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EXECUTIVE SUMMARY:

BOSTON'S CRIMINAL COURTS: 1814-1850

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The antebellum period was a threshold in the history of Boston. During this period the city grew from a small seaport of about 33,000 in 1810 to a city of 137,000 in 1850 linked with the world not only by sea but also by an expanding inland network of railroads. Boston was a vital factor via its financial and labor resources in the industrial development of New England and was a magnet for immigrants from rural areas in New England as well as the British Isles. With these developments the city expanded rapidly, lost its colonial consensus, and developed many of the urban problems including crime that are still with us today.

This was also a period of rapid development in Boston's criminal courts. For a hundred years prior to 1800 non-capital criminal cases were heard by a single court, the Court of General Sessions of the Peace. But between 1800 and 1822 four distinct courts divided up the criminal business of Boston. On March 4, 1800 the Municipal Court was established as the main trial court in Boston with both a civil and a criminal docket; on June 19, 1809 the Court of Common Pleas was formed to hear civil cases and minor criminal cases. On June 25, 1811 the General Court of Sessions assumed the criminal jurisdiction of the Court of Common Pleas, and on February 23, 1822 the Police Court was created to hear the criminal cases formerly handled by the General Court Sessions, which was abolished.

After a century of stability Boston began to experience considerable turmoil in its criminal courts. Serious criminal cases, other than capital cases which went to the Supreme Judicial Court, were handled by the Municipal Court, but minor cases requiring only bench trials and short sentences to the House of Correction were heard by a succession of lower courts. The confusion was centered at the lower end of the criminal spectrum. The lower



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courts were moving cautiously into an area, minor deviance, where they had never had a clear jurisdiction before. In the eighteenth century minor deviance had been controlled for the most part by the church, but as the church gradually lost its authority, the courts were forced to assume control over this important sector of human behavior.

Not only were the courts changing, but due process and the training of lawyers were also changing. Before the Revolution American criminal courts followed a very loosely defined procedure. The hearsay rule was not given wide authority until the early part of the nineteenth century (Friedman, 1973: 134-137), and criminal defendants were allowed to testify in their own behalf for the first time at midcentury (Warren, 1966: 472-474). Moreover, after the Revolution American lawyers were no longer trained in English law offices at Westminster. Instead, they undertook apprenticeships in American cities and towns where the skill of their mentors and the quality of their practice often left much to be desired. Before long well known lawyers were giving ad hoc lectures to anyone who was interested, but soon groups of lawyers organized themselves to offer an integrated, comprehensive curriculum in the law. The best known of these early law schools was the Litchfield Law School which was established in 1784 and graduated more than 1,000 lawyers during its 49 years of service (Warren, 1966: Ch. 14). Finally, established universities responded to the need for systematic legal training, and Harvard established its Law School in 1817. The training afforded law students through systematic instruction far exceeded that generally available to apprentices in law offices, and the apprenticeship method of training lawyers was largely abandoned after the Civil War.

All of these changes had a profound effect not only on the pattern and volume of crime in Boston during the antebellum period but also upon the manner

in which the criminal courts dealt with criminality. This study examines carefully these two broad issues and specifically, attempts to answer the following questions.

1. What were the prosecution rates of the lower criminal courts, i.e., of the Municipal Court and the Police Court of Boston, and what did these rates mean for the courts during this period?
2. To what extent were the lower criminal courts used to constrain the burgeoning Irish population, particularly in public drunkenness? Was the policing of alcohol abuse focused on the consumer primarily, or was it extended to the retailer as well?
3. How did property crime rates adapt to the growth of materialistic values in Boston during the antebellum period?
4. How did the reorganization of Boston's social structure from that of a small, colonial seaport to a cosmopolitan, commercial center affect its crime pattern? Did the relative levels of theft and violence change? Did it exhibit a transitional pattern in its criminality?
5. How were the crime patterns of juveniles, women, and the lower class affected by the social and economic changes the city was undergoing?

The Methods

The data upon which this research is based were gathered from the Police Court and the Municipal Court of Boston during the even years from 1814 and 1850. The Police Court only began operations in 1822, but it did not develop a complete set of data for that year nor in 1830, and these years were omitted from the analysis. Thus, data for the years 1824 through 1828 and 1832 through 1850 were collected for the Police Court. A complete series of data from 1814 through 1850 was collected for the Municipal Court. Information on the charge,

the defendant, the complainant, the examination, the outcome, and the judgment was obtained for each case that came before both courts during the indicated years. Altogether approximately 30,000 cases were coded from Police Court docket books, and another 9,200 cases were coded from the record books of the Municipal Court.

Antebellum Boston's Crime Problem

The prosecution rates for serious offenses, i.e., burglary, felonies against the person, and felonies against property, in the Municipal Court declined unevenly from 1814 to 1830 and in the Police Court from 1824 to 1836.

(Figure 1 here)

After these years both courts experienced a rise in the rate of prosecutions to 1850 of roughly similar proportions, i.e., about 1.5 crimes per 1,000 inhabitants.

Minor prosecutions, i.e., minor property or violent offenses, or prostitution, in the Municipal Court displayed a similar saucer-like decline and rise between 1824 and 1850. From a high of 5.7 offense per 1,000 in 1818 the rate of prosecutions slipped to 1.7 in 1836, and from there the curve rose

(Figure 2 here)

again to finish at 4.8 per 1,000 in 1850, or slightly below where it began in 1818. Minor prosecutions in the Police Court, however, displayed a much more pronounced drop. From a high of 30.0 per 1,000 in 1824, they fell to 5.2 per 1,000 in 1846. Thus, the prosecution of minor offenses in the Police Court dropped dramatically during the 1820s and 1830s, although the same is not true for serious offenses in that court nor for either category of offenses in the Municipal Court. It would appear that the Police Court was attempting to police minor deviance very closely during its early years, but for several

