

**BODIES  
PUBLIC  
A  
CITY  
E  
S**

Bodies Public, City Spaces: Becoming Modern Victoria, British Columbia, 1871-1901

by

Lisa Helps  
B.A. University of Victoria, 2002

A thesis submitted in partial fulfillment of  
the requirement of the degree of

Master of Arts

in the Department of History

© Lisa Helps, 2005  
University of Victoria

All rights reserved. This work may not be reproduced in whole or in part, by photocopy  
or other means, without the permission of the author.

Supervisors: Peter Baskerville and Elizabeth Vibert

### **Abstract**

This work is set in Victoria, a West Coast Canadian colonial city in the last three decades of the nineteenth century. It is an enquiry into the enterprise of city building in this period through the lens of the local police court. Taking as a starting point the idea that bodies and spaces are historical and thus incomplete processes rather than objects of historical study, I examine the making of the public – both people and place – through measuring the regulation of bodies and spaces. I argue that the city's public as well as bodies and spaces were discursively marked and materially made through the convergence of particular material and ideological conditions on the streets, in the police courtroom, the jail, and the chambers of City Council.

**Table of Contents**

Abstract	ii
Table of Contents	iii
List of Tables	iv
List of Figures	v
Acknowledgements	vi
Dedication	vii
Introduction: Mapping the Vagrant Body	1
Chapter One: City Building	22
Chapter Two: Building the City Public	44
Chapter Three: "Until He Is Ironed to Satisfaction"	80
Diffractions: Reconsidering Bodies Public City Spaces	115
Appendices	120
Bibliography	126

## **List of Tables**

### ***Chapter Two***

Table 2.1 Population of Victoria by race	48
Table 2.2 Most Frequent Embodied Infractions of Public Space	56
Table 2.3 First Nations Men Most Frequent Embodied Infractions of Public Space	57
Table 2.4 First Nations Women Most Frequent Embodied Infractions of Public Space	57
Table 2.5 Non-First Nations Men Most Frequent Embodied Infractions of Public Space	57
Table 2.6 Non-First Nations Women Most Frequent Embodied Infractions of Public Space	58
Table 2.7 Frequency of Total Embodied Infractions by Calendar Month	62

### ***Chapter Three***

Table 3.1 Fines Paid by Keepers and Inmates of Houses of Ill-Fame for Available Years	84
Table 3.2 Sentences for Vagrancy, 1889-1901	86
Table 3.3 First Nations Men Jails Sentences Served by Full Year, 1890-1901	90
Table 3.4 Non-First Nations Men Jails Sentences Served by Full Year, 1890-1901	90
Table 3.5 First Nations Women Jails Sentences Served by Full Year, 1890-1901	91
Table 3.6 Non-First Nations Women Jails Sentences Served by Full Year, 1890-1901	92
Table 3.7 Hard Labour by Gender and Race 1890-1892	103
Table 3.8 Hard Labour by Gender and Race 1899-1901	103
Table 3.9 Embodied Infractions as Percentage of Total Police Court Charges, 1871-1901	106

**List of Figures*****Chapter 1***

Figure 1.1 Victoria Police Department Circa 1900 38

***Chapter 2***

Figure 2.1 Charges Against First Nations and Non-First Nations Men 52

Figure 2.2 Charges Against First Nations and Non-First Nations Women 53

Figure 2.3 Charges for Vagrancy by Year, 1871-1901 68

Figure 2.4 Charges for Prostitution, 1871-1901 73

***Chapter 3***

Figure 3.1 Charges for Prostitution, 1871-1901 83

Figure 3.2 Food Rations for Prisoners with Short Term and Long Term  
Hard Labour 95

## Acknowledgements

I wish to thank the following people for making this work possible, and, what is more, for not making it feel like "work" at all: Carl, Les, Ethel and John for keeping me "secure" at the Provincial Archives. All the archivists and retrievals folk at the Provincial Archives for making the archives a welcome and FUN place to do research and for putting up with my multiplicity of requests. Constable Jonathan Sheldan of the Victoria City Police for excitedly sharing what he knows about the history of the force. Carey Pallister at the Victoria City Archives for allowing me to pick her brain on all matters of local history over sushi lunches. Nancy Parker for writing a brilliant thesis in 1987 at the University of Victoria that has provided me with both information and inspiration. Members of the Gender History Collective at the University of Victoria for creating spaces to bounce ideas around, for imagining lines of flight between all of our work, and for being enthusiastic beer drinking companions. The University of Victoria Faculty of Graduate Studies, the Department of History, and the Social Sciences and Humanities Research Council for generous financial support. Karen McIvor, Karen Hickton, Eileen Zapshala, and Jeannie Drew for making the department a warm, friendly and supportive place. The folks on the Fernwood Community Centre Society Board of Directors who allowed me a space to put theory into practice. Angus McLaren, for asking provocative questions and for very careful attention to my work. My supervisors, Elizabeth Vibert and Peter Baskerville for patience, humour, encouragement, and many, many careful reads, insightful suggestions, and kind words. My good friends – both near and far – simply for being. Grambo, for being a stellar grandmother as well as a fantastic research assistant. My sister, Anthea, for asking questions, and lots of them. Mom and Dad for believing in me and being proud no matter how far-fetched my ideas/ways of being might seem. My love Annalee Lepp for making *every day* a laughter-filled journey and a precious gift. And finally, the ocean for sustaining me, and the trees upon which these words are written.

for Linden et al.

---

## INTRODUCTION

---

### **Mapping the Vagrant Body**

"Hey are those washrooms open again," I asked, noticing him coming from the direction of the public washrooms here in City Hall square.

"No, they're not going to open them. There was someone lying down on the ground shooting up and the maintenance guy said there were too many needles. I'm a junkie. Been a junkie since I was fifteen but after I'm done you'd never know that I've been there."

I just met Linden. "My name is rebirth," he said, "the Linden tree stands for rebirth. My mom named me after US president Lynden Johnson though." Forty-seven years old, self-professed junkie and alcoholic. He's had six kids, but I couldn't really discern from our conversation how many are still alive, and a wife M.J. Mary Jo. She's pregnant. She beats him up from time to time but he can take it. "When I said for better or worse I meant it ... it takes a long time to get to know someone."

"Do you work there?" gesturing at the Victoria City Archives.

"For now," I replied. "

"What are you working on?"

"How the police treated people who were drunk in the streets, screaming, that kind of thing – in the late nineteenth century."

"Up until now?" he asked, breathing vodka/whiskey/beer fumes in my direction. "'Cause they have those records too, they just might not let you see them ... Hey did you know that's where the old jail was, over there ... Last guy they put in the hole stood in water up to his knees the entire time."

"Yeah, I think it was pretty harsh from what I've read," I said.

"I'm Linden," he said offering his hand, "and that's M.J. Mary Jo over there."

"Lisa," I replied, extending mine. "I'll see you around eh?"

"I'm always here."

One must only wander through the streets of any major Canadian city to see that Linden is right: he and others like him are always here. Winter, spring, summer, and fall,

reaching into garbage cans for five-cent pop bottles, congregated in city green spaces, selling *Street Newz* on the corner, sitting on Douglas Street, on Yonge Street, on rue Ste-Catherine attempting to make contact with the averted eyes of passersby, "Spare any change today?" And most of us, perhaps, walk on, stepping over outstretched legs, around dirty bundles, bags and shopping carts, past people curled, asleep in doorways, steering clear of the homeless bodies. My question – as I step – is *have* these bodies always been here? If we were to have traversed the streets of nineteenth-century Victoria, British Columbia, would we have encountered them? Do the homeless, their bodies, and the public space, to which they lay claim have a history? Samira Kawash, who examines corporeality and subjectivity in terms of the political and theoretical question of security, argues that "the homeless body does not refer to an original body, a body outside history or culture" nor is the "homeless body" the "same thing as the homeless person or the human body that homeless people necessarily possess or inhabit. Rather the homeless body emerges as a particular mode of corporeality in contingent circumstances through which the public struggles to define itself as distinct and whole."<sup>1</sup> It is precisely the history of this struggle and the emergence of specific bodies and a specific public in late nineteenth-century Victoria that I desire to explore.

Scholars and activists in North America, working in a multiplicity of disciplines and for a wide range of organizations have written a great deal about homelessness since the early 1990s, so much so that the topic has become what historian Elaine Abelson calls a "growth industry."<sup>2</sup> Similarly, since the 1970s, and more recently in the Canadian context, historians have studied vagrancy and have sought to understand the ways in which the poor, the homeless, and those without work or socially acceptable means of subsistence have been treated in different times and places in the past. Despite the proliferation of work under both of these rubrics, scholars have made little attempt, except in very broad strokes, to investigate when vagrancy "ended" and homelessness "began." One notable exception is political scientist Leonard C. Feldman's *Citizens Without Shelter: Homelessness, Democracy and Political Exclusion*, which he begins by examining

---

<sup>1</sup> Samira Kawash, "The Homeless Body," *Public Culture* 10.2 (1998): 334, 324.

<sup>2</sup> Elaine Abelson, "Homeless in America," *Journal of Urban History* 25.2 (January 1999): 258.

the shift from vagrancy laws to contemporary anti-homeless legislation in the American context. Feldman argues that there are both continuities and discontinuities between prohibitions against vagrancy dating back to early modern England, and current anti-homeless practices in the United States. Employing a Foucauldian genealogical approach, he briefly outlines vagrancy statutes in both British and American contexts, which he argues focused on curing idleness and preventing future criminality. He wonders, however, as do I, if vagrancy/homelessness is "really the *same* threat across societies and historical periods? Is it really the *same* animus or anxiety motivating efforts at social control?"<sup>3</sup> He maintains that vagrancy laws and contemporary anti-homeless legislation must both be understood in terms of "historically contingent constructions of the public sphere."<sup>4</sup> In his analysis, there has been a shift "in the very constitution of the public sphere: from the productive public sphere and its preoccupation with idleness to the consumptive public sphere and its preoccupation with aesthetic appearance."<sup>5</sup> Laying aside for a moment the problem with Feldman's approach of examining production and consumption as separate entities rather than as two sides of the same capitalist coin, the more poignant issue, from a historical perspective, is *when* did this shift begin to take place? Although not tackling this question directly, Feldman appears to suggest that since 1972 when the United States Supreme Court invalidated vagrancy legislation as being "unconstitutionally vague,"<sup>6</sup> a "specifically post-industrial logic has emerged" which is concerned with "the exclusion of the displaced poor from consumptive public spaces."<sup>7</sup> He points to Seattle's 1993 sidewalk ordinance to illustrate this phenomenon, which, he asserts, was enacted by City Council, with the support of business leaders, to deal with the problem of obstruction. According to Feldman, the homeless street-dweller and the panhandler are "viewed as physical blockages preventing the achievement of a unified public space in which consumer goods and consumers move unobstructed."<sup>8</sup>

---

<sup>3</sup> Leonard C. Feldman, *Citizens Without Shelter: Homelessness, Democracy and Political Exclusion* (Ithaca: Cornell University Press, 2004), 29.

<sup>4</sup> Feldman, 29.

<sup>5</sup> Feldman, 29.

<sup>6</sup> Vagrancy was removed as an offence from the Criminal Code of Canada this same year.

<sup>7</sup> Feldman, 36.

<sup>8</sup> Feldman, 44.

In examining the records of the local police court in Victoria, British Columbia from 1871 to 1901 with a focus on offences that I classify as "embodied infractions of public space," I contend that the shift to which Feldman refers – when certain city residents began to conceive of public space as something which could be obstructed – began much earlier than 1972. Whereas in the early period of my study, between 1871 and 1873, no one was indicted specifically for offences relating to "obstruction," on 30 November 1889 William M. was charged with "causing a disturbance by inconveniencing peaceable passengers"<sup>9</sup>; on 22 September 1890, John G. was brought before Police Magistrate Macrae for "obstructing passengers by standing on the sidewalk"<sup>10</sup>; on 17 August 1892 John D. likewise came before the court for "loitering on the street and obstructing passengers."<sup>11</sup> Not only were police constables and Magistrate Macrae using the language of obstruction by the late 1880s, but the court was also becoming more frequently a site for dealing with violations of public space than it had been in the earlier periods and sentences for such violations were becoming increasingly harsh. Through analyzing police court records and rich sources from the Victoria gaol, and examining local newspapers and city by-laws I explore the idea that in late nineteenth-century Victoria a specific public and specific bodies were mutually, simultaneously, and reciprocally constituted. If, as Kawash suggests, "the homeless body emerges as a particular mode of corporeality in contingent circumstances through which the public struggles to define itself as distinct and whole," might the same be said about "the vagrant body," "the drunk and disorderly body," the "passenger-obstructing body," and so on? What were the circumstances in which the public<sup>12</sup> struggled to define itself in late nineteenth-century Victoria? How was this struggle enacted in, on, and through certain bodies and spaces, and how were these bodies and spaces made in this period?

---

<sup>9</sup> Victoria City Archives (VCA) CRS 114 Police Court Charge Book (PCCB) 30 November 1889.

<sup>10</sup> VCA CRS 114 PCCB 22 September 1890.

<sup>11</sup> VCA CRS 114 PCCB 17 August 1892; VCG CRS 116 Magistrate's Record Book (MRB) 17 August 1892.

<sup>12</sup> This concept will be problematised and carefully characterized below.

### Why the Body?

A close scrutiny of Canadian vagrancy historiography and a more general review of British and American works, indicates that historians have taken a keen interest in and approached vagrancy from a number of perspectives. However, in most studies, the vagrant body remains a shadow. In many cases historians see the bodies of those labeled as and charged with vagrancy and related offences as symbols or representations of social disorder and threats to middle-class morality. In "Policing the Poor in Eighteenth-Century London: The Vagrancy Laws and Their Administration," Nicholas Rogers asserts that, "vagrancy was one of the most persistent symbols of social irregularity."<sup>13</sup> Likewise, Lynn Hollen Lees, who has examined the poor laws in England from 1700 to 1948, argues that, "notions of pauperization and pauperism projected deep social fears of corruption onto the body of the destitute ... the pauper helped people define their own virtue by representing what they were not."<sup>14</sup> Investigating vagrancy in early twentieth-century Calgary, David Bright contends that, "vagrants in this period represented a section of society that had failed or refused to internalize dominant middle-class values."<sup>15</sup> Given this prevailing perception of the relationship of "vagrants" to society, where vagrants function as a symbol of what society is not, historians have utilized three different approaches in scrutinizing this relationship.

First, certain early American works examined the regulation of "vagrants" and the enforcement of vagrancy laws as a means of ruling-class control. One of the most poignant examples of such an approach is the work of Sidney L. Haring, who sees the "tramp acts" passed in the United States beginning in the 1870s as "laws specifically designed by one class to be used as weapons in controlling a weaker class."<sup>16</sup> A second,

---

<sup>13</sup> Nicholas Rogers, "Policing the Poor in Eighteenth-Century London: The Vagrancy Laws and Their Administration," *Histoire sociale/Social History* XXIV.47 (May 1991): 127.

<sup>14</sup> Lynn Hollen Lees, *The Solidarity of Strangers: The English Poor Laws and the People, 1700-1948* (Cambridge: Cambridge University Press, 1998), 41.

<sup>15</sup> David Bright, "Loafers Are Not Going to Subsist Upon Public Credulence: Vagrancy and the Law in Calgary, 1900-1914," *Labour/le travail* 36 (Fall 1995): 43.

<sup>16</sup> Sidney L. Haring, *Policing a Class Society: The Experience of American Cities, 1865-1915* (New Jersey: Rutgers University Press, 1983), 201. See also Haring and L.M. McMillin, "Buffalo Police, 1872-1900, Labor Unrest, Political Power and the Creation of the Police Institute," *Crime and Social Justice* 4 (1975): 5-14; Haring, "Class Conflict and the

more nuanced approach, put forward by Paul Boyer in *Urban Masses and Moral Order in America, 1820-1920* is the "social control thesis." Following sociologists, Boyer refines the concept of social control, which he notes "is often equated with involuntary manipulation." He argues, however, that class distinctions between middle-class reformers and those who were seen to be in need of reform were not entirely clear. These groups, he maintains, had a "nexus of shared social assumptions and aspirations" and were interested in creating a shared city-space which was agreeable to all.<sup>17</sup> In other words, he contends that although differentially situated within relations of power, those who were "objects" of reform were also active participants in the shaping of city spaces.

James Pitsula, Jim Phillips and David Bright, in their studies of vagrancy in Toronto, Halifax and Calgary respectively, have adopted Boyer's "social control thesis" to varying degrees. These scholars employ modes of analysis that revolve around the role of charitable organizations, legal sanctions, and the courts, which, they argue, served to inculcate the "vagrant" population with socially acceptable notions of labour and productivity. Pitsula's work, the first Canadian investigation of the "treatment of tramps," charts the attempt of the Associated Charities – a group made up of affiliates from a variety of organizations and which "represented middle-class philanthropy" – to deal with the "tramp menace" in Toronto in the late nineteenth century.<sup>18</sup> Setting his inquiry within the context of scholarly work that explores the response of organized charity in the United States to the "tramp problem", and examining a wealth of sources, he focuses on the efforts of reformers to institute a "labour test." He argues that this test, which entailed work in exchange for relief, "was a means of social control, a way of enforcing the law of work on a deviating, floating population."<sup>19</sup> In his examination of the use of vagrancy laws in late nineteenth-century Halifax, Phillips reaches a similar conclusion. He maintains that the "principal determinant" in the application of the law was "fear of the

---

Suppression of Tramps in Buffalo, 1892 – 1894," *Law and Society Review* 11 (1976-1977): 874-911.

<sup>17</sup> Paul Boyer, *Urban Masses and Moral Order In America, 1820-1920* (Cambridge: Harvard University Press, 1978), 59-60.

<sup>18</sup> James M. Pitsula, "The Treatment of Tramps in Late Nineteenth-Century Toronto," *Historical Papers* (1980): 119.

<sup>19</sup> Pitsula, 132.

vagrant as a deviant, disruptive force," which needed to be regulated.<sup>20</sup> He contends first, that this regulation was more stringent as a result of the depressed local economy in the 1870s and second, that an expansion of the scope of the vagrancy laws at municipal, provincial and federal levels over his period of study reflected a continued focus on "the individual vagrant and his or her lack of moral fibre and commitment to the work ethic" as well as a new emphasis on "inculcating appropriate industrial attitudes."<sup>21</sup> While Bright concurs with Pitsula and Phillips that the law was a means of social control, he investigates the application of the law in early twentieth-century Calgary police courts as a process of hegemony and the "legitimization of power" of the ruling class.<sup>22</sup> Drawing on the work of Natalie Zemon Davis, he analyzes the tales told to the police magistrate by those who had been charged with vagrancy. In Bright's estimation, through the "public ritual" of telling their stories in court, offenders were publicly redeemed, the working classes were warned of the dangers of straying from an industrious path, and capitalism was reaffirmed as "intrinsically sound" through the "public spectacle" of "vagrants promising to reform their ways by re-embracing the virtues of the work ethic."<sup>23</sup>

Although both Phillips and Bright point to a perceived lack of "moral fibre" and a rejection of the "virtues of the work ethic" by those charged as vagrants, neither is concerned with vagrancy as a crime against morality. A third approach is to posit vagrancy as an offence that explicitly challenged middle-class notions of respectability and morality and therefore required moral regulation.<sup>24</sup> Drawing on Michel Foucault, Alan Hunt and Mariana Valverde, in her study of sexuality, family, and the law in mid-twentieth century Ontario, Joan Sangster defines moral regulation as the "discursive and

---

<sup>20</sup> Jim Phillips, "Poverty, Unemployment and the Administration of the Criminal Law: Vagrancy Laws in Halifax, 1864 – 1890," in *Essays in the History of Canadian Law, Volume III: Nova Scotia*, eds. Philip Girard and Jim Phillips (Toronto: University of Toronto Press, 1990), 132.

<sup>21</sup> Phillips, 152.

<sup>22</sup> Bright, "Loafers Are Not Going to Subsist," 42-3.

<sup>23</sup> Bright, "Loafers Are Not Going to Subsist," 57.

<sup>24</sup> M. Elizabeth Langdon, "Female Crime in Calgary, 1914 – 1941," *Law & Justice in a New Land: Essays in Western Canadian Legal History*, ed. Louis A. Knafla (Toronto: Carswell, 1986), 293-309 examines female vagrancy. However, her focus is not on moral regulation, but on the types of crimes women committed and the decrease over her period of study in prostitution charges.

political practices' whereby some behaviours, ideas and values were marginalized and proscribed while others were legitimized and naturalized."<sup>25</sup> In examinations of women charged with vagrancy and related offences in Montreal, Mary Anne Poutanen sets her study within this framework of moral regulation and argues that the state was becoming increasingly involved in this process. Influenced by Tina Loo and Carolyn Strange's *Making Good: Law and Moral Reform in Canada, 1867-1939* and Mariana Valverde's groundbreaking *The Age of Light, Soap and Water: Moral Reform in English Canada, 1885-1925*, David Bright, in a more recent work, scrutinizes the moral aspects of female vagrancy in Alberta in the early twentieth century. Significantly, and unlike the works discussed above, both Bright and Poutanen employ gender as a central axis of analysis; they examine vagrancy statutes as tools of the state in asserting itself and the concomitant implications of the enforcement of these laws on women's and men's activities.

Bright contends that in early twentieth century Alberta, "the state made use of the vagrancy statutes to define and regulate 'respectable' behaviour among young women," and examines editorials from the local press as well as the language used by both magistrates and "vagrant women" in the courtroom, to illustrate this claim.<sup>26</sup> In two studies of female vagrancy in early nineteenth-century Montreal, Poutanen, makes the important argument that it was not only women's behaviour that the state sought to regulate, but also their use of public space, which she sees as an extension of "popular class" households.<sup>27</sup> Her gendered lens allows her to discern that men and women occupied this space differently: men who were charged for vagrancy and related offences posed a moral threat because of their refusal to work, whereas women's disruption of the social order stemmed from the fact that they refused to be in the home and took up space instead with "behaviours such as cross-dressing, larceny, loitering in the streets and green

---

<sup>25</sup> Joan Sangster, *Regulating Girls and Women: Sexuality, Family and the Law in Ontario, 1920-1960* (Don Mills: Oxford University Press, 2001), 8. See also Mariana Valverde, *The Age of Light, Soap and Water: Moral Reform in English Canada, 1885-1925* (Toronto: McLelland and Stewart, 1991).

<sup>26</sup> David Bright, "'Go Home. Straighten Up. Live Decent Lives': Female Vagrancy and Social Respectability in Alberta, 1918-1993," *Prairie Forum* 28.2 (Fall 2003): 163.

<sup>27</sup> Mary Anne Poutanen, "Regulating Public Space in Early Nineteenth-Century Montreal: Vagrancy Laws and Gender in a Colonial Context," *Histoire sociale/Social History* XXXV.69 (May 2002): 38.

spaces, using obscene language, making threats and assaults, homelessness, and drunkenness,"<sup>28</sup> as well as prostitution. She argues that the police pursuit and prosecution of these activities resulted in an "*embourgeoisement* of the public: that is, the creation of a public space that was regulated, illuminated and respectable and that permitted bourgeois women and their children to traverse it without encountering pandemonium and notorious persons."<sup>29</sup>

Both social control and moral regulation approaches to the study of vagrancy have clearly been useful in examining the relationships among the public, the law, the state, and the activities of a certain segment of the population. Missing, however, from these analyses is an investigation of the ways in which both social control and moral regulation were enacted in, on and through certain bodies, and a serious consideration of these same bodies as sites through which control and regulation were contested and resisted. Although, for example, Poutanen has importantly pointed out that public space is something which is created, and that a specific public was made in early nineteenth-century Montreal through a regulation of women's activities, she does not link activities to the bodies that performed them. She argues that "vagrant women were perceived as an impediment to a well-ordered society."<sup>30</sup> However, by cross-dressing, being drunk, or engaging in an assault, women inhabited public spaces in particular ways and it was their bodies-actions, which became the impediment. In an attempt to secure itself, the state through the courts marked these bodies – "the cross-dresser," "the drunken woman," "the violent woman" – and sought to regulate them. What Poutanen fails to do in any meaningful way, though, is to consider not just the regulation of women on the basis of gender ideology, but the regulation of their bodies, based on the real material threats, shaped through discourse, that bodies and the activities of these bodies were perceived to pose to public space in early nineteenth-century Montreal. What kinds of bodies were produced, marked, regulated and resisted? What modes of embodiment were these

---

<sup>28</sup> Mary Anne Poutanen, "The Homeless, the Whore, the Drunkard and the Disorderly: Contours of Female Vagrancy in the Montreal Courts, 1810-1842," *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, eds. Kathryn McPherson, Cecilia Morgan and Nancy M. Forestall (Don Mills: Oxford University Press, 1999), 39.

<sup>29</sup> Poutanen, "Regulating Public Space," 43.

<sup>30</sup> Poutanen, "The Homeless, The Whore, The Drunkard," 34.

women thought to enact? Explicitly tackling these issues would render more fleshy, messy, noisy, and tension-filled these women's activities, and the activities of the state to contain them in an attempt to secure its power.

