

The Right to Counsel: Criminal Prosecution in 19th Century London

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- A central policy concern is that we want criminal justice institutions that deter crime, respect public financing concerns, and apply equally to all.
- In the U.S. the right to counsel is embedded into the Constitution (6th Amendment).
- *Gideon v Wainwright* extended this to the guarantee of publicly-provided defense.
- In France, this was incorporated into the Napoleonic Code in 1808.
- In the U.K., this right was introduced in 1836.

- The impact of the right to have defensive representation has been basically unstudied.
- Past research has focused on the impact of pay increases on criminal justice outcomes.
- Or, has tried to compare private to publicly provided defense attorneys.
- Here, we consider the first introduction of the right to counsel in common law traditions.

- The primary courthouse in 18th and 19th Century London was known as the Old Bailey.
- All felony cases processed there.
- Each year the *Proceedings of the Old Bailey* were published providing transcripts of the trials.
- This corpus has recently been digitized and made public.
- Trial transcript from over 250,000 criminal trials available.

Criminal Prosecution Prior to 1836

- For felony crimes, the prosecution was performed by professional attorneys before a judge and jury.
- Defendants were required to defend themselves.
- In misdemeanor crimes, both the prosecution and defense was commonly represented by professional attorneys.
- The prevailing feeling was the the courtroom was lopsided and unfair.

Prosecution Prior to 1836

- As an illustration, a popular publication at the time, intended to be a guidebook, encouraged prosecuting counsel that they
- “ought to confine himself to a simple detail of the facts he expects to prove, because the prisoner has no opportunity of laying his case before the jury by his counsel; and even the privilege of stating circumstances, however dryly, in such order and direction as may tend most directly to a particular conclusion is, of itself, no small advantage accorded to the prosecutor, and certainly should be exercised with great forbearance and caution ... In cases of misdemeanour, the prosecuting counsel is not thus restricted, because here the defendant is allowed to make a real defence by his counsel and, therefore, here the counsel for the prosecutor may not only state his facts, but reason upon them, and anticipate any line of defence which his opponent may probably adopt” (Dickenson and Talfourd, 1829).

- "it appears to me ... the effect of allowing counsel in felonies would totally destroy the temper, moderation, and sobriety of the administration of criminal justice. The counsel for the prosecution would follow the bad example of the counsel for the prisoner. In a public contest the strict discharge of duty would yield to the fame of eloquence and the ardour of victory; the authority of the judge would be despised; the jury would be exposed to the corruptions of the worst arts of the forum (Grant, 1838)"
- "the generality of profession are of opinion that counsel ought not to be allowed to speak for a prisoner, and that the practice would be injurious to the accused" (quoted in Wood (2003))
- "lead to a trial of skill and the prosecutor, being the richer party, would generally succeed"
- a "ridiculous fiction is resorted to of the judge being counsel for the prisoner"

Prisoner's Counsel Act of 1836

- Allowed defense counsel to be present at trial.
- Address the jury.
- Make closing speeches
- Directly question witnesses.

Identification Strategy

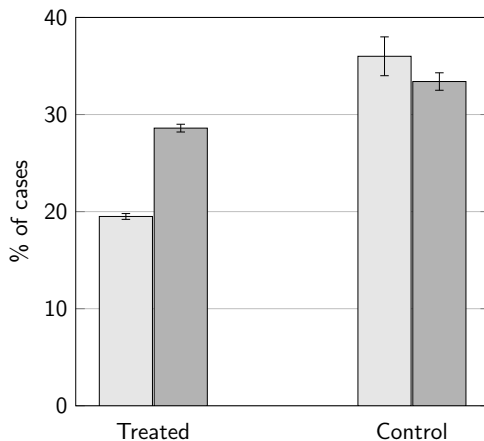
- Estimate a difference-in-difference model. Distinguish misdemeanor crimes from felony crimes.

$$Conviction_{icy} = \beta_1 Post_{iy} \times Treated_{ic} + \tau_{iy} + \kappa_{ic} + X_{icy}\beta + \epsilon_{icy}.$$

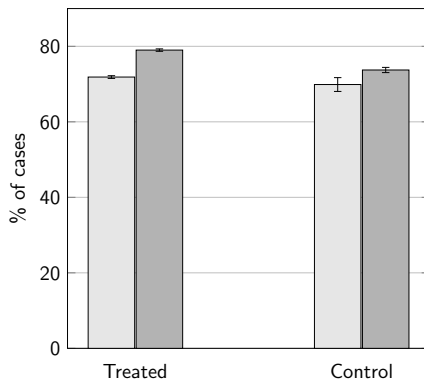
Identification Strategy

- We need to identify the “control” crimes - there is no formal list of misdemeanors
- We use as a control group of crimes those that we know were statutory misdemeanors and those crimes that never had death as a possible sanction (from the “Bloody Code”).
- This generates a list of 9 crimes we use as misdemeanors: assault, bigamy, indecent assault, libel, manslaughter, perjury, perverting justice, stealing from master, sodomy (and 32 treated crime types)