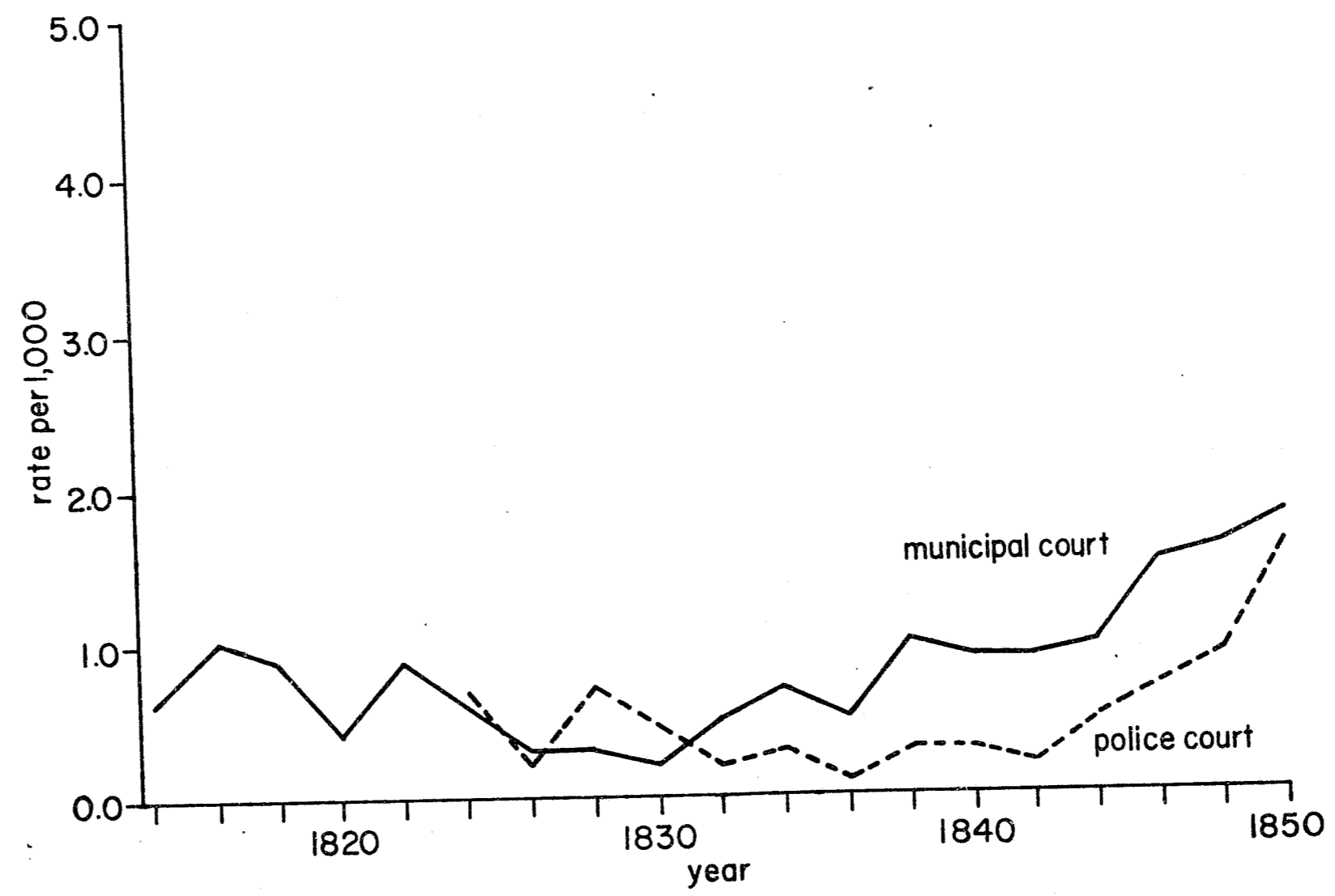


Figure 1: Prosecutions for Serious Offenses in the Municipal and Police Courts: 1814-1850

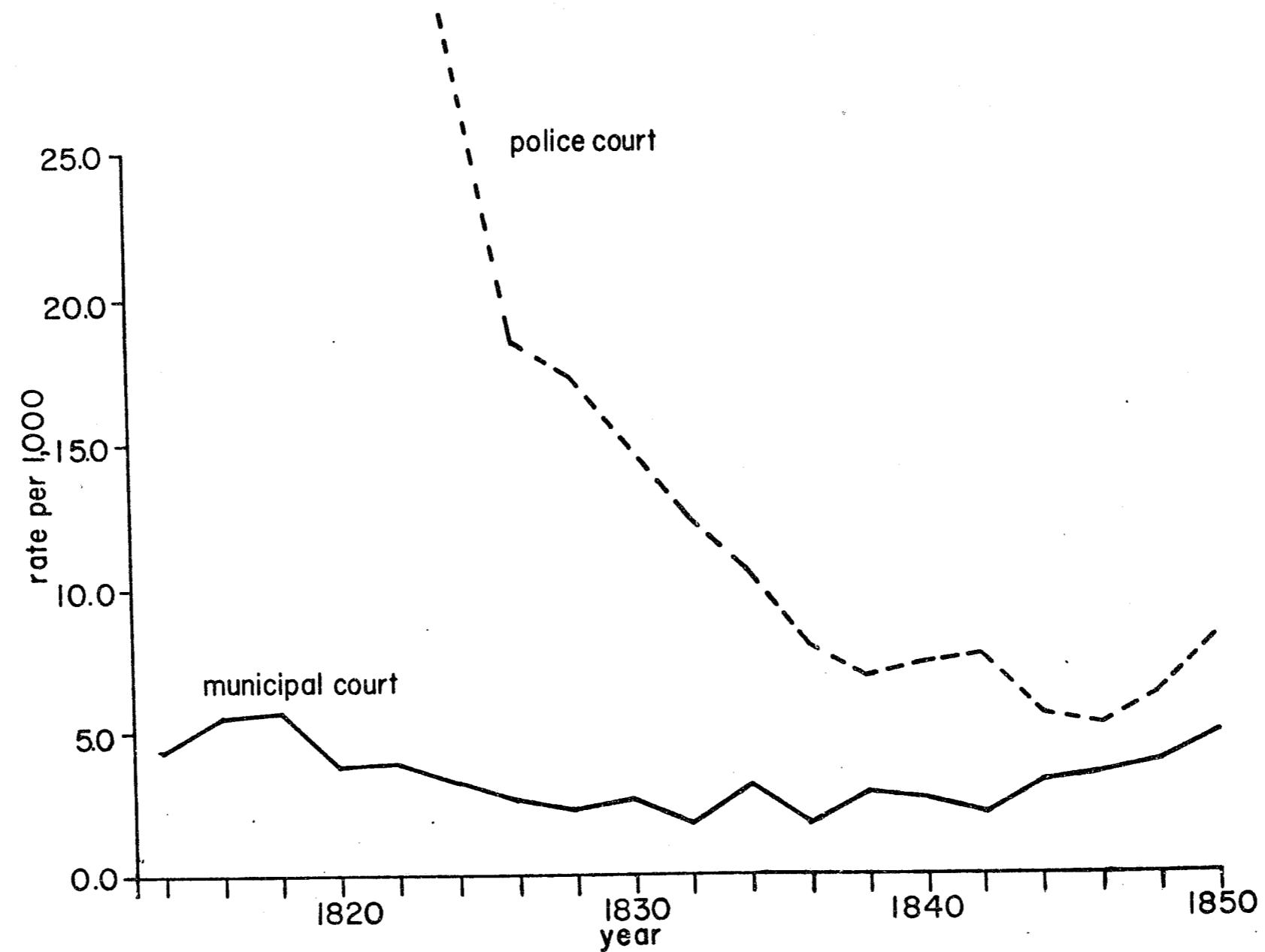


Figure 2: Prosecutions for Minor Offenses in the Municipal and Police Courts: 1814-1850

reasons it was unable to sustain this policy as the years passed.

One area that came in for an increasing level of vigilance was the consumption of liquor. During the 1840s liquor law violations and public drunkenness became serious problems in the Municipal Court and the Police Court respectively. Highs in these two offenses were reached in 1846 and 1850, and they represented in these years 64.9 and 35.6 per cent of all charges brought to their respective courts. A determined effort was made during

(Figure 3 here)

these years to control both the sale and consumption of alcohol, and some prominent Boston businessmen were charged repeatedly with liquor law violations. Although Irish names were in abundance among those arrested for public drunkenness, the effort was not confined to them alone. It was an orchestrated campaign focusing on any and all who violated the laws controlling the sale and consumption of "spirits."

Serious property crimes were also a growing problem during this period. In the late 1830s burglary cases began to rise in both the Municipal and the Police Courts, and by 1850 they made up fully 31.5 per cent of the property offenses heard in the Municipal Court. In the Police Court their percentage

(Figure 4 here)

was also rising but not so dramatically; in 1850 it was 14.7 per cent of all property cases. Moreover, the value of property lost in property crimes was increasing. Before 1835 cases involving less than \$11 outnumbered cases

(Figure 5 here)

involving more than \$30 by 2.2 to 1.0 but after 1835, they were nearly equal, 1.1 to 1.0.

