‘Lurking’ and ‘loitering’: the genealogy of languages of police suspicion in Britain

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ABSTRACT

While the ideals of the police regulation of urban order in nineteenth-century Britain have received significant scholarly attention, there has been limited engagement with how this type of policing operated in practice. By examining for the first time the evolution and genealogy of ‘lurking’ and ‘loitering’, two legal terms that formed a prominent part of the police language of suspicion from the later eighteenth century, this article emphasises the critical role of this legal language in the exercise of police power over urban space. The late eighteenth and first half of the nineteenth centuries is revealed as a formative period in the development of anxieties around ordering the urban sphere, in which the legal categories ‘lurking’ and ‘loitering’ evoked powerful concerns. It argues that the police regulation of urban order by targeting the ‘suspicious characters’ who threatened it is a deep structure of policing, which merits further examination to understand deep-rooted police stereotyping practices.

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Introduction

During a trial at the Old Bailey in 1829, police officer William Henman stated of the defendant William Binley’s alleged accomplices: ‘I have seen them lurking about, not in the way a person would on business’.

On 29th March 2020, Marie Dinou was allegedly seen ‘loitering between platforms’ by officers at Newcastle Central Station, and was detained by British Transport Police on suspicion of breaching the restrictions imposed under the Coronavirus Act 2020 (Dearden 2020). In these two examples, police officers described behaviour they viewed as suspicious, and potentially criminal, as ‘lurking’ and ‘loitering’. This is behaviour that appeared out of place, without purpose, and contrary to the regular ordering of society. Separated by nearly 200 years and all the attendant social change that a long time span encompasses, the terms point to a resilient and deep-rooted policing structure. This article examines the evolution and genealogy of ‘lurking’ and ‘loitering’, and the implications of their usage for policing in historical and contemporary contexts. It examines the use of these terms in criminal justice legislation and by police officers to describe suspicious behaviour. Crucially, it asks two interconnected questions: why these terms and the behaviour they describe are an enduring part of the language of police suspicion, and what this shows about the police regulation of urban order.

As scholars have demonstrated, there is a significant and enduring concern with policing urban public space and regulating order in the city. From its earliest iterations, ‘policing’ related more broadly to social policy than purely law enforcement and was concerned with upholding order, particularly in the urban sphere (see Foucault 2009). Neocleous (2000) and Dodsworth (2019) showed...
that enforcing order on the streets was a crucial part of the ideology of eighteenth- and nineteenth-century policing. However, there has been limited engagement with how this policing operated in practice. While Lawrence (2017) examined the historical tradition of pre-emptive policing based on suspicion through an examination of the evolution of police powers, there has been no sustained examination of how guidance and legislation were translated into practice; how policing agents engaged with ‘suspicious characters’ and enforced order on the ground (Bland 2021). This article exposes a crucial part of this policing picture, examining regulating urban order through police officers’ use of a shared language of suspicion: ‘lurking’ and ‘loitering’. It explores how these legal terms acted as a framework for the exercise of police power and agency on London’s streets.

While scholars have revealed that the policing focus on ordering the urban sphere over at least the last two centuries has significant moral undertones, this article reveals an earlier, formative part of this narrative. In the later nineteenth century, for example, police attempts to regulate traditional working-class street recreations and employment, such as street selling, led to violence and conflicts between the communities and the police, and the mid-twentieth century policing of working-class youths in middle-class areas of cities reflected attempts to uphold standards of propriety (Cohen 1997, pp. 116–123). In the first half of the twentieth century, the police sought to create order by regulating the emerging motor traffic (Taylor 1999). Studies of late-twentieth century policing and municipal regulation demonstrate that policing on the streets was focussed on reproducing order and regulating urban space (Ericson 1982, Levi 2008). A crucial contemporary point of reference for regulating space is anti-social behaviour legislation, which arguably relabels ‘loiterers’ as those who exhibit anti-social behaviour; part of a longer history of attempts at policing behaviour (Burney 2009, Millie 2009). Finally, as the second opening quotation demonstrates, 2020–2021 have witnessed policing attempts to regulate the use of public space in the context of the Covid-19 pandemic. Extending this narrative back demonstrates practical policing attempts to reproduce order in urban public space from the later eighteenth century. While the forms of order have evolved in response to changing social conditions, there are clear continuities in policing attempts to impose moralised ideals based on middle- and upper-class visions of the proper ordering of society.

The behaviour described by ‘lurking’ and ‘loitering’ was a source of particular anxiety in the eighteenth- and nineteenth-century urban context because it threatened attempts to enforce order on the streets and to eradicate visible symbols of idle poverty. Social commentators conceived of the city as a body, through which pedestrians, vehicles and goods were expected efficiently to circulate (Daunton 2000, p. 5); this endures in modern conceptions of the ideal use of public space (Levi 2008). In this context, ‘lurking’ and ‘loitering’ were loaded words, implying that the individual so-described had a sinister or nefarious purpose, was attempting to hide themselves, or was idling without a legitimate purpose. The terms implied a disruption to proper order, and a threat to attempts at enforcing respectability among even the lowest classes in society. The term ‘loitering’, particularly in the form ‘loitering with intent to commit felony’, has considerable longevity as a legal term; first introduced in eighteenth-century vagrancy legislation, its legislative use continued in the Offences against the Person Act 1861 and it is still present in legislation relating to stalking and soliciting for prostitution (Policing and Crime Act 2009, Protection of Freedoms Act 2012). The use of ‘lurking’, by contrast, was fading by the mid-nineteenth century. The two terms are examined together here because they were used together in legislation and apparently interchangeably by members of the diverse range of officials responsible for law enforcement before and after the establishment of the Metropolitan Police in 1829. The term ‘policing agents’ is used to encompass the range of officials with law enforcement responsibilities in this period: including parish constables, watchmen and patrols, officers attached to magistrates’ courts, and Metropolitan and City of London police officers. This article emphasises substantial continuity in policing practices and use of language to regulate urban order, despite extensive policing reform.