Use of Defense Counsel Before and After 1836



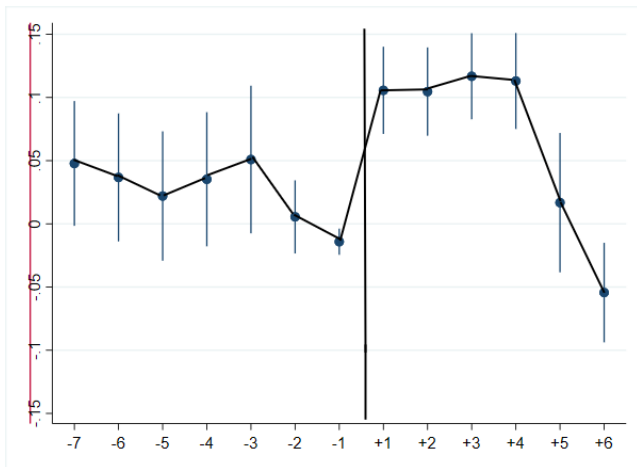
Convictions Before and After the 1836 Act



Results

	<i>Baseline</i>	<i>Alternative Time Windows</i>		
coverage:	±40 years	±30 years	±50 years	BH window
years:	[1796-1876]	[1806-1866]	[1786-1886]	[1803-1871]
	[1]	[2]	[3]	[4]
Post x Treated	0.0250 *** (0.0064)	0.0239 *** (0.0063)	0.0190 ** (0.0080)	0.0263 *** (0.0063)
Crime Fixed Effects?	Yes	Yes	Yes	Yes
Year Fixed Effects?	Yes	Yes	Yes	Yes
Controls?	Yes	Yes	Yes	Yes
R^2	0.514	0.554	0.458	0.528
AIC	59,165	38,097	86,860	48,981
N	135,365	117,229	153,046	125,315
# clusters	81	61	98	69
DV μ	0.7523	0.7617	0.7440	0.7583

Dynamic Effects



Alternative Explanations

- Past Research has shown a number of other patterns to convictions at the Old Bailey.
- ... police, capital punishment
- ... institutional change?

Police?

coverage:	± 40 years	± 40 years
years:	[1796-1876]	[1796-1876]
	[1]	[2]
Police x Treated	0.0131 (0.0098)	-0.0150 (0.0104)
Post x Treated		0.0317 *** (0.0060)
Year Fixed Effects	Yes	Yes
Crime Controls?	Yes	Yes
Controls?	Yes	Yes
R^2	0.529	0.529
AIC	54,754	54,744
clusters	81	81
N	135,363	135,363

Capital Punishment?

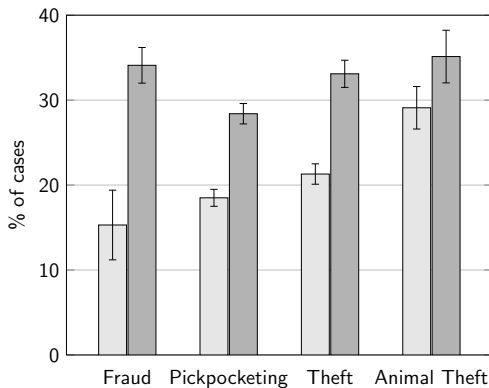
	<i>Baseline</i>	<i>Alternative Time Windows</i>		
coverage:	±40 years	±30 years	±50 years	BH window
years:	[1796-1876]	[1806-1866]	[1786-1886]	[1803-1871]
	[1]	[2]	[3]	[4]
Post x Treated x Not Death Eligible	-0.1150 (0.1328)	-0.1250 (0.1411)	-0.0409 (0.1522)	-0.1217 (0.1395)
Crime Fixed Effects?	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes
Controls?	Yes	Yes	Yes	Yes
R^2	0.529	0.569	0.475	0.544
AIC	54,735	34,040	81,995	44,677
clusters	81	61	98	69
N	135,363	117,299	153,046	125,315

Use of Defense Counsel?

	[1]	[2]
Post x Treated x Counsel		0.0249 (0.0199)
Post x Counsel		0.0659 *** (0.0213)
Treated x Counsel		-0.0251 (0.0179)
Post x Treated	0.0261 *** (0.0066)	0.0137 (0.0114)
Counsel	-0.0849 *** (0.0051)	-0.0354 * (0.0197)
Crime Fixed Effects?	Yes	Yes
Year Fixed Effects	Yes	Yes
Controls?	Yes	Yes
R^2	0.536	0.536
AIC	53,111	52,986

- We leverage the text of the trial transcript to gain information about how the courtroom changed.
- We use a popular topic modeling approach; Latent Dirichlet Allocation (LDA)
- Its goal is to uncover hidden “themes” within the text.
- We then explore the topics time series to identify breaks occurring “near” in time to the institutional change.