Despite the fact that the centrepiece of Pitsula's argument is the debates around the implementation of the labour test as an antidote to "the tramp menace," like Poutanen, he fails to consider the body as a critical site of inquiry. He points out that "able-bodied and chronic mendicants had to be isolated from temptation, their bodies cleansed of tobacco and alcohol, and their minds habituated to the rhythm of regular labour."<sup>31</sup> He cites John Baille, the manager of the House of Industry who proclaimed: "'We'll wash and bathe them, we'll cut their hair and comb them, we'll teach them what honest labour means and make something of them'."<sup>32</sup> Pitsula tells the story of a Toronto alderman who had gone to England to inspect the labour test and punitive measures in place there. According to this Councilor, one English alderman had tried stone breaking and reported that, "he toiled away for a considerable time ... but he was so 'used up', his hands were so blistered, the muscles of his arms so strained, that he vowed this was far too severe a test for, at any rate, unprofessional tramps."<sup>33</sup> Finally, he quotes from a report of the Associated Charities published in the local press in which one of the members declared: "I can feed a tramp on a dollar a week so that he'll want to leave right off, and that's the object we have in view. We don't want to feed them so well that they'll stay all winter."<sup>34</sup> Pitsula does not consider *where* these people were supposed to go once driven away from this man's organization nor what impact such a meager diet might have had on a person's ability to find work. He also does not reflect on why and how the bodies of "tramps" became the "property" of middle-class philanthropists to be washed, bathed and groomed in the first place. Despite all of the ways in which his sources point to the body, he has not read these in terms of the ma(r)king of bodies nor does he question exactly what this ma(r)king entailed, or *why* certain bodies needed to be made in particular ways.

Pitsula is certainly not the only scholar who fails to take seriously the embodied fates of those charged with vagrancy. In his discussion of the prison conditions "vagrants"

---

<sup>31</sup> Pitsula, 131.

<sup>32</sup> Pitsula, 128.

<sup>33</sup> Pitsula, 125.

<sup>34</sup> Pitsula, 124.

endured in Halifax, Phillips notes that the "registers reveal many pathetic life histories," but relates these fates (which included death in some cases) at the level of description rather than analysis.<sup>35</sup> A number of British works outline the harsh conditions and routines in the casual wards, which were legislated into existence in 1842 to provide overnight relief to "vagrants." However, like Pitsula and Phillips, none of these works explicitly consider the relationship between meager diets, the "stoving" of clothes in order to disinfect them, the beds of straw, or the four hours of hard labour that was required before one was permitted to leave in the morning, and the expectation that so-called vagrants were to *become* respectable, productive, and functional member of society.<sup>36</sup> In other words, none of these works look at the ways in which vagrant bodies could be potentially "unmade" by the regimes to which they were subject in the casual wards and the prison.

An equally important tension overlooked by both those who utilize a social control approach and those who have placed their studies in a framework of moral regulation, is the way in which certain bodies are marked through the application of vagrancy laws and defendants' interface with these laws in the courtroom. Particularly troubling is Bright's assertion that appearing in court and telling a certain tale offered those charged as vagrants a "chance of public redemption."<sup>37</sup> Let us consider this alongside an anecdote related by Poutanen about an incident in 1840 in which a city policeman could not identify a woman who had been previously arrested for vagrancy. The Inspector of Police "ordered the chief constables to parade all vagrants arrested the previous day in front of the policemen before they were dismissed from duty. Anyone who could not recognize these vagrants in future would be discharged from the force."<sup>38</sup> Even if, as Bright maintains, those charged as vagrants were able to secure a suspended sentence or a

---

<sup>35</sup> Phillips, 142.

<sup>36</sup> Lionel Rose, *Rogues and Vagabonds: Vagrant Underworld in Britain, 1815-1985* (New York: Routledge, 1988), 77-8; Rachel Vorspan, "Vagrancy and the New Poor Law in Late-Victorian and Edwardian England," *The English Historical Review* 92.362 (January 1977): 61; Glen Matthews, "The Search for a Cure for Vagrancy in Worcestershire, 1870-1920," *Midland History* 11 (1986): 107; Simon Fowler, "Vagrancy in mid-Victorian Richmond, Surrey," *Local Historian* 21.2 (1988): 68.

<sup>37</sup> Bright, "Loafers Are Not Going to Subsist," 57.

<sup>38</sup> Poutanen "The Homeless, The Whore, The Drunkard," 37.

dismissal through a carefully deployed narrative, when they left the courtroom, they would still be homeless, or undernourished, or shabbily clad, or carrying their worldly belongings with them. An examination at the level of body would allow closer scrutiny of the ways in which those marked as vagrants dealt with, on the streets and in the courtroom, the association that police constables and magistrates made between their bodies/bodily appearances and the modes through which their bodies occupied space. Such an examination would render more complex bodies, spaces, and the relations of power through which both were made. In short, investigating both social control and moral regulation as enacted *through* the body would illustrate how, in Poutanen's words, those charged with vagrancy "in essence became the offence"<sup>39</sup> and would allow a more careful exploration of the ways in which they negotiated this becoming.

Rather than probing this process of becoming, certain Canadian historians have tended to reify "the vagrant" (and "the tramp") and to uncritically reproduce "vagrant" as an identity category. These scholars conceive "vagrants" as a group of people who existed with a distinct historical identity, lived a disruptive and unproductive "lifestyle," and therefore needed to be regulated. In outlining the origin of "the tramp" in historical discourse, Pitsula argues that, "most historians who write about the tramp agree that his social significance lay ... in what he symbolized."<sup>40</sup> Continuing with this line of argument he notes that, "the tramp was the embodiment of all the character defects ... which middle-class reformers discerned at the root of the crisis in the social order."<sup>41</sup> Although writing more than ten years after Pitsula, at a time when scholars had begun to approach crime and criminality as socially constructed, Bright too posits that "the vagrant" was someone who existed and could be identified. In outlining the police use of vagrancy laws to arrest labour radicals in Calgary in 1912 and 1914, he points out the ways in which the local press seized on these events as opportunities "to depict vagrants as social misfits" despite the fact that there was no "evidence to suggest that vagrants themselves were supporters of the IWW."<sup>42</sup> Who were "vagrants themselves?" What can this phrase possibly mean? Did people *self-identify* as vagrants despite the fact that to be such a person

---

<sup>39</sup> Poutanen "The Homeless, The Whore, The Drunkard," 37.

<sup>40</sup> Pitsula, 116.

<sup>41</sup> Pitsula, 119.

<sup>42</sup> Bright, "Loafers Are Not Going to Subsist," 51.

was a criminal offence? In his more recent work, Bright argues that despite the fact that laws concerning vagrancy were so loosely defined that they could be leveled against almost anyone, "the charge [of vagrancy] was generally used against those whom the state had already determined as socially undesirable."<sup>43</sup> Yet it was precisely *through* interactions with the state, as embodied by the police force and the justices of the peace, that people *became* arrested, labeled, and prosecuted as vagrants. In short, none of the works outlined here examine "vagrants" or the vagrant body as produced *through* regulation. As noted above, Sangster defines (moral) regulation as the "'discursive and political practices' whereby some behaviours, ideas and values were marginalized and proscribed while others were legitimized and naturalized."<sup>44</sup> What will hopefully become evident throughout this work is that it was not only certain ideas and values that were marginalized/legitimized through regulation and regulatory practices but also certain bodies.

Perhaps this lack of precision in terms of the regulatory *and* productive power of the law, on the part of Pitsula and Bright stems from both the letter of the law, and one of the main tenets of vagrant historiography, that is, that although those arrested for vagrancy were often engaged in activities, such as causing a disturbance by being drunk, loitering in the street, obstructing passengers and so on, vagrancy was a status crime. For example, one of the clauses through which one could be charged as "loose, idle or disorderly persons or vagrants," was "not having visible means of maintaining themselves and living without employment."<sup>45</sup> In the *Digest of the Criminal Law of Canada*, 1890, G.W. Burbidge cites *R. v. Bassett* in which it was established that "a person cannot be convicted of the offence defined in this clause unless he has acquired in some degree a character that brings him within its terms."<sup>46</sup> Nicholas Rogers highlights this tension, arguing that as a result of the broad scope of vagrancy statutes in early nineteenth-century London,

---

<sup>43</sup> Bright, "Go Home. Straighten Up," 162.

<sup>44</sup> Sangster, 8.

<sup>45</sup> Statutes of Canada (hereinafter S.C.) 55-56 Vict. (1892). c. 29, s 207 (a).

<sup>46</sup> 10 Ont. P.R. 386, cited in G.W. Burbidge, *A Digest of the Criminal Law of Canada* (Toronto: Carswell Co., 1890), 187.

"the social boundaries of vagrancy were extended beyond the act of vagrancy itself."<sup>47</sup> The charge of vagrancy could be leveled against someone for a "non-act," or upon suspicion that someone was *about to* undertake some illegal action. Bright makes a similar claim, asserting that, "it was possible to identify – and hence charge – vagrants according to their appearance and lifestyle."<sup>48</sup> Taking seriously vagrancy as a status crime, that is, a crime in which a *certain type* of person was charged, and both Rogers' and Bright's contentions, my interest lies in the matter of this supposed non-act. If arrests for vagrancy and related offences could, but need not be, the result of an actual illegal action, might we not say that in both cases, act and non-act, the (becoming vagrant) body itself might indeed *be* the action and therefore the crime?

### **Bodies-Actions, Power and Space**

Let us depart for a moment from the world of historiography and move into the realm of theory – if these two might indeed be conceived as disparate for the time being. In the last fifteen years in a multiplicity of disciplines, many scholars have turned to the body as a site through which to analyze the production of knowledge, and gendered and racialized difference(s). Many of these scholars have conceived the body as a material-discursive entity which, if approached as such, might help to resolve some of the debates between so-called empirically minded modernists and discursively inclined post-modernists, which have been raging in the humanities and beyond for a number of years. These works are useful on a number of levels. First, they problematize "the body itself" in innovative ways and suggest interesting and useful methods of conceiving and interrogating a multiplicity of bodies and moments which give rise to these bodies. Second, they see bodies as constituted through relations of power. Third, they call for an analysis of the relationship between bodies and spaces.

Ultimately concerned with the production of space, Henri Lefebvre's discussion of the fetishization of products, in the Marxian sense, is key in terms of understanding the body as a product, as something which is produced. Working from Marx, he argues that

---

<sup>47</sup> Rogers, 145. Federal criminal statutes in place in my period of investigation, as well as Victoria city by-laws, encompassed equally wide-ranging definitions of vagrancy and related (non) activities.

<sup>48</sup> Bright, "Loafers Are Not Going to Subsist," 48.

"products and the circuits they establish (in space) are fetishized and so become more 'real' than reality itself – that is, than productive activity itself ... Merely to note the existence of things ... is to ignore what things at once embody and dissimulate, namely social relations and the forms of those relations."<sup>49</sup> Although he goes on to use this basic premise to examine the production of space, it might also be used to historicize the body. If, as will hopefully become clear throughout this work, all bodies are products of history, that is, bodies are *made by* history as much as they make history, then it is critical to examine the relations through which bodies were made in a given historical period. Rather than starting with the premise that the body is "real," I want to ask what (productive) activities produced the bodies of those charged with vagrancy and related offences in Victoria in the late nineteenth century? What social relations did those so charged (come to) embody and also to conceal?

In order to answer these questions, it is necessary to further unsettle the "reality" of the body and to see the body itself as a productive activity. In "The Body as Method?," Kathleen Canning suggests that the notion of embodiment, "a far less fixed and idealised concept than body," might be useful for studying the body in history, in that it "encompasses moments of encounter and interpretation, agency and resistance."<sup>50</sup> Similarly, philosopher N. Katherine Hayles argues that "embodiment is contextual, enwebbed within the specifics of place, time, physiology and culture that together comprise enactment. Embodiment never coincides exactly with the 'body'."<sup>51</sup> Echoing this definition, and clarifying the ways in which embodiment does not coincide exactly with the body, feminist geographers Pamela Moss and Isabel Dyck define embodiment as "those lived spaces where bodies are located conceptually and corporeally, metaphorically and concretely, discursively and materially, being simultaneously part of bodily forms and their social constructions." They argue that embodiment is about being connected, temporally and historically, to other discursive and material entities – other bodies – in

---

<sup>49</sup> Henri Lefebvre, *The Production of Space*, trans. Donald Nicholson Smith (Oxford: Blackwell, 1991), 81.

<sup>50</sup> Kathleen Canning, "The Body as Method? Reflections on the Place of the Body in Gender History," *Gender and History* 11.3 (1999): 505.

<sup>51</sup> N. Katherine Hayles, "The Materiality of Informatics," *Configurations* 1.1 (1993): 154-5.

concrete practices, politically, culturally, socially, economically, and spatially.<sup>52</sup> A slightly different, but equally significant perspective on embodiment is put forth by feminist cultural studies theorists Abigail Bray and Claire Colebrook who argue that, "if the body is not a prediscursive matter that is then organized by representation, one might see the body as an event of expression ... The body would be understood in terms of what [Gilles] Deleuze calls its becomings, connections, events and activities ... Action is productive rather than representational. Accordingly one should ask what an action does rather than what it means."<sup>53</sup>

If we concede that the body is itself an event as much as a product, the body is thus implicated in its own production. Conceptually, as Canning, Hayles and Moss and Dyck point out, embodiment and the body are not one in the same; it is critical in an investigation of the ma(r)king of bodies not to conflate them or to substitute one for the other. The relationship between the body and embodiment for the purposes of this work is that embodiment is the mode through which bodies are produced and become *specific* through regulation and relations of power-agency. "Embodied infractions of public space," the charges that I examine, are those through which the state attempted to regulate bodies and spaces and in so doing contributed to the production of both but did not entirely produce either; through negotiating relations of power, those charged for embodied infractions contributed to the ma(r)king of their own bodies and the city spaces through which they moved. I use "bodies public" to refer to those whose bodies were *made public* through efforts to regulate them on the streets, in the courtroom and in the pages of the local newspaper. Rather than merely examining and ascribing meaning to the relatively fixed body, analyzing embodiment as a process of negotiation and constitution between the self and the world, and bodies or "bodies-actions" as productive events whose "doings" might be scrutinized, is a revealing mode of historical investigation. By employing "embodiment" and "the body as an event," it is possible to see the bodies of those charged in the police courts and imprisoned for embodied

---

<sup>52</sup> Pamela Moss and Isabel Dyck, *Women, Body, Illness: Space and Identity in the Everyday Lives of Women with Chronic Illness* (Maryland: Rowman and Littlefield Publishers, 2002), 55.

<sup>53</sup> Abigail Bray and Claire Colebrook, "The Haunted Flesh: Corporeal Feminism and the Politics of (Dis)Embodiment," *Signs: Journal of Women in Culture and Society* 24.1 (1998): 36, 57.

infractions of public space (for *being* embodied in a particular way) as actions and processes. Such an analysis allows for an exploration of how those charged for such offences negotiated and contested "concrete practices, politically, culturally, socially, economically and spatially" and how they contributed to their own making and the making of the street, police court, press, and gaol spaces which they occupied.

What is hopefully becoming apparent is that both bodies and spaces are made through relations of power. In order to understand the workings of power in shaping, enabling, and producing specific bodies in specific "pasts," Judith Butler's reading of Michel Foucault is indispensable. Drawing on his work, Butler asserts that relations of power are always productive.<sup>54</sup> Importantly, she does not locate power as an external force that "acts on," but argues that "there is no power that acts, but only a reiterated acting that is power in its persistence and instability."<sup>55</sup> In this conception of power, the bodies of city councilors, the police, the police magistrate, the newspaper reporters, the prison warden, and gaolers must also be seen as events/actions engaged in persistent regulatory activities through which the bodies of "vagrants" and indeed their own bodies were produced. In other words, these authorities did not *hold* colonial, legal, judicial, editorial, or disciplinary power, which could or could not have been wrested from them, they *acted* the power legitimized by the institutions within which they operated. If productive power is thus conceived, Butler's notion of "agency as a reiterative or rearticulative practice, immanent to power, and not a relation of external opposition to power," is useful in attempting to analyze "vagrant bodies" and (their) modes of embodiment.<sup>56</sup> In what ways did the bodies-actions of the latter challenge those of the former? How did those charged for embodied infractions of public space participate in the reiterative acting of power and thus shape power relations themselves?

The final, related, and indeed integral aspect to consider before testing the theoretical ground which we are now laying, is the relationship of space to the production of bodies through relations of power. It is not that historians of vagrancy and related offences have ignored the body explicitly, but that to a large degree, with perhaps the

---

<sup>54</sup>Judith Butler, *Bodies that Matter: On the Discursive Limits of "Sex"* (New York: Routledge, 1993), 109.

<sup>55</sup> Butler, 9.

<sup>56</sup> Butler, 15.

exception of Poutanen, these studies lack an analysis of spatiality, that is, an interrogation of the ways in which space is produced.<sup>57</sup> Once we consider the constitution of specific spaces historically – in this case, city streets and public places – the contours of the body, both material and discursive, necessarily become visible and must be scrutinized. Works which engage with spatial theory posit the inextricability of bodies-spaces and argue that to examine the making of one without the other is, at best, impractical. As Sherene Razack has noted, "to interrogate bodies traveling in spaces is to engage in a complex historical mapping of spaces and bodies *in relation*, inevitably a tracking of multiple systems of domination and the ways in which they come into existence in and through each other."<sup>58</sup>

Many recent works which draw on spatial theory, including that of Razack, incorporate the work of Lefebvre in their analyses. Razack maintains that the importance of Lefebvre's groundbreaking work is that it does not render space "on a purely descriptive level that does not show the dialectical relationship between spaces and bodies."<sup>59</sup> As noted above, Lefebvre has asserted that space is a product, the productive relations of which must be scrutinized. He argues that, "every social space is the outcome of a process with many aspects and many contributing currents, signifying and non-signifying, perceived and directly experienced, practical and theoretical. In short, every social space has a history."<sup>60</sup> Yet what *is* social space? According to Lefebvre, and critical to my project, "space is social morphology: it is to lived experience what form itself is to the living organism ... The form of social space is encounter, assembly, simultaneity."<sup>61</sup> In this conception, bodies-spaces are not separate, but are inevitably and simultaneously shaped by each other. In the same way that as an organism moves, so too must its form.

---

<sup>57</sup> Richard Anderson, "'The Irrepressible Stampede': Tramps in Ontario, 1870-1880," *Ontario History* LXXXIV.1 (March 1992): 33-56 considers in a compelling way the movement of "tramps" through space and shows their travel patterns in rural Ontario as reflective of the availability of seasonal labour. Yet he does not consider the ways in which the movement of these migrant labourers shaped the very spaces through which they traveled.

<sup>58</sup> Sherene H. Razack, "Introduction," *Race, Space and the Law: Un-Mapping a White Settler Society* (Toronto: Between the Lines, 2002), 15.

<sup>59</sup> Razack, 8.

<sup>60</sup> Lefebvre, 110.

<sup>61</sup> Lefebvre, 94, 101.

Consider for a moment the bodies of Fanny Eastman and Officer Flewin, the latter who arrested the former in 1882 for being "drunk and obstructing the sidewalk on Sunday afternoon on Douglas street"<sup>62</sup> or those of Kitty, a "Stickeen Indian woman", and Sergeant Bloomfield who charged her in 1883 "with shouting and using profane language on the corner of Government and Cormorant street on Saturday evening" and arrested her "with the assistance of two Indians."<sup>63</sup> These embodied encounters shaped the street space in particular ways: through bodies enacting colonial, gendered, and racialized regimes of power they *made* colonial, gendered and racialized spaces.

The conceptual framework iterated by Moss and Dyck, equally concerned with the making of bodies-spaces, is the final work I explicitly draw on in order to explore the making of bodies public and public spaces in Victoria in the late nineteenth century. They argue that the body is not a "lone, separate, individual entity," but that "the body is always already 'in context'." By this they mean that bodies "exist spatially in relation with other bodies, recursively constituted through tangible and intangible things and processes." With their focus on women with chronic illnesses, they give as examples of these things and processes, "escalators, street corners, apartment blocks, capital, income, race, knowledge, beliefs."<sup>64</sup> In terms of thinking about bodies-spaces in the late nineteenth-century Victoria we might substitute for these shelter, food, police officers, city building, colonialism, the law. Moss and Dyck use the theoretical concept of "corporeal space" in order to understand and examine the experiences of "bodies in context." They define corporeal space as comprising "the *living* spaces of 'bodies in context', claiming both the temporal and spatial specificity of bodies, giving rise to *specific* bodies and *specific* environments." They argue that, "holding in tension meaning and matter, corporeal spaces are able conceptually to maintain a synchronous union between the discursive and material so that bodies are neither wholly idealized nor utterly fleshed – bodies and spaces are simultaneously idealized and fleshed, and are made *specific* through the recursive process of becoming."<sup>65</sup>

---

<sup>62</sup> *British Daily Colonist*, 13 September 1882, 3.

<sup>63</sup> *British Daily Colonist* 17 January 1883, 3.

<sup>64</sup> Moss and Dyck, 52-3.

<sup>65</sup> Moss and Dyck, 54.

Given that my aim, as articulated at the outset, is to examine the emergence of specific bodies and a specific public, the work of Moss and Dyck and the other theoretical insights outlined here are desirable and indeed critical to engage with. I take seriously the notion that the body is both a product and a productive power relation and that city streets and public places, and the bodies that moved through these, became specific as a result of the "synchronous union" of material conditions (lack of shelter, want of employment, need of food) and ideological conditions (notions of productivity, respectability, modernity, liberalism, colonialism). Carefully scrutinizing the changes in space-related city by-laws between 1871 and 1901, analyzing upwards of 4000 cases that came before the Victoria police court in select years between 1871 and 1901, reading over 800 editions of the *British Daily Colonist* in these same years, looking closely at City Council proceedings, and examining the living and labour conditions of prisoners in the Victoria gaol, I explore the *living* spaces of 'bodies in context' in late nineteenth-century Victoria. How did experiences of the material and discursive conditions of this particular time and place give rise to specific bodies – those that made laws and policed and those who broke laws and were policed and specific spaces – streets, City Council chambers, the police courtroom, the gaol? What might such an investigation illuminate that has not yet been articulated by historians of petty crime, city building, colonial power, and the application of the law? And finally, how might this historical investigation contribute to and refine certain theoretical concepts and questions?

In Chapter One I examine the process of city building in Victoria in the last decade of the nineteenth century and the relationship of the city police to this venture. I argue that certain city builders in late nineteenth-century Victoria envisaged and attempted to create city streets which facilitated movement and a public – both people and place – that reflected their notions of Britishness, "whiteness," and capitalist productivity. Chapter Two explores the role of the police court in making the city's public and in particular focuses on the ways in which people were arrested for both offences of "being" and "doing." I argue first that the bodies-actions of those charged and the spaces which they occupied became perceptibly inextricable from each other, and second that city building in Victoria must be conceived explicitly as an aspect of the larger process of colonization enacted in British Columbia in the late nineteenth century.

In the third chapter I look at the increasingly severe consequences meted out for certain modes of being and doing on the city streets. I examine the ways in which both the bodies of those imprisoned for embodied infractions and the city's public were made through dietary regimes, punishment, and labour in the Victoria gaol. I contend that this making extended beyond the walls of the prison and impacted the ability of those who spent time in gaol to become productive and respectable inhabitants of the city. Finally, in an attempt to examine the foundations of conceptions and practices of city building outlined in Chapter One, I circle back to the City Council chambers of the mid 1870s in order to investigate the relationship of increased police court activity between 1871 and 1901 to the enterprise of attempting to secure both obstruction-free public spaces and liberal hegemony in Victoria by the early 1880s.

---

## CHAPTER ONE

---

### City Building

The washrooms are closed again. For good.

"Too much damage," said one of the painters here, beautifying City Hall Square. And so I wandered away slightly – bladder full – to soak up some sunshine before heading back into the city archives and the records from the Victoria police court in 1900. And I listened, as one painter spoke to another:

"Yeah, they just get totally wrecked, out of their minds, and trash the place."

"Yeah and notice how empty the square is now that the washrooms are closed. They've all moved somewhere else."

"Yeah, that's good eh?"

Two police officers enter from centre square:

"Hey, are the washrooms still closed? We just had a robbery. We're looking for a guy, about thirty, dark hair, 180 pounds," they say, venturing towards the washrooms in search of their thief.

"Yeah, they've closed 'em down for good. Too much damage."

"Better that way, less people around here now," say the officers to the painters.

And off they set, to police their empty square.

Although it may be anachronistic or perhaps presentist to begin a historical investigation of city building and policing practices with a conversation I had during the course of my research, what I hope to do in this chapter is to historicize this conversation, to show that the foundations of the notions of public space in Victoria evidenced in the above scenario – ideas about who belongs in certain spaces and who does not – were laid in the late nineteenth century. The years between the city's incorporation and the turn of the century were tension-filled for an emerging city attempting to create itself. This period in which Victoria experienced a rise and then, in many senses, a decline, all the while

establishing itself as a modern city, is fruitful for an investigation of the multifaceted affair of city building. Most works on vagrancy and related offences are set in cities such as Halifax, Montreal, Buffalo, and London, which were well established in the period in which historians have undertaken their investigations.<sup>1</sup> As a counterpoint, an examination of Victoria in its formative years can provide a glimpse into the ways in which "legitimate" city builders, such as respectable citizens, mayors and aldermen, and members of the police force as well as "illegitimate" ones, such as so-called drunks, vagrants, and prostitutes, laid its foundation. In order to scrutinize the process of city building in Victoria, this chapter maps the integral components of the making of modern Victoria, and charts the responsibilities and bodies-actions of those charged with ensuring order in the burgeoning metropolis, namely, the city police.