Policing agents who used ‘lurking’ and ‘loitering’ to describe suspicious behaviour in eighteenth- and nineteenth-century London were using these legal terms to reinforce their power over those whom they policed. We can situate this language usage within critical discourse analysis, which
views discourse as ‘a form of social practice’ and as ‘socially constitutive as well as socially shaped’ (Fairclough et al. 2011, pp. 357–358). The distinctive social and political milieu of nineteenth-century Britain was host to a range of performative languages of social description, particularly those used to describe the underclass. Henry Mayhew, who surveyed the London poor in the mid-nineteenth century, characterised his subjects as belonging to a separate ‘race’ from members of respectable society. He described systematically ‘the varieties of street-folk’, their ‘habits, amusements, dealings, education, politics, and religion’ and ‘religious, moral, and intellectual degradation’ (Mayhew 1861: i, p. 6). Later nineteenth-century commentators characterised the poorest and most criminal section of society as the ‘residuum’ (Stedman Jones 1971, Welshman 2006). This article enhances our knowledge of historical languages of suspicion by examining ‘lurking’ and ‘loitering’ as part of a performative language used to reinforce the social inequalities between the police and their targets. This vocabulary characterised the otherwise innocuous behaviour of the ‘underclass’ in standing or waiting on the streets as deviant and, crucially, as a legitimate target of disciplinary attention. Highlighting the interplay between legal categories and the exercise of police power, this article reveals the translation of this legislative language into practical policing activities.

The article will start by establishing a framework for understanding the role of police officers who labelled behaviour as ‘lurking’ and ‘loitering’ in shaping and reinforcing perceptions of deviance and criminality. Subsequently, the research methodology will be briefly outlined. It will next discuss the wider usage of ‘lurking’ and ‘loitering’ in literature and historical newspapers to highlight why this behaviour was viewed as a particular source of concern for policing and then explore in detail how the terms were used in legislation and instructions for police to enforce order in urban space. Finally, it will examine cases where policing agents reported that they witnessed suspects ‘lurking’ or ‘loitering’ to analyse the nature of the behaviour described and what this demonstrates about the deep and enduring roots of regulating urban space as a policing priority.

**Proactive policing and shaping deviance**

Labelling theory highlights the role played by society in shaping deviance: as Becker argued, ‘social groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labelling them as outsiders’ (Becker 1963, p. 9). The social rules, however, are not enforced evenly, but discretion is exercised in selecting those who are categorised as deviant outsiders (Becker 1963, p. 13). As scholars have argued in the context of periods of anxiety about crime and moral panics, crime and deviance can be created and escalated through social reactions, rather than resulting from evidence of substantial criminal activity (Davis 1980, p. 191, Hall 2013, p. 2). Viewed within this framework, the use of language such as ‘lurking’ and ‘loitering’ in legislation and instructions for policing agents reflects the societal construction of certain behaviours as suspicious and potentially criminal.

However, while societal perceptions are important in developing the language of suspicion, we must recognise the key role played by the police in labelling behaviour as ‘lurking’ and ‘loitering’. As Neocleous (2000, p. 99) argued, ‘by definition the exercise of police discretion defines who is deviant in any social context and how that deviance is controlled’. Those habitually viewed by the police as deviant are referred to as ‘police property’ (Lee 1981): ‘low status, powerless groups whom the dominant majority see as problematic or distasteful’ (Reiner 2019, p. 175). By repeatedly targeting individuals from these groups, ‘people with certain characteristics are disproportionately questioned or arrested, leading to a vicious cycle of deviance amplification’ (Matza 1969, Young 1971, Reiner 2019, p. 173). While contemporary criminological studies provide a valuable conceptual framework for understanding the construction of deviance through the perennial police targeting of ‘police property’ and the derogatory terminology used by officers to describe their ‘property’ (Ericson 1982, Loftus 2007), there has previously been no sustained examination of how the police used legal categories such as ‘lurking’ and ‘loitering’ to label suspects as deviant.
In the nineteenth century, legislation and wider anxieties about poverty, vagrancy and habitual criminality focused police attention on the working classes, and particularly on the poorest sections of society (Neocleous 2000, p. 100). In Davis’s study of Jennings’ Buildings, a Kensington slum or ‘rookery’ demolished in 1873, she argued that ‘the Metropolitan Police concentrated their resources on those groups and individuals they could control most easily, because they already fitted contemporary stereotypes of the disreputable sections of society’ (Davis 1989, p. 68). Here this was the predominantly Irish poor and casual labourers who were residents of Jennings’ Buildings. She suggested that the vicious cycle of police targeting reinforced wider societal perceptions that Irish casual labourers were typically criminals, and in turn promoted growing hostility between the police and the targeted community (Davis 1989, p. 70). While Davis’s work focuses on the later nineteenth century, the evidence presented here reflects police targeting from the eighteenth century; it probably also took place earlier and is deeply embedded within police practice.

Davis drew a comparison with the policing of the African-Caribbean community of the Broadwater Farm Estate in Tottenham in the 1980s, where hostilities between the community and the police sparked rioting in 1985. Police targeting and stereotyping, therefore, is an enduring feature of policing, and plays a significant role in reinforcing wider societal perceptions of criminality. These policing practices were, and still are, part of class relations, used to reinforce social inequalities, and rooted within long-standing perceptions of urban ordering. The language and wider societal perceptions of criminality within which police officers operate affect policing practices, and those whom they choose to target. ‘Lurking’ and ‘loitering’ were the most distinctive of a range of terms used to characterise the behaviour of young men among the lower orders of society as potentially criminal, labelling these individuals as deviant.

Methodology

The research for this article represents a substantial historical analysis of the usage of ‘lurking’ and ‘loitering’. To examine the nuances and meanings of these terms outside criminal justice, keyword searching was undertaken in two key online databases: Eighteenth Century Collections Online (Gale 2020) for books and essays published in 1780, and Gale Primary Sources (Gale 2020), filtered separately for books and essays published in 1850 and for newspapers and periodicals published in 1780 and 1850. Eighty references to ‘lurking’ and eighty to ‘loitering’ from these sources in 1780 and 1850 were analysed in context. This evidence facilitated analysis of why the behaviour described as ‘lurking’ and ‘loitering’ was a particular and growing source of official concern.