Minor property crimes, on the other hand, were showing little tendency to change in either court. In the Municipal Court minor property crimes

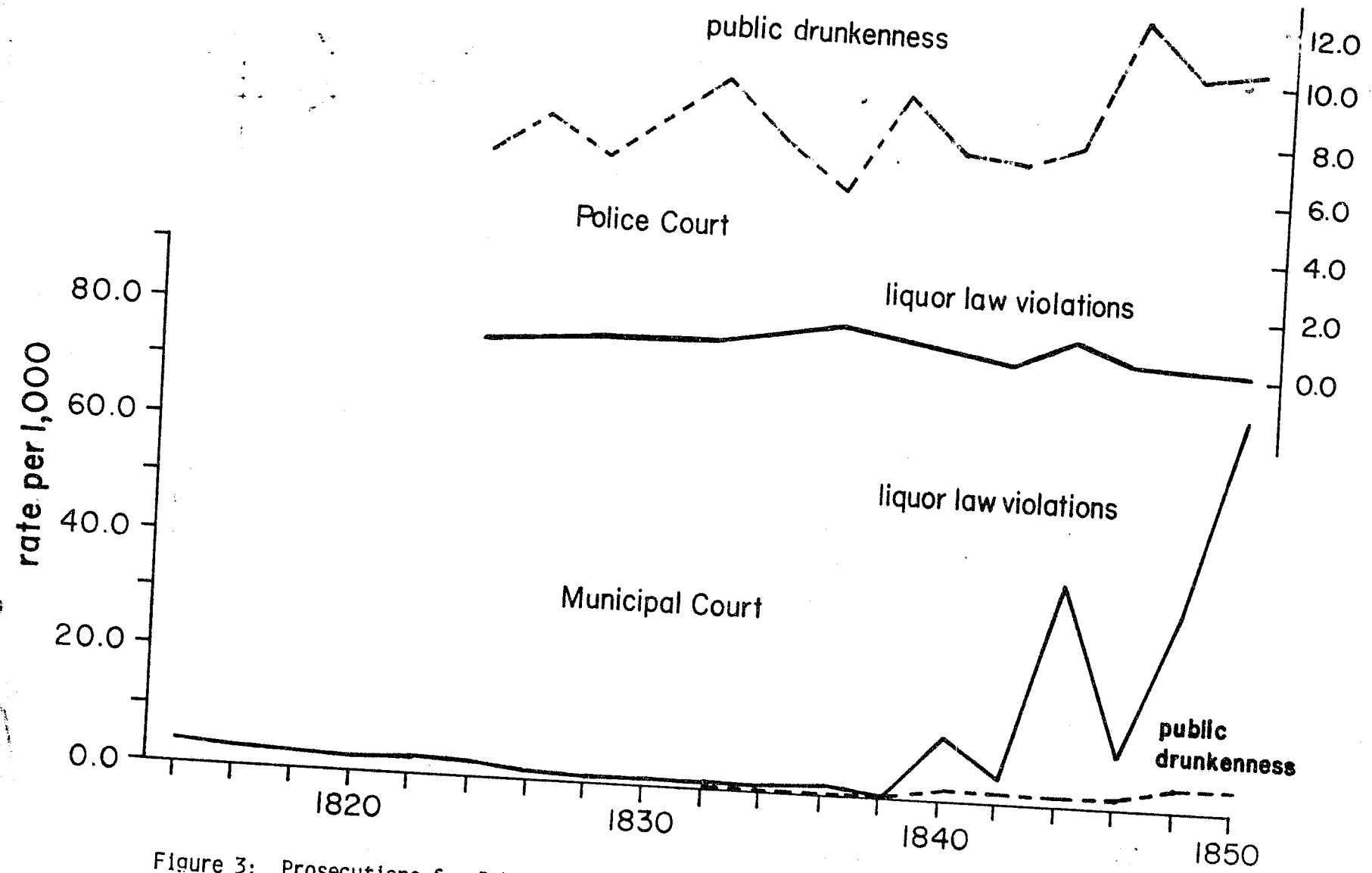


Figure 3: Prosecutions for Public Drunkenness and Liquor Law Violations

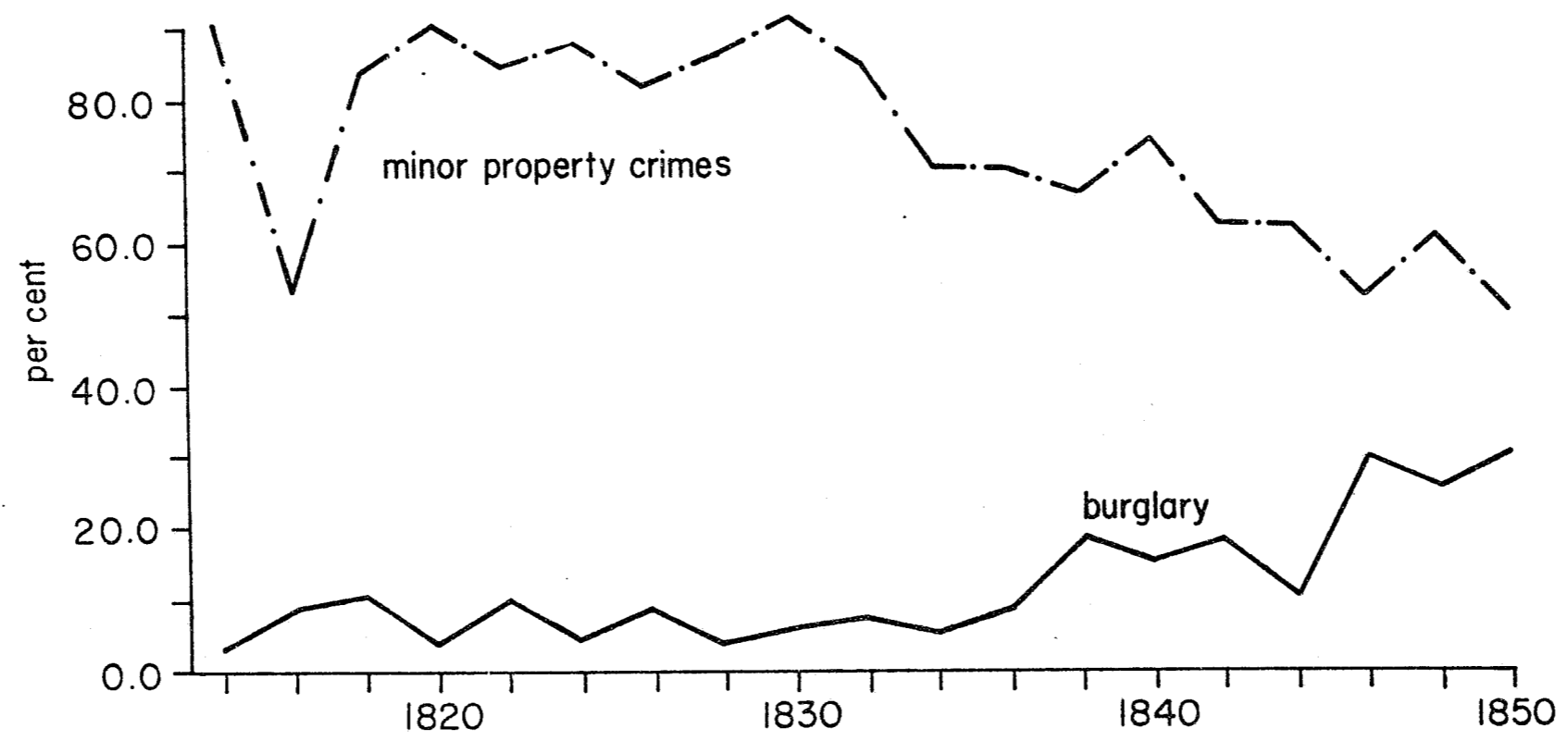


Figure 4: Percentage of All Property Cases in the Municipal Court for Burglary and Minor Property Crimes