### **Becoming Modern Victoria**

First established as a fort of the Hudson's Bay Company in 1843, Victoria was incorporated as a city in 1862 with a fluctuating population in that year alone of between 3000 and 6000. The gold rush of the 1860s brought more people, capital, and prosperity to the colony of Vancouver Island so that by 1871, when British Columbia joined confederation, the *Daily Colonist* reported that there were 1645 white male adults, 1197 females, 211 "colored males and females," 360 natives, 578 male children, and 530 female children in Victoria for a total population of 3629 permanently residing in the city.<sup>2</sup> The next ten years tell a tale of a gradual swell in both population and affluence.

---

<sup>1</sup> Jim Phillips, "Poverty, Unemployment and the Administration of the Criminal Law: Vagrancy Laws in Halifax, 1864 – 1890," in *Essays in the History of Canadian Law, Volume III: Nova Scotia*, eds. Philip Girard and Jim Phillips (Toronto: University of Toronto Press, 1990), 128-62; Mary Anne Poutanen, "The Homeless, the Whore, the Drunkard and the Disorderly: Contours of Female Vagrancy in the Montreal Courts, 1810-1842," *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, eds. Kathryn McPherson, Cecilia Morgan and Nancy M. Forestall (Don Mills: Oxford University Press, 1999), 29-47; Sidney L. Harring, "Class Conflict and the Suppression of Tramps in Buffalo, 1892 – 1894," *Law and Society Review* 11 (1976-1977): 874-911; Nicholas Rogers, "Policing the Poor in Eighteenth-Century London: The Vagrancy Laws and Their Administration," *Histoire sociale/Social History* XXIV.47 (May 1991): 127-47.

<sup>2</sup> "Victoria City," *Daily Colonist*, 28 June 1871, 3. The unofficial census of 1871 reveals similar figures in terms of the population of First Nations and non-First Nations Victorians. The census lists 144 First Nations men, 210 First Nations women, 1999 non-

By 1881 the number of people living in Victoria had risen to 5925 and, according to Peter Baskerville, "a city with increasingly well-defined if not all together attractive social, political, and economic attributes had emerged."<sup>3</sup> During the 1880s Victoria experienced the greatest growth in its history: the population nearly doubled making it the eleventh largest city in Canada in terms of population; the city limits expanded to seven and a half square miles; and Victoria continued as a centre for both trade and manufacturing, with imports doubling and exports increasing by one third, and manufacturing production increasing 3.5 times.<sup>4</sup> By 1889 the city had 315 telephones, 21 public school teachers, 79 street lamps, and property values were assessed at a total of \$9,020, 573.<sup>5</sup> In this same year, according to one newspaper report, one million dollars were spent within the city limits and 350 dwellings were erected.<sup>6</sup>

One of the ways in which the *Daily Colonist* measured the overall progress of the city was by citing the degree of prosperity and a corresponding lack of poverty. Written in the boom of the last decade of the nineteenth century, articles that attempted to paint Victoria in a particular light or to sell the city to outsiders and newcomers emphasized this prosperity-poverty dyad. One 1891 author noted that "whether in or out of doors there is hardly any sign of poverty in Victoria. People look well fed and are warmly clad,

---

First Nations men, and 1287 non-First Nations women. According to John Lutz (personal communication, 3 March 2005) these figures do not include the 45 men, 45 women and 30 children who resided on the Songhees reserve.

<sup>3</sup> Peter Baskerville, *Beyond the Island: An Illustrated History of Victoria* (Burlington: Windsor Publications, 1986), 24.

<sup>4</sup> Baskerville, 46.

<sup>5</sup> Derek Pethick, *Summer of Promise: Victoria 1864-1914* (Victoria: Sono Nis Press, 1980), 120.

<sup>6</sup> "Victoria's Progress," *Daily Colonist*, 1 January 1890, 2. The newspaper reports that I draw on in this chapter come from a systematic reading of the *Daily Colonist* (which I also refer to as the *Colonist*) between 1871 and 1901. My original impetus for examining the newspapers was to get a sense of how those who went to prison were represented in the paper. Therefore, I isolated the 628 people sentenced to jail in my data base and read the *entire* paper (as opposed to merely the police court column) on the day after an offender in my prison database went before the police court and, in the case of a remand, the day following the remand date. At the same time as studying how prisoners were depicted, I was able to glean a great deal about the city. What follows might best be characterized as a scrutiny of the opinions of literate and respectable city dwellers in the last decade of the nineteenth century. In Chapter Three I look more closely at the 1870s through the lens of City Council minutes.

and one's charity is seldom appealed to, even by the appearance of want."<sup>7</sup> A writer in early 1892 expressed a similar sentiment. In an article entitled "Good Work," he declared that "there is, happily, very little poverty in this city. It does not contain a single professional beggar that we know of, and appeals are not often made to the charity of the citizens."<sup>8</sup> Even by the end of the century when, according to Baskerville, Victoria had undergone an overall decline in prosperity and "the city of Vancouver had surpassed Victoria in imports, exports, manufacturing, bank clearances, head offices and population,"<sup>9</sup> residents still touted the fact that there were few poor people within their city limits. A 1900 article which extolled the virtues of Victoria's businesses, scenery, and society life proclaimed that, "the charitable organizations of the city are numerous and liberally supported. Happily there are few desperate poor. The result of a thorough canvas of the city just before Christmas convinced the officers of the Salvation Army that there was not a family in absolute want of the necessities of life."<sup>10</sup>

Certain press reports in this same period, however, told a different story. In July 1891, the newspaper reported that "Officer Smith found three children on Douglas street, homeless and friendless" and took them to the barracks for "safe keeping."<sup>11</sup> At the end of a City Council meeting later that summer, "the members had a brief private session in the committee room ... to discuss the case of several poor people and the advisability of placing them in the Old People's Home."<sup>12</sup> Late in 1892, the Benevolent Society of B.C. presented a letter to City Council asking for assistance in coping with the great number of people who came to them for relief. Secretary of the Society, W.H. Mason, wrote that "the persons I refer to ... are almost all in a state of utter destitution – without food, shelter, or sufficient clothing, many of them in such a state of disease, dirt and general degradation."<sup>13</sup> In early March 1900, just over a month after the Salvation Army stated that "there was not a family in absolute want of the necessities of life," the Friendly Help Association "reported that 28 cases were attended to during February, 12 being supplied

---

<sup>7</sup> "Victoria As It Appears to a Newcomer," *Daily Colonist*, 1 January 1890, 1.

<sup>8</sup> "Good Work," *Daily Colonist*, 6 February 1892, 4.

<sup>9</sup> Baskerville, 48.

<sup>10</sup> "The City of Victoria," *Daily Colonist*, 20 January 1900, 4.

<sup>11</sup> "Three Unfortunates," *Daily Colonist*, 17 July 1891, 5.

<sup>12</sup> "The Poor," *Daily Colonist*, 4 September 1891, 5.

<sup>13</sup> "The Poor and the Destitute," *Daily Colonist*, 3 December 1892, 5.

with groceries, 8 with fuel, 3 with milk daily, and 13 with clothing."<sup>14</sup> Peter Baskerville and Eric Sager's *Unwilling Idlers: The Urban Unemployed and Their Families in Late Victorian Canada*, helps to explain the obvious need in the city at the turn of the century. Drawing on the 1901 census, they demonstrate that at the time the census was taken, only 76.1 percent of Victorians of working age were employed for a full twelve months per year.<sup>15</sup> A comparison between the former press reports and the latter clearly indicates that prosperity was likely not an adequate measure of progress in Victoria in its boom years. Inevitably, within a burgeoning capitalist economy, prosperity for some meant poverty for others. As much as certain city builders may have sought to deny it, this tension seeped out in the pages of the *Colonist* between glowing reports of affluence.

A second mode of evaluating progress in Victoria in the late nineteenth century was to appraise the built environment of the city. Historian Chris Otter has argued that,

Liberal society ... needed to be built and maintained – wide streets, slum demolition, sewerage and street lighting were all attempts materially to assemble spaces where ruling through freedom [his definition of liberalism] could be made possible and visible ... Town Councils ... actively refashioned cities, building sewers and widening streets, and drawing up regulations defining legal minimums, of air space, gas impurities and the window area of houses ... [M]atter and discourse were mobilized together to assemble civil spaces.<sup>16</sup>

Otter echoes here my own contention and that of Pamela Moss and Isabel Dyck that city spaces were built as a result of the "synchronous union" of material and ideological conditions.<sup>17</sup> Although not explicit in this regard, reports published in the *Colonist* that measure progress by assessing the quality and quantity of city real estate draw on this discourse of liberalism as outlined by Otter. An 1890 article entitled "Pull Them Down" declared that,

Although some very fine buildings are going up on Johnson Street, there are a number of dens on the lower part which should be pulled down on

---

<sup>14</sup> "Friendly Help," *Daily Colonist*, 7 March 1900, 5.

<sup>15</sup> Peter Baskerville and Eric W. Sager, *Unwilling Idlers: The Urban Unemployed and Their Families in Late Victorian Canada* (Toronto: University of Toronto Press, 1998), 86. 7.7 per cent worked 1-5 months, 10.1 per cent 6-8 months, and 6.2 per cent 9-11 months.

<sup>16</sup> Chris Otter, "Making liberalism durable: vision and civility in the late Victorian city," *Social History* 27.1 (January 2002): 3, 7.

<sup>17</sup> Pamela Moss and Isabel Dyck, *Women, Body, Illness: Space and Identity in the Everyday Lives of Women with Chronic Illness* (Maryland: Rowman and Littlefield Publishers, 2002), 54.

account of their dilapidated condition. Moreover, they are frequented by disreputable characters and the practices there resorted to are said to be of the vilest. They are filthy in the extreme and behind them, close by the railway station, is a pool of foetid matter, the exhalations from which are by no means grateful.<sup>18</sup>

Apparently, just over a year later the author's desire had been fulfilled. In November 1891, a writer commented on

a solid, substantial growth this puffed up by no paper statistics, but evinced every day as brick walls are seen to rise higher and higher, and others spring up again, replacing shanties and hovels all over the city. Where once were Indian cabins, low grog shops and Chinese washhouses are now beautifully decorated spacious stores that would be a credit to any city. Altogether the change in Johnson street is wonderful.<sup>19</sup>

This comment unambiguously celebrates that the "shanties and hovels" of the racialized others of respectable "white" British citizens no longer formed part of the Johnson streetscape. Despite this writer's observation, according to the 1881 census, there were only 33 "vessels and shanties" in the city and by 1891, 144, 23 of which were in the Johnson street ward.<sup>20</sup> This, of course, is likely due to an increase in population between 1881 and 1891. However, simply because *more* people lived in the city did not mean that more people necessarily lived in houses rather than shanties or vessels. In 1881 the ratio of shanties to houses was 1:57.2 whereas by 1891 there was one shanty for every 27.8 houses.<sup>21</sup>

This process of "replacing shanties and hovels" was an ongoing one. A press report from the summer of 1892 describes a confrontation between a First Nations woman and one Officer Smith, who went into her home, "an old shack of miscellaneous construction," and dismantled it. The article noted that

---

<sup>18</sup> "Pull Them Down," *Daily Colonist*, 29 August 1890, 5.

<sup>19</sup> "How We Are Growing," *Daily Colonist* 22 November 1891, 5.

<sup>20</sup> The enumerators of the 1881 census were instructed that "every vessel, which is the abode and domicile of a family, or on board which there may happen to be any person or persons belonging to our population, not having a domicile on shore, or not forming part of any family on shore is to be registered in [the vessel] column." Shanties were considered "dwellings of a temporary character." These same instructions were given to enumerators in 1891. *Manual Containing the 'Census Act' and the Instructions to Officers Employed in Taking the Second Census of Canada* (Ottawa: Department of Agriculture, Census Branch, 1881), 26; *Instructions to Officers. 1891* (Ottawa, 1891), 12.

<sup>21</sup> *Second Census of Canada, 1881*, 94 ; *Third Census of Canada, 1891*, 8.

as Officer Smith was not well up on the Chinook, he simply waves his hands and baton, which indicated a clearance. Mrs. Klootch did not catch on and the officer proceeded to illustrate by removing a couple of pegs. Then she lent an unwilling hand, and ... Officer Smith was able to come back to headquarters and report that all was clear.<sup>22</sup>

In the retelling of this encounter, the writer assured readers that Officer Smith "simply waves his baton," indicating that he was not acting violently, but simply attempting to get the woman to clear out. To this First Nations woman, however, in the hands of colonial power embodied by Officer Smith, who was dismantling her home, the baton waving was surely a serious threat. Furthermore, the writer does not indicate where the evicted woman and her children *went*. Perhaps onto the street. Perhaps further to the periphery of the city to reconstruct their dwelling. Yet perhaps to the writer, living in a becoming modern city in which the very destruction of this woman's home was a symbol of progress, her future whereabouts and housing conditions were beside the point. Employing this same discourse of liberal progress and achievement, local historian David Pethick has reflected on the position of Victoria as it bid farewell to the nineteenth century amidst ringing bells and exploding firecrackers. He points out that at the beginning of the century, "only an Indian village had marked the site of the festivities; now a modern city, complete with street cars and telephones, surveyed its achievements, found them good, and looked confidently toward the future."<sup>23</sup>

In addition to explicitly asserting and celebrating Victoria's progress, *Daily Colonist* columnists and letter writers in the late decades of the nineteenth century covered contests over the use of public spaces and made suggestions as to how these spaces should be ordered. An 1892 article entitled "Street Pea Nut Stands" recounts the proceedings of a City Council meeting in which "the matter of street fruit, candy and pea nut stands was warmly discussed." Some aldermen claimed "that their presence was a nuisance, while others contended that they did no harm and could always be kept in order, or else be closed." The specific case before Council was that of the "keeper of the well-known stand at the corner of Yates and Government streets," who had been in the same spot for three years, had paid his annual license, and "had never had a complaint lodged against him."

---

<sup>22</sup> "An Eviction," *Daily Colonist*, 16 July 1892, 5.

<sup>23</sup> Pethick, 143.

Nevertheless, this man was "turned off the street" by Police Chief Sheppard "because the stand was a public nuisance." No decision was made on the matter and it was referred to the police committee by a vote.<sup>24</sup> This incident, and the recounting of it in the press, exemplifies the contested nature of public city spaces in late nineteenth-century Victoria. The process of the city becoming is revealed here: the city was not (and never is) fixed; the very use of the streets and what constituted "order" upon these streets was "warmly" debated and in part determined in the City Council chambers. Nine years later,<sup>25</sup> the press reported that Council had to make another decision about the use of city streets:

John Bartlett, who has been recently discharged from the hospital, requested permission from the Council to sell matches and other small articles on the streets in order to make a living for his wife and family, as he is still in too weak a condition for working. Several aldermen spoke of the deserving nature of the case, and on motion, the matter was left in the hands of the Mayor.<sup>26</sup>

Like the commentary on the "Pea Nut" stand, this article outlines late nineteenth-century struggles over city spaces and Council's ultimate role in regulating these spaces. That these seemingly trivial Council agenda items were newsworthy further suggests that the question of who had legitimate access to the streets and who did not was a topic of contemporary interest and anxiety.

It was not only Council reports in the papers that articulated a desire for a certain type of city space – the letters to the editor section was also a forum in which concerned Victorians engaged in comment on such issues. In 1891, one such citizen wrote a letter entitled "Street Loafers":

The complaints arising on account of men blocking the sidewalks should cause the authorities to turn their attention to the crowd which completely fills the sidewalk every evening on the N.W. corner of Government and Yates streets ... It is quite impossible for a pedestrian to elbow his or her way through the dense mass congregated on the sidewalk in this vicinity – especially on Saturday evenings. It is quite out of the question for a lady to

---

<sup>24</sup> "Street Pea Nut Stands," *Daily Colonist*, 18 February 1892, 5.

<sup>25</sup> The examples cited here are just a few among many such incidents that the *Colonist* recorded in the years which I examined. Likely Council had to make similar decisions between 1894 and 1898, years not covered in this work.

<sup>26</sup> "Discussing Early Closing," *Daily Colonist*, 19 February, 1901, 6.

attempt to get along in either direction. Trusting that the authorities will see to the "moving on" of these crowds off the public pathway.<sup>27</sup>

This resident clearly marks the sidewalks as "public *pathways*," that is, places for "the public" to move through. In this writer's conception, there were, on the one hand, those who "blocked" and by inference were not a part of the legitimate public with entitlement to public city spaces. On the other hand, there were those who attempted to "get along" who, apparently because of their movement, *did* constitute the public and as such had access to public pathways. The writer highlights in particular that it was "out of the question for a lady to get along" signaling the importance for "a lady" to be able to *move through* the streets, thus ensuring that she would not be mistaken for a woman *of* the street. In fact, the discursive centerpiece of this letter is the language of movement; even the appeal to the authorities to address the problem of "street loafers" requests that they handle the "moving on" of such persons. As we shall see below, this letter is part of a more general sentiment expressed by citizens and legally encoded in the Street By-Law, that the public streets of the city were becoming spaces to move through – particularly in the service of capitalism and colonialism – rather than to congregate upon.

While the ability for pedestrians to move through the streets with ease on a daily basis was becoming increasingly important, at certain times of the year movement through the streets was especially warranted by certain segments of the population. Victoria Day, birthday of Queen Victoria, namesake of the city itself, was one such occasion. In 1892, reporting on the activities of Victoria's many societies, the *Colonist* announced that "at 10 o'clock this morning, the members of the Sons of England Lodgers in the city will parade from Foresters's Hall to the Pandora Avenue Methodist church ... The parade will be given in honor of Her Majesty's birthday."<sup>28</sup> In May 1900 the newspaper heralded the "monster patriotic parade through the city's streets ... which both residents and visitors are looking forward to with much pleasurable anticipation ... it is bound to eclipse any similar affair in the past." According to the paper, parade participants included "the Boys' Brigades of Victoria and Vancouver, Indians, school

---

<sup>27</sup> "Street Loafers," *Daily Colonist*, 9 March 1891, 4.

<sup>28</sup> "Among the Societies," *Daily Colonist*, 22 May 1892, 10.

children, firemen, societies, floats, and citizens in carriages."<sup>29</sup> Christmas was another time during which movement through the streets was celebrated. In 1899 a *Colonist* headline proclaimed, "Christmas Eve in Victoria Streets Crowded with Happy Children and Just as Happy Parents." The article went on to note:

And such a crowd it was last evening! The streets were a motley mixture of hurrying pedestrians and odd shaped parcels done up in brown paper ... Men and women who under ordinary circumstances would have felt themselves everlastingly disgraced in the lorgnetted eyes of society wrestled with bags and boxes, even longing for the multitudinous arms of Buddha that they might carry more.<sup>30</sup>

The city streets were perceived by the writers, and perhaps also by people who participated in the Queen's birthday celebrations and who bustled home with their packages on Christmas Eve, as spaces of movement. In these particular instances, the writers did not argue that respectable citizens should be able to move through the city unimpeded on their daily routes, but claimed the streets specifically as spaces of celebration. In late nineteenth-century Victoria, the use of the streets by certain segments of the public, and the gathering of crowds within the streets was tolerated and even legitimated, that is, crowds were acceptable given that they were in motion and as long as the overarching purpose of these moving crowds was to enact and embody colonialism (parading for the Queen) and consumer capitalism (wrestling with bundles and longing to carry more).

While citizens used the press to express their desire for certain kinds of public city spaces, City Council, as the governing entity of the city and its public, had a responsibility to respond. In "An Ordinance to Incorporate the City of Victoria," which became provincial legislation when British Columbia joined confederation, Council was authorized to make by-laws on a wide range of issues.<sup>31</sup> The Ordinance dictated that by-laws had to be voted on at meetings where at least four of seven aldermen and the mayor were present, and that each by-law had to be considered at least twice. As the following

---

<sup>29</sup> "Queen's Birthday," *Daily Colonist*, 24 May 1900, 1.

<sup>30</sup> "Christmas Eve in Victoria – Streets Crowded With Happy Children and Just as Happy Parents. Business Houses of all Branches Did a Brisk Trade All Day," *Daily Colonist*, 24 December 1899, 3.

<sup>31</sup> "An Ordinance to Incorporate the City of Victoria," Statutes of British Columbia (hereinafter S.B.C) 30 Vict. (1867), c. 94, s. 35.

press report from 1892 suggests, Council members were not necessarily aware of the exact content of a by-law when asked to vote on it:

ALD. STYLES – We are called here and we know nothing whatever of what we are called together for. We ought to have a copy of this by-law before us so we might understand it.

ALD. BAKER concurred. He Said:

"I hope in future we will have copies of all these by-laws. Surely we have officials enough around this hall to make copies of an ordinary by-law. Why have we not copies?"

THE MAYOR – I quite agree with you. You should have copies.

ALD. BAKER – There are many by-laws passed here that we have had no opportunity of studying. It is all very well for the Mayor to read out clause after clause, and make such amendments as he thinks proper, but we can't understand them.<sup>32</sup>

Thankfully perhaps, even though Council initiated, debated, and amended by-laws, it was ultimately up to the "municipal electors" to confirm proposed by-laws by voting on them. If the electorate defeated a by-law "no such by-law, or portion of a by-law, or one of a similar nature, shall be brought forward or considered during the same municipal year."<sup>33</sup> Significantly then, the by-laws outlined below which encoded relationships between bodies and public spaces were not merely passed by six aldermen and the mayor but had the widespread support of those members of the public at large who were eligible to vote in municipal elections.<sup>34</sup>

The first significant Street By-Law, passed 4 June 1873, regulated the speed at which people rode or drove through the "Public Streets" of the city, dictated that those constructing or repairing buildings not take up more than one third width of the street, regulated the disposal of rubbish, coals and night soil, and noted that "no person or persons shall interrupt any highway or Public thoroughfare within the City limits, by erecting thereon any fence, building, barricade, or obstruction of any nature or any

---

<sup>32</sup> *Daily Colonist*, 17 December 1892, 3.

<sup>33</sup> S.B.C. 30 Vict. (1867), c. 94, s. 53, 54.

<sup>34</sup> Those so eligible were men of "full age," presumably 21, who had lived in British Columbia for at least three months before an election, "being ... rated on the Municipal Assessment Roll ... and having paid all assessments due up to the time of voting." S.B.C. 30 Vict. (1867), c. 94, s. 15.

kind."<sup>35</sup> Recognizing the need to further circumscribe the use of the streets fourteen years later, City Council amended the by-law in May 1887 and added a series of sections relating to the construction and maintenance of sidewalks, the regulation of traffic, and the use of firearms.<sup>36</sup> It was not until March 1901, however, that Council added a section entitled "FOOT PASSENGERS," thus writing *embodied obstructions* into the by-law. The 1901 by-law dictated that "no persons shall stand in groups, in front of any saloon, boarding house, hotel or place of public entertainment, or remain on any of the streets or sidewalks in said city, so as to cause any obstruction to the free use of said streets and sidewalks by foot passengers."<sup>37</sup> Significant in terms of the regulation of bodies on the street, and reflecting the desires of certain citizens as articulated in the press, is the notion embedded in the 1901 by-law, that the streets were becoming places to *move through* rather than to "remain on." This new by-law and its enforcement likely posed a contradiction for those for whom the streets were the only place they *could* remain: the public was increasingly being legislated by Council exclusively for those who had a "private" place to which to return.

In the 1901 flurry of amendments to Victoria's by-laws, Council also revamped the "By-Law Relating to Public Morals." Originally implemented in 1885 as the "Saloons and Public Morals By-Law," it was aimed at regulating the relationship between alcohol consumption and public morals. When City Council amended this by-law in 1888 and again in 1901, as with the Street By-Law, they made it more explicit with respect to the relationship between bodies and spaces. The pertinent section of the 1888 by-law noted that,

any person or persons found drunk or disorderly, or who shall cause a disturbance by screaming or singing, or by impeding or incommoding peaceable passengers in any street, highway, or public place within the City

---

<sup>35</sup> "Municipal Street By Law" (1873), no. 9, s. 4, *By-laws of the Corporation of the City of Victoria Province of B.C. 1877* (Victoria: Daily Standard Printing House, 1877), 20.

<sup>36</sup> "A By-Law to regulate Streets and Sidewalks and the Traffic thereon," (1887), no. 31, *By-laws of the Corporation of the City of Victoria Province of B.C. 1889*, ed. Edwin Johnson (Victoria: Cohen's Printing Office, 1889), 87-91.

<sup>37</sup> "A By-Law to Regulate Streets and Sidewalks and the Traffic Thereon, and the Width and Grades Thereof," (1901), no. 340, *Revised, Amended and Consolidated By-Laws of the Corporation of the City of Victoria 1901* (Victoria: T.C. Cusak, 1901), 110.

of Victoria, and all vagrants and mendicants within the said City, shall be subject to the penalties of this By-Law.<sup>38</sup>

The 1901 by-law was even more explicit:

No person shall be or remain in any street or public place within the city limits who is intoxicated, and no person shall in or upon the street or public places of the city noisily scream, or create any offensive noise, or do any act to create or cause a disturbance or to impede or incommode peaceable passengers on such streets or public places, or the inhabitants of the city. And no vagrant or mendicant shall remain in or upon such streets or public places.<sup>39</sup>

There are three noteworthy shifts between the 1888 by-law and that of 1901. First, "the said City" had been discursively broken down into its component parts: streets and public places; integral to the definition and composition of the city by 1901 were the "streets and public places" which the city, represented by Council, could claim as its own. Second, with the incorporation of the word "inhabitants," the 1901 by-law denoted who belonged in the city and by extension in the streets and public places, and who did not. Third, while the maximum sentence for an infraction of the Public Morals By-law decreased from six months in prison to one month, the maximum fine increased from \$50 to \$100, thus making the ability to avoid jail time by paying a fine even less possible for most of those the police deemed noisy, offensive, or disruptive.