To examine the policing usage of ‘lurking’ and ‘loitering’ in criminal trials, cases from the Old Bailey Proceedings were identified using the Old Bailey Proceedings Online by searching terms relating to types of police officer in combination with ‘lurking’ and ‘loitering’ (Hitchcock et al. 2018). Felony offences from the metropolitan area were tried at the Old Bailey, and the Proceedings provided qualitative accounts of all the trials that took place in this period.3 These records were supplemented through police court reports in historical newspapers, which provide qualitative accounts of the hearings at magistrates’ courts: including both trials for misdemeanours which were dealt with summarily by magistrates or at quarter sessions, and hearings for felonies that proceeded to trial at the Old Bailey. The pertinent cases were identified by examining all the police court reports in The Times and The Morning Post at five-year intervals between 1780 and 1850, and recording those that involved the police use of ‘lurking’ or ‘loitering’. This evidence provides for a qualitative analysis of this policing language and its implications for policing practices.

‘Lurking’ and ‘loitering’ in the eighteenth and nineteenth centuries

To understand how these terms evolved and capture why the behaviour described by legislation and policing agents as ‘lurking’ and ‘loitering’ was a source of police concern in this period, we will first examine the wider usage of these terms in this period. This section suggests that the precise
definition of ‘loitering’, associated specifically with idleness or waiting, meant that it endured in legislation, especially in the phrase ‘loitering with intent to commit felony’. In contrast, ‘lurking’ appears a more imprecise term, which was more commonly used than ‘loitering’ in a wide range of contexts in this period but has not survived in a criminal justice context. Both terms, however, were used to describe behaviour that was viewed as disruptive to the ideal regular ordering of the urban environment, and this is crucial to understanding how this behaviour came to be characterised in a criminal justice context as an area for policing action.

The Oxford English Dictionary suggests that ‘lurk’ and ‘loiter’ were first used at a similar time: the first usage of ‘lurk’ dates from c.1300 (Oxford University Press 2020b), and ‘loiter’ from c.1380 (Oxford University Press 2020a). The evidence from keyword searching in online databases implies that, in 1780 and 1850, ‘lurking’ was more commonly used than ‘loitering’ in literature and newspapers and periodicals. The GoogleBooks Ngram Viewer also shows that ‘lurking’ consistently appeared more commonly in published works than ‘loitering’ throughout the period (Google 2020). While ‘lurking’, as in current usage, typically had negative connotations in the historical examples identified, it was used only infrequently to describe the suspicious behaviour under examination here. In a rare example, a short story in The Ladies’ Cabinet of Fashion, Music and Romance (1850) described a young suitor as ‘always lurking round the castle’ of his love. The infrequent usage of ‘lurking’ to describe moving in a secretive or furtive manner outside the criminal justice context in this period probably accounts for its disappearance in legislation in the nineteenth century.

While it was rarely used to describe human behaviour, ‘lurking’ was commonly used in abstract contexts to describe dangerous or disruptive elements. For example, it was used in a medical context, referring to illness or disease ‘lurking’ in the body: Alexander’s Plain and Easy Directions for the Use of Harrogate Water (1780, p. 67) referred to the power of water from the natural springs in Harrogate to ‘eradicate all the lurking seeds of the distemper’ in the body. ‘Lurking’ was also used to describe the presence of negative emotions or ideas; in An Inquiry into the Principles of the Distribution of Wealth most Conducive to Human Happiness, authors Thompson and Pare (1850, p. 402) described how ‘there is lurking in the very constitution of man a source of evil’. These examples show that ‘lurking’ was widely understood as a verb with negative connotations, used to imply that the so-described object was threatening or hostile.

While ‘loitering’ was also used in various contexts, the examples from literature and newspapers show that its connection with the criminal justice context is more straightforward than ‘lurking’. The Oxford English Dictionary suggests that loitering was always associated with vagrancy, as ‘the word was probably introduced into England by foreign ‘loiterers’ or vagrants’, from Dutch origins (Oxford University Press 2020). This, therefore, probably explains its adoption into the language of criminal justice and particularly vagrancy legislation. While ‘loitering’, like ‘lurking’, was sometimes used in a metaphorical context, as in ‘loitering hours’ or the ‘loitering sun’, it was more typically used to describe human behaviour in waiting or idling, with connotations of laziness (Drummond 1780, p. 95, Jenyns 1780, p. 11).

Strikingly, loitering was associated with both the upper and lower orders of society. An article on the House of Commons referred to ‘a set of idle, lifeless, loitering, lounging, ill-informed Gentlemen at Westminster’ (Hampshire Chronicle 1780), while ‘a crowd of suppliants might at all times be seen loitering and losing their time’ outside country houses, waiting for alms (Manchester Times 1850). In both cases, loitering was associated with waiting or idling without gainful purpose; although for the poor, there appears some recognition that their lifestyle may have necessitated some loitering. Unlike ‘lurking’, ‘loitering’ did not necessarily have negative connotations and appeared a fairly neutral term. It was the context that gave it a negative slant: ‘loitering’ came to be viewed as criminal because it represented a behaviour that threatened the ideals of well-ordered streets and a prosperous capitalist society.

Those who wrote about movement on the urban streets in the nineteenth century conceptualised a well-ordered mass of pedestrians who walked purposefully on the right-hand side of the
pavement without ‘loitering’ (Joyce 2003, p. 226). In this context, the working classes were specifically encouraged to maintain proper circulation. An article about ‘Good Breeding’ in the Family Economist (1850, p. 28), a periodical ‘devoted to the Moral, Physical, and Domestic Improvement of the Industrious Classes’ described the behaviour of the well-behaved pedestrian, who ‘will not, whatever be his station, hinder and annoy his fellow pedestrians, by loitering or standing still in the middle of the footway’. This exhortation is probably based on an awareness that ‘loitering’ by members of the lower orders of society was particularly likely to be viewed as disruptive or potentially criminal by the authorities.