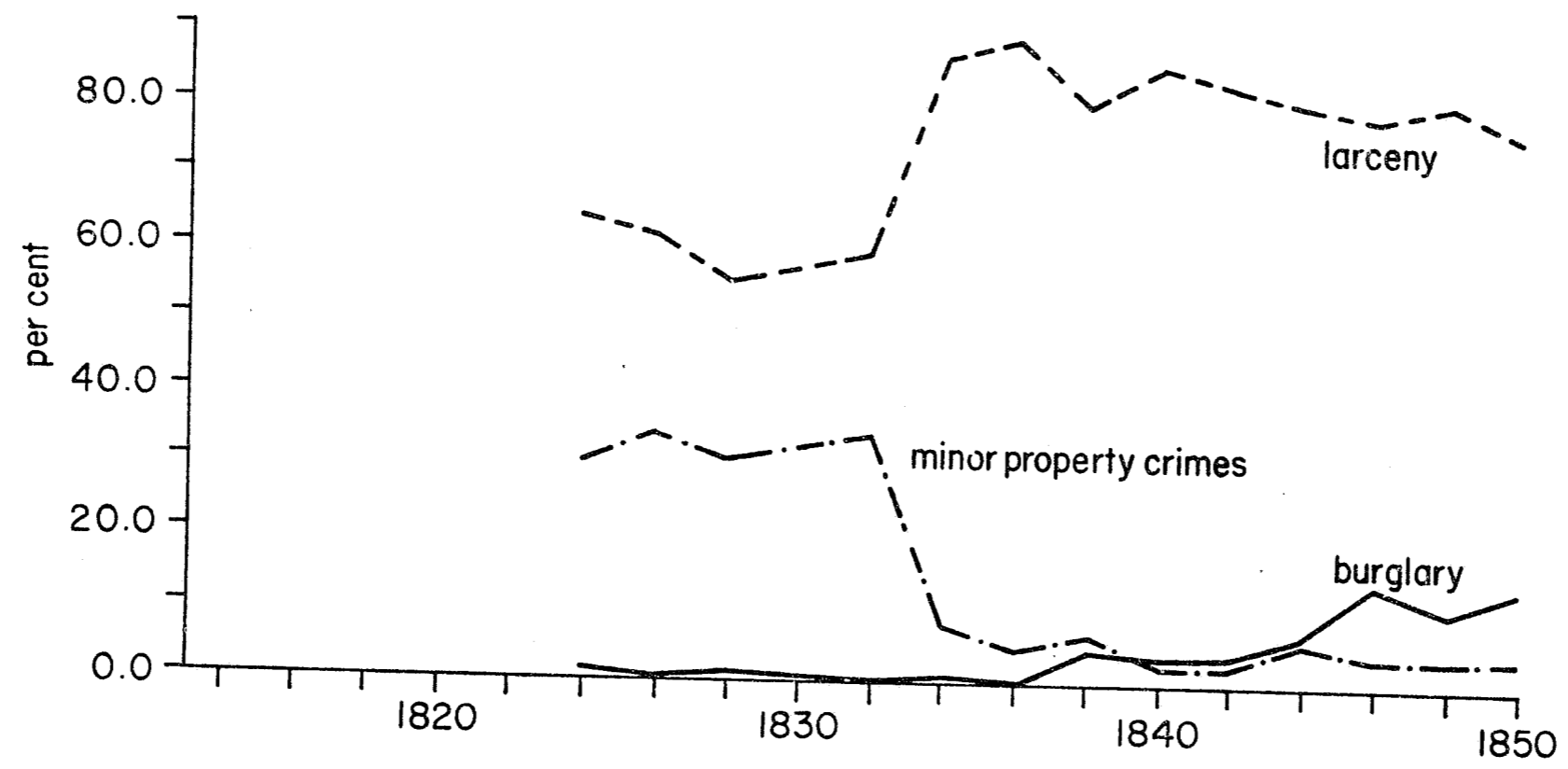


Figure 5: Percentage of All Property Cases in the Police Court for Burglary, Larceny, and Minor Property Crimes

fluctuated around 1.6 cases per 1,000 for more than two decades between 1826 and 1850, and in the Police Court minor property crimes (including larceny and misdemeanor property crimes) fluctuated around 3.9 per 1,000 between 1836 and 1846. Minor property crimes were clearly not the problem.

The depression of 1836-1842 probably contributed to some extent to the rapid rise in burglaries during this period. But as we shall see juveniles were also beginning to appear in court in increasing numbers, and they were particularly active in property crimes.

A crime index of considerable interest in historical studies is the theft-violence ratio. Many different versions have been used, but all of them are based on distinct indicators of violent and property crime. In this case the indicator of violent crime in both courts consists of the summed rates of assault and battery, felonies against the person, and misdemeanors against the person in both the Police and the Municipal Courts. The theft indicator for both courts is made up of the summed rates of burglary, felonies against property, forgery, fraud, larceny, and misdemeanors against property. When the violence indicator is divided by the theft indicator, the theft-violence ratio of the Municipal Court seems to be essential flat for the 36 years of this study, but the theft-violence ratio of the Police Court is tilted slightly downward (see Figure 6).

(Figure 6 here)

When the components of the theft-violence ratio for the Police Court are examined, it is clear that the decline was due to a gradual drop in the rate of assault and battery cases in that court. When the penalties meted out to assault and battery offenders are examined, it appears that this decline was due largely to a steady decline in the rate of minor assault and battery cases. Serious assault and battery cases continue to appear in

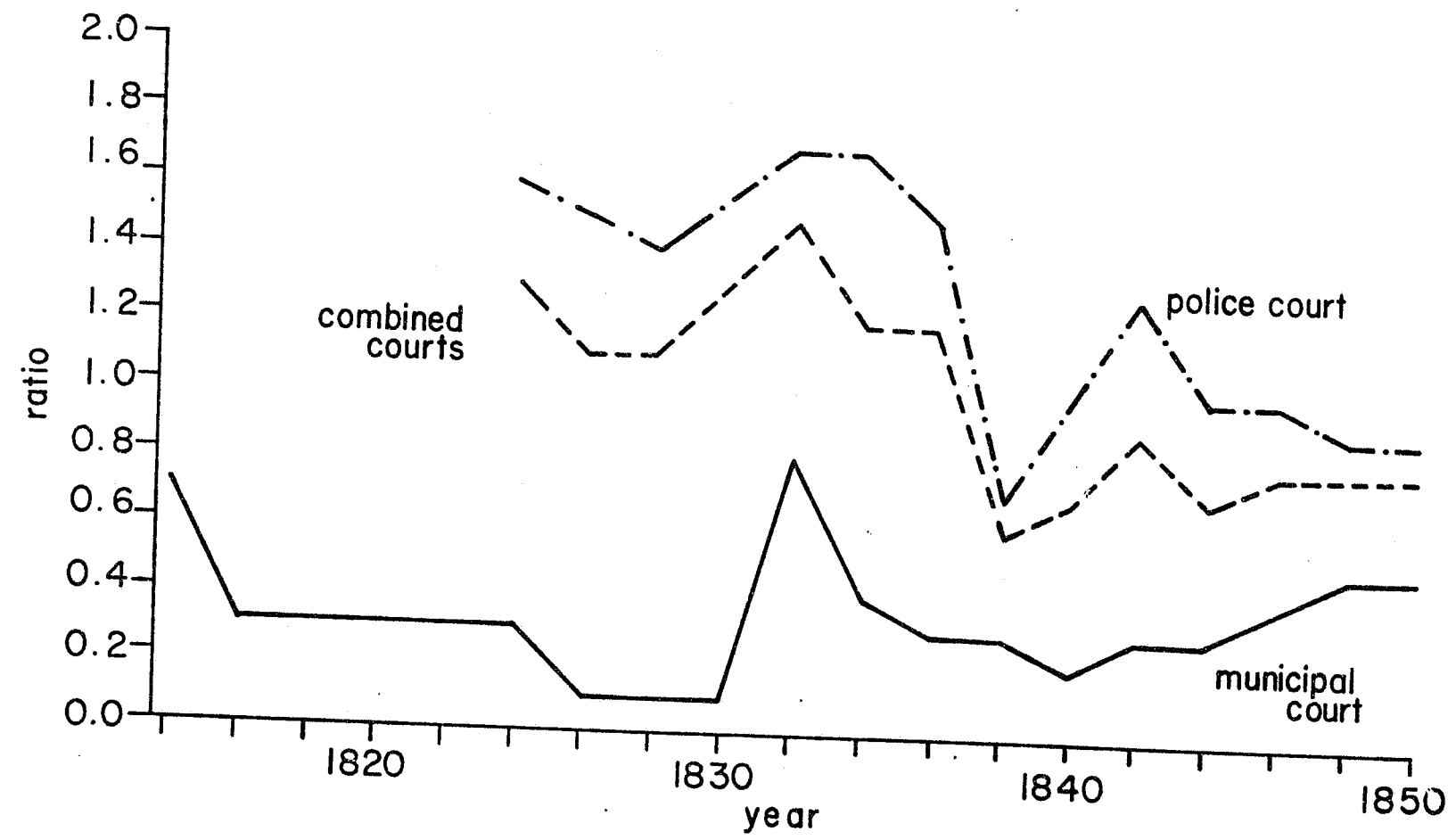


Figure 6: The Ratio of Violent Offenses to Property Offenses in the Police Court, in the Municipal Court and for the Combined Courts in Boston: 1814 through 1850

the Police Court in considerable numbers, but minor assault and battery becomes noticeably less common. Much the same pattern was observed in the Municipal Court, though not as many such cases found their way in the first place into the Municipal Court. No such unilateral decline in minor theft cases was observed in either court.