The final by-law, which regulated the relationship between bodies and public spaces, and perhaps the law which did so most overtly, was the Parks By-Law. From its inception in 1890, this by-law clearly outlined those to whom the public belonged – and who belonged in the public – and those to whom it did not. The 1890 by-law stated that,

it shall be lawful for any police officer, constable, caretaker or other person duly authorized by the mayor or any alderman of the city, to exclude from the said public squares, parks and grounds all drunken or filthy persons, vagrants and notoriously bad characters and to remove therefrom any

---

<sup>38</sup> "A By-Law Relating to Public Morals," (1888), no. 44, s. 2, *By-laws of the Corporation of the City of Victoria Province of B.C. 1889*, ed. Edwin Johnson (Victoria: Cohen's Printing Office, 1889), 121.

<sup>39</sup> "A By-law To Amend the Public Morals By-Law" (1901), no. 377, s.4a 1901 *Revised, Amended and Consolidated By-Laws of the Corporation of the City of Victoria 1901* (Victoria: T.C. Cusak, 1901), 256.

person who ... is committing any nuisance or who is guilty of any disorderly conduct therein.<sup>40</sup>

As with the by-laws cited above, the Parks By-Law is evidence of the explicit exclusion of specific bodies from specific spaces. It was through these exclusionary laws and their enforcement that certain city builders attempted to create public spaces specifically for certain other bodies, namely the "peaceable passengers" and "respectable inhabitants" of the city.

### **Making Space: Policing the Body Public**

At the same time as certain inhabitants expressed opinions about the shape of public spaces in the city of Victoria, and in many ways City Council acted in accordance with the desires of its citizens, it was ultimately the role of the police, the "officers of the peace," to enforce by-laws and to make certain that the streets remained orderly and uncluttered. It was the job of the police to ensure the unimpeded movement of citizens. In a 1995 article in *Urban History Review*, Jeffrey Ian Ross undertakes an analysis of the historiography of policing in Canada. He divides the 41 articles, chapters, books, and theses that make up his sample into two categories: case studies of particular forces and case studies of subprocesses in particular forces. The 21 works that make up the latter set analyze issues such as "police control of undesirables," "police courts/magistrates," and "class-based policing," to name a few categories.<sup>41</sup> However, none of the studies cited by Ross explicitly investigate the role of the police in regulating bodies or shaping public city spaces. While this work in no way professes to be a history of policing in Victoria per se, we must consider that the charges for infractions of public space that came before the police magistrate were initiated by the police; police constables walked the beat and removed drunk, disorderly, and vagrant bodies from the city streets, parks, squares, and grounds.

---

<sup>40</sup> "A By-Law to provide for the Maintenance and Care of Public Parks, Squares and Grounds," (1890), no. 87, s. 2 1890 *By-laws of the Corporation of the City of Victoria Province of B.C. 1891*, (Victoria: Cohen's Printing Office, 1891), 205.

<sup>41</sup> Ian Jeffery Ross, "The Historical Treatment of Urban Policing in Canada," *Urban History Review / Revue d'histoire urbaine* XXIV.1 (October 1995): 38-9.

The Victoria Metropolitan Police was established in 1858 when Governor James Douglas appointed Augustus Pemberton as Commissioner of Police, and at the time it was the first municipal police force in Western Canada. Douglas instructed Pemberton to hire "a few strong men with good character" to begin to create order in the not yet colonial city.<sup>42</sup> Two years later, under Chief Francis O'Conner, the police department had 12 constables including a sanitary officer, a night watchman, and a jailer. From the inception of the force, responsibility for policing was complicated in Victoria. As John C. Weaver points out in *Crimes, Constables, and Courts: Order and Transgression in a Canadian City, 1816-1970*, one of the unique aspects of Canadian policing in the nineteenth century, in contrast to both Britain and the United States, was "the municipal focus of policing and the civic control over public order offences." In Ontario, he maintains, it was only after the Second World War that the province asserted "central authority."<sup>43</sup> In Victoria, however, until the mid-1870s, the city and the colonial government (and following 1871, the province) contributed in equal shares to the salary of the Chief of Police.<sup>44</sup> In 1873 the power to appoint police officers was bestowed upon City Council by "The Municipality Act Amendment Act," yet a 1876 amendment to this act made possible the establishment of a police board to be comprised of the Provincial Secretary, the Mayor or Warden of a municipality, and a Justice of the Peace in the municipality appointed by the Lieutenant Governor. The board was responsible for ensuring the efficient functioning of the local police force and "preventing neglect or abuse."<sup>45</sup> In addition, the 1876 act gave the Lieutenant Governor the power to appoint the police magistrate of a municipality.<sup>46</sup> Clearly in nineteenth-century Victoria, both the city and the province were actively engaged in police matters.

---

<sup>42</sup> Valerie Green, *Upstarts and Outcasts: Victoria's Not-So-Proper Past* (Victoria: TouchWood Editions, 2000), 126.

<sup>43</sup> John C. Weaver, *Crimes, Constables, and Courts: Order and Transgression in a Canadian City, 1816-1970*, (Montreal and Kingston: McGill-Queen's University Press, 1995), 14.

<sup>44</sup> Constable Jonathan Sheldan, President, *Victoria Police Historical Association*, personal communication, 16 February 2005.

<sup>45</sup> S.B.C. 39 Vict. (1876), c. 1, s. 11.

<sup>46</sup> S.B.C. 39 Vict (1876), c. 10.

Despite the shared nature of policing in British Columbia, the role of the municipal police was clearly localized.<sup>47</sup> In a compelling work on summary justice in Victoria between 1862 and 1892 Nancy Parker argues that over the course of the late nineteenth century, the police were transformed from "quasi-military adjuncts of the colonial administration into a professionalized element of the urban bureaucracy."<sup>48</sup> Police chiefs and constables were charged with enforcing municipal, provincial, and federal by-laws and statutes, "preserving the peace, preventing crime and apprehending offenders," and with "generally maintaining within the limits of the municipality law and order, and of administering justice therein."<sup>49</sup> In addition, those sworn in as officers had to take an oath to "serve our Sovereign Lady the Queen in the office of Police Constable ... without favour or affection, malice or ill-will; and ... to ... cause the peace to be kept and preserved; and ... prevent all offences against the persons and properties of Her Majesty's subjects."<sup>50</sup> Not only charged with these responsibilities, those appointed as police constables also had to be specifically embodied. In his 23 March 1881 report to City Council, Superintendent of Police Francis O'Conner wanted to "call ... attention to the qualifications that a man should possess previous to his being elected a police Constable. He should be in height a man of at least 5 ft 8 inches, respectable, sober, healthy and steady man and a fair scholar ... Obedience should be instilled, they should also be required to go through a course of discipline."<sup>51</sup> Materializing their connection to "Her Majesty," the uniforms of Victoria's finest were the same as those worn by the London police.<sup>52</sup> And, in 1900, reifying the concentration of colonizers on the force, an amendment to the Municipalities Act directed that "all members of the police force shall

---

<sup>47</sup> Nancy Parker, "The Capillary Level of Power: Methods and Hypotheses for the Study of Law and Society in Late Nineteenth-Century Victoria, British Columbia" (MA thesis, University of Victoria, 1987), 46 points out the contests in the late 1870s between the city and the province over responsibility for matters relating to policing. Of particular concern to both parties was who should pay for the upkeep of prisoners in the city jail charged with provincial and federal offences, and whether the municipal force should be responsible for policing beyond the city limits, and if so how far.

<sup>48</sup> Parker, 60.

<sup>49</sup> S.B.C. 1896, 61 Vict. c. 144 s. 230, 231.

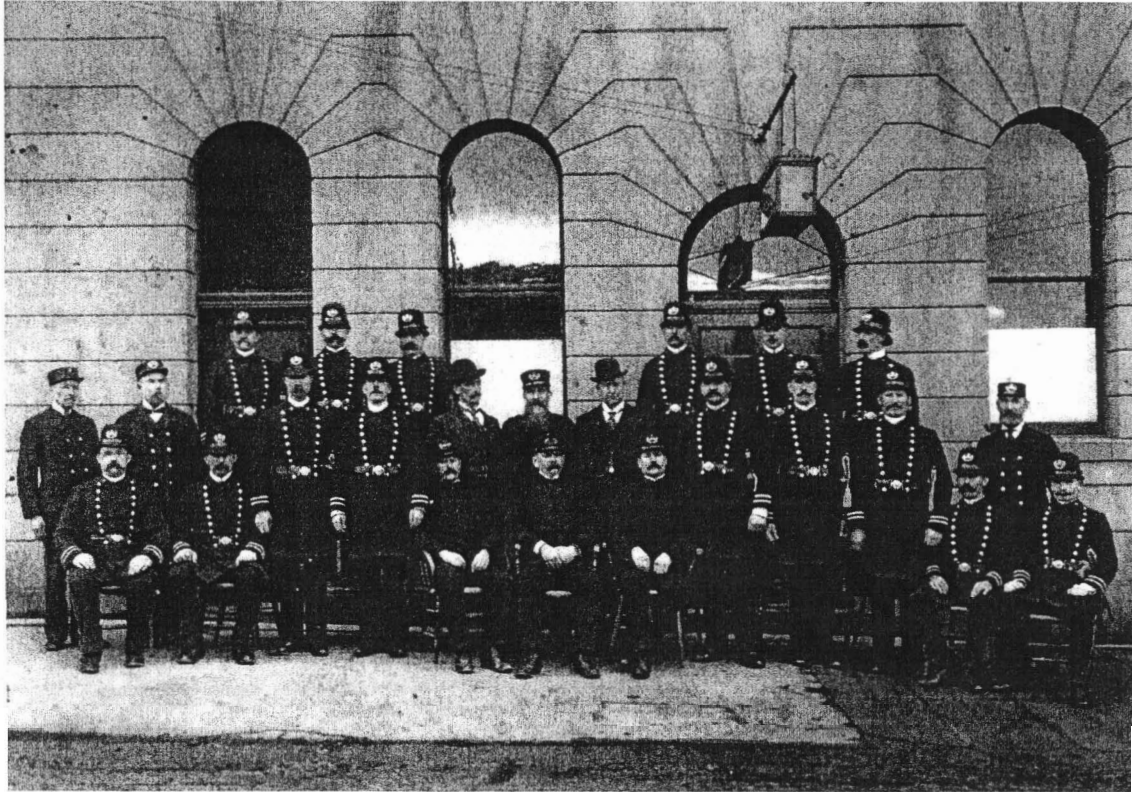
<sup>50</sup> S.B.C. 1873, 36 Vict. c. 5 s. 45.

<sup>51</sup> VCA CCM 23 March 1881.

<sup>52</sup> Baskerville, 67.

be British subjects."<sup>53</sup> The police, then, were to embody respectability, health, discipline and Britishness; they were to be uniformly clad and relatively homogenous with regard to certain bodily characteristics such as height and, according to Figure 1.1, the amount and type of facial hair.

**Figure 1.1**  
**Victoria Police Department circa 1900**



Victoria Police Museum and Archives (VPMA)

The police force, then, served as a local embodiment of colonial rule and order. At the outset of this work, I discussed the fetishization of bodies through which the activities which give rise to specific bodies are obscured by conceiving the body as a given rather than as a product of historical processes. I also pointed out the importance of conceiving the bodies of police officers, city councilors, and magistrates as events/actions which did not *hold* power, but enacted it. Thus, the production of the bodies of police officers (often in opposition to those they arrested) must not escape scrutiny. Given that constables in late nineteenth-century Victoria spent a great deal of time on the street, we

---

<sup>53</sup> "An Act to Amend the Municipal Clauses Act," S.B.C. 64 Vict. (1900), c. 23, s. 29.

might see the police as public bodies differently situated within relations of power and differently produced than the bodies public which they sought to regulate, namely those of so-called drunks and vagrants. In year-end reports of the Chief of Police and newspaper articles, there is evidence that a very specific police body was emerging in the last decade of the nineteenth century, one that needed to be clean, comfortable, and uniformly clad.

The state of both the police barracks and the city lockup was of great concern to Chief Sheppard in the late 1880s and early 1890s and to Chief Langley at the turn of the century. Although police and prisoners existed side by side in these buildings, in their reports, the chiefs of police pointed to the necessity of spatial segregation and made explicit distinctions between the needs of the former and those of the latter. Of utmost importance, the police needed to be clean and to have facilities in which to wash. With a new police barracks in the works as an addition to city hall, Chief Sheppard instructed Council in his 1889 year-end report that, "in the new Police quarters three wash basins are required for the use of the men, as at present they have to go down to the City lockup."<sup>54</sup> At the end of the following year, Sheppard made a similar appeal. He recommended "the construction of a water-closet at the Police Station, for the use of the Constables, who have at present to use the prisoners' closet in the lockup which is very unsatisfactory, besides the inconvenience of coming down stairs at night and waiting in the cold."<sup>55</sup> The report is ambiguous as to whether the prisoners' water-closet itself was "unsatisfactory" or whether the lack of satisfaction came from officers having to *use* that which was in the domain of the prisoners, thus blurring the boundaries – at the level of a basic bodily function – between respectable and prisoner bodies. By the following year-end, Sheppard's requests had been met and he thanked Council's Police Committee, noting that "the alterations lately carried out in the barracks by your honorable Police

---

<sup>54</sup> Henry W. Sheppard, "Report of the Superintendent of Police," *Annual Reports Corporation of the City of Victoria Year Ending 31<sup>st</sup> December 1889 John Grant Mayor* (Victoria: Munro Miller, 1890), 62.

<sup>55</sup> Henry W. Sheppard, "Report of the Superintendent of Police," *Annual Reports Corporation of the City of Victoria Year Ending 31<sup>st</sup> December 1890 John Grant Mayor* (Victoria: Jas. A. Cohen's Electric Printing), 61.

Committee has added very much to the comfort and convenience of the members of the force generally."<sup>56</sup>

Although the officers in the barracks were comfortable by the end of 1891, the same could not be said for the prisoners. Sheppard reported that the lockup itself was "totally inadequate to meet the present requirements, as the number of persons arrested is considerably on the increase, and under present arrangements quite a number of prisoners have to serve eight or ten days' imprisonment in the lockup for petty offences, such as drunkenness etc."<sup>57</sup> At the close of 1892, Chief Sheppard again drew attention to the "inadequacy of room and requirements at the City lockup" and advocated for "bath accommodation for short-term prisoners, otherwise it will be impossible to keep the place in a good sanitary condition."<sup>58</sup> Evidently, he got his wish as he noted at the end of 1893 that, "the new City Lockup has proved a great convenience, especially in regard to baths for dirty prisoners." He made two additional requests, however, asking for sanitary beds for prisoners and a boiler in the yard of the lockup "for the purpose of boiling blankets which have vermin."<sup>59</sup> In his reports, Sheppard clearly employed two distinct elements of the discourse of sanitation: that of cleanliness and comfort in reference to his officers, and that of dirt and lack of sanitation in regards to the prisoners in the lockup. In so doing he articulated two different sets of material conditions, which gave rise to the clean and comfortable bodies of the police officers in opposition to and in segregation from the dirty and unsanitary bodies of prisoners.

At the turn of the century, Chief Langley also made use of the discourse of comfort and cleanliness in his reports to Council. He suggested at the end of 1900 that, "the room adjoining the Police Barracks, over the old fire hall, be added to the barracks for the comfort of the men when off duty. That separate lockers be placed in the room

---

<sup>56</sup> Henry W. Sheppard, "Police Report," *Annual Reports Corporation of the City of Victoria Year Ending 31st December 1891*, (Victoria: Jas. A. Cohen, 1893), 48.

<sup>57</sup> Henry W. Sheppard, "Police Report," *Annual Reports Corporation of the City of Victoria Year Ending 31st December 1891*, 49.

<sup>58</sup> Henry W. Sheppard, "Report from the Chief of Police," *Annual Reports Corporation of the City of Victoria Year Ending 31st December 1892 Hon. Robert Beaven Mayor* (Victoria: Jas. A. Cohen, 1893), 92.

<sup>59</sup> Henry W. Sheppard, "Report of the Chief of Police," *Annual Reports Corporation of the City of Victoria Year Ending 31st December 1893 Hon. Robert Beaven Mayor* (Victoria: Thomas Roarke & Co, 1894), 74-5.

for the men to put their uniforms and equipments in when off duty. Also that connections be made to the bath in their quarters." In this same report he noted the crowded conditions at the lockup. However, unlike Sheppard, Langley did not articulate a concern for the sanitation of prisoners, but extended the discourse of the comfort and safety of his men even into his discussion of the lockup. He recommended to Council that "two large cells be erected at the rear of the Police Station ... as during the past few months we have been greatly overcrowded, prisoners having to lie in the hallway, and it is not safe for the gaoler to enter with so many loose prisoners about, as he visits the cells every half hour."<sup>60</sup> The bodies of the prisoners lying overcrowded in the hallway did not even register in Langley's account; it is the bodies of his men that were his primary concern, bodies that had to be provided with comfort and safety as they walked amidst the "loose prisoners" in regular intervals of surveillance.

Not only were they to be clean and comfortable, the bodies of police officers were also to be visibly and distinctly marked by their uniforms. As Eric H. Monkkonen has argued, "when in the nineteenth century the city took the step of uniforming its police, it clearly stated its power to control its inhabitants."<sup>61</sup> Monkkonen's work explicitly employs a social control thesis and thus his notion that "uniforming" the police allowed the city to *control* its inhabitants might be overstated. However, the donning of police uniforms was (and is) clearly an embodiment of state-sanctioned power. Parker points out the contemporary concern with regulating the behaviour of the police "and in particular the demeanor of the officers in uniform." She cites an order from Police Chief Sheppard in 1891 in which he dictated that "loitering on the corners of Streets is strictly prohibited also talking to persons on the streets."<sup>62</sup> The marked bodies of the uniformed police were to be distinct in both their appearance and their actions from those whose bodies-actions they sought to regulate.

In late nineteenth-century Victoria, the *Daily Colonist* regularly commented on and celebrated the uniforms of the police. In an 1890 article entitled "In Bright Array," the

---

<sup>60</sup> J. M. Langley, "Report of Chief of Police," *Annual Reports Corporation of the City of Victoria Year Ending 31<sup>st</sup> December 1900 Hon. Charles Hayward Mayor* (Victoria: Western Printing House, 1900), 73.

<sup>61</sup> Eric H. Monkkonen, *Police in Urban America, 1860-1920* (Cambridge: Cambridge University Press, 1981), 53.

<sup>62</sup> Superintendent's Order Book, 12 June 1891, cited in Parker 36.

paper reported that, "dressed in their new winter clothes, the City police were inspected at 3 o'clock yesterday by Ald. Kelly, representing the police committee. He expressed himself as well pleased with the appearance and behaviour of the force ... Their new uniforms are well made of good material and are considered the neatest and best the force has yet received."<sup>63</sup> In May 1892, just before the Queen's birthday, the force again got new uniforms. The *Colonist* excitedly remarked that "the new uniforms ... will be ready, today, so that the officers will be able to dress their parts to perfection during the celebration."<sup>64</sup> In May 1899 the inspection of the police was again recounted in the paper. In "Police on Parade," the writer reported that "the uniformed members of the city police force were formally paraded for inspection yesterday afternoon [before Mayor Redfern], dressed in their best suit of clothes which have just been received from the contractors."<sup>65</sup> And, even though they had clearly just received new uniforms in the spring of 1899, less than a year later, an article entitled "Better Uniforms" announced that "the police commissioners have decided on better and more expensive suits for the members of the police force." The suits of gaolers and detectives were to cost \$22.50 and those of constables \$30.<sup>66</sup> In fact, in 1900 a total of \$2050.72 was spent on police uniforms and boots.<sup>67</sup> Significantly, in this same year, those charged for embodied infractions of public space paid \$2367.05 in fines in the police court, thus financing, in a certain sense, the clothing of those who arrested them.<sup>68</sup> Not only constituted through conditions of cleanliness, comfort, and safety which they came increasingly to enjoy at the barracks, the bodies-actions of the members of the police force were also made as they donned their "expensive suits." These uniforms marked police officers as legitimate public bodies, those charged with the role of protecting and regulating public space and with keeping the public peace.

---

<sup>63</sup> "In Bright Array," *Daily Colonist*, 5 November 1890, 5.

<sup>64</sup> *Daily Colonist*, 23 May 1892, 5.

<sup>65</sup> "Police on Parade," *Daily Colonist*, 23 May 1899, 5.

<sup>66</sup> "Better Uniforms," *Daily Colonist*, 7 March 1900, 5.

<sup>67</sup> J. M. Langley, "Report of Chief of Police," *Annual Reports Corporation of the City of Victoria Year Ending 31<sup>st</sup> December 1901 Hon. Charles Hayward Mayor* (Victoria: Western Printing House, 1901), 86.

<sup>68</sup> This figure is gleaned from the police court records and is an aggregate of fines paid for total embodied infractions. This figure is likely an underestimation as I calculated using the minimum amount for each value within the "fine" variable. See Appendix 3.

**Conclusions**

With the police at centre stage, "dressing their parts" as officers of the peace and attempting to ensure public order, Victoria was well on its way to developing into the type of city that its residents envisioned in the press – a becoming city of prosperity, progress, and affluence. Through enacting by-laws which reified this vision, City Council distinctly designated the streets and public places of its city as spaces of movement, and made an effort to demarcate which bodies had a right to be in these places by proscribing those that did not. Inhabitants were not to be impeded; the streets were to be cleared of disorderly, drunken, and vagrant bodies, in order that peaceable passengers might traverse these same streets on their way to the productive spaces of work, the consumptive spaces of the commercial centre, and the private spaces of their homes. As the public was becoming increasingly defined as a space to move through rather than to dwell in, only those who had a private place to return to had legitimate access to the public. In Victoria in the late nineteenth century, certain city builders were actively engaged in legislating and enacting a city premised upon distinctions between stasis and movement, productivity and idleness, cleanliness and dirt, and public and private. This colonial city provides fertile ground for both an examination of the role of the police court in the enterprise of city building by attempting to enforce these distinctions and for an investigation of the ways in which those the police deemed obstructive, idle, vagrant, and so on, negotiated relations of power.

---

## CHAPTER TWO

---

### **Building the City Public: Being and Doing in Becoming Modern Victoria**

Henry Marshall, a vag, with a costume of a rag will be jailed as a bum for one month to come. Billy Meyer through whiskey lost discretion and got frisky; in begging soon became adept, for a month in prison he'll be kept.<sup>1</sup>

I'm not guilty your Honor. Leastwise, I don't think any man as has a bit of 'bacco in his clothes can be called a vagrum.<sup>2</sup>

Marshall and Meyer were only two of many people who came before the police court in Victoria between 1871 and 1901, charged for what I call "embodied infractions of public space." Included within this category are offences such as being drunk and disorderly, being a vagrant, causing a disturbance by screaming, disturbing the public peace, and so on.<sup>3</sup> Most historians who have examined such charges classify these as offences against public or moral order and distinguish them (as they were distinguished in law) from offences against property or persons. However, as is hopefully evident from my scrutiny in the previous chapter of city by-laws under which many embodied infractions fell, I contend that offences like drunkenness, vagrancy, and prostitution were more than violations of public or moral order. People were arrested for these types of activities because *their bodies took up public spaces in particular ways* by being a certain kind of person and/or doing a certain action. Furthermore, and equally significant, unlike assault for example, which was certainly an embodied infraction and was often committed in public space, the charges that interest me are ones in which the public itself was the party violated.

Historians have used police court records for a variety of purposes such as tracking changes in petty crime over time, observing the gendered, racialized and classed

---

<sup>1</sup> "City Police Court," *Daily Colonist*, 1 December 1889, 4.

<sup>2</sup> "Municipal Police Court," 15 May 1881, 3.

<sup>3</sup> See Appendix 1 for a complete list of charges included under this heading.

nature of legal regulation, and examining the shift from community to state control of public spaces. Building on these approaches, and pushing further the potential of police court records to reveal more than trends in petty crime and its regulation per se, my aim in this chapter is to scrutinize the Victoria police court records in order to discern what they might disclose about the relationship between the regulation of bodies and spaces and the making of the public in Victoria. The 4256 cases that make up the data discussed below cover a thirty-year period and are drawn from the Magistrate's Record Book and the Charge Book of the Victoria police court in the periods 1871-1873, 1881-1883, 1889-1893, and 1899-1901.<sup>4</sup> Making a case for the examination of police court dramas as they were played out in the newspaper, Paul Craven has argued that police court sources themselves are "quantitatively exhaustive but qualitatively skeletal."<sup>5</sup> However, as Nancy Parker has asserted, the records of local police courts are useful because they were routinely generated. She points out that "the chargebook itself was daily taken to the police court where sentencing information ... was recorded by the magistrate. Thus the chargebooks constituted an immediate record of the activity of the police and the Police magistrate."<sup>6</sup> There is certainly a dearth of qualitative evidence in these sources. However, given that they provide a sketch of the every day/every night activities of people on the streets, a quantitative analysis of police court records reveals a great deal about who the bodies public were in late nineteenth-century Victoria and what the consequences were for their ways of being.