Such uses of ‘loitering’ were related to a wider contemporary perception of the importance of proper circulation to ensure the regular ordering of urban space. Public health movements urged that ‘courts and alleys should be opened up to circulation by driving new roads through the worst slums to bring air and the light of civilisation into their gloomy depths’; ‘arteries should be kept free of blockages or the city – like an individual – would suffer apoplexy’ (Daunton 2000, p. 5). The discourse on circulation and the city as a body can also be related to the use of ‘lurking’ in this period in a medical context to describe lingering disease or poison in the body. Alongside the health benefits, such urban improvements were connected with raising moral standards, and allowing the authorities, including the police, to ‘see’ the city (Kneale 1999, p. 334, Joyce 2003, p. 151). It was believed that the moral character of the inhabitants would be improved by living in open spaces where the lower orders could see the examples set by the middling and upper classes of society (Otter 2008, p. 72). Idleness, poverty and criminality were viewed as interconnected moral problems by eighteenth- and nineteenth-century commentators, who posited the idea of the ‘undeserving poor’ as those who were responsible through their own laziness and immorality for their poverty (Colquhoun 1796, Mayhew 1862). Reforming the physical environment, and an enhanced policing presence, were conceived as the common solutions to health, social and moral problems.

While commentators encouraged the proper circulation of pedestrians and vehicles on the streets, the police were expected to enforce this. As Andersson (2013, p. 90) wrote, a Metropolitan Police Constable’s ‘main task is to maintain the flow and remove any object that might obstruct it’. Constables had a range of measures at their disposal to remove obstructions, including vehicles, goods and street sellers. Policing circulation by asking individuals viewed as loitering to ‘move on’ was used by police constables as a ‘means of demonstrating their authority’ (Storch 1976, Andersson 2013, p. 90). The contemporary ideals of proper circulation were used, therefore, as a tool of police power to be wielded against those who were seen as disrupting the proper social order of the streets.

As this evidence has revealed, ‘lurking’ and ‘loitering’ were used in a variety of other contexts in this period, and were not exclusively descriptions of suspicious behaviour. In fact, ‘lurking’ was infrequently used to describe human behaviour, but did have clear negative connotations, and would have been readily understood as a sinister verb when used in criminal justice contexts. ‘Loitering’, in contrast, was typically used to describe individuals waiting or idling, and was not necessarily viewed as negative or potentially criminal without a specific context. Both terms were associated with the imagery of the city as a body, which needed to be free from ‘lurking’ disease and ‘loitering’ pedestrians. However, ‘loitering’ was probably adopted above ‘lurking’ into the later nineteenth century in a criminal justice context because it implied idle or aimless behaviour that was more explicitly threatening to the ideals of regular circulation on the urban streets. In addition, ‘lurking’ was a more common word in general usage, whereas ‘loitering’ had more specific connotations and was more suitable for co-option into a criminal justice context to describe specific behaviour. The period between 1780 and 1850, however, was a formative era, in which emerging anxieties about the connections between the idle poor and crime, and the imperative to regulate and order the streets of the city fostered the development of both ‘lurking’ and ‘loitering’ as powerful linguistic tools.
'Lurking' and 'loitering' in criminal justice

Now we will turn to a detailed examination of 'lurking' and 'loitering' in the criminal justice context, and the policing concerns that these terms reflect. Policing use and understanding of 'lurking' and 'loitering' derived from legislation and published instructions for different types of policing agents. As Neocleous (2000, p. 4) explained, in early modern understandings of policing as wider social policy, 'police was for the most part concerned not with criminal activity but with activities potentially damaging to communal good order'. While legislation on vagrancy had been evolving since the sixteenth century, the homeless and itinerant poor were a growing source of public and official anxiety, and a target of policing, in the eighteenth and early nineteenth centuries (Rogers 1991, p. 128). Disorderly behaviour and vagrancy were viewed as important targets partly because they were perceived as economic threats; everyone was expected to contribute financially to society (Weber 1930, Neocleous 2000, p. 17). This also had a moral slant, reflecting patriarchal attempts to reform the 'immoral behaviour' played out in the chaotic and disorderly urban streets (Dodsworth 2019, p. 157).

Vagrancy legislation indicated that policing agents should be proactive in arresting disorderly persons and those suspected of criminal activity, rather than just reacting to reported offences. The 1751/2 Disorderly Houses Act stated that:

all Constables, Beadles, and Watchmen, shall be, and are hereby authorised and required to apprehend and secure all suspicious persons they shall find lurking and loitering about the Streets, Alleys, Passages, or other Places within their respective Districts, at unseasonable Hours.

Here, 'lurking' and 'loitering' appear to refer to the same kind of behaviour. This suspicious activity is related to 'unseasonable Hours', presumably night-time, implying that this behaviour was undertaken outside of the normal hours for legitimate business activity. Policing order in urban space entailed regulating the movement of individuals by identifying those perceived to be behaving suspiciously.

In addition to their usage together, both 'lurking' and 'loitering' were used separately and in combination with other terms to describe suspicious behaviour that policing agents were expected to regulate in other instructional sources in the eighteenth and nineteenth centuries. Colquhoun's *A Treatise on the Functions and Duties of a Constable* (1803, pp. 11–12) stated that constables 'ought to use their utmost endeavours to discover whether any reputed thieves, idle or disorderly or suspicious characters, are residing in, or lurking about, their wards and districts'. He explained that often these 'suspicious persons' were found 'lurking about inn yards on the arrival of coaches, and about areas after dark, or lounging in squares, streets, lanes or passages' (Colquhoun 1803, p. 12). This reflects a subtle contrast, with 'lurking' associated with hiding in enclosed semi-public spaces, whereas 'looming' was associated with more open public spaces. Colquhoun suggested that suspicious behaviour was associated with those who did not appear to be going about lawful business, but were instead attempting to conceal themselves and their potentially criminal intentions. He expected constables to proactively investigate those whose behaviour was characterised as deviant in this way.