Before and After the 1836 Act



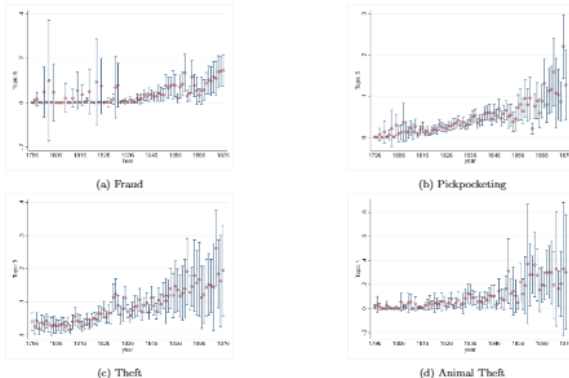
- Statistical model of writing:
- First, identify a probability distribution over a set of topics.
- Second, define each topic as a probability distribution over words in the dictionary.
- LDA reverses this process by finding the two distributions that best describe the text.
- LDA's output are these two probability distributions.

Timing Across Crimes

<i>Fraud</i>			<i>Pickpocketing</i>		
word	rank	avg rank (other 9)	word	rank	avg rank (other 9)
time	2	11.9	o'clock	5	17.2
day	17	23.4	night	15	102.0
never	18	15.3	time	16	81.2
last	41	39.78	morning	17	133.3
afterwards	50	44.6	never	23	69.4
date	51	342.8	day	30	115.0
months	52	56.1	minutes	31	61.2
since	53	101.9	months	33	121.4
now	54	98.3	afterwards	34	117.3
year	56	244.7	years	41	63.1
present	58	139.4	evening	47	75.7
remember	75	192.1	half-past	48	146.7
days	104	100.9	since	57	315.0
years	118	90.9	hour	87	166.1
times	133	127.4			
always	134	173.3			
avg rank	63.5	112.7	avg rank	34.6	113.2
<i>Theft</i>			<i>Animal Theft</i>		
word	rank	avg rank (other 9)	word	rank	avg rank (other 9)
o'clock	6	85.3	o'clock	8	9.8
time	8	57.6	day	11	30.7
day	14	72.8	morning	13	11.9
never	15	60.7	time	22	41.7
morning	16	29.2	afterwards	30	47.2
minutes	20	169.1	minutes	31	143.8
evening	31	82.4	night	40	27.0
years	36	47.3	years	41	50.7
afterwards	37	91.0	evening	45	58.2
night	39	78.4	months	49	103.0
hour	51	156.0	half-past	51	160.4
half-past	58	225.3	hour	64	145.4
months	60	86.6			
clock	70	432.8			
afternoon	88	216.0			

Timing Over Time

Figure 7: *Timing over Time*



The probability weights put on these topics (from the LDA process) for each observation are collapsed to the annual level. The means are depicted with the 95% confidence intervals. Only those observations where fraud is the crime are considered for the 80-year window; 1796 to 1876.

Break in Time Trends for *Timing*

crime:	Fraud [1]	Pickpocketing [2]	Theft [3]	Animal Theft [4]	Control Crimes [5]
constant ($\hat{\zeta}_0$)	0.00777 (1.30434)	-1.67518 *** (0.31958)	-3.09613 *** (0.39133)	-3.37149 *** (0.84928)	-0.04080 (1.55630)
Post ($\hat{\zeta}_1$)	-5.28525 *** (1.41390)	-1.58490 *** (0.43390)	-2.26303 *** (0.67407)	-7.47237 *** (1.40535)	-1.25927 (1.65438)
Year ($\hat{\zeta}_2$)	0.00001 (0.00072)	0.00093 *** (0.00081)	0.00173 *** (0.67407)	0.00188 *** (1.40535)	0.00004 (0.00085)
Post x Year ($\hat{\zeta}_3$)	0.00287 *** (0.00077)	0.01107 *** (0.00024)	0.00086 *** (0.00037)	0.00406 *** (0.00076)	0.00068 (0.00091)
R^2	0.0477	0.0383	0.0405	0.0968	0.0035
F	38.8 ***	144.1 ***	118.1 ***	76.4 ***	2.1 *
N	2328	10,864	8396	2141	1855

Conclusion

- Exploit an important institutional change that extended the right to counsel to felony crimes in a difference-in-difference specification.
- Show that this lead to more convictions.
- Effect cannot be explained by changes in policing, punishment severity, or the presences of defense counsel - - institutional change
- Use text of the trial transcripts to unpack how the courtroom changed.
- Using topic modeling, we present evidence that questions involving the timing of events increased in frequency.

Thanks!

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