In order to scrutinize the street activities of late nineteenth-century Victorians and the desire of city builders such as "respectable" citizens, mayors and aldermen, and members of the police force to shape urban spaces, I first examine the letter of the law

---

<sup>4</sup> See Appendix 2. It is important to note here that 4256 refers to *cases* or *charges* that came before the court, not individuals. There were certainly people who appeared before the court on many occasions and some of their stories will be revealed here. However, due to the scope of this project and the ten-year sample over a thirty-year period, I was unable to track and account for repeat offenders at an individual level.

<sup>5</sup> Paul Craven, "Law and Ideology: The Toronto Police Court 1850-80," *Essays in the History of Canadian Law, Volume 2*, ed. David Flaherty (Toronto: University of Toronto Press, 1983), 248.

<sup>6</sup> Nancy Parker, "The Capillary Level of Power: Methods and Hypotheses for the Study of Law and Society in Late-Nineteenth Century Victoria, British Columbia" (MA thesis, University of Victoria, 1987), 34, 36.

and who was in charge of enacting it. Second, I attempt to answer the following questions: Who were the people on the streets in Victoria between 1871 and 1901? What types of charges were leveled against them? How were offenders represented and how did they attempt to represent themselves in the press? How did charges against them vary over time? And finally, what do the answers to these questions reveal about the making of the public in a West coast colonial city at the turn of the twentieth century?

### **Laying Down the Law**

The removal of certain bodies from the city streets, performed by the police, was only the first step in attempting to create public order; it was the police magistrate who determined "guilt" or "innocence" and meted out fines and sentences accordingly. Historians have characterized the police court as a place of "quick justice" in which a large number of men and women passed through the "docket" on any given day for offences ranging from drunkenness to assault to the destruction of property.<sup>7</sup> In Toronto the police magistrate tried 6554 cases in 1879.<sup>8</sup> According to John C. Weaver, by the late nineteenth century about three thousand cases came before the police court each year in Hamilton "at the rate of five to ten cases a day."<sup>9</sup> While Victoria between 1871 and 1901 did not boast the same population as either Toronto or Hamilton, the range of offences that came before the local police court can be similarly characterized. In British Columbia, as in Ontario, the position of police magistrate was created by provincial legislation. "The Municipality Amendment Act" of 1873 gave municipalities the right to appoint a salaried police magistrate who had the "full power, authority, and jurisdiction to do alone" what could be done by any one or more federal Justices of the Peace.<sup>10</sup> Between 1873 and 1901 details surrounding the appointment, property requirement, and

---

<sup>7</sup> Craven, 275.

<sup>8</sup> Craven, 264.

<sup>9</sup> John C. Weaver, *Crimes, Constables, and Courts: Order and Transgression in a Canadian City, 1816-1970*, (Montreal and Kingston: McGill-Queen's University Press, 1995), 71.

<sup>10</sup> "An Act to Amend 'The Municipality Act'," Statutes of British Columbia (hereinafter S.B.C) 36 Vict. (1873), c. 5, s. 42; "An Act respecting the duties of Justices of the Peace, out of Sessions in relation to summary convictions and orders," Statutes of Canada (hereinafter S.C.) 32-33 Vict. (1869), c. 31. Before this it was Augustus Pemberton, first commissioner of police, who had served in this capacity and had been appointed as such by the colonial government.

office hours of the police magistrate were outlined in municipalities' acts. However, with the exception of an increase in the number of indictable offences, which could be tried by the police magistrate under the "Speedy Trials Act" of 1890, the role and jurisdiction of the magistrate remained consistent over this period.<sup>11</sup>

Like the police officers that brought cases before him, the magistrate was responsible for dealing with breaches of local by-laws as well as provincial and federal statutes. The embodied infractions for which offenders were arrested in late nineteenth-century Victoria were Street By-Law, Public Morals By-Law and Parks By-Law violations as well as violations of federal vagrancy and prostitution laws. The 1869 "Act respecting Vagrants" classified vagrants as anyone who could work but refused to do so, who exposed or exhibited any indecent exhibition, or "openly or indecently" exposed their persons, who wandered about and begged, and "all persons loitering in the streets or highways and obstructing passengers by standing across the footpath or by using insulting language ... causing a disturbance in the streets or highways by screaming, swearing or singing, or being drunk or impeding or incommoding peaceable passengers." In addition "all common prostitutes, night walkers ... or gathering of people not giving a satisfactory account of themselves – all keepers of bawdy houses and houses of ill-fame not giving a satisfactory account of themselves" could be arrested as vagrants.<sup>12</sup> So-called prostitutes could also be charged under the "Common Nuisances" section of the Criminal Code, which prohibited, among other things, the keeping of disorderly and common bawdy houses.<sup>13</sup>

Regardless of which level of law police officers and magistrates exercised, the question remains: whose behavior are we scrutinizing when we examine the fates of people brought before the court for embodied infractions of public space? I argue that the police and police court magistrates were clearly engaged in building a certain kind of city by regulating the activities of people who occupied public spaces in particular ways. However, it is critical to call attention to the fact that the police court records themselves

---

<sup>11</sup>Parker, 92.

<sup>12</sup> S.C. 32-33 Vict. (1869), c. 28, s. 1. In 1869 the maximum sentence for any such activity was two months with or without hard labour. In 1874 the maximum punishment was increased to six months. S.C. 37 Vict. (1874), c. 44, s. 1.

<sup>13</sup> G.W. Burbidge, *Digest of the Criminal Law of Canada* (Toronto: The Carswell Company Ltd., 1980), 172-4.

provide evidence of the systematic behaviours of the police and the magistrate, rather than those of the people whom they arrested. The data analyzed below, then, were produced as a result of the actions of those charged with maintaining law and order in a becoming modern city; any conclusions that we come to must be understood in this context. So as to avoid an entirely top-down analysis, I use newspaper accounts to attempt to flesh out the voices, albeit it in filtered form, of those who came before the courts.

### **Gendering and Racializing Bodies-Spaces**

In order to set the cases that came before the police court in select years between 1871 and 1901 in context, it is necessary to illuminate the composition of Victoria's population in this period. I am interested specifically in the ways in which the police and police courts contributed to racializing and gendering city streets and public places in particular ways. Thus, a breakdown of Victoria's population by race and gender is critical. However, the difficulty in providing this information is immense as the census is the only reliable source with which to do so. As with all historical sources, the census is a product of the time and place in which it was created; the questions asked and the answers given respectively reflect the attitudes and ideologies of the census makers in Ottawa and the respondents in late nineteenth-century colonial British Columbia. The information in Table 2.1 must be considered accordingly.

**Table 2.1**

**Population of Victoria by race and Gender 1871 - 1901**

<b>Year</b>	<b>First Nations Men</b>	<b>First Nations Women</b>	<b>Total First Nations</b>	<b>Total Chinese</b>	<b>Total Men</b>	<b>Total Women</b>	<b>Total Population</b>
1871	144	210	354	n/a	2143	1287	3430
1881	n/a	n/a	159	979	3468	2457	5925
1891	n/a	n/a	116*	1934*	10,653	6,188	16841
1901	n/a	n/a	266	2739	12,618	8,301	20,919

\*"Origins of the people" not recorded in 1891 census. These figures are generated from an aggregation of nominal data.

Sources: 1871 unofficial census of Victoria; 1881-1901 published census reports.

As Table 2.1 illustrates, in contrast to the population distribution of men and women in hinterland and resource-based areas of British Columbia, in Victoria the ratio of women to men was greater; women made up an average of 39 per cent of the population between 1871 and 1901. This percentage was relatively consistent starting at 37.5 per cent in 1871, rising to 41.4 per cent in 1881, falling back to 37.5 per cent in 1891 and climbing slightly again to 39.6 per cent by 1901. Despite the specific gendered makeup of the population, only 607 or 14 per cent of the total charges for embodied infractions that were brought by officers of the peace before the police court in these years involved women. Significantly, and perhaps surprisingly, the percentage of women arrestees remained relatively consistent between 1872 and 1901. In 1872 women accounted for 11 per cent of 117 total arrestees for embodied infractions; in 1882, 14.3 per cent of 334; in 1892, 16.3 per cent of 562; and in 1901, 14.1 per cent of 403 arrests. Why was women's overall rate of arrest significantly lower than the proportion of the population which they comprised? Why did the percentage of women arrestees remain fairly consistent over time when we might expect otherwise? In other words, if city builders were increasingly concerned with attempting to remove disorderly bodies from the streets, as the city by-laws indicate and the data discussed below demonstrates, why were women's bodies not increasingly considered disruptive or disorderly given late nineteenth-century middle-class conceptions of female propriety, respectability, and notions of women's sphere as private?

In a comparison of published and manuscript sources of police court activities in Victoria for 1881 and 1891, Parker argues that although gender was a significant factor in shaping the experience of people who came before the court, "race may have been a more significant social division."<sup>14</sup> Although the census figures for First Nations people (see Table 2.1) likely do not account for those living on the periphery of the city or on the Songhees reserve and thus do not reflect the number of First Nations people moving through the streets of late nineteenth-century Victoria, these figures are significant in relation to the number of First Nations people charged with embodied infractions of public space. As Table 2.1 indicates, at no time did the First Nations population of the city exceed much more than ten per cent of the total population of the city. In 1871 they

---

<sup>14</sup> Parker, 156.

comprised 10.3 per cent of the total population and by 1901, a mere 1.3 per cent. However, of the total charges for embodied infractions of public space that police officers brought before the magistrate between 1871 and 1901, 928 or 21.8 per cent were leveled against First Nations men and women.<sup>15</sup> This figure suggests that despite the low proportion of the population they comprised, First Nations people were a key target of the police. One explanation for their high rate of arrest might be the prevalence and persistence of contemporary stereotypes that associated First Nations people with alcohol consumption. Such stereotypes were reified in the Indian Act, which prohibited supplying intoxicants to First Nations people and also made it illegal for First Nations to have intoxicants in their possession.<sup>16</sup> As a result of both popular conception and the law, First Nations people were likely charged disproportionately for being drunk. In fact, of the total charges for drunkenness, 881 or 27 per cent were brought against First Nations men and women, and of the total First Nations charges, 95 per cent were drunkenness-related. The ways in which their bodies occupied space by being "drunk and disorderly," causing obstructions, or being out on the public streets for the purposes of prostitution were particularly intolerable to a city preoccupied with creating a certain kind of public – a venture which entailed removing the First Nations colonial other from its streets and public places.

However, as Figures 2.1 and 2.2 indicate, although racialization was a significant factor in determining who the police arrested for embodied infractions, the intersection of racialization and gender cannot be ignored. The total number of charges against First Nations men was 644 and against non-First Nations men 2882, a ratio of 1:4.5. A breakdown by gender and race for the city as a whole is only available for 1871, and in this year the population ratio of First Nations men to non-First Nations men was 1:13.9.

---

<sup>15</sup> I only recorded ethnicity when members of certain racialized groups were signified as such in the records. It is perhaps not surprising that only those visibly (or audibly) identifiable as non-Anglo-Saxon were distinctly noted. As will become clear below, the vast majority of non-Anglo-Saxon people that came before the police court were First Nations people. Thus for the purposes of readability – and not to intentionally obscure the fates of Chinese and other "marked" residents – throughout this work I refer to First Nations people and non-First Nations people. The latter category includes all *unmarked/unidentified* people who came before the court.

<sup>16</sup> J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1991), 191.

In the following year the ratio of First Nations men to non-First Nations men *charged* with embodied infractions was 1:2.9.<sup>17</sup> Clearly, First Nations men made up more than a proportional share of the charges. For First Nations women, however, this was even more profoundly the case. There were five times as many non-First Nations as First Nations women in Victoria in 1871, yet the total charges against First Nations women was 279 and non-First Nations women, 326, a ratio of 1:1.2.<sup>18</sup> In 1872, ten times as many charges were laid against First Nations women as against non-First Nations women, despite the evident population difference between the two. In fact for all full years examined, until 1890, the number of charges against First Nations women was greater than charges against non-First Nations women. (See Figure 2.2.) These figures reveal that First Nations women were more vulnerable than both non-First Nations men and women, and First Nations men to being arrested for occupying the streets in specific ways. Their bodies public were particularly offensive to a becoming modern city. The decrease in both First Nations men and women charged, in relation to non-First Nations men and women, over the course of the late nineteenth century (see Figures 2.1 and 2.2) is most likely a consequence of a general decrease in population of First Nations people in and around the city.<sup>19</sup>

---

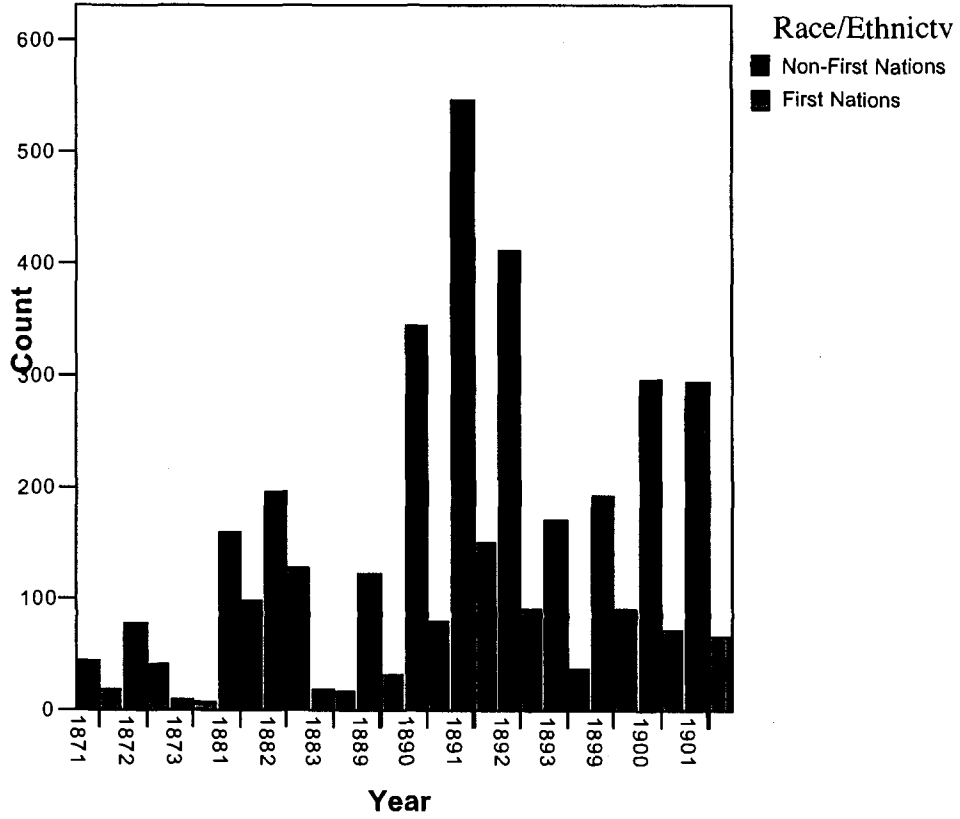
<sup>17</sup> I am comparing 1872 police court records with the 1871 census data as in 1871 I only examined a portion of the calendar year. See Appendix 2.

<sup>18</sup> I am not proposing that the number of First Nations to non-First Nations women was static over time. Table 2.1 clearly indicates that that was likely not the case, considering the decrease in the *total* number of First Nations people. However, given that 1871 is the only year in which a breakdown of gender and race is available, this comparison is a useful means of contextualization, if only at the level of suggestion.

<sup>19</sup> The 1881 Department of Indian Affairs (DIA) census gives the First Nations population of South East Vancouver Island as 661 (which included reserves and perhaps excluded off reserve). The 1891 census lists 2041 First Nations people of which 1828 resided in the Esquimalt district and only 20 in Victoria North including the Saanich Peninsula (excluding those on Saanich Peninsula reserves). The 1890 DIA census of the Songhees showed Discovery Island Band 17; Esquimalt Band 30; and Songhees Band 134. John Lutz, personal communication, 28 February, 2005.

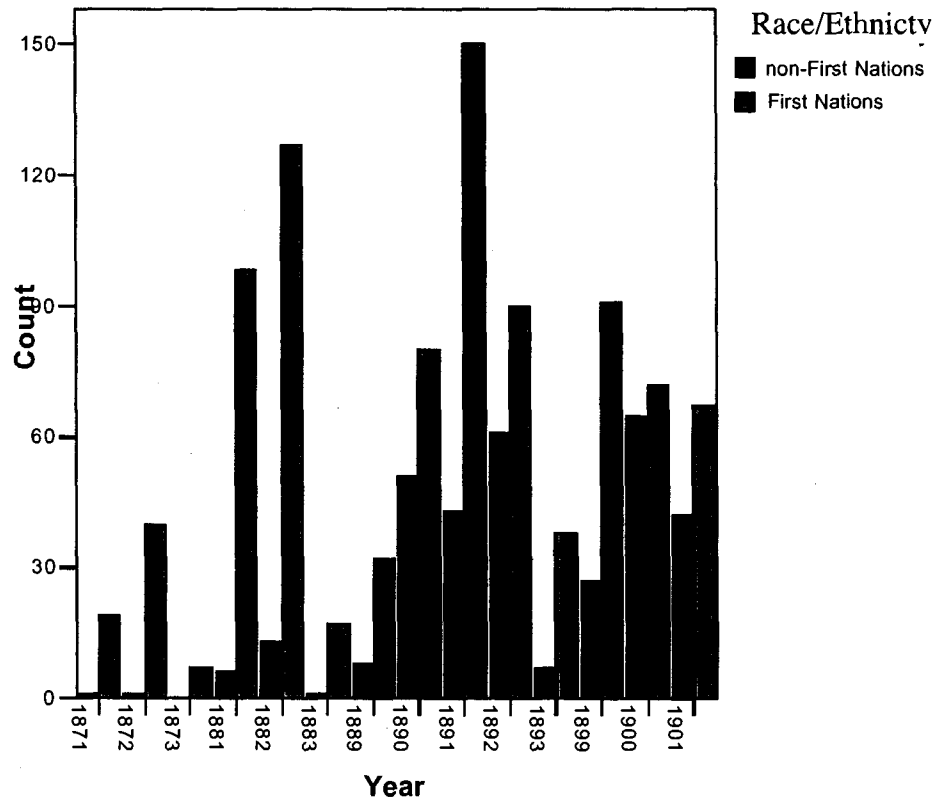
**Figure 2.1**

Charges Against First Nations and Non-First Nations Men, 1871-1901



**Figure 2.2**

Charges Against First Nations Women and Non-First Nations Women, 1871-1901



In addition to First Nations people, Chinese residents were explicitly marked in the police court records as racialized others of "white" British society. However, in sharp contrast to First Nations residents, Chinese people were charged with a remarkably low number of offences relative to their population size. Of the total embodied infractions, only 53, or 1.3 per cent, involved people identified in the records as Chinese. Of these charges, only one was brought against a woman. Given the number of Chinese people who lived in Victoria in the late nineteenth century (see Table 2.1), this low arrest rate might seem surprising. Were Chinese residents perhaps arrested more often for offences other than those which I examine here? Parker, who analyzed *all* charges brought before the police courts in 1881 and 1891, has found that although the police in their reports identified the Chinese as part of the "criminal classes" in Victoria – they were the ones

police *expected* to commit crimes – this identification did "not produce high arrest or conviction rates."<sup>20</sup> In 1881 the Chinese accounted for 2.4 per cent of the total arrestees while they made up ten per cent of the city's population. In 1891, 8 per cent of total police court arrests involved Chinese residents and the Chinese comprised 11.2 per cent of the city's population. Parker maintains that these relatively low returns could be explained by the absence of a regular police patrol in Chinatown, "successful resistance to policing,"<sup>21</sup> or the fact that, according to one officer, "Chinamen will not bear witness against each other" and therefore arrests were futile because prosecution was difficult.<sup>22</sup> Local historian Christina Nilsen describes one account of Chinese resistance in which after a large number of infractions for overcrowding under the Cubic Air By-Law, Chinese residents chose not to pay fines and filled the city jail to over-capacity. After this incident, the frequency of charges against them under this by-law decreased.<sup>23</sup> Significantly, however, as Parker points out and as my findings corroborate, Chinese people were rarely arrested for the two most common types of charges, namely drunkenness and vagrancy. Why was this? In addition to Chinese resistance, another possible explanation is that the Chinese, while clearly a racialized "other," were seen by their contemporaries as productive in the capitalist sense – a key component of the public which city builders were attempting to define in this period. Except in periods of high unemployment when their labour, at least on a local level, was deemed to be unfair competition for "white" men, they were needed as workers both in Victoria, and beyond.

### **Being and Doing in the City Streets**

Although historians have dealt with the gendered, and to a certain degree, the racialized nature of police court activity, in reviewing the North American and British literature on vagrancy and related offences, it does not appear that there is any work which examines the significance of the language of the police court charges themselves. Given my interest in the regulation of bodies, I sought to discover what kinds of bodies were more frequently charged, those whose ways of being were offensive or those whose actions or

---

<sup>20</sup> Parker, 158.

<sup>21</sup> Parker 156.

<sup>22</sup> Victoria Police Archives Police Report 11.5 1886 – 1891, cited in Parker 113.

<sup>23</sup> Christina Nilsen, personal communication, 18 March 2005.

"doings" attracted attention from the officers of the peace and landed them before the magistrate. In order to do so, when collecting data from the police court records, I coded the charge language used by the police court recorder very precisely. For example, drunk, found drunk, being drunk, being drunk and disorderly, and so on, each had separate values. (See Appendix 1.) Yet, how can we be sure that the language used in the charge book was not simply arbitrary and left to the whim of the clerk? And, what can possibly be gleaned from this seemingly over-scrupulous analysis?

A comparison of the charge language used by the police court clerk with that of the Street By-Law, the Public Morals By-Law, and the Parks By-Law, the 1869 Vagrancy Act,<sup>24</sup> and after 1892, the sections of the Criminal Code relating to vagrancy<sup>25</sup> and Disorderly Houses,<sup>26</sup> indicates that 82 per cent of the charges recorded are drawn directly from the language of the legislation. (See Appendix 4.) As Table 2.2 indicates, the remaining 20 per cent of the charges do not figure significantly into the most prevalent embodied infractions that came before the police court. It is possible to conclude, therefore, that the language used in the charge book was far from arbitrary. Analyzing the charges for embodied infractions at the level of charge language allows for a close scrutiny as to the ways in which charges for being a certain kind of person differed from those laid for doing a certain kind of action. (See Appendix 5.) In terms of the ma(r)king of bodies the public in late nineteenth-century Victoria, this detailed analysis reveals that to be – or more aptly, *to be perceived as* – a certain kind of person by the police and magistrate was more offensive than to do a certain kind of action.

---

<sup>24</sup> S.C. 32-33 Vict. (1869), c. 28, s. 1.

<sup>25</sup> S.C. 55-56 Vict. (1892), c. 29 s. 207.

<sup>26</sup> S.C. 55-56 Vict. (1892), c. 29 s. 195, 198.

**Table 2.2**  
**Most Frequent Embodied Infractions of Public Space**

	<b>Charge</b>	<b>Frequency</b>	<b>Percent</b>
1	Drunk/Found drunk	2496	60.5
2	Being drunk and disorderly*	716	17.4
3	Being a vagrant/Vagrancy	384	9.3
4	Body-space by-law infractions**	130	3.2
5	Being an inmate or keeper of a house of ill-fame	97	2.4
6	Causing a disturbance/disturbing the (public) peace	73	1.8
7	Keeping a house of ill-fame	68	1.7
8	Using grossly insulting language	63	1.5
9	Fighting in the streets	61	1.5
10	Obstructing passengers	37	.9

\*Charge language used in 1870s and 1880s

\*\*Infractions of the Street, Public Morals and Parks by-laws.

Taken as a whole, the ten most common embodied infractions of public space laid out in Table 2.2 indicate that the police primarily arrested people for being, doing, and drunkenness. Charges for doing, illustrated in lines six through ten of the table, amounted to only 302 of the top ten total, whereas those for being, comprised 1327. This suggests that in late nineteenth-century Victoria, the likelihood of arrest may have been greater for someone who was perceived *to be* a certain type of person than for someone charged for a particular type of action, such as "causing an obstruction" or "creating a disturbance." Tables 2.3, 2.4 and 2.6 indicate that "being" offences were racialized and gendered: First Nations men and women were most frequently charged for being drunk and non-First Nations women with being inmates or keepers of houses of ill-fame. To those charged with containing them, once people were marked by the police, the court, and the press as being "drunk," a "vagrant," an "inmate," or a "keeper," their bodies

became indiscernible from their ways of being. This was particularly the case for "inmates" and "keepers" who, once engaged in prostitution, became "fallen women" unemployable in other trades due to their "vile character."