These facts suggest that the Police Court (and the Municipal Court, too) began to discourage minor assault and battery cases during the late 1830s, probably because these minor cases represented private disputes more than criminal matters. Thus, the decline in the theft-violence ratio of the Police Court during the 1830s seems to be due more to a change in that court's policy regarding violence than to any change in the underlying crime pattern.

Social Position and Crime

One of the fastest growing segments of Boston's crime problem was juvenile crime. Before 1829 juveniles never committed more than 4.7 offenses per 10,000. In 1830 it rose to 13.0 offenses per 10,000 and in the next 20 years it continued

(Figure 7 here)

to increase sharply, reaching 212.7 offenses per 10,000 in 1850! This increase, moreover, was almost entirely due to male offenses. The total number of girls charged with offenses in the Municipal Court reached 17 in 1850; for boys the number was 253. At no time did girls comprise more than 12.7 per cent of the juveniles charged in the Municipal Court.

Juveniles committed most of their crimes against property, and as their numbers in the Municipal Court grew, so did the rates of property crimes. By 1850 juveniles were responsible for 71.9 per cent of the burglaries committed in Boston and for 36.0 per cent of the minor property offenses. In contrast they were responsible for only 21.6 per cent of the violence offenses.

This upsurge in juvenile crime, no doubt, had a variety of causes. The fact that compulsory education was inaugurated in Boston in 1827 may have

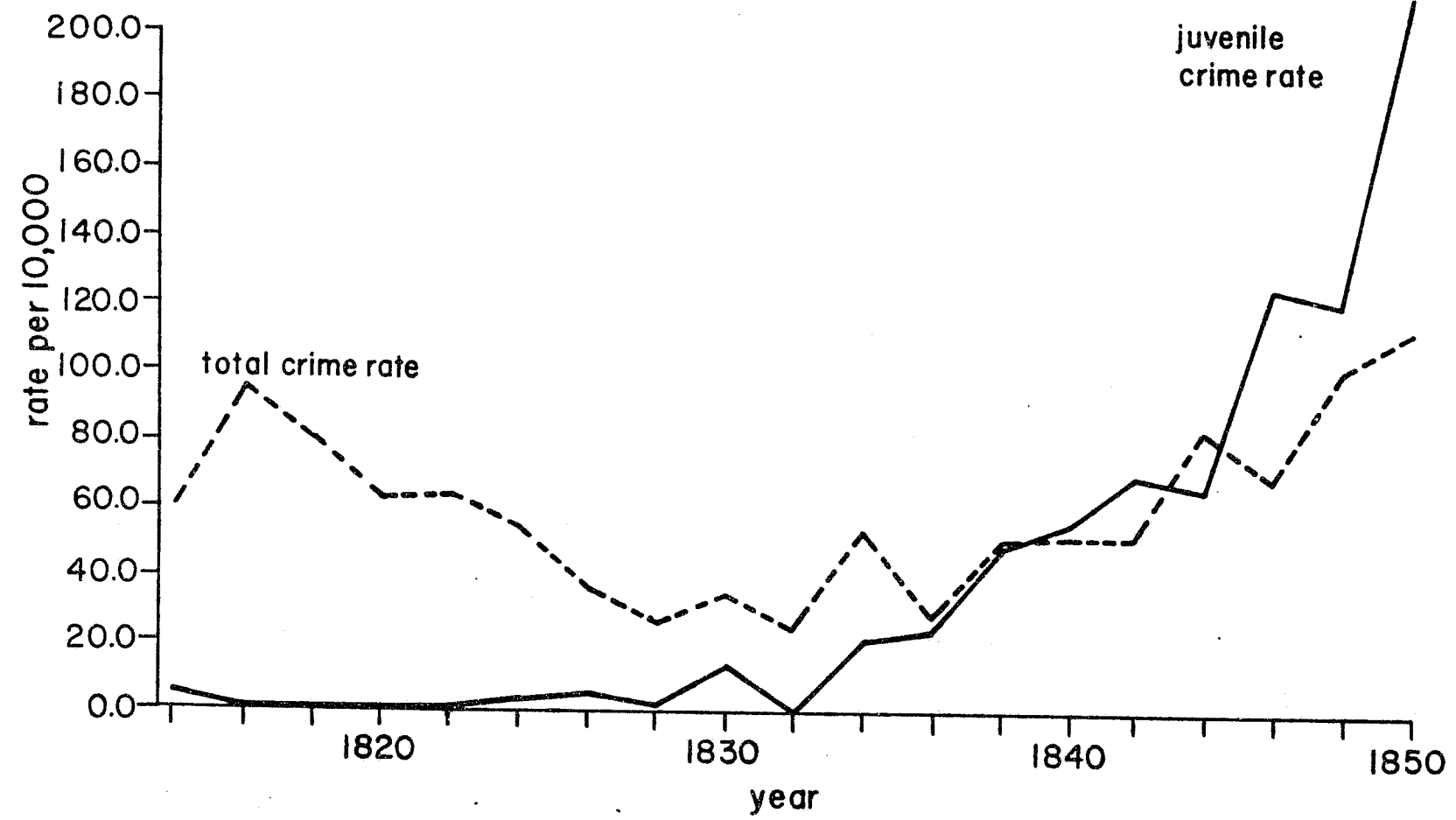


Figure 7: Crime Rate (per 10,000 10-15 years) for Juveniles and the Total Crime Rate (per 10,000) in the Municipal Court

contributed to the serious alienation of some adolescents, and the Depression of 1836-1842 may have affected some others. It is unlikely, however, that the heavy Irish immigration of the 1840s could have had any effect, since the upsurge in juvenile crime was already underway by the time the Irish began to arrive in large numbers in the mid-1840s.

Adult females were never a very prominent factor in the crime problem of this period. They composed about one-seventh of the males appearing in the Municipal Court, and about one-third of the males appearing in the Police Court where prostitution cases were heard. There were, however, some interesting shifts in their offense pattern. Married women displayed a growing tendency to commit violent crimes as the antebellum period wore on, and single women became more frequently involved in prostitution or sex crimes. These shifts may reflect changes in the status of married women, such that they were more inclined to resist familial pressures forcefully as the decades passed. The shift toward prostitution and sex crimes among single women may mean that growing numbers of young women were drawn to Boston in search of employment. Inevitably, some of them found their way into this type of crime.

Occupation and Crime

An individual's occupation sets his or her life style and if married that of his or her family as well, and it places him or her in the social structure at a particular point. Both facts have an effect upon the individual's criminal activity, and accordingly the occupational structure of a community constitutes an important key to its crime pattern. In Boston's Municipal Court laborers dominated the crime picture from 1814 through 1842, when businessmen became the largest group. Laborers were involved mainly in property crimes (55.0 per cent of their total) and crimes against the person

(Figure 8 here)



Figure 8: Percentage Distribution of Defendants in the Municipal Court According to Occupation

(20.4 per cent); businessmen, on the other hand, were primarily involved in violations of city ordinances. Fully, 74.5 per cent of their offenses were concentrated in this crime category. Violent crimes constituted only 2.8 per cent of their total crimes, and crimes against property included another 4.5 per cent.

The decline of minor property crimes among laborers between 1830 and 1850 helps to explain the overall decline of this crime during this period.

(Figure 9 here)

Businessmen committed few of these crimes; their speciality was regulatory offenses - and as their numbers grew, regulatory offenses similarly became a major crime problem.