Policing agents were also directed to police those whom they saw 'lying' and 'laying' alongside 'loitering' in legislation and official instructions. Under the 1771 London Streets Act, watchmen were directed to apprehend 'disorderly persons loitering, wandering or misbehaving themselves'. The 1774 Westminster Watch Act, which set minimum standards for the Westminster parishes in terms of the number of watchmen, reflecting the growing concern in the eighteenth century with the dangers of crime at night, stated that watchmen were to apprehend 'all Persons lying or loitering in any Square, Street, Court, Lane, Mews, Yard, Alley, Passage, or Place'. In St Anne Westminster in 1791, a force of 16 'patrols' established to supplement the existing watchmen were ordered by the vestry to apprehend 'all Persons whom they may suspect of any evil Designs, or who are laying or loitering in the streets'. These directions for watchmen reflect their role in policing...
urban order, and the specific concerns that the majority of criminal and deviant behaviour took place at night time.

While the clear stated intention of the Metropolitan Police on its establishment in 1829 was the ‘prevention of crime’, Dodsworth (2019, p. 210) argued that the force’s focus was ‘as much about securing a civilised space as it was about preventing crime’. Storch (1977, p. 50) suggested that ‘some of the major functions and ongoing concerns of the Victorian police were the maintenance of order and decorum in all public spaces and the imposition of new standards of urban discipline’. These functions were solidified under the later 1839 Metropolitan Police Act, depicted by Inwood (1990, p. 130) as ‘a charter for public order, cleanliness and an imposition of respectable standards of behaviour on the streets of London’. This policing focus on public order was part of wider social change in this period: as Daunton (1983, p. 223) suggested, in the nineteenth century, ‘the collective space of the street created tensions as the informal street life collided with the desire to regulate and neutralise urban space’; this was an era in which housing reform sought to create private spaces for families, and their use of urban public space was regulated and controlled. The project of policing public order, therefore, was part of wider concerns for moral and physical reform in urban space in the nineteenth century, in which the police were cast in a central role.

Within this context of regulating urban space, each Metropolitan Police Constable was expected to arrest ‘all persons whom he shall find between sunset and the hour of eight o’clock in the forenoon, lying in any highway, yard, or other place, or loitering therein, and not giving a satisfactory account of themselves’.7 Once again, ‘loitering’ was associated with the night time, reflecting the idea that this behaviour was not part of legitimate business activity. While existing scholarship argues for a growing focus on policing public order in the mid-nineteenth century, it is striking that there were substantial continuities in language used to describe suspicious behaviour in instructions and legislation for different types of policing agents before and after the establishment of the Metropolitan Police in 1829. This reflects an enduring policing focus on regulating urban order and controlling public space. It also demonstrates clear continuities in the type of behaviour characterised as deviant and potentially criminal.

Despite the usage of both ‘lurking’ and ‘loitering’, alongside ‘lounging’, ‘lying’ and ‘laying’ in legislation and instructions, by the later nineteenth century and into the present day, only ‘loitering’ endured in this criminal justice context. The phrase ‘loitering with intent to commit felony’ was first used in the 1891 Penal Servitude Act, and was presumably developed from the references to persons identified as being ‘with intent to commit felony’ in vagrancy legislation from the late eighteenth and nineteenth centuries, in combination with the various references to ‘loitering’.8 While both ‘lurking’ and ‘loitering’ were used interchangeably in this period to characterise suspicious behaviour that policing agents were expected to be vigilant towards, as criminal justice legislation and policing language evolved and ‘lurking’ (and indeed ‘lounging’, ‘lying’ and ‘laying’) fell out of common usage, the negative and secretive connotations of ‘lurking’ were absorbed into ‘loitering’ and it took on an increasingly threatening and deviant slant. The behaviour described by these terms was characterised as posing a growing threat to the regular ordering of public space. The evidence from court cases demonstrates that policing agents adopted this language to justify their arrests and portray suspects as criminals as part of the policing project of controlling urban space.

‘Lurking’ and ‘loitering’ in criminal trials

The evidence presented here from trials enhances our understanding of the behaviour described by the terms ‘lurking’ and ‘loitering’ and how this was created as a source of concern for policing; crucially it explains how this language was used by policing agents to exercise power over urban space by creating and reinforcing contemporary stereotypes and perceptions of criminality. This policing language of suspicion derived from vagrancy legislation and instructions, which encouraged policing agents to investigate offences and make arrests based on suspicion. However, we do not have qualitative descriptions of most arrests under vagrancy legislation for this period, or for the
other police stops that did not result in arrests since detailed summary court records do not survive for this period. Instead, this analysis principally uses felony cases tried at the Old Bailey: 60 policing references to ‘lurking’ and 65 to ‘loitering’ as a cause for suspicion were identified in the Old Bailey Proceedings, 1780–1850. While the accounts in the Proceedings did not reproduce the exact words spoken by actors in court, but instead were written up by shorthand writers, scholars have argued that the use of language in the Proceedings is broadly reflective of the spoken language due to semantic differences between words attributed to different actors (Hitchcock 2017, pp. 5–8). It is highly likely, therefore, that ‘lurking’ and ‘loitering’ were indeed used by the policing agents at court. In addition to the cases from the Old Bailey, cases from police court reports in newspapers are also included in this analysis, with 14 of these referring to ‘lurking’ and six to ‘loitering’. These cases valuably supplement the Old Bailey cases, demonstrating policing agents’ usage of ‘lurking’ and ‘loitering’ to explain their arrests at different levels of the criminal justice system.