**Table 2.3**  
**First Nations Men Most Frequent Embodied Infractions of Public Space**

	<b>Charge</b>	<b>Frequency</b>	<b>Percent</b>
1	Drunk	407	63.2
2	Being drunk and disorderly*	196	30.4
3	Fighting in the Public Streets	18	2.8
4	Being a Vagrant/Vagrancy	7	1.1
5	Causing a disturbance/disturbing the (public) peace	6	.9
6	Being drunk and disorderly in the public streets	5	.8

\*Charge language used in 1870s and 1880s

**Table 2.4**  
**First Nations Women Most Frequent Embodied Infractions of Public Space**

	<b>Charge</b>	<b>Frequency</b>	<b>Percent</b>
1	Drunk	206	73.8
2	Being drunk and disorderly*	62	22.2
3	Being in the public streets for the purposes of prostitution	6	2.2
4	Being a Vagrant/Vagrancy	4	1.4

\*Charge language used in 1870s and 1880s

**Table 2.5**  
**Non-First Nations Men Most Frequent Embodied Infractions of Public Space**

	<b>Charge</b>	<b>Frequency</b>	<b>Percent</b>
1	Drunk	1717	59.6
2	Being drunk and disorderly*	418	14.5
3	Being a Vagrant/Vagrancy	328	11.4
4	Body-space by-law infractions**	115	4

5	Using obscene/grossly insulting language	57	2
6	Fighting in the Public Streets	40	1.4
7	Obstructing Passengers	31	1.1

\*Charge language used in 1870s and 1880s

\*\*Infractions of the Street, Public Morals and Parks by-laws.

**Table 2.6**  
**Non-First Nations Women Most Frequent Embodied Infractions of Public Space**

	Charge	Frequency	Percent
1	Drunk	126	38.5
2	Being an inmate or keeper of a house of ill-fame	84	26
3	Keeping a house of ill-fame	57	17.4
4	Being a Vagrant/Vagranct	27	8.3
5	Being drunk and disorderly	14	4.3
6	Causing a disturbance by screaming	7	2.1
7	Using obscene/grossly insulting language	5	1.5

While the "being" offences clearly indicated that those so charged had likely performed an illicit action (or sometimes, in the case of "being a vagrant," a non-action) the language of the charges and reports in the press indicates the indiscernability of their bodies-actions. For example, in May 1892, in an article entitled "Out After Midnight," the *Colonist* reported that:

In the early morn, yesterday, Officer Smith, while patrolling his beat on Yates street, observed two women approaching him in the company of two gentlemen. *As the women were known to him as inmates of not very respectable houses*, he invited them to accompany him to the station, and the quartette followed him as far as Johnson street, where one of the escorts, thinking discretion the better part of valor, decided to return home. The other gentleman accompanied the women to the police station, where Smith laid a charge of vagrancy against the latter, under the Public Moral ordinance, which prohibits persons being on the streets after midnight, unless they can give a satisfactory account of themselves.<sup>27</sup>

<sup>27</sup> "Out After Midnight," *Daily Colonist*, 22 May 1892, 5. Emphasis mine.

This incident illustrates the conflation of being and doing, or bodies-actions, on the part of the police towards those whose bodies and behaviours they sought to regulate. Smith arrested these women because he *recognized them as being* inmates of disorderly houses. Being out after midnight in and of itself was not an offence. However, in this case, it became one, as Mabel B. and Louisa J. were already *known* to him *as* certain types of women. Both appeared before the magistrate the following day charged with "being a nightwalker" and pleaded not guilty. As the paper reported, they claimed that "in the company of an escort, they were proceeding to a restaurant" and were not acting in a disorderly manner. The women were eventually dismissed and the writer noted that, according to the magistrate, while the Vagrancy Act "was doubtless passed with very praiseworthy motives, and is extremely stringent in its terms ... some discretion should be used by the guardians of the peace in carrying it into effect."<sup>28</sup> It might be argued that the officer did use discretion in this instance: he recognized these women as those whose way of being was proscribed by the Vagrancy Act and arrested them as such.

While the bodies of those arrested for "doing" offences were clearly marked by the charge language as engaging in unsavoury public behaviour, it was for their actions rather than their ways of being that they were arrested, actions which they could potentially refrain from in the future.<sup>29</sup> In addition, the consequences for "doing" were, overall, less severe than for "being" offences. Obstructing passengers or causing a disturbance might have resulted in a fine of \$5 or \$10 and rarely in a jail term. For example, when Ah H. and Ah Y., two Chinese men, were apprehended for "unlawfully loitering on Government Street and obstructing passengers"<sup>30</sup> they were likely interpreted within the contemporary city building discourse-practice of movement, production, "whiteness" and Britishness. Within this framework it was evident that two loitering Chinese men were an obstruction to the becoming modern city envisaged by the law-making city builders, and

---

<sup>28</sup> "Out After Midnight," 5.

<sup>29</sup> I do not want to overstate the distinction between "being" and "doing." Likely in the examples below the "Chineseness" of these men's bodies impacted their arrest. Nor do I want to suggest a clear delineation between those who were arrested as "being" a certain way and those who were arrested for "doing." A nominal analysis of repeat offenders would be a fascinating way to examine the relationship and potential overlap between charges for being and doing. However, such an investigation is, unfortunately, beyond the realm of the present study.

<sup>30</sup> VCA CRS 114 PCCB 14 September 1891; VCA CRS 116 MRB 14 September 1891.

as such must be removed from the streets. However, they each received \$10.00 fines, which they subsequently paid. Similarly, when Della W. was charged in the fall of 1889 for "causing a disturbance in the street by swearing"<sup>31</sup> and Minnie W. was indicted the following year for "causing a disturbance in the street by screaming,"<sup>32</sup> these women's bodies occupied and enacted space in ways that defied at once appropriate femininity and desirable public behaviour. Yet neither faced a steep fine and neither went to prison. Della W. paid a \$5.00 fine and Minnie W. paid somewhere between \$10.00 and \$24.00 to avoid a prison term. Those arrested as "inmates" and "keepers" of houses of ill-fame, however, were more steeply fined than any other offenders and "vagrants" were imprisoned for longer than anyone else. These fining and sentencing differentials reveal that behaviours and actions which could be changed or stopped were not as much of a threat to the public which certain city builders were attempting to create, as specific ways of being, which were seen by those who kept the law as less alterable.

The most frequent charge, "drunk" or "being found drunk," was both a "being" and "doing" offence, and must therefore be analyzed distinctly. As Table 2.2 indicates, the charge language used by the police court clerk to describe drunkenness changed between the 1870s and the last decade of the century from "being drunk and disorderly" simply to "drunk" or "found drunk." The most obvious reason for this difference is that the Public Morals By-Law passed in 1888 explicitly prohibited "any persons found drunk *or* disorderly" from being in the public streets.<sup>33</sup> Prior to 1888, charges for public drunkenness fell under the Vagrancy Act and were leveled for being drunk *and* disorderly or causing a disturbance by being drunk. Equally significant with regard to the change in charge language, and more interesting, "drunk" in the context of the police court charge book can be understood both as an adjective, which described a state of being, and as a noun, which referred to a certain type of person. Ample newspaper evidence suggests that the more popular meaning was the latter. In December 1889 the *Colonist* reported that "two simple drunks, one white and one Indian, were sent to jail for one month in

---

<sup>31</sup> VCA CRS 114 PCCB 9 November 1889.

<sup>32</sup> VCA CRS 114 PCCB 19 September 1890.

<sup>33</sup> "A By-Law Relating to Public Morals," (1888), no. 44 s.2, *By-laws of the Corporation of the City of Victoria Province of B.C. 1889*, ed. by Edwin Johnson (Victoria: Cohen's Printing Office, 1889), 121. Emphasis mine.

default of the usual fines."<sup>34</sup> In February 1890 the paper noted that "one downcast looking drunk was the only occupant of the dock in the police court yesterday. He added a V to the general revenue of the city."<sup>35</sup> In the spring of 1891, in an article entitled, "Drunks," the reporter related that "the programme, yesterday, in the police court was composed almost entirely of drunks, of whom there were four. They were all polished off in the traditional form."<sup>36</sup> At the turn of the century the *Colonist* represented those charged with drunkenness in a similar fashion. In September 1900 the police court report recounted that "no less than seven drunks lined up in the police court yesterday and admitted that they had celebrated Labor Day not wisely, but too well. They were all dealt with in the usual manner. Among the batch were a number of old offenders."<sup>37</sup> As with offences of "being," the bodies of those who came before the police court and were represented in the press as "drunks" became marked as indiscernible from their public ways of being (drunk) and their actions (drinking).

The number of charges for taking up public space as a drunk or drunk and disorderly body was extremely high, amounting to 3212 or 75.5 per cent of the total cases. Even though most other investigations of vagrancy and related offences in industrialized cities in nineteenth-century Canada also find drunkenness to be the most prevalent charge leveled against people on the street,<sup>38</sup> Peter Baskerville has noted that in the early 1890s "no constabulary arrested more drunks per 1,000 people than did

---

<sup>34</sup> *Daily Colonist*, 27 December 1889, 4.

<sup>35</sup> *Daily Colonist*, 2 February 1890, 4.

<sup>36</sup> "Drunks," *Daily Colonist*, 19 May 1891, 5.

<sup>37</sup> "The Police Court," *Daily Colonist*, September 1900, 5.

<sup>38</sup> Jim Phillips, "Poverty, Unemployment and the Administration of the Criminal Law: Vagrancy Laws in Halifax, 1864 – 1890," in *Essays in the History of Canadian Law, Volume III: Nova Scotia*, ed. Philip Girard and Jim Phillips (Toronto: University of Toronto Press, 1990): 133; Craven, 263; Weaver, 132; Mary Anne Poutanen, "Regulating Public Space in Early Nineteenth-Century Montreal: Vagrancy Laws and Gender in a Colonial Context," *Histoire sociale/Social History* XXXV.69 (May 2002): 38. Poutanen distinguishes between men and women and shows that nearly two-thirds of the women in her sample were charged with vagrancy due to prostitution-related activities, whereas men's vagrancy offences were most often alcohol-related. For non-First Nations women in Victoria the split between drunkenness related charges (139) and prostitution (143) was nearly even. For First Nations women, 268 of 279 charges against them were for being drunk or drunk and disorderly.

Victoria's finest."<sup>39</sup> This fact could be a product of the climate: as a result of the relatively moderate temperatures on the coast, there may have been more people out on the street and therefore visible year round than in cities like Montreal or Halifax. The data in Table 2.3 support this claim and indicate a relatively even spread of charges throughout the year.

**Table 2.7**  
**Frequency of Total Embodied Infractions by Calendar Month**

Month	Number of Infractions	Percentage of Total
January	313	7.4
February	257	6
March	303	7.1
April	320	7.5
May	315	7.4
June	393	9.2
July	303	7.1
August	326	7.7
September	430	10.1
October	480	11.3
November	398	9.4
December	415	9.8

The number of arrests for public drunkenness, however, might also be a result of the unique pattern of Victoria's industrial development in the last three decades of the nineteenth century. In 1872, the number of arrests for drunkenness per 1000 inhabitants was 16.8. By 1882 this figure climbed to 50.6. In 1891, it dropped slightly to 34.3, and by 1901, was 15.2, lower than the rate in 1872. How can this be explained? The 1880s and early 1890s were the years in which Victoria experienced the greatest degree of industrial growth and prosperity, whereas over the course of the latter part of the last decade of the nineteenth century came a relatively rapid phase of deindustrialization. Although the economic situation in Victoria in 1901 was not comparable to the "pre-industrial" era, it is interesting that the police appeared to have condoned drunken behaviour more at the turn of the century than in periods of economic boom. These rates suggest that in prosperous years when there was obviously much work to be done, certain city builders had little tolerance of drunken bodies in the streets which were likely

---

<sup>39</sup> Peter Baskerville, *Beyond the Island: An Illustrated History of Victoria* (Burlington: Windsor Publications, 1986), 68.

perceived as an affront to notions of productive activity. Thus, in these periods "drunks" were removed from the streets, if only temporarily.

There were likely high incidences of arrests for drunkenness when ships came into port, or during Victoria Day celebrations when visitors flowed into the city from Vancouver, Seattle, and other nearby areas. Nonetheless, press accounts of drunkenness often featured repeat offenders who became well known to the police, the magistrate and city residents in general as a result of attempts to regulate them through repeated arrests as well as and having their bodies-actions made public through representation in the press. Craven has painted a compelling picture of the police court as a theatre and has argued that newspaper police court columns, which reported the regular goings on in the courtroom, are a useful historical tool in that they can reveal a great deal about the ideological underpinnings of both the police court audience and the respectable newspaper reader.<sup>40</sup> This is undoubtedly the case and the Victoria papers certainly constructed those who appeared before the police magistrate as the "others" of respectable society. In addition, the newspaper police court column is an important vehicle through which to access the voices, albeit in mediated form, of those arrested by police and brought before the court. The *Colonist* reports allow for a glimpse at some of the ways in which those arrested for drunkenness iterated and articulated agency by making a mockery of the so-called justice of the police courtroom and by contesting the capacity of the law to define and contain their bodies.

Phillip C., "Phillip the irrepressible,"<sup>41</sup> was arrested 26 times in the years 1889-1893 and 1899-1901. On 16 June 1891 the paper reported that "Phillip ... next stood up and positively blushed, as he answered in the affirmative to the charge of being drunk. To the astonishment of the magistrate and superintendent, he produced the necessary \$5 to pay his fine, and left the dock with a jaunty air, winking at one of the sergeants as he went out."<sup>42</sup> The following August, the paper again narrated the antics of Phillip, who once more was charged with being "found drunk." The reporter recounted Phillip's words: "'Your Honor,' began Phillip, clearing his throat for one of his flights of eloquence, 'be easy with me. You behold in me the shattered wreck of a once

---

<sup>40</sup> Craven, 286-7.

<sup>41</sup> "In Police Circles," *Daily Colonist*, 16 June 1891, 5.

<sup>42</sup> "In Police Circles," 5.

magnificent manhood, brought low by the fell des —'." The magistrate interrupted him and, as the paper noted, "after pondering over the matter for a moment ... thought that two months' retirement from the temptations of a cold, unfeeling world, would act as a tonic on the 'shattered wreck,' and it was so ordered." In the end, Phillip "was led away reciting, 'Fellow Gladiators' in his best style."<sup>43</sup> Phillip's actions in the courtroom – winking, waxing eloquent as to the demise of his "magnificent manhood," and reciting poetry as he was being led away – can be read as resistance to the efforts of the police to contain him. Although the magistrate sentenced Phillip to spend the next two months in prison at hard labour,<sup>44</sup> this measure was clearly only a temporary one, and he would soon be back on the streets of the city.<sup>45</sup> In other words, through regulating Phillip C.'s body, the police and the magistrate were making efforts to *control* his actions and to shape the city spaces that he occupied. Yet this control was necessarily incomplete as Phillip C. himself engaged in this regulatory process through negotiation and contestation when before the police magistrate.

Although he was one of the more well-known offenders, Phillip C. was by no means the only "drunk" given voice in the pages of the *Daily Colonist*. Even the most vulnerable of bodies public, First Nations women, at times acted assertively and even defiantly in the courtroom. In so doing they demonstrated their ability to engage with the law and, equally significantly, revealed the limits of the law's ability to regulate and circumscribe their bodies-actions. A police court column in the spring of 1890 recounted that "two of yesterday's drunks were lady Siwashes." The first, Jinny, was fined, paid her fine, and "turned her back, perhaps for ever, on the court." The writer went on to document the case of,

Amy ... frail sister of Jinny ... When asked that awful question, 'Plead guilty or not to the charge?' she looked away from Mr. Dowler [the magistrate] and smiled bewitchingly at the chief. He failed to be moved by her blandishments but she beckoned him and slowly counted out five dollars in silver into his hand, smiled at the officer who let her out of the

---

<sup>43</sup> "City Police Court," *Victoria Daily Colonist*, 3 August 1892, 5.

<sup>44</sup> The hard labour portion of his sentence was not listed in the newspaper report, but in VCA CRS 114, PCCB 2 August 1892.

<sup>45</sup> Phillip C. came before the court again for drunkenness on 11 November 1892, just over one month after he was released from serving the above sentence and the magistrate sentenced him to three months with hard labour.

dock, bowed to the chair which the chief sat in, and left the court with a courtly curtsy.<sup>46</sup>

Amy's ability to command the attention of the chief is clear. As the narrative infers, he had to get up from his chair, walk to the dock, and put out his hand to receive her money. Second, she refused to utter a response to "that awful question," but answered with her body-action. Third, and most significantly, she clearly came to court that morning with five dollars, was well aware of the cost of her offence, was prepared to pay it, and offered it up *before* the police magistrate could find her guilty and order her to do so. Finally, her curtsy to the chief on the way out of the courtroom may, on the one hand, have been a gesture of respect for his authority. Yet, on the other hand, given the way in which she conducted herself while on the dock, we might also see this action as a defiance of both gendered and racialized norms: respectable women curtseyed, "lady Siwashes" did not.

In many cases, those charged as "drunks" pleaded not guilty and provided explanations to the magistrate for their ways of being. Sometimes they were dismissed; in other cases they had to face consequences of their ways. On 26 July 1892, the *Daily Colonist* related that "Wm. T. D[]", charged with being found drunk, explained that his undue hilarity was caused by the news of the arrival of some friends by special steamer from Vancouver. He was warned to go and sin no more."<sup>47</sup> On the same day, "Charles J. L[], the poet," came before the court, "the charge being a plain drunk." However, as the reporter noted, "Charles John says [the charge] arose from a dispute with a cop as to the advisability of using an iambic hexameter instead of an anapestic dactylic couplet. Charles John succeeded in proving his adversary wrong and the charge was laid in revenge for the humiliating defect." The magistrate was not convinced by Charles' defence and he received "14 days in default of a \$10 fine."<sup>48</sup> In the first instance William T.D. defended his actions/his public way of being and suggested this was *mistaken* as drunkenness when really, he said, he was only excessively happy at the arrival of his friends. Perhaps the magistrate believed William's tale. However, he may also have been

---

<sup>46</sup> "The Police Magistrate's Levee," *Daily Colonist*, 6 May 1890, 6.

<sup>47</sup> "City Police Court," *Victoria Daily Colonist*, 26 July 1892, 5. I use square brackets to indicate that while the last name of the offender was given in the press, because of my research agreement with the Victoria City Archives, I am not permitted to disclose the last names of those whose charges I examine.

<sup>48</sup> "City Police Court," 5.

dismissed because his defence was innocuous and did not directly challenge the authority or credibility of the arresting officer. In the second case, by suggesting that the officer who took him into custody did so in "revenge" for being publicly humiliated, Charles John essentially implied that this officer had abused his power. The magistrate may not have tolerated such an accusation against a custodian of civic order, and sentenced Charles accordingly.

As outlined above, while those charged with being drunk or drunk and disorderly comprised the vast majority of the total embodied infractions, the second most frequent charge through which bodies were made public was vagrancy. Although the number of cases of vagrancy in Victoria – 384 or nine percent of the total – is quite low relative to charges for drunkenness, two aspects of these charges warrant discussion. First, of the 384 vagrancy charges laid by police, only 11 or 0.3 per cent were against First Nations people and 15 or 0.4 per cent against Chinese residents. While the dearth of Chinese arrestees was somewhat accounted for above, how can we understand the low number of First Nations people charged with vagrancy, and what are the implications of such a question? One explanation explicitly related to the desire of certain city builders to construct a specific type of public body, is that First Nations people, as the subjects of colonial rule, may have been perceived by the police as so far outside of the becoming respectable "white" middle-class society that they were barely recognizable as its "other." Vagrancy laws from their very origins in late-medieval England were created with the aim of instilling a work ethic, reforming the so-called vagrant, and recovering him or her into the realm of productive society. Mary Ellen Kelm has compellingly argued in *Colonizing Bodies: Aboriginal Health and Healing in British Columbia, 1900 – 50*, that one of the objects of colonization was "the Indian body's eradication," by which she means full *physical erasure* of First Nations bodies from colonial spaces.<sup>49</sup> Holding this notion in tension with the concomitant desire of the colonizer to "civilize" First Nations people, she also maintains that "many missionaries and government agents sought to transform Aboriginal bodily practices, to reform Aboriginal people into 'good little brown white

---

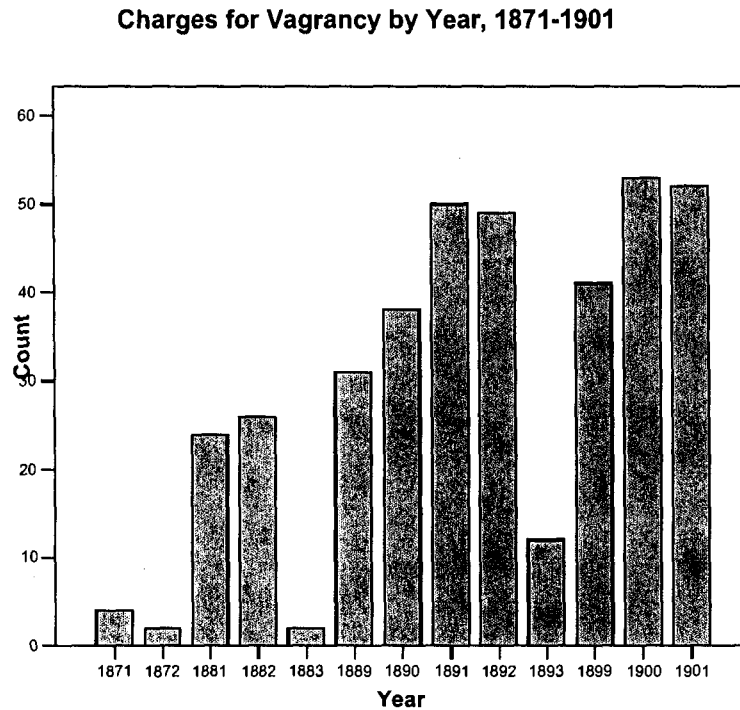
<sup>49</sup> Mary Ellen Kelm, *Colonizing Bodies: Aboriginal Health and Healing in British Columbia, 1900 – 50* (University of British Columbia Press, 2001), xviii.

men'.<sup>50</sup> Kelm points to residential schools and missionary pressure as the components of the colonial apparatus responsible for this potential reformation. The important point here is that those responsible for enforcing the law – in this particular case, federal vagrancy legislation – likely enacted this tension which Kelm points to: on one hand they desired the complete eradication of "the Indian body" and therefore saw the redundancy of reform in the sense in which the Vagrancy Act was intended; on the other, they recognized that it was the function of the assimilatory colonial apparatus and not of the law per se to attempt to reform First Nations bodies. However, neither of these stances made the vagrancy law redundant to First Nations people; the knowledge that they *might* be arrested as vagrants could still serve to circumscribe their bodies-actions.

In general, the number of vagrancy charges (384) is likely an under-representation of the cases in which federal vagrancy legislation was actually deployed, as almost *all* of the embodied infractions for which people were brought before the police court could have fallen under this legislation. In particular, although only 31 women were listed in the charge book as "vagrants," 165 were charged as inmates or keepers of houses of ill-fame, a way of being proscribed by the Vagrancy Act. When considered as a proportion of the population, the ratio of people per thousand population arrested for vagrancy increased from 0.6 to 4.4 between 1872 and 1882, dropped slightly to 2.9 in 1891, and again to 2.5 per thousand population by 1901. However, despite the decrease in charges per 1000 population between 1882 and 1901, the timing of the increase in the *actual number* of vagrancy arrests is revealing in terms of the relationship between those responsible for making law and those charged with enforcing it. As Figure 2.3 illustrates, in the 1870s police made few arrests for vagrancy, perhaps because the federal law had only recently come into effect and because in this early period the city was less established and did not have its own by-laws which regulated bodies and spaces to the degree that Ottawa's statute did. Significantly, although British Columbia did not have provincial legislation "respecting" vagrants, the Public Morals By-Law circumscribed the same activities as did the federal vagrancy statute and, until 1901, the maximum penalty for an infraction of this by-law mirrored that of the federal law. Once the Public Morals By-Law came into effect in 1888, the number of charges for vagrancy increased and contin-

---

<sup>50</sup> Joe Severight cited in Kelm, 173.

**Figure 2.3**

ued to do so, rising still in 1901.<sup>51</sup> (See Figure 2.3.) I am not suggesting a direct correlation between arrests for vagrancy and the enactment of the Public Morals By-Law. We might speculate, however, that given the identical content and consequences of the by-law and the statute, once the provisions of federal vagrancy law had been reified in the city's own by-law – and therefore reflected the explicit wishes of law-making city builders – the federal legislation itself may have been more frequently deployed.

Like so-called drunks, those charged with vagrancy disputed the charges brought against them and sought to disassociate their bodies from the perceived modes of embodiment allegedly connected with their racialized and class locations such as being idle, poor, or dirty. Put another way, they attempted to identify themselves as legitimate members of the public, most often by employing capitalist discourses of production and possession. In November 1873, "Castolzeo, a smart looking Indian was charged by Sergt.

<sup>51</sup> As Table 2.1 indicates, the population of the city increased between 1871 and 1901 which might explain the increased *number* of vagrancy arrests but not the, *timing* of the increase.

Bloomfield with being a rogue and vagabond and with having whiskey in his possession."<sup>52</sup> The *Colonist* reported the courtroom interview:

The Magistrate – Why don't you go to work?

The Prisoner – I can't get no show.

The Magistrate – No show? Why?

The Prisoner – I don't get out of gaol only 3 or 4 days when the Police snatch me up again.

The Magistrate – That is because you do wrong.<sup>53</sup>

As a result of "previous convictions having been proved," the magistrate sentenced "the Prisoner" to one month with hard labour. The newspaper represented the magistrate's voice as framing this exchange, that is, he had both the first word, and the last. From the outset he invoked the discourse of productivity and implied that the prisoner should work. Castolezeo himself was seemingly well aware of this expectation, yet he blamed the police for interfering with his ability to find work. This line of defence – holding the police accountable and thus absolving himself of responsibility for his lack of employment – likely did not go over well with the magistrate who unequivocally demonstrated through his sentence that it was not the police but Castolezeo who "do[es] wrong."