Modernizing Boston's Criminal Courts

Four distinct streams of cases were handled by Boston's criminal courts: serious property crimes; private disputes involving mainly assault and battery or fraud cases; cases involving vice (prostitution and gambling); and business regulatory cases. Each stream was handled differently by the courts. Serious property crimes were prosecuted aggressively; few were withdrawn or dropped; a high level of convictions was achieved; and punishments were often severe. Private disputes, on the other hand, were frequently withdrawn or dropped; low conviction rates were achieved; and punishments were mild. Business regulatory offenses were rarely tried; guilty verdicts were infrequent; large numbers were pleaded guilty; or were left unresolved. Vice cases were tried infrequently, but when they were tried they often produced guilty verdicts; guilty pleas were also common; and many cases were left unresolved.

The high percentage of guilty pleas among the latter two streams, i.e., among business regulatory offenses and vice cases, suggests that plea bargaining

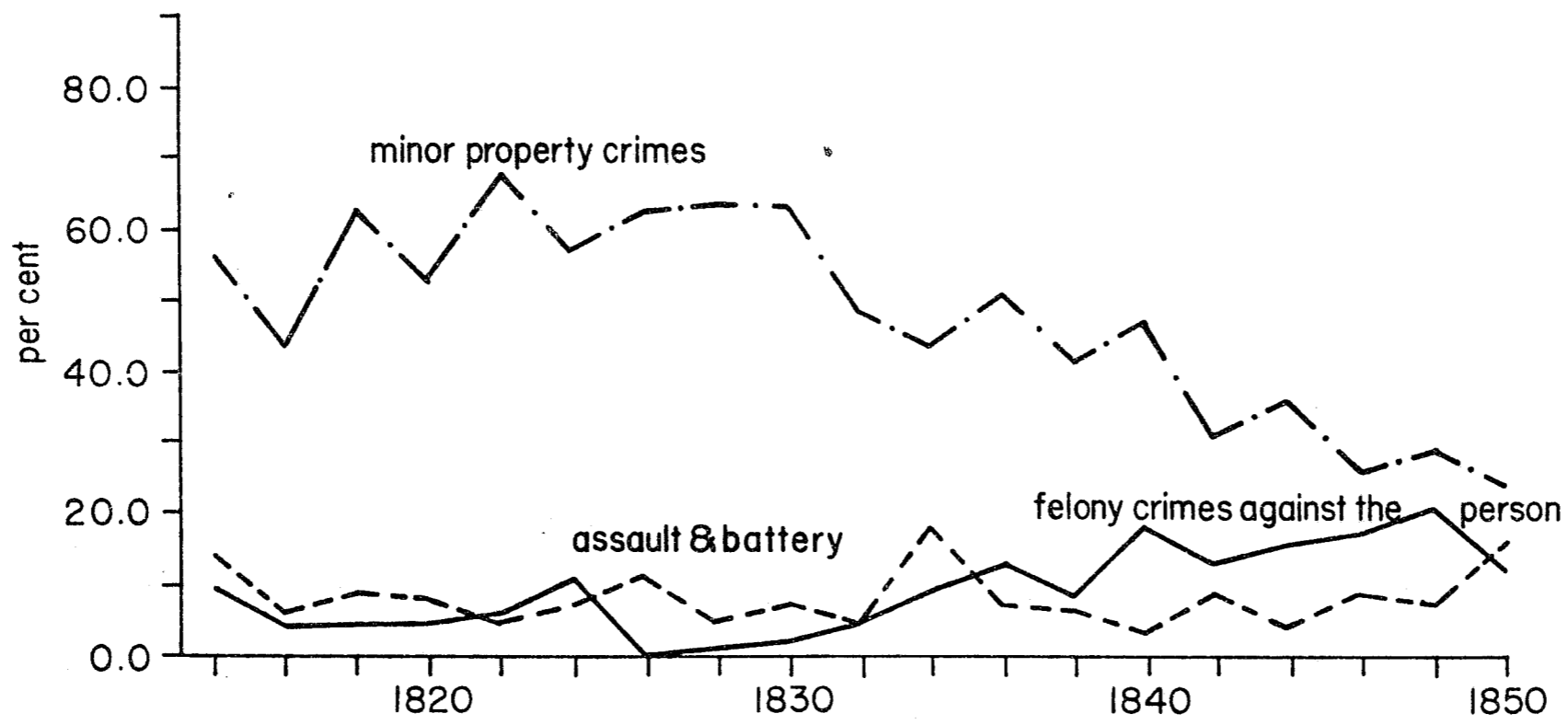


Figure 9 : Percentage Distribution of Offenses by Laborers in the Municipal Court

was common in antebellum Boston. There is good evidence that guilty pleas in city ordinance violations doubled between 1834 and 1836 in the Police Court. From there it spread in 1838 to prostitution cases in the Municipal Court and in 1842 to public drunkenness and larceny cases in the Police Court. In 1844 it became common in liquor law violations in the Municipal Court, and in 1846 it emerged in prostitution cases in the Police Court. Finally, in 1850 in the Municipal Court it became the dominant outcome among fraud cases. It was clearly a matter of prosecutorial or judicial discretion as to where and when plea bargaining would be permitted. Otherwise, the practice would have taken hold in each court at about the same time.

There is also good evidence that guilty pleas were accompanied by reduced sentences in both the Police Court and the Municipal Court. Before guilty pleas became the dominant outcome in the Municipal Court for prostitution cases, little advantage to the defendant was connected with a guilty plea. But a reduced sentence was a frequent accompaniment of guilty pleas after they became general. As guilty pleas became the preferred outcome in specific cases, they were favored with less severe sentences.

The same is true in the Police Court. Guilty pleas to city ordinance violations there produced reduced fines after plea bargaining became a

(Figure 10 here)

regular procedure in that court. The conclusion is inescapable that these guilty pleas in both courts were induced and that plea bargaining was rampant in antebellum Boston.

Plea bargaining was introduced into the Police Court in 1834 probably because it was a lower court with relatively non-professional officers and a weak commitment to due process. It developed first in city ordinance cases