In these cases, the terms ‘lurking’ and ‘loitering’ were used in combination with other factors and evidence to describe proactive policing agents’ reasons for making arrests. Proactive policing, in this context, refers particularly to arrests based on suspicion that a suspect had recently, or was about to, commit an offence. Motivations for proactive policing included knowledge of the suspect and their character, other descriptions of suspicious behaviour, and, most commonly, evidence that the suspect was carrying goods, presumed to be stolen. Theft offences accounted for the majority of cases tried at the Old Bailey in this period, and for the vast majority of proactive policing cases, because thefts, above offences against the person or fraud offences, are most readily detected by policing agents. Illustrating how these factors were combined by policing agents to explain their arrests, constable William Lack stated at the trial of Richard Warren at the Old Bailey in 1807 that: ‘I saw the prisoner at the bar loitering about Mr Sack’s shop, I knew him to be a man of suspicious character; I watched him, I saw him make several attempts to take the quarter of lamb off the hook at the door; after making several attempts he took it off, he endeavoured to put it under his apron’. In this case, Lack watched Warren because he ‘knew him to be a man of suspicious character’ and saw him ‘loitering’; he lay in wait until he saw him steal a quarter of lamb from a shop, which he then tried to conceal. ‘Lurking’ or ‘loitering’ is generally not the only motivation for proactive policing practices, nor the only justification for an arrest. However, these terms, understood to denote potentially deviant behaviour, were clearly used by policing agents alongside other factors to construct a picture of criminality for judges, juries and magistrates.

It is evident from the cases from the Old Bailey Proceedings and police court reports in newspapers that ‘lurking’ or ‘loitering’ behaviour was typically connected with particular locations or neighbourhoods. For 41 ‘lurking’ cases and 46 ‘loitering’ cases in the Old Bailey Proceedings, the location was identified, and categorised according to type. For example, ‘lurking’ and ‘loitering’ both commonly took place by a shop or group of shops: 20 ‘loitering’ cases and 19 of ‘lurking’. As in the example of the trial of Richard Warren above, this reflects the frequency with which this behaviour related to theft from a shop. At the trial of Robert Penny in 1837, City of London Police Constable George Cheney reported that, ‘I saw the prisoner lurking about Mr Gash’s shop, in the Old Jewry – he saw me, and went up Cheapside – I knew him before, and followed him, and saw something in his pocket; he searched the suspect to discover a pair of boots stolen from the shop’. In an example of a suspect loitering outside more than one shop, officer Thomas Thompson stated at the trial of Thomas Jones in 1824 that he ‘saw the suspect loitering about several shops; lost sight of him for about ten minutes, and then saw him come back with a bundle’, and found that he had stolen a shirt from a line outside a shop window. Thus policing agents drew a clear connection between ‘loitering’ and ‘lurking’ and suspicion of theft or potential theft from shops.

While both terms were used in conjunction with a street or road, ‘loitering’ was much more commonly associated with thoroughfares than ‘lurking’. The suspect/s were reportedly ‘loitering about’ a street or streets in 16 cases, compared with 8 ‘lurking’ cases. For example, Patrol Henry Barnett apprehended Henry Symmonds for theft in 1788 and stated his trial that ‘I apprehended the prisoner about one in the morning; I saw him loitering about in Oxford-road; I did not like the looks of him’.
The Morning Post (1810) reported that two unnamed defendants were charged at Bow Street Magistrates’ Court with ‘being reputed thieves, and loitering about the avenues of the Theatre, for the purpose of picking pockets’; an example of a specific charge for loitering under vagrancy legislation. This stronger association between ‘loitering’ and the streets reflects the fact that loitering was specifically conceptualised as a behaviour that was contrary to maintaining good order and the regular circulation of individuals in the thoroughfares of the city. By asserting that these individuals were loitering in the streets, these policing agents were presenting this behaviour as a suspicious disruption to the proper order of the city.

While ‘loitering’ and ‘lurking’ were mainly associated with specific places such as streets, shops or houses, individuals were also described in more unusual contexts. For example, policeman John Cardy reported at the trial of John Payne at the Old Bailey in 1840 that he witnessed the defendant ‘lurking about the horse and cart, leaning over the pales looking into the yard – I knew him to be a stranger, and had suspicion’, and he later saw Payne returning carrying a stolen horse-cloth under his arm.14 ‘Loitering about’ was not specific to place: policing agents described suspected pickpockets, for example, as ‘loitering about a mob of people’, as Police Constable George Kemp did at the trial of John Osborne in 1836.15 These cases demonstrate that policing agents often clarified their usage of ‘lurking’ and ‘loitering’ by relating these seemingly vague terms to particular locations. This was used to connect this behaviour with the location of the alleged offence, and to reinforce the perception that the defendants’ behaviour was a deviant threat to the regular ordering of respectable urban society.

Alongside the spatial dimensions of ‘lurking’ and ‘loitering’, the policing of this behaviour had a significant temporal dimension. Proactive policing agents disproportionately sought out those whom they perceived to be behaving suspiciously in the evenings and at night, reflecting the wider policing project of asserting order over urban space. These policing agents were specifically responding to instructions and wider societal perceptions about the enhanced danger of crime at night-time, and indeed their propensity to make more arrests at night-time reinforced these wider concerns. Considerable policing provision was focussed on the dangers of night-crime; watchmen patrolled the streets of the city overnight, and on the establishment of the Metropolitan Police, two thirds of the whole force was devoted to night-time patrolling (Durston 2012, p. 95). Beyond the specific focus on the night, contemporary commentators argued that there was a particularly high incidence of crime in the evenings. Before the Select Committee on the Police of the Metropolis (1828, p. 89), William Wadham Cope, City Marshal, was asked ‘are there any particular circumstances or times in which they [offences] are more frequently committed than formerly?’, and replied that ‘I think it is done early in the morning, and perhaps towards five or six o’clock in the evening’. Richard Birnie, chief magistrate at Bow Street, stated before the same Select Committee that juvenile delinquents committed depredations ‘principally’ ‘in the dusk of the evening, at the play-houses, and at places of public resort’ (Select Committee on the Police of the Metropolis 1828, p. 35).