In 1892, Phineas M. was also charged with vagrancy as a result of his failure to secure gainful employment. According to the press account, he pleaded not guilty and "claimed that it was delicate health which prevented him from working." He elaborated on his condition and asserted to the magistrate:

Why, Your Honor ... I am so delicate that even the sight of a pick and shovel throws me into a low fever, and if I was to watch a hod-carrier for five minutes I would go off into strong convulsions. There is no man living who is more desirous of working than I, but, alas! I am so feeble that it is impossible.

The magistrate "thought about a month in the convalescent ward of the Topaz avenue retreat would do Phineas good, and it was so ordered."<sup>54</sup> There are two ways of reading this incident. First, in his testimony, Phineas clearly made the point that he knew he *should* work, but maintained that he was unable to do so. Although he may well have been physically frail, sick, or otherwise disabled, the sarcastic tone in which the writer

<sup>52</sup> "Municipal Police Court," *Daily Colonist*, 1 November 1873, 3.

<sup>53</sup> "Municipal Police Court," 3.

<sup>54</sup> "City Police Court," *Daily Colonist*, 7 July 1892, 6.

rendered his voice made a mockery of his physical state. Second, in his sarcastic rendering of his supposed desire to work, Phineas himself may have been making a mockery of the court and of capitalist notions of productivity more generally. Either way, like Castolzeo twenty years earlier, he was chastised for not being productive. Nevertheless, despite the fact that in 1892, half of those charged with vagrancy received sentences with hard labour, Phineas did not. The magistrate may have, in part, taken seriously his claim as to his fragile physical condition. Yet as we shall see in the following chapter, the Topaz Avenue jail was hardly a convalescent home. Sentencing Phineas to the conditions in the jail would likely tax his already frail body and would, in the end, render him less capable of participating in the productive relations through which the city was building itself in this period.

Others who were charged with vagrancy used the equally capitalist discourse of possession/accumulation when defending themselves in the police court. In April 1881, John T., "a soldierly looking and talkative Irishman," was apprehended for vagrancy, along with a blind man named Lawrence J.. The latter, additionally charged with "begging," had supposedly left town and was sentenced to three months in prison with hard labour should he return. John T. defended his conduct in relation to the blind man. In the words of the police court columnist: "The prisoner stated that he had sold a farm in the east and was living off the proceeds of it. He was most particular in his conduct and anything he did that was wrong was done in ignorance. It was only an act of charity on his part towards the blind man." The prisoner was pushed further and presumably asked about work. As the report noted, "In answer to the Court he said he was not in any employment, was living on his money, had no need to work, and therefore, could not be a pauper."<sup>55</sup> Perhaps testing this claim, the magistrate fined him \$10 or in default one month's imprisonment. This incident is revealing on a number of levels. First, when John T. asserted that he was merely acting charitably toward "the blind man"<sup>56</sup> which, he inferred, he did not realize was an "offence," he drew upon liberal notions of relief and

---

<sup>55</sup> "Municipal Police Court," *Daily Colonist*, 9 April 1881, 3.

<sup>56</sup> It is not clear from the newspaper rendering of the case how John T. was "acting charitably" towards Lawrence J. or what his particular offence was. This may be an example of the discretionary use of the vagrancy laws: John T. was at the wrong place at the wrong time, with the wrong person, and he was a "stranger" in town; therefore, he was arrested.

benevolence: he who had plenty providing for he who had not. Second, he argued that because he had money he could not *be* a pauper. However, the failure of this line of argument to impress the magistrate reveals that for people who were interpreted to embody a less than respectable class location, merely to possess property in this period of emerging industrial capitalism was not enough; participation in productive activity was a simultaneous requirement. Unfortunately, the police court recorder in this year did not document who paid their fines and who did not; we are left to wonder whether John T. did indeed have as much money as he claimed or whether he served a term in the city jail as a result of his poverty.

In this same spring, Joseph J. was also "brought up for loitering on the road and for vagrancy." The superintendent of police reported to the magistrate that only last week he had secured assurance from Joseph that he would "leave the country. He went to the Sound came back on the next steamer and here he is again!" According to the *Colonist*, Joseph defended himself most emphatically against this charge. He implored the magistrate, "I'm not guilty your Honor. Leastwise, I don't think any man as has a bit of 'bacco in his clothes can be called a vagrum."<sup>57</sup> Like John T., he pointed to the fact that because he had tobacco, and by extension, presumably money to purchase it, he could not possibly be a vagrant within the meaning of the law. In this case the magistrate emphatically disagreed, and sentenced Joseph to three months with hard labour.<sup>58</sup>

After drunkenness and vagrancy, the third highest number of embodied infractions in Victoria in the late nineteenth century – being an inmate or keeper of a house of ill-fame, street prostitution, and night walking – amount to 173, almost all of which were brought against women.<sup>59</sup> Figure 2.4 illustrates that in the early 1870s and 1880s there were very few prostitution-related arrests in Victoria. Between 1871 and 1883, the police only charged five women for "being out in the public streets for the purposes of prostitution" and they were all First Nations women. These statistics might seem surprising given that Baskerville has found evidence that in 1865 "some 200 Indian

---

<sup>57</sup> "Municipal Police Court," 15 May 1881, 3.

<sup>58</sup> Joseph J. was again sentenced to hard labour for being a vagrant, this time for six months on 21 October 1881. CRS 114 PCCB 21 October 1881.

<sup>59</sup> Two men were charged with being inmates and five with being keepers. Charges for frequenting houses of ill-fame numbered 22 (not included in this total) and were leveled only against men.

prostitutes lived in filthy shanties owned by the Chinese and rented ... at four to five dollars a month."<sup>60</sup> Jean Barman, also using qualitative sources from the 1860s, points to the "Road to Esquimalt on Sunday" which was "lined with the poor Indian women offering to sell themselves to the white men passing by."<sup>61</sup> She argues that it was "generally accepted" that because "colonial women" were absent, male colonizers could legitimately seek out First Nations women as sexual partners.<sup>62</sup> Both Baskerville and Barman's qualitative evidence speaks to a contemporary concern about high instances and visibility of First Nations women's prostitution. However, the dearth of prostitution charges against First Nations women (or any women for that matter) in the 1870s and 1880s suggests that these practices were condoned, perhaps enjoyed, and at least tolerated, by early city dwellers.

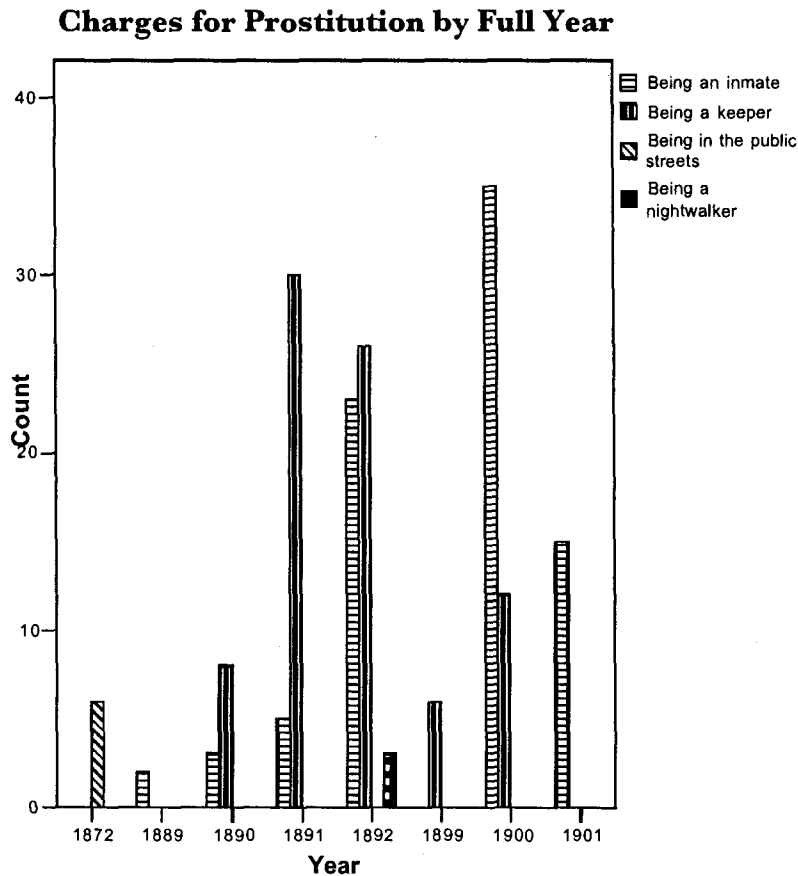
---

<sup>60</sup> Correspondence between the Superintendent of Provincial Police and the Colonial Secretary, cited in Baskerville, *Beyond the Island*, 39.

<sup>61</sup> Anglican Bishop George Hills, cited in Jean Barman, "Taming Aboriginal Sexuality: Gender, Power, and Race in British Columbia, 1850-1900," *B.C. Studies* 115/116 (1997-1998): 245.

<sup>62</sup> Barman, 240. Phillipa Levine, "Orientalist Sociology and the Creation of Colonial Sexualities," *Feminist Review* 65 (Summer 2000): 7 makes a similar argument in the context of British colonialism in India. She contends that "prostitution was a central prop of a masculinized colonial rule."

Figure 2.4



It was not until 1889, that non-First Nations women began to be prosecuted in the police court for being inmates or keepers of houses of ill-fame.<sup>63</sup> This relatively sudden appearance of prostitution charges was likely due, in part, to the efforts of moral reform organizations, and in particular to those of the Women's Christian Temperance Union in the city from 1883 onwards.<sup>64</sup> In addition to the work of these associations, more general sentiments such as that expressed in an 1892 *Daily Colonist* article entitled, "Moral Depravity," likely weighed on enforcers of public order in the city. The article recounted the details of "well to do girls ... led astray by a *demi monde* in the city," who had been "hiring them to stay with men in her house." The author implored that "immediate steps

<sup>63</sup> These charges may have been laid between 1884 and 1888. However, 1889 is the first year of my sample in which they appeared.

<sup>64</sup> See Lyn Gough, *As Wise As Serpents: Five Women and an Organization that Changed British Columbia, 1883-1939* (Victoria: Swan Lake Publishing, 1988) 21-8.

... be taken for both the punishment of the offenders and the prevention of further outrages of the kind ... the wrong is exposed as a public one as it is a private one, for the existence of such an evil in the city affects every resident."<sup>65</sup> This writer highlighted the tension between public and private in late nineteenth-century prostitution charges: the body-actions that provoked such charges took place behind closed doors, yet the goings-on and the bodies in these "disorderly houses," as they were commonly known, were *made* public by press discussions and prosecutions in the police court.

Although so-called prostitutes were not given voice in the police court column to the extent that "drunks" and "vagrants" were, perhaps because they were women and perhaps also because they were most often fined, paid their fines and went on their way, there is one exceptional case which warrants attention. In the fall of 1899, a year of relatively few charges of prostitution (see Figure 2.4), a *Colonist* piece entitled, "Grave Charge Against Police," was the first of a series of articles outlining the details of the case of Julie L., charged with "keeping a common bawdy house." According to the paper, when she came before the police court she stated that Sergeant Walker, who had summoned her, had only done so because she had refused to pay him \$10.00.<sup>66</sup> This claim led to an investigation of the police force, the dismissal of two officers, the resignation of Police Chief Sheppard, and the sentencing of Julie L. to six months with hard labour. The case quickly came to be about much more than Julie L. and her offence. In a sense her trial became the means through which the factions and tensions within the police department in the closing years of the century were exposed. Yet at the same time through attempts to regulate her activities and mode of life, Julie L.'s body, the actions she performed and where and how she performed them became open to public scrutiny through the process of the trial.

As the paper reported, prostitution-related cases were usually "disposed of quietly and expediently. The accused hustles into court – rises to murmur 'guilty' as the charge is read – pays the fine and leaves at a nod and a word from the police." However, in this instance, "Julie L[] proposed to fight the issue." Accompanied by a lawyer, she testified that Senior Sergeant J.W. Walker, the arresting officer, "had been a regular caller at the

---

<sup>65</sup> "Moral Depravity," *Daily Colonist*, 6 May 1892, 8.

<sup>66</sup> "Grave Charge Against the Police," *Daily Colonist*, 22 October 1899, 6.

place of the accused, not always in a condition of sobriety; and that he had on one occasion recently abused her in coarse terms and even gone so far as to strike her on the neck and shoulder with his heavy cane." Walker stated that "such places" as those run by the defendant, "were, as everyone was aware, permitted to exist so long as they were not disorderly." He claimed that the women in the house next door, for example, conducted a "quiet place" and "did not – as the defendant in this action had – stand on the street in the daytime." He asserted that it was for this reason and no other that he had summoned her to the court.<sup>67</sup> Witness for the defense, Constable Clayards, testified that "the house was not disorderly ... he had seen no fighting, drinking, quarrelling or indecency about the place."<sup>68</sup> Contesting the testimony of his fellow officer, prosecution witness Constable Carson, however, noted that "the L[] place was a house of prostitution ... if she were not a prostitute she wouldn't be in the locality and under the circumstances surrounding her residence." When Julie L. was cross examined as to why she had two houses, one with her husband on Douglas Street and another on Chatham,

she said it was because she was pleased to have two homes. Her answer as to why she went to Chatham street was in itself a second question: 'What do women generally go to Chatham street for?' Pressed for more definite statements, she said she had her house on Chatham street for the same purpose as the other women in that locality.<sup>69</sup>

Her lawyer, Mr. Higgins, however, questioned whether she could be found guilty of being a *keeper* of a house of ill-fame given that she was the only woman living (or working) in her house. In his closing remarks, he asserted that she "had not been flaunting her vice in the eyes of decency upon the public streets. She had not flaunted it in the bright glare of the electric light at theatre or any other place of public entertainment. She had lived quietly and without disorderly proceedings at her home. But she was without friends and without influence, and therefore singled out for prosecution."<sup>70</sup> Magistrate Hall concluded that "the evidence of Sergeant Walker is that he saw the defendant soliciting. This was uncontradicted excepting by the defendant, whose evidence, in my opinion is

---

<sup>67</sup> "Grave Charge Against the Police," 6.

<sup>68</sup> "City Police Disgraced," *Daily Colonist*, 27 October 1899, 6.

<sup>69</sup> "City Police Disgraced," 6.

<sup>70</sup> "The Hearing Concluded," *Daily Colonist*, 28 October 1899, 6.

absolutely unworthy of belief, even under oath."<sup>71</sup> He sentenced Julie L. to six months imprisonment with hard labour without the option of paying a fine, the most severe sentence meted out for any charge in the years I examined, "if not the severest sentence ever imposed in a case of the kind in this province."<sup>72</sup>

How do the proceedings and outcome of this case contribute to and illuminate the making of specific bodies and specific city spaces? First is the issue of supposed equality before the law – a fundamental tenet of modernity and liberalism upon which the law-making apparatus of certain city builders was premised. One letter to the editor during the trial of Julie L. noted:

During the regime of [Magistrate Hall's] predecessor the women who are here by sufferance were assured of one thing – that if they were assaulted, robbed or otherwise molested in contravention of the law, redress was open to them through the court ... Now if one of this class is robbed or assaulted or otherwise suffers, what is the result? If she dare to bring her appeal for protection into court she is forthwith questioned by the court as to her mode of life.<sup>73</sup>

However, missing in this analysis is a recognition that it was precisely because of her "mode of life" that Julie L. was summoned to court. Simply because of the location of one of her houses, the body of Julie L. was marked and she became known as a "keeper of a house of ill-fame." Consequently, merely to be standing on the street with/in such a body was in itself an offence and a violation of the public which certain city builders desired to create. To be otherwise known – for example to be the mayor's wife exiting a church, or Mrs. Teague returning home from a Women's Christian Temperance Union meeting – was to be otherwise embodied, and therefore acceptable to and congruent with notions of the public laid out in city by-laws and enforced by the police. In other words, like gender and race – and inextricably bound up with these – people also embodied specific *class* locations. Second, in the courtroom, her body-action became the pinnacle upon which the prosecution rested its case. In his closing remarks, lawyer for the prosecution, Mr. Moresby argued: "As to the assertion that Sergeant Walker wanted her to receive his attentions, the Sergeant was a married man, and in any event he questioned

---

<sup>71</sup> "Heavy Sentence Imposed," *Daily Colonist*, 31 October, 1899, 6.

<sup>72</sup> "Heavy Sentence Imposed," 6.

<sup>73</sup> "The Magistrate," *Daily Colonist*, 29 October 1899, 7.

if there was a man in the room who would want such relations with so utterly vile a thing as this defendant."<sup>74</sup> Because the body of Julie L. was marked in this way and in the power dynamics of the courtroom was degraded to the status of a "thing," Magistrate Hall firmly dismissed her testimony and in particular did not attempt to address the assault she suffered at the hands of Sergeant Walker, leaving her no legal recourse to address this abuse. Sentencing her to six months with hard labour when she had recently had an operation for cancer and spent two months in the hospital, showed little mercy on the part of the law.<sup>75</sup> Finally, the severity of this sentence demonstrated that for a "vile thing" of "this class" to make such serious allegations against the police, and in so doing to challenge their authority and integrity, was in itself an abominable and intolerable affront to both respectable citizens and becoming public spaces in late nineteenth-century Victoria.

### **Conclusions**

For Julie L. and other so-called "keepers" as well as for "inmates," "vagrants," and "drunks," simply to *be* on the streets and in public places in late nineteenth-century Victoria was an offence in the eyes of City Council, the police, the magistrate, and certain other city residents. Historians have characterized these types of crimes as infractions of public or moral order. However, when examined at the level of being and doing, it becomes clear that it was not people's *actions* per se that were disruptive to some pre-existing public or moral order. In the case of Victoria, certain city builders attempted to create a specific conception of the public and public space through the regulation of certain people's ways of being. The very bodies of "keepers," "inmates," "vagrants," and "drunks" were at odds with the types of city spaces envisaged by the makers and keepers of the law and were arrested as a result. At the same time, the bodies of those who were charged for "being" became perceptibly inextricable from both the ways in which they occupied spaces (being drunk, being out in the streets after midnight, being idle) and the spaces which their bodies occupied (street corners, houses on Chatham street, police court dock, newspaper columns). Those who were apprehended for "doing" – for causing a

---

<sup>74</sup> "The Hearing Concluded," 6.

<sup>75</sup> "The Hearing Concluded," 6.

disturbance by screaming, obstructing peaceable passengers, disturbing the public peace – were both less frequently detained and less severely punished.

For those charged with offences of both being and doing, appearing before the court was only the final stage in a complex public process which entailed embodying space in a particular way, being interpreted and arrested by the police on the beat, and finally, appearing before the magistrate. On one level, then, it is the police who initiated the arrest in the first place that we might see as ultimately shaping public space and constraining bodies public in particular ways. However, even before the police intervened, there were the bodies of those so-called drunks, vagrants, inmates, keepers, and others who occupied-enacted the streets and public places of the city in particular ways. Certainly their activities were increasingly under surveillance and prosecuted over the last decades of the nineteenth century as both Council, the makers of by-laws, and police charged with enforcing the law, attempted to specifically gender and racialize the public. Given that First Nations people generally, and First Nations women in particular, were the most vulnerable to policing practices and regulation, it is imperative to conceive of certain city builders as an active component of the colonial apparatus at work in British Columbia in this period and, furthermore, to understand the making of modern Victoria as an explicit aspect of the larger process of colonization.

An equally important conclusion is that those arrested for the ways in which their bodies occupied spaces – for being "filthy," or "disorderly," or "idle," or perhaps just simply for being – demonstrated an understanding of the ways in which the law operated. In certain cases they poked fun at those charged with enforcing the law, and, in the end, challenged the power of the law to contain them. By paying fines and heading back into the streets, or by forcefully asserting that they were not "disorderly" within the meaning of the law, those charged for embodied infractions successfully confirmed the legitimacy of the relationship of their bodies to public spaces, if only for the time being. Furthermore, by using capitalist discourses of productivity and accumulation, so-called vagrants situated themselves within, rather than outside of an emerging capitalist society. Finally, in as much as those on the streets in the late nineteenth century were fined and imprisoned, unless they chose to leave town (an act of resistance in itself), they did not *go anywhere, they did not disappear*. In all their drinking and screaming and disorderliness, they were a fleshy

barrier to the making of a coherent public, a public preoccupied with creating spaces that would both enable and embody progress, and facilitate production.

---

## CHAPTER THREE

---

### "Until He Is Ironed To Satisfaction"

As a hinge between the population and the individual, the body, its distribution, habits, alignments, pleasures, norms, and ideas, is the ostensive object of governmental regulation, and the city is both a mode for the regulation and administration of subjects but also an urban space reinscribed by the particularities of its occupation and use.<sup>1</sup>

It is evident that the project of building modern Victoria was inextricably bound up with attempts to circumscribe and contain bodies-spaces; the city was both a mode for the regulation of bodies-spaces and an entity itself built through bodily and spatial regulation. In particular, as we have seen, the actions of the police and the resistance of arrestees in the police court to the charges brought against them contributed to the making of Victoria's public places in the late nineteenth century. However, we might also conceive of the consequences meted out in the police court for specific ways of being and doing, as impacting the composition of the urban streetscape and the actions-bodies embedded there as much as – if not more than – the activities of the police on the streets. The courtroom was the site where the fate of a so-called offender was decided: he or she was either dismissed, required to pay a fine, or sent to jail – one more body either back onto the street or contained in prison for a time. Significantly, neither historical works that investigate the role of police courts and analyze vagrancy and related offences, nor those which examine the history of cities, explicitly scrutinize the relationship between police court sentences and jail conditions, and the ma(r)king of bodies and spaces.<sup>2</sup> Why might

---

<sup>1</sup> Elizabeth Grosz, "Bodies-Cities," in *Feminist Theory and the Body: A Reader*, eds. Janet Price and Margrit Shildrick (New York: Routledge, 1999), 386.

<sup>2</sup> Jim Phillips, "Poverty, Unemployment and the Administration of the Criminal Law: Vagrancy Laws in Halifax, 1864 – 1890," in *Essays in the History of Canadian Law, Volume III: Nova Scotia*, ed. Philip Girard and Jim Phillips (Toronto: University of Toronto Press, 1990): 128-62; Mary Anne Poutanen, "The Homeless, the Whore, the Drunkard and the

it be important to do so? And, how can we be sure that the jail and the police court actually contributed to the making of the city's public in late nineteenth-century Victoria?

What I hope to demonstrate in this chapter is that the police court did not function in a vacuum, but was an integral component of city building, of circumscribing certain bodies in public city spaces in order to enable the unobstructed passage of other bodies through these same spaces. I contend that the proportional increase of public-space-related infractions and the increased severity of response to these by magistrates between the early 1870s and 1901, contributed to the making of specific bodies, specific spaces, and a well-defined understanding of "the public." In particular, police court practices reinforced the general notion of certain city builders outlined in Chapter One: that the public was to be comprised of productive men of British descent and respectable Anglo-Saxon women who moved through – rather than remained on – city streets, and who did not engage in disruptive or disorderly behaviours. In order to flesh out this contention, I explore the following questions: What were the consequences meted out for embodied infractions of public space and how did these change between the 1870s and the end of the century? What part did the city jail play in shaping spaces and making bodies? What do the answers to the preceding questions reveal about city building and body making? And finally, how can the role of the police court be situated within the wider context of late nineteenth-century city building?

---

Disorderly: Contours of Female Vagrancy in the Montreal Courts, 1810-1842," *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, eds. Kathryn McPherson, Cecilia Morgan and Nancy M. Forestall (Don Mills: Oxford University Press, 1999), 29-47; Sidney L. Haring, "Class Conflict and the Suppression of Tramps in Buffalo, 1892 – 1894," *Law and Society Review* 11 (1976-1977): 874-911; Nicholas Rogers, "Policing the Poor in Eighteenth-Century London: The Vagrancy Laws and Their Administration," *Histoire sociale/Social History* XXIV.47 (May 1991): 127-47; Bonj Szczygiel, "'City Beautiful' Revisited: An Analysis of Nineteenth-Century Civic Improvement Efforts," *Journal of Urban History* 29.2 (December 2003): 107-32; Philip J. Ethington, *The Public City: The Political Construction of Urban Life in San Francisco, 1850 – 1900* (London: Cambridge University Press, 1994); Andrew Brown-May, "A Charitable Indulgence: Street Stalls and the Transformation of Public Space in Melbourne, c. 1850-1920," *Urban History* 23.1 (May 1996): 48-71; Steve Poole, "'Til Our Liberties be Secure': Popular Sovereignty and Public Space in Bristol, 1780-1850," *Urban History* 26.1 (1999): 40-54.

**Consequences of Being and Doing in Becoming Modern Victoria**

The sentencing of Julie L. to six months at hard labour for being a keeper of a house of ill-fame was unusually harsh. Most women charged as inmates or keepers were fined for the ways in which their bodies occupied space. As illustrated in Figure 3.1, the police laid the greatest number of charges for prostitution in 1891 and 1892, perhaps two of the city's most prosperous years of those I have examined. In 1891, in all areas of city revenue generation enterprises – from dog taxes to real estate to police court fines – the total receipts far exceeded those of the previous year.<sup>3</sup> Additionally, whereas in 1881 the value of city real estate was \$2,749,073, the personal property of residents was assessed at \$3, 378,000, and the taxable income of city dwellers amounted to \$145,000, by 1891 these totaled \$17,700,000, \$7,516,378, and \$736,450 respectively.<sup>4</sup> Given this economic boom, if people had money to seek pleasure in houses of ill-fame, the "keepers" and "inmates" would be able to pay their fines without difficulty. Charging women for such offences in these particular years would have been an effective means of generating city revenue.