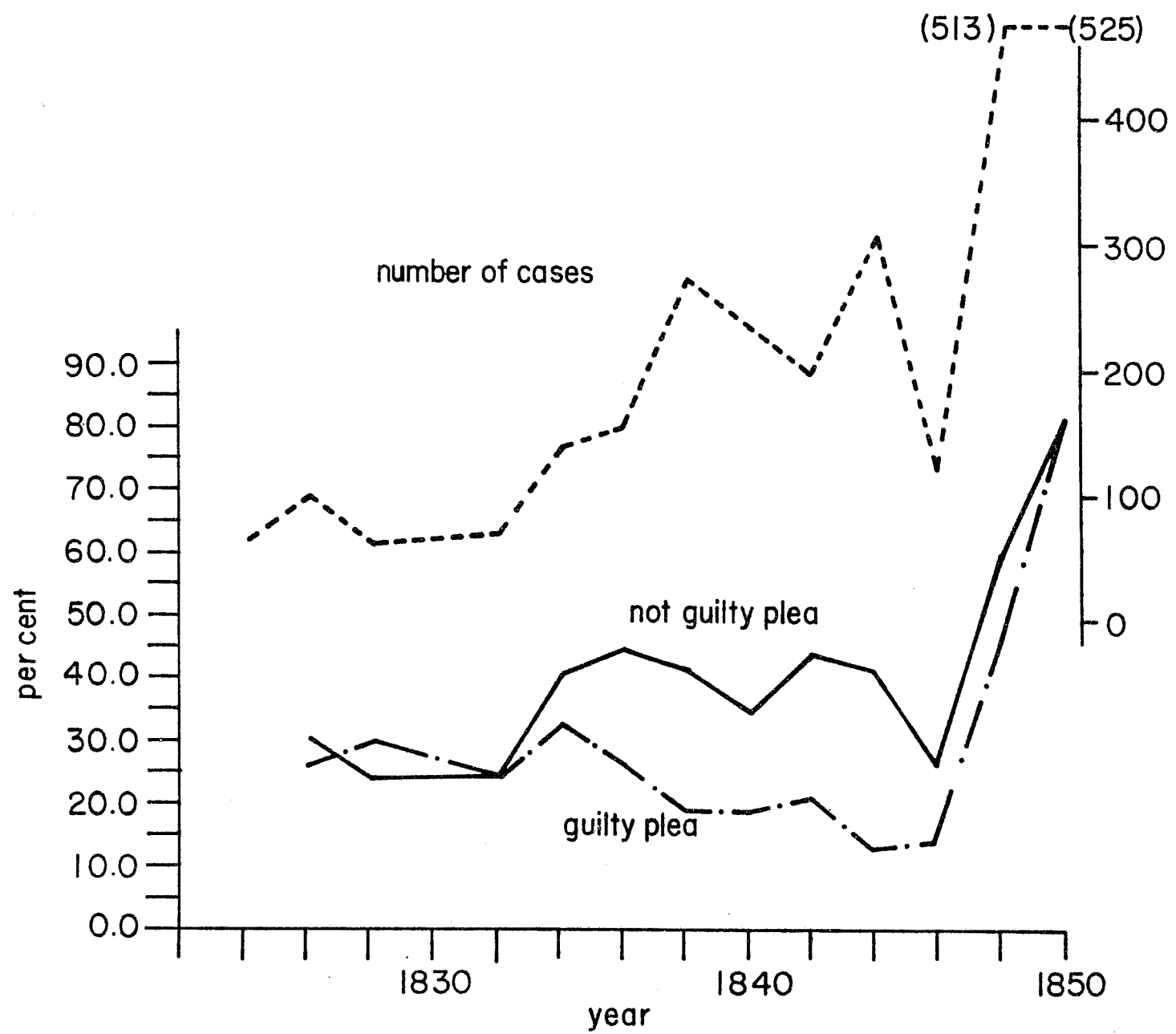


FIGURE 10: NUMBER OF CITY ORDINANCE VIOLATIONS AND PERCENTAGE BEING FINED MORE THAN \$2.00 ACCORDING TO PLEA IN THE POLICE COURT: 1826-1850.

probably because they were common offenses among businessmen who fought strenuously any criminal charges against them. City ordinance violations carried little opprobrium, moreover, and defendants had at best only a weak sense of their guilt. Plea bargaining was invented for those cases where it could relieve a substantial trial burden without arousing the moral sentiments of the community. City ordinance violations seemed to fit these requirements very well.

As it spread through the Municipal Court, plea bargaining induced a steady decline in guilty verdicts after 1838. But the decline in guilty verdicts was not entirely due to plea bargaining, since it occurred in serious criminal cases such as burglary where plea bargaining was rare. During the 1840s not guilty verdicts became more frequent in burglary cases, and the duration of trials ending in guilty verdicts in burglary cases during the 1840s reflected the application of a more rigorous standard of due process in the Municipal Court as the antebellum period wore-on.

Although there was no general decline in guilty verdicts in the Police Court comparable to that in the Municipal Court, those offenses that exhibited a large percentage of guilty pleas also showed declines in guilty verdicts. There was an increase in not guilty verdicts in the Police Court during the 1840s, particularly in larceny and assault and battery cases, where plea bargaining was infrequent. It may be that the Police Court, too, was extending greater due process protections to defendants in certain types of cases.

Sentencing in Boston's Courts

Punishments reflect not only the seriousness with which different offenses are viewed in the community, serving thereby as an index of changing values, but it also provides a measure of the fairness with which justice is administered. In Boston property crimes were punished most severely in both

the Police Court and the Municipal Court. Burglary, larceny, and minor property crimes were regularly given prison sentences, whereas felonies against the person, minor crimes against the person, and assault and battery most often received fines. The difference in level of punishment of each category of offense is clear and unmistakable. It is opposite from today's pattern, and in this sense the sentencing policies of Boston's criminal courts were not modern. Property offenders in the nineteenth century were regarded as professional criminals who needed severe sentences to deter their criminality (Gatrell, 1980: 300-301). Violent offenders were regarded as more impetuous than criminal; they were punished more leniently.

Sentencing patterns changed during the antebellum period, but for the most part in expected ways. Punishments for offenses that were actively plea bargained, e.g., city ordinance violations, grew lighter as plea bargaining took hold in both courts, whereas those offenses that grew sharply in volume, e.g., liquor law violations, were punished more severely. There was no general tendency, however, to relax the sentences for property offenders nor to strengthen those of violent offenders.

When we compare the sentences of defendants of different social rank, we see clear evidence that social position affected sentencing, but not in a discriminatory way. Defendants who committed crimes typical of their social category received mild sentences. Defendants who committed atypical crimes were severely punished. Businessmen, for example, who were charged with prostitution or fraud - two relatively common offenses among businessmen - received mild punishments in comparison with offenders of other backgrounds, but businessmen who committed larceny or assault and battery - uncommon offenses for them - were punished severely. Similarly, in the Municipal Court,

women who committed minor property offenses or prostitution were punished routinely, but assault and battery, which was a low volume offense among women, was punished severely. Juveniles were also punished according to this formula. Before 1840 juveniles committed few burglaries and were punished severely when convicted of them, but after 1840 when burglaries became common for juvenile defendants, they were punished mildly.

The Courts were probably also taking into account the degree of threat posed by a particular offense in deciding the appropriate sentence. Females, for example, received distinctly heavier sentences for public drunkenness and prostitution than male defendants in the Police Court but lighter sentences for assault and battery. Similarly, in the Municipal Court juveniles were convicted less often than adults, and when convicted they received more favorable

(Figures 11 and 12 here)

sentences than adults for property crimes.

Finally, we have already noted the tendency for property offenders to receive much more severe sentences than violent offenders. In the Municipal Court (but not in the Police Court) there is a clear tendency for sentences given property offenders to become more lenient during this period - particularly for juveniles. Prison sentences for minor property and burglary charges ease noticeably for both juveniles and laborers. Punishments for violent offenders remained approximately the same throughout the antebellum period in both courts. Thus, there was some tendency in the Municipal Court during this period to reverse the relative severity of punishments for property and violent offenders.

Conclusion

This summary describes the results of my study of the antebellum Boston criminal courts. It is clear from this study that the crime problem shifted as the courts themselves adopted a more modern perspective vis-a-vis crime. The decline of the church as the dominant institution in the community forced