These anxieties about crime in the evenings were undoubtedly reinforced, and even fuelled by, the practices of proactive policing agents. Among the cases involving ‘lurking’ and ‘loitering’ under analysis here, there is a clear tendency towards evening arrests: 55% of ‘loitering’ cases and 47% of ‘lurking’ cases with a reference to the time of arrest took place between 6pm and 10pm. This reinforces the idea that ‘lurking’ and ‘loitering’ related to specific behaviours, which were heavily targeted by proactive policing agents at a particular time of day. Based on witnesses’ references to their daily activities in the Old Bailey Proceedings, Voth (1998, p. 33) suggested that, on average, the working day finished at around 7pm in London in 1800. Policing agents targeted suspicious persons around this time, portraying their ‘lurking’ and ‘loitering’ behaviour as contrasting with those who legitimately used the streets for their business activities during the day. This speaks to the strengthening premise that the streets were no longer an appropriate space for working-class recreation and socialising, which was promoted through the increasing regulation of urban public spaces and social life in this period (Daunton 1983). These proactive policing agents were part of
a wider project of policing urban order, attempting to order and control urban street life according to elite standards of propriety.

Individual policing agents made significant use of the terms ‘lurking’ and ‘loitering’, reflecting their engagement with the project of policing order on the streets and reinforcing wider perceptions of criminality and deviance. To highlight the role played by individual policing agents, we can identify one particularly proactive policing agent who appeared in eight ‘loitering’ and three ‘lurking’ cases from the Old Bailey, and one ‘lurking’ case reported in *The Times* from Hatton Garden Police Court. This was Thomas Thompson, who variously described himself as a ‘patrol’, an ‘officer’ and a ‘constable’, in cases dating from between 1815 and 1824. Thompson’s use of different titles reflects in part the ambiguities in descriptors for types of policing agent before the establishment of the Metropolitan Police, and probably also in part his own movement between different roles, as he progressed from a patrol to an officer and constable. We can be fairly certain that this is the same individual, as the cases that he was involved with place him in a small area around Clerkenwell and the north-eastern edges of the City of London.

Thompson’s descriptions of suspects ‘lurking’ and ‘loitering’ are supported by his knowledge of the area he policed, and particularly his knowledge of local ‘suspicious characters’; he used these terms to justify his investigation of those he suspected of criminal activity but for whom he lacked concrete evidence of wrongdoing. At the trial of John Hodges and John Allcock in 1815, he stated that ‘I had known Allcock to be a suspicious character’, and he witnessed the two defendants ‘loitering about every shop window’ as they made their way down St John Street in Clerkenwell, making two references to their ‘loitering’. In this account, Thompson implied that he targeted Allcock for specific observation because he viewed him as a ‘suspicious character’, reflecting police targeting practices. At the trial of Samuel Hyland in 1817, he stated that he saw the defendant with two others and ‘followed them up the Strand, as I knew them before’. He subsequently saw Hyland ‘loitering’ about a shop with a coat that he believed to be stolen and apprehended him. In these cases, Thompson used the term ‘loitering’, alongside assertions of his knowledge of the defendants and allegations about their character, to frame his accounts of suspicious and criminal behaviour.

Similarly it was reported in *The Times* (1814) that, in the examination of Lydia Case at Hatton Garden Police Court, Thompson ‘stated that he had seen prisoner in company with a man, for several evenings, lurking about rent shops in the neighbourhood’. Here ‘lurking’ was used by Thompson to explain his suspicion of Case, and to provide context for his allegation that she stole two parcels from a shop. It is clear from Thompson’s appearance in a high proportion of proactive cases involving ‘lurking’ and ‘loitering’ that proactive policing based on suspicion was a key part of his policing strategy, and that he was an active contributor to the project of policing public order. His example also demonstrates the critical role that individual police officers played in reinforcing perceptions of criminality through their use of language.

To sum up, the terms ‘lurking’ and ‘loitering’ were used by policing agents to describe the behaviour of suspects that they identified as suspicious, as reported in the *Old Bailey Proceedings* and police court reports in newspapers. This analysis of these terms in context shows that the suspects and their behaviour were portrayed as threatening elite ideals of well-ordered streets. ‘Loitering’ was especially closely associated with thoroughfares, and was constructed as an activity that interrupted the regular circulation of pedestrians and vehicles. Proactive policing agents targeted suspects whom they described as ‘lurking’ and ‘loitering’ in the evening, often after dark, to suggest that their activities were not legitimate business activities during the standard working day and to regulate the use of the streets, particularly by the lower classes who traditionally had recourse to public spaces for recreation. These policing agents also used their wider knowledge and observation of those they viewed as suspicious to justify their arrests and portray defendants as criminals to judges and juries.
Conclusion

‘Lurking’ and ‘loitering’ were powerful components of a shared language of suspicion, transmitted through legislation and instructions for policing agents into the language of policing agents themselves. Analysing the genealogy of these terms has revealed that the behaviour described as ‘lurking’ and ‘loitering’ was constructed as criminal because it was viewed as a disruption to the ideals of regular, ordered streets, where pedestrians and vehicles were expected to circulate purposefully. The concern for orderly streets was viewed as a wider social and moral problem, fuelled by anxieties about the interconnected relationships between poverty, idleness and criminality. Fears of a ‘criminal class’, believed to be responsible for the majority of criminal activity and drawn from the poorest parts of society, were emerging in this period. The problematisation of the behaviour characterised by ‘lurking’ and ‘loitering’ reflects a governmental principle, developing in this period, that public spaces were not for recreation or socialising, but should be passed through in a purposeful manner. This moralisation of public space usage was part of a wider shift in the ways in which city-dwellers interacted with their fellow residents in the nineteenth century, characterised by Sennett (1977) as the shift from ‘public man’ to ‘private man’. ‘Lurking’ and ‘loitering’, therefore, became part of a framework through which space was to be regulated in the urban sphere in the modern era. As the opening example in this article demonstrated in the context of policing the pandemic (Dearden 2020), ‘loitering’ is still used today by police officers to describe suspicious and criminal behaviour. Moreover, policing scholars have found clear continuities in the type of behaviour regarded as suspicious. Quinton (2009, p. 143), for example, showed that the phrase ‘hanging about’ (behaving apparently aimlessly) was commonly cited by police officers as grounds for investigating young people based on suspicion of criminal intent or activity.

