## *Droits d'auteur*

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## *Résumés*

This article examines the impact of the growing number of prosecutions for road traffic offences at Clerkenwell Court in central London. The average number of cases heard in each courtroom remained stationary and additional traffic prosecutions were accommodated by reductions in prosecutions for drunkenness or disorderly behaviour and for regulatory offences. This change in police prosecution policy impacted on the court's proceedings and increased the court's workload because motorists were more likely than drunks to argue their cases and to employ legal representatives. Sentencing patterns, the memoirs of magistrates and court clerks and other published documents indicate that the court staff viewed traffic offending as essentially 'regulatory' and distinguished it from 'serious crime' except when somebody was killed or a court order was ignored. The court prioritised its own resources to deal with 'serious crime' at the expense of traffic prosecutions. The results of this study support Howard Taylor's thesis that resource constraints had an important influence on police prosecution policies, but show that not only police resources but also court resources and the discretionary powers of individual magistrates were important factors in prosecution patterns.

Cet article examine l'impact du nombre croissant de poursuites concernant la circulation routière au tribunal de Clerkenwell, au centre de Londres. Le nombre moyen d'affaires examinées par chaque chambre est resté stationnaire et les affaires supplémentaires de circulation ont été absorbées grâce à une réduction des poursuites pour ivrognerie, trouble à l'ordre public, ou à des infractions à la réglementation. Cette modification de la politique pénale policière a eu pour impact un accroissement de la charge de travail du tribunal parce que les automobilistes étaient davantage portés que les ivrognes à contester les charges et à faire appel à un conseil. Les régularités du *sentencing*, les souvenirs des magistrats et des greffiers, ainsi que d'autres documents publiés, indiquent que le personnel du tribunal considérait les infractions de circulation comme une matière essentiellement « réglementaire » qu'il distinguait des « infractions graves », sauf lorsqu'il y avait eu un décès ou qu'une décision de justice avait été ignorée. Le tribunal donnait la priorité aux « infractions graves », au détriment des affaires de circulation. Les résultats de cette étude confirment la thèse d'Howard Taylor selon laquelle les contraintes qu'imposaient les ressources disponibles influençaient fortement la politique pénale policière; mais ils montrent que c'est également vrai des ressources dont disposait le tribunal et des pouvoirs discrétionnaires de chacun des magistrats, qui influençaient eux aussi en grande partie les décisions de poursuite.