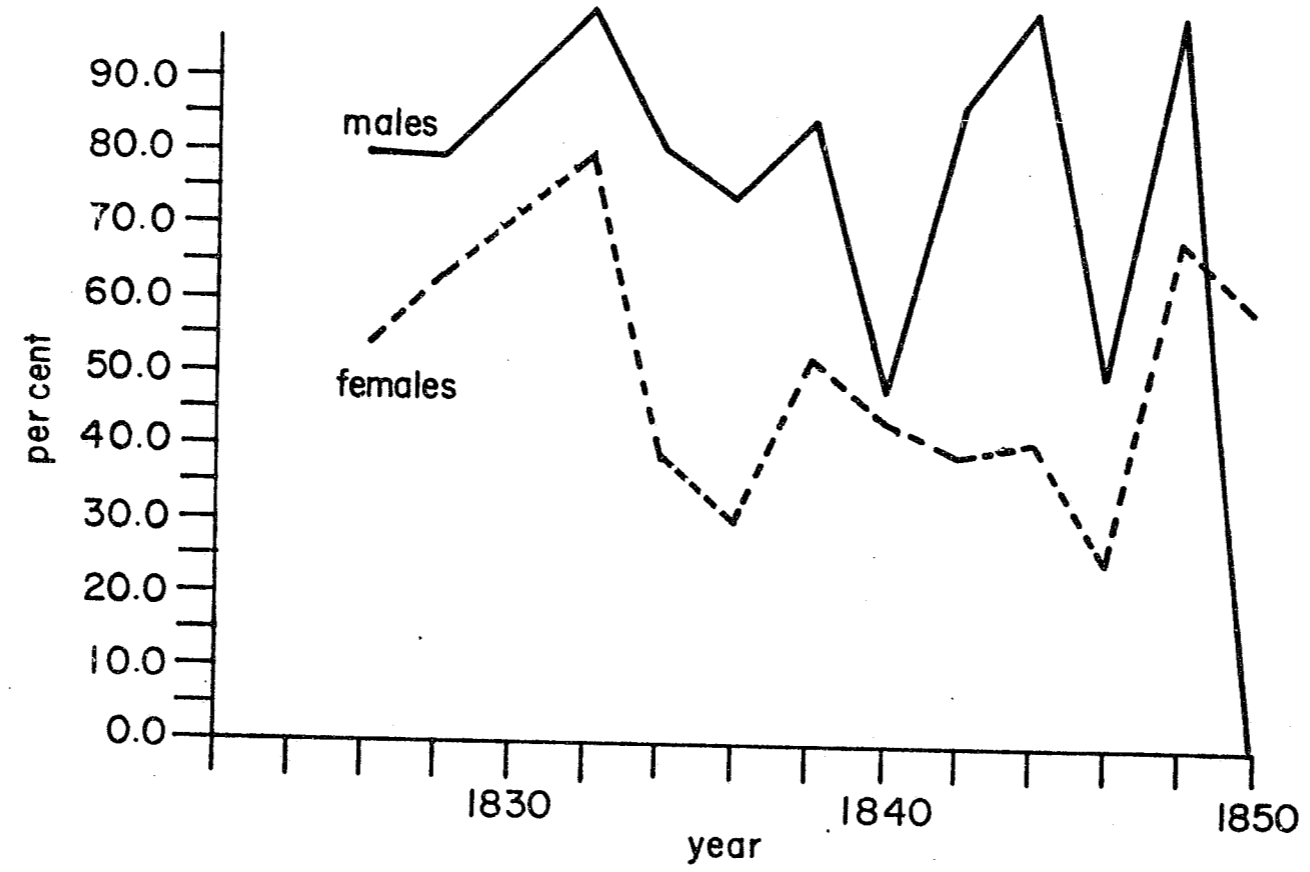


FIGURE 11: PERCENT CONVICTED OF PROSTITUTION RECEIVING JAIL SENTENCES OF 3 MONTHS OR LESS ACCORDING TO SEX IN THE POLICE COURT: 1826-1850.

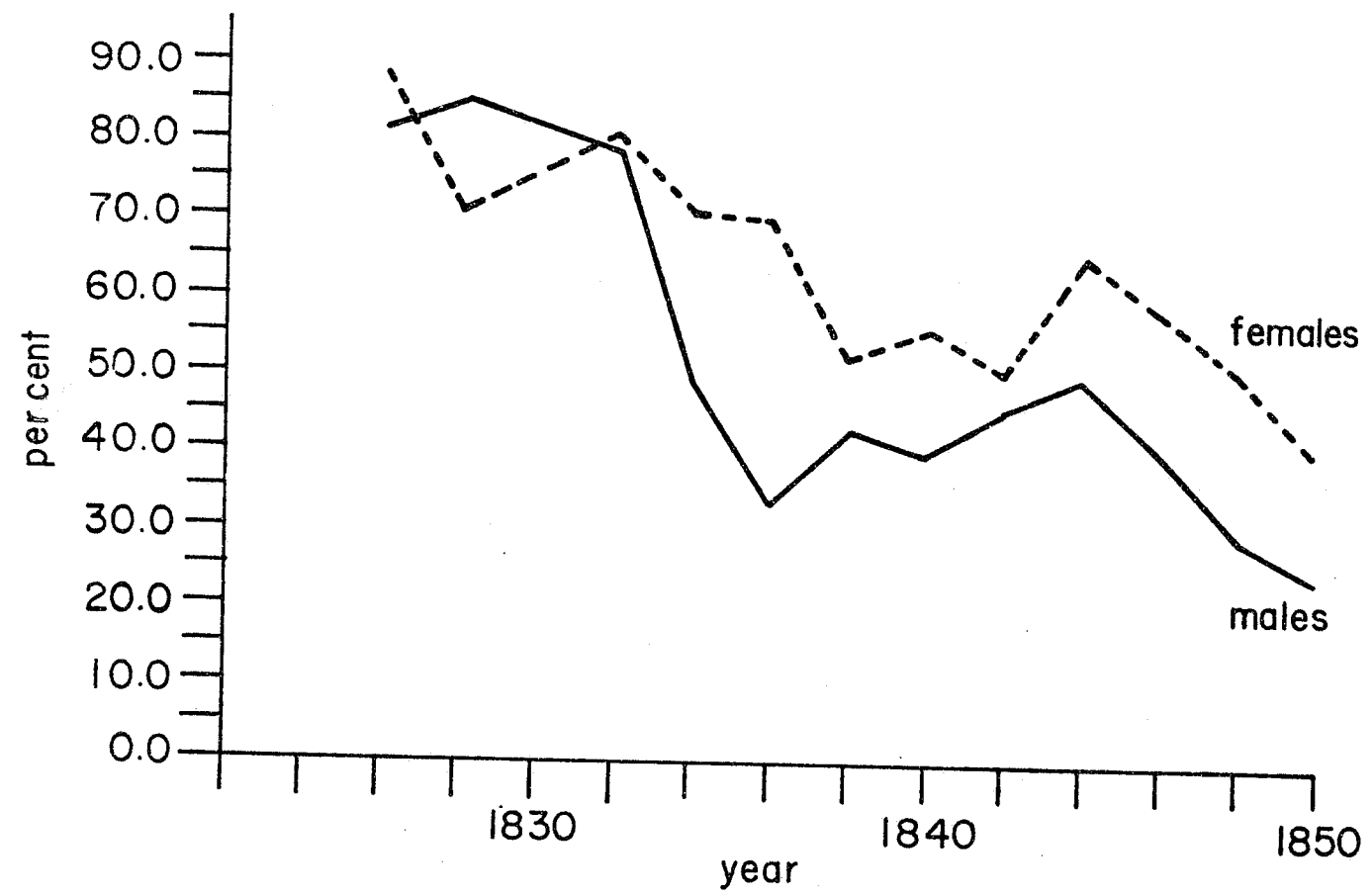


FIGURE 12: PERCENT CONVICTED OF ASSAULT AND BATTERY RECEIVING FINES OF \$2.00 OR LESS ACCORDING TO SEX IN THE POLICE COURT: 1826 - 1850.

the criminal courts to perform an expanded role in policing deviant behavior. Minor crime probably surged, but then declined as the criminal courts adapted to their expanded function. Moreover, as the criminal courts acquired legitimacy, citizens complained not simply about major and minor criminality but also about private disputes, which added considerably to the courts' burden.

The major changes in Boston's crime pattern over this 36 year period that meant most to the courts was the surge in the 1830s of juvenile crime and regulatory crime. Juveniles became the dominant group in serious property crime in the late 1830s, and businessmen became the single largest category of defendants in that decade. The appearance of juveniles in large numbers in the Municipal Court may have inspired John Augustus, who selected many of them as wards to reform. It may, therefore, have been a factor in the invention of probation, and the social service function of the criminal courts. Large numbers of businessmen in the courts, meant that defendants who had resources to contest criminal charges were extending the court and its facilities to the utmost. It was only a short step to the invention of plea bargaining and by 1850 a variety of high volume, minor offenses were regularly plea bargained in both the Police Court and the Municipal Court.

Historical studies of crime and criminal justice can provide a great service to modern criminologists and others interested in these problems for several reasons. Historical studies can help us study social change and reveal the connections between the affairs of men and the evolving social and political context. Historical studies can also help to identify the intellectual threads that tie us and the contemporary world to the past, showing thereby the extent to which current policies and institutions are both bound and inspired by our predecessors.

Historical studies can also reveal the sources of inventions like plea bargaining and help us to understand the purposes they served historically. It is important to gain some insight into their origins so that we can evaluate the social momentum that shapes us and our institutions. Through historical studies we can gain a perspective on our own world that is difficult to realize in any other way. Through historical studies we come to know ourselves better.

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