The police project of regulating urban space by identifying those deemed disruptive and potentially criminal, and attempting to remove them from the streets, has deep historical roots. We can assume that the policing agents examined here probably encountered many different individuals waiting or standing on the streets of the city, and they exercised discretion to investigate, watch and apprehend only some of them: in so doing, they created and perpetuated deviance. By exercising power over those they designated as ‘police property’, their allegations created and reinforced wider perceptions of criminality and criminal stereotypes. The long view of policing practices reveals that the stereotypes and deep-rooted perceptions that inform this disproportionate policing focus originate as part of the historical perception that poverty and criminality are connected, and that those who, through poverty or lack of opportunity, spend their recreation time on the streets rather than in private spaces, are likely to be capable of criminality. Language continues to play an important role in asserting police power over those viewed as ‘police property’: ethnographic research on policing in different national contexts has revealed police officers use terms such as ‘scrotes’ (Loftus 2007, p. 193) and ‘pukers’ (Ericson 1982, p. 138) to establish their social distance from, and perceived superiority over, a particular subset of poor young men. The use of these terms, and the enduring policing focus on suspects ‘hanging about’ or ‘loitering’, emphasises the continued power of police language in characterising those of lower socio-economic status as potentially criminal.

In contemporary Britain, black and ethnic minority communities are dominant and contentious targets of police suspicion, disproportionately targeted by police stop and search practices (Quinton 2015). Individuals from these communities, through structural inequalities in employment, education and living situations, are seen by scholars as ‘available’ for targeted policing practices, perpetuating the cycle (MVA and Miller 2000, Waddington et al. 2004, Bowling and Phillips 2007, p. 946). Stop and search practices have been found to be largely ineffective at deterring or preventing crime (Tiratelli et al. 2018). Their continued use reflects in part the enduring way in which the police act for the middle and upper classes of society to enforce their ideals on the lower orders. Scholars have suggested that repeated stops and searches contribute to processes of stigmatisation and criminalisation among targeted groups, leading to disenfranchisement, social exclusion and loss of trust in
the police (Bowling and Philips 2007, p. 959, Bradford 2017, Reiner 2019, p. 173). The current police use of stop and search, therefore, is not only ineffectual, but hugely damaging. Recognising the deep structure of such targeted policing practices suggests that we need a thorough overhaul of these police powers to provide for new, more effective community-led strategies.

In the context of the Covid-19 pandemic, we have witnessed unprecedented peacetime controls over the use of public space, with emergency legislation providing police officers with powers to control the movement of citizens (O’Sullivan 2020). On the surface, this has reflected some changes in police targeting strategies, as individuals from all classes have been subject to policing attempts to control their movement and use of public space. However, as in other ways, the crisis has reinforced wider social inequalities. The use of stop and search powers in London increased during the spring 2020 lockdown, with declining proportions of stops resulting in arrests, and these powers continue to disproportionately affect the same communities: young black men in London were on average 19 times more likely to be stopped and searched between July and September 2020 compared with the whole population (Ashby 2020, p. 5). While we have not yet seen or fully understood the implications of the pandemic response for policing and society, it is clear that, even in these new circumstances, deep-rooted police targeting practices continue to affect particular communities more heavily than others.

Addressing these powerful deep structures of policing and their implications for targeted communities is challenging, but imperative. Strategies here include ongoing efforts to provide for diversity within police forces, improved education and training for police officers and working with grass-roots community groups to improve police-public relations and devise new policing strategies with the investment of marginalised groups. First, however, if we want to unpick problematic relationships between police and communities who are, or view themselves as, unfair targets of policing, we need to recognise that regulating and reproducing the dominant social order is a deep structure of policing, firmly embedded in policing practices.

With the contemporary impetus for recognising the impact of history on today’s society and its structural inequalities, perhaps we can be optimistic that understanding the historically entrenched nature of targeted policing practices will provide the foundations of a new vision of policing that provides legitimate and consensual policing for all.

Notes

1. Old Bailey Proceedings Online (OBPO), December 1829, trial of William Binley (t18291203-74).
2. ‘Loitering with intent to commit felony’ was removed from the statute book in 1981.
3. See Emsley et al. (2018) for more information about the Proceedings.
4. 28 statutes on vagrancy were passed between 1700 and 1824.
5. See Shoemaker (2007) for an analysis of eighteenth-century London street life.
6. Westminster City Archives: O452/21, St Anne Westminster, Orders and Regulations of Evening Patrols, 1791.
7. The National Archives: MEPO 8/1, Instructions to the Force, p. 56.
8. The phrase ‘with intent to commit felony’ is first in 1792 Middlesex Justices Act.
9. See OBPO ‘Statistics’: theft offences accounted for 89% of all Old Bailey cases, 1780–1850; among proactive policing cases, theft offences accounted for 96% of cases.
10. OBPO, December 1807, trial of Richard Warren (t18071202-40).
11. OBPO, April 1837, trial of Robert Penny (t18370403-1090).
12. OBPO, January 1824, trial of Thomas Jones (t18240114-175).
13. OBPO, January 1788, trial of Henry Symmonds (t17880109-21).
14. OBPO, October 1840, trial of John Payne (t18401019-2658).
15. OBPO, May 1836, trial of John Osborne (t18360509-1226).
16. OBPO, February 1815, trial of John Hodges and John Alcock (t18150215-88): a ‘patrole’; OBPO, April 1817, trial of William Smith (t18170416-163): an ‘officer’; OBPO, July 1817, trial of George Watson (t18170702-49): a ‘constable’.
17. OBPO, February 1815, trial of John Hodges and John Alcock (t18150215-88).
18. OBPO, October 1817, trial of Samuel Hyland (t18171029-75).
19. For example, see Badshah (2020).
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