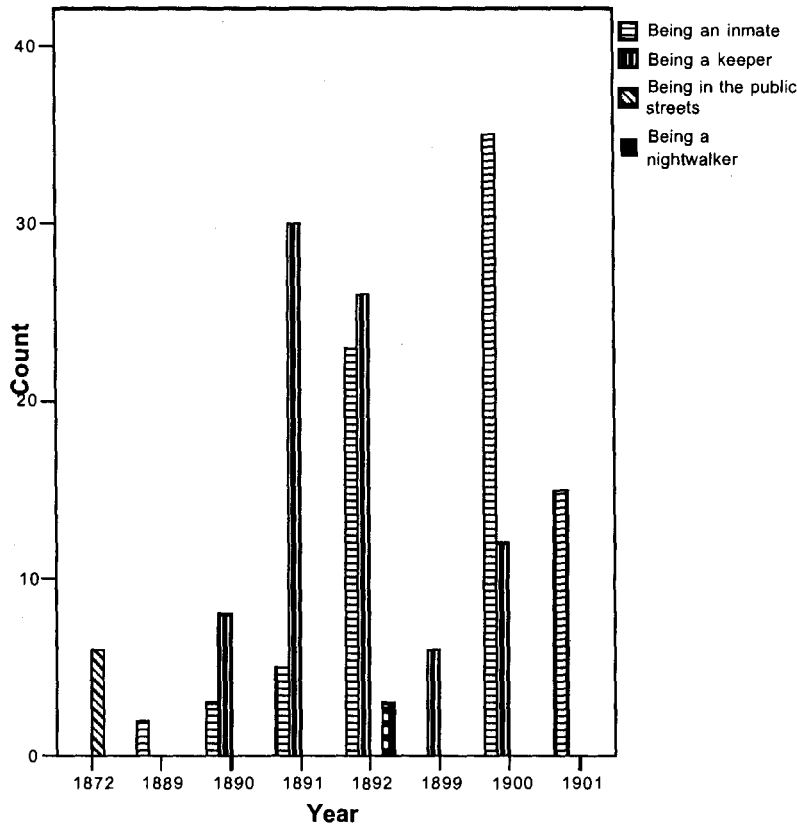
---

<sup>3</sup> "Local Improvements," *Daily Colonist*, 1 January 1892, 2. The city boundaries had also expanded between 1881 and 1891, making the geographical scope in which these assets were contained larger.

<sup>4</sup> "City Assessment," *Daily Colonist*, 1 January 1892, 7.

Figure 3.1

Charges for Prostitution by Full Year



In general, as Figure 3.1 illustrates and for the reasons outlined above, prostitution charges were relatively high over the course of the last decade of the nineteenth century; the police were evidently taking steps to protect the "residents" of the city from such "evils." At the same time as incidents of arrest rose, the consequences for being an inmate or keeper of a house of ill-fame became more severe. In 1890 and 1891 the fines for these offences, for the most part, were \$50 and \$25 respectively (evidencing a class – or at the very least a wage – difference between "keepers" and "inmates"). Between 1892 and 1901 the respective fines were the same, but the consequences for not paying them were different: women faced jail sentences, most often without hard labour, if they could not pay. However, in almost all cases so-called keepers and inmates *did* pay their fines. It might, in fact, be argued that the "inmates," the "keepers," and the city understood the fines as a business expense of sorts, or as an unofficial license. One late nineteenth-

century commentator, the Justice Henri Taschereau of the Superior Court of Montreal, confirms this perspective. In a diatribe as to why those arrested as prostitutes should be imprisoned rather than fined, he argued that,

those women come periodically ... before the recorder. With the exception of a very few cases they are, each time, sentenced to pay a fine, which they do easily from the proceeds of their vile trade. They expect it, anyhow, and have a reserve fund for that object. The fine is paid and ... they return triumphantly to their dens, the doors of which are reopened the same afternoon.<sup>5</sup>

Table 3.1 illustrates that over the years, so-called inmates and keepers made significant contributions to the fines collected in the police court and to the municipal treasury more generally. Although the amount they paid in fines may have been a very small fraction of the overall city revenue in any given year, I contend that not only did these so-called "vile" and "morally depraved" women assist in the enterprise of city building by functioning as the "other" or the "outside" against which respectable inhabitants could construct themselves, they also served to build the city materially with their regular contributions to the city treasury.

**Table 3.1**  
**Fines Paid by Keepers and Inmates of Houses of Ill-Fame for Available Years**

Year	Fines Paid by Keepers of Houses of Ill-Fame	Fines Paid by Inmates of Houses of Ill-Fame	Total Fines Paid by Inmates and Keepers	Total Police Court Fines	Inmates & Keepers Fines as Percentage of Total
1890	\$400	\$20	\$420	\$5109.50	8.2
1891	\$1080	\$50	\$1130	\$6970.10	16.2
1892	\$1100	\$575	\$1675	N/A	—————
1899	\$150	0	\$150	\$2275	6.6
1900	\$450	\$1000	\$1450	\$5385.05	26.9
1901	0	\$500	\$500	\$5285	9.5
<b>Total</b>	<b>\$3180</b>	<b>\$2145</b>	<b>\$5325</b>	—————	—————

Sources: Police Court Records (For fines paid by inmates and keepers), Newspaper Reports of City Council Revenue (1890-1892), Year End Police Reports (1899 – 1901)

<sup>5</sup> Henri Taschereau, "Report on the police investigation and its results," in *Saving the Canadian City: The First Phase 1880-1920*, ed. Paul Rutherford (Toronto: University of Toronto Press, 1974), 110.

Like the consequences for being "inmates and keepers," the penalties for being "drunk" or "drunk and disorderly" became increasingly harsh over the last three decades of the nineteenth century. Between 1871 and 1883, the most common fine for this offence was \$2.50 and in this period it was handed out 555 times – 249 times to First Nations men, 59 to First Nations women, 238 to non-First Nations men and 9 to non-First Nations women. As with the total embodied infractions First Nations people were, perhaps not surprisingly, disproportionately over-represented in the number of charges for drunkenness in these years. However, in this period neither racialization nor gender was a determining factor in terms of the amount of the fine imposed. With only 20 exceptions, *everyone* was fined \$2.50.

Between 1890 and 1893 the police court magistrate dispensed a \$5.00 fine 1154 times, 306 times to First Nations men, 126 to First Nations women, 661 to non-First Nations men and 61 to non-First Nations women. The increase of \$2.50 over this period seems insignificant, and perhaps it is. However, in the 1870s people who were not able to pay their fines for drunk and disorderly behaviour faced a prison term of six hours, whereas by the early 1890s the prison time for defaulting on a fine had increased to one month, sometimes with hard labour. Equally significant, in this period racialized gender came to figure more prominently in the fines meted out. Between 1890 and 1893, both First Nations and non-First Nations men were fined \$5.00 or \$5.00 with a default jail term in relatively equal degrees. However, in these years, First Nations women received 38 fines of \$5.00, which, if unpaid, would result in jail terms of various lengths whereas non-First Nations women only received 11 fines in that amount. The significance of this fining is twofold. First, as illustrated above, the bodies of First Nations women were considered the most disruptive to the respectable public that city builders were attempting to create, in that they defied both gendered norms by being drunk in the streets, and expectations that as racialized colonial subjects they would either disappear or assimilate. Second, and related, while it was likely desirable for the enforcers of public order to contain First Nations women in prison and remove them from the streets, this was not the case for non-First Nations women. The latter, it was hoped, still had a chance of becoming respectable – a fate that would be nearly impossible in the city gaol. Overall,

the standard fine of \$5.00 with or without a default jail sentence was the most frequent fine dispensed to everyone from the 1890s, and remained so until the end of the century with one exception: by 1899 for first-time offenders charged with public drunkenness, the most common fine handed out was reduced to \$2.50, except for both First Nations men and women who continued to be fined \$5.00 even when making a first-time appearance before the police court.<sup>6</sup> Clearly by the end of the century the public was becoming less tolerant of "drunk" First Nations bodies in the city streets, bodies which did not reflect its self-image of respectable British "whiteness."<sup>7</sup>

The only embodied infraction for which there was not usually the option of paying a fine, except in the early period, was vagrancy. Between 1871 and 1882, 14 people charged as vagrants had the alternative of paying a fine of between \$2.50 and \$24 or facing gaol terms of seven to 14 days with or without hard labour (6), one month with or without hard labour (2), two months with hard labour (2), or three months with hard labour (4). In these years it was not possible to discern from the records whether or not people paid their fines because the police court clerk did not indicate paid and unpaid fines as did the clerk after 1889. From the late 1880s, similar to the increasingly harsh penalties faced by "inmates," "keepers," and "drunks," so-called vagrants also received more severe sentences. As Table 3.2 indicates, 1890 and 1891 were the two years in the last decade of the nineteenth century in which the most "vagrants" spent time in prison. Given that the early 1890s was a period of local prosperity and production, the idle

**Table 3.2**  
**Sentences for Vagrancy, 1889 – 1901**

Year	Sentence				Total	Number with hard labour
	1 month or more	2 months or more	3 months or more	4 months or more		
1889	7	0	1	0	8	6
1890	22	1	2	0	25	11
1891	16	2	2	1	21	4

<sup>6</sup> Between 1899 and 1901, 328 \$2.50 fines were imposed; of these, only four were against First Nations people.

<sup>7</sup> As noted in Chapter One, it was in 1900 that the province altered the Municipalities Act to ensure that "all members of the police force shall be British subjects." "An Act to Amend the 'Municipal Clauses Act'." S.B.C. 64 Vict. (1900), c. 23, s. 29.

1892	7	3	1	0	11	5
1899	5	1	1	0	7	6
1900	1	3	2	0	6	6
1901	4	2	4	1	11	10
<b>Total</b>	<i>62</i>	<i>12</i>	<i>13</i>	<i>2</i>	<i>89</i>	<i>48</i>

bodies of those charged with vagrancy were likely more noticeable and less pardonable than in a period of economic downturn and high unemployment. Indeed by 1901, the beginning of the decade following a period of rapid deindustrialization, the number of sentences for vagrancy had decreased despite a slight increase in the number of charges.<sup>8</sup> This suggests that when rates of unemployment were higher, for the magistrate to punish someone for not working might cast doubt on the justice of the court, one of the principles upon which the law was founded.<sup>9</sup> However, Table 3.2 illustrates that even though by 1899 fewer people were sentenced for vagrancy, the proportion of those serving terms at hard labour between 1899 and 1901 was far greater than earlier in the 1890s. Evidently, even in a period of economic downturn the regulation of bodies and spaces was still a key concern of certain city builders; it was necessary that a certain number of bodies be made public and condemned to labour in prison as an example of the potential consequences of idleness and other non-productive activities.

The *Daily Colonist* tells a different story as to the most desirable sentence for a "vagrant" throughout the last two decades of the nineteenth century, namely, to have him or her leave town. In 1881, a reporter described the case of Ellen Robertson:

At 11 a.m. yesterday morning the Police magistrate took his seat on the bench and the only case on the docket was called. The defendant, Ellen Robertson, failed to put in an appearance although called three times in a stentorian voice by one of the officers. She is supposed to have made the best possible use of her two days' remand, for herself it is to be hoped and for the city certainly, by getting away as far as possible from the neighbourhood of the city police barrack where, should she make herself

---

<sup>8</sup> Peter Baskerville and Eric W. Sager, *Unwilling Idlers: The Urban Unemployed and Their Families in Late Victorian Canada* (Toronto: University of Toronto Press, 1998), 15. For Vagrancy sentences see Chapter Two, Figure 2.3.

<sup>9</sup> In 1901, only 76.1 per cent of workers in Victoria were employed for 12 months of the year. Baskerville and Sager, 86.

visible again, an order from Mr. Pemberton for six months hard labour within the precincts of the gaol yard awaits her.<sup>10</sup>

Even in the 1890s, when those arrested for vagrancy were increasingly imprisoned, I encountered innumerable statements such as that from a police court column report in the fall of 1890: "Three vags were the next culprits called. Two of them pleaded 'not guilty', and were remanded for two days, to give them a chance to leave town."<sup>11</sup> In December of this same year the paper again reported that, "R. Haggard ... could not successfully dispel the belief that he was a vagrant, and was given 24 hours in which to leave town, for the benefit of the city's health."<sup>12</sup> By 1900, these sentiments as to the best way of dealing with so-called vagrants remained unchanged. In a police court report entitled "Short Session," the reporter noted that "two vags failed to appear, having been shown how they could leave town."<sup>13</sup> The sentiments of these writers can be situated within what Mariana Valverde has identified as a late nineteenth-century discourse of the city as an "organic whole" or an "organism" whose health was at risk – in these examples, the bodies of those arrested for vagrancy were contagions dangerous to the health of the city.<sup>14</sup> While those charged with vagrancy could be and certainly were imprisoned in the city jail, thus removing their bodies from the public streets, newspaper reports reveal that a more effective and permanent way of dealing with vagrant bodies, which would improve the overall health of the city, was to have them leave town, for good.

### **Ma(r)king Bodies in the Prison**

If women and men could not afford to pay their fines for the charges brought against them for taking up public spaces in particular ways, or if charged with vagrancy and unable to leave town, another potential consequence for particular modes of being and doing was doing time in the city gaol. As noted above, in the 1870s and 1880s I was

---

<sup>10</sup> "Police Court," *Daily Colonist*, 4 May 1881, 3.

<sup>11</sup> *Daily Colonist*, 3 September 1890, 4.

<sup>12</sup> "The Police Blotter," *Daily Colonist* 16 December 1890, 5.

<sup>13</sup> "Short Session," *Daily Colonist*, 5 December 1900, 5.

<sup>14</sup> Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925* (Toronto: McLelland and Stewart, 1991), 129-30.

unable, for the most part, to determine the jail sentences people served.<sup>15</sup> However, Tables 3.3 through 3.6 unequivocally demonstrate that the police court was not only a forum which regulated bodies, but was concomitantly a means through which colonial order on the public streets was enforced. In comparing Table 3.3 and Table 3.4 it becomes clear that overall, the difference in sentences between First Nations and non-First Nations men was not as great as we might expect, given that by the end of the century First Nations men were still fined \$5.00 for first time drunkenness-related offences whereas the first offence fine for non-First Nations men was dropped to \$2.50. For example, in 1890, 19.5 per cent of First Nations men charged were sentenced to one month and 16.6 per cent of non-First Nations men charged received this same sentence. By 1900, only 4 per cent of First Nations men were sent down for one month, and only 3.3 per cent of non-First Nations men. However, when in 1899 lighter jail sentences, ranging from two to six days were instituted, only 0.8 per cent of First Nations men sentenced received such a sentence between 1899 and 1901, whereas 27 per cent of non-First Nations men were given this same sentence. In these same years, 11.9 per cent of First Nations men charged served 7 to 13 day sentences and 7.1 per cent 14 to 20 days sentences compared to 3.8 per cent and 5 per cent of other men for these respective sentences. Evidently by the turn of the century not many First Nations men or non-First Nations men spent more than two weeks in prison for embodied infractions. However, at this point First Nations men were still more contained than non-First Nations men in terms of the one- and two-week sentences they received compared to the percentage of the latter who went to prison for merely two to six days.

---

<sup>15</sup> The total number of sentences served between 1889 and 1901 as far as I could determine, was 562. Relevant data was not available for the 1870s or 1880s or for a portion of 1891.

**Table 3.3**  
**First Nations Men Jail Sentences Served by Full Year, 1890-1901**

Year	Sentence								
	2-6 days	7-13 days	14-20 days	21 days or more	1 month or more	2 months or more	3 months or more	4 months or more	6 months or more
1890	0	0	0	0	8	0	0	0	0
1891	0	5	0	0	4	0	0	0	0
1892	0	1	5	0	6	0	0	1	0
1899	2	6	3	0	1	0	0	0	0
1900	0	4	8	0	2	0	0	0	0
1901	0	10	1	0	0	0	0	0	0
<b>Total</b>	2	26	17	0	21	0	0	1	0

**Table 3.4**  
**Non-First Nations Men Jail Sentences Served by Full Year, 1890-1901**

Year	Sentence								
	2-6 days	7-13 days	14-20 days	21 days or more	1 month or more	2 months or more	3 months or more	4 months or more	6 months or more
1890	0	1	2	0	57	2	2	1	3
1891	0	27	1	0	48	2	1	1	0
1892	1	30	11	0	20	5	1	1	0
1899	13	14	12	0	19	0	2	0	1
1900	15	12	14	3	10	3	1	0	2
1901	16	4	13	1	7	0	4	0	0
<b>Total</b>	45	88	53	4	162	12	11	3	6

As the data in Tables 3.5 and 3.6 reveal, the story for First Nations women was slightly different. In comparison to most non-First Nations women, who, in many senses because of their racialized status at least embodied the possibility of becoming respectable, the bodies of First Nations women were increasingly removed from the streets by the police and imprisoned over the last decade of the nineteenth century. Although non-First Nations women made up a higher number of total cases<sup>16</sup> and particularly by the end of the century were a proportionately larger body of the population of Victoria, a total of 44 First Nations women who came before the police court between 1890 and 1901 spent time in prison. Only 41 non-First Nations women

<sup>16</sup> See Chapter Two, Figure 2.2.

did so. A comparison of Tables 5.5 and 5.6 reveals that in most years between 1890 and 1901 First Nations women served *more* jail sentences than non-First Nations women despite the fact that the charges leveled against them, with the exception of 1890, were far fewer. This could be explained by the number of prostitution-related offences brought against non-First Nations women (143), which rarely resulted in jail sentences. In and of itself, this is interesting. Arguably, if only indicated by the value of fines associated with each offence, prostitution was a far more serious offence than being drunk. The bodies of First Nations women, drunk on the streets, which amounted to 96 per cent of the total charges brought against them, posed *more* of a threat to the public and appropriate notions of public behaviour/public bodies/public space, than did the explicitly sexualized activities of non-First Nations women. As a result, between 1899 and 1901, First Nations women served no 2 to 6 day sentences, 20 per cent served 7 to 13 day sentences, 20 per cent, 14 to 20 day sentences and 60 per cent, sentences of one month or more.<sup>17</sup> The bodies of non-First Nations women were less contained, in that 11 per cent served sentences of 2 to 6 days, 32 per cent 7 to 13 days, and 37 per cent, 14 to 20 days. No non-First Nations women served sentences for one month or more despite the fact that in each of these years, they were charged more frequently than their colonial others against whom the courts, through these sentencing practices, clearly defined them.

**Table 3.5**  
**First Nations Women Jail Sentences Served by Full Year, 1890-1901**

Year	Sentence								
	2-6 days	7-13 days	14-20 days	21 days or more	1 month or more	2 months or more	3 months or more	4 months or more	6 months or more
1890	0	0	0	0	4	0	0	0	0
1891	0	2	0	0	5	0	0	0	0
1892	0	2	2	0	5	0	0	0	0
1899	0	2	2	0	6	0	0	0	0
1900	0	0	1	0	6	0	0	0	0
1901	0	2	1	0	0	0	0	0	0
<b>Total</b>	0	8	6	0	26	0	0		0

<sup>17</sup> In total between 1890 and 1901 First Nations women also served *more* one month sentences than did First Nation men despite being charged less frequently. (See Tables 3.3 and 3.5)

**Table 3.6**  
**Non-First Nations Women Jail Sentences Served by Full Year, 1890-1901**

Year	Sentence								
	2-6 days	7-13 days	14-20 days	21 days or more	1 month or more	2 months or more	3 months or more	4 months or more	6 months or more
1890	0	0	0	0	5	0	0	0	0
1891	0	0	0	0	3	1	0	0	0
1892	0	0	0	0	6	0	0	0	0
1899	0	2	0	0	0	1	0	0	2
1900	2	2	2	0	0	0	1	0	0
1901	0	2	5	0	0	1	1	0	0
<b>Total</b>	2	6	7	0	14	3	2	0	2

Regardless of the amount of time men and women spent in the prison, the conditions they could expect to face once inside were quite harsh. In 1872 one writer described the gaol in the *Daily Colonist* as follows:

Language is utterly inadequate to convey anything like a just idea of what was presented to the eye and nose of this writer in going the rounds of the gaol the other day ... In some instances nine human beings are crammed into a single cell incapable of accommodating more than two. These nine ... spend the night done up in a dirty-looking blanket, packed like so many sardines in a tin, inhaling the noxious gases and the vitiated atmosphere of an ill ventilated cell. In some of the wards the stench issuing through the small auger-hole in the door of these cells is enough to take away one's breath.<sup>18</sup>

For those who were homeless or who spent most of their time in the public in ways that city builders deemed inappropriate, these were precisely the conditions in which they could end up. The province did build a new city jail in 1886, thus somewhat addressing the overcrowded and unsanitary conditions. However, penal disciplinary regimes changed very little between the 1870s and end of the century. Bodies were both marked and made while on the inside through prison diets, punishments, and labour practices. Not contained by the prison walls, this ma(r)king contributed to the wider project of attempting to secure the city's public.

Reports on dietary conditions from early nineteenth-century jails were far from favourable. In *'Terror to the Evil-Doers': Prisons and Punishments in Nineteenth-Century Ontario*,

<sup>18</sup> "The Victoria Gaol," *Daily Colonist*, 22 September 1872, 4.

Peter Oliver contends that "many prisoners feared that their health was being destroyed by cold, damp, heat, and virtual starvation."<sup>19</sup> To illustrate this claim he reports the case of a prisoner in the Midland gaol in 1826 who was "almost exhausted for want of a more substantial diet."<sup>20</sup> In his discussion of conditions in the Halifax bridewell in the late 1830s, Rainer Baehre notes that "prisoners were allotted seven pounds of bread per week, bibles, and prayer-books, but no clothing or bedding."<sup>21</sup> When the Halifax penitentiary opened in 1844, dietary conditions for prisoners improved slightly. In 1851, however, "in an effort to save money" convict rations were reduced to "two Plates Mush, Soup and hard Biscuit, with one lb. Beef on Sundays."<sup>22</sup> Baehre speculates that by 1861 the prison diet had improved somewhat as medical attendant Dr. Rufus Black vouched for "the wholesome nature of the food, and the cleanly manner in which it was prepared." Nonetheless, soon after Black's report the commissioners concerned with the overall state of the prison noted that "the convicts' general health was 'not good'" to a large degree because of the "unchanging diet," and recommended "that potatoes might be used to supplement the regular fare of hard biscuit and bread."<sup>23</sup> In a compelling article which investigates regional variation in Canadian penitentiary expenditures between 1880 and 1925, economists Alan Green, Mary MacKinnon and Chris Minns show that in this period well over half the money spent on rations went towards staple items such as flour and beef.<sup>24</sup> They demonstrate that in addition prisons bought barley, oatmeal, rice, fish, mutton, bacon or pork, butter, milk, beans, potatoes, peas, currants, raisins, prunes, pepper, vinegar, salt, coffee, eggs, lard, molasses, sugar, and tea.<sup>25</sup> While Green et al. maintain that prisoners' daily food regimes were not as varied as the expenditures suggest,

---

<sup>19</sup> Peter Oliver, *Terror to the Evil-Doers': Prisons and Punishments in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1998), 37.

<sup>20</sup> Oliver, 38.

<sup>21</sup> Rainer Baehre, "From Bridewell to Federal Penitentiary: Prisons and Punishment in Nova Scotia before 1880," in *Essays in the History of Canadian Law, Volume III: Nova Scotia*, eds. Philip Girard and Jim Phillips (Toronto: University of Toronto Press, 1990), 177. A "bridewell" is a low security, city-run gaol.

<sup>22</sup> Baehre, 184.

<sup>23</sup> Baehre, 184-5.

<sup>24</sup> Alan Green, Mary MacKinnon and Chris Minns, "The Costs of Doing Hard Time: A penitentiary-based regional price index for Canada 1880-1926," Unpublished paper presented at *Annual Meeting of the Canadian Economics Association*, June 2004.

<sup>25</sup> Some of these items may, of course, have been exclusively for the prison staff.

and that they "doubt any free citizen would have volunteered to consume a prison diet,"<sup>26</sup> their findings do suggest that dietary conditions in Canadian prisons had improved somewhat over the course of the nineteenth century and into the beginning of the twentieth.

Dietary data available for the Victoria gaol in the last two decades of the nineteenth century can be set within this larger Canadian context. A number of press reports in Victoria in the 1870s and 1880s comment on the damp, overcrowded, and unsanitary conditions of the city gaol. None of these accounts, however, make mention of the quantity or quality of food consumed in the gaol in these decades. Before 1889 in fact, it does not appear that the gaol itself kept systematic records pertaining the rationing of food to prisoners. From 1889 until 1913 (the last year the gaol was in operation) in general, prisoners were allotted the following daily food ration:

Bread	24 oz
Beef without bone	6 oz
Potatoes	8 oz
Oat Meal	4 oz
Corn Meal	4 1/2 oz
Pork when used	5 oz
Fish when used	10 oz
Tea	1/4 oz
Coffee	1/2 oz
Sugar	1 1/2 oz
Barley	1/2 oz <sup>27</sup>

The "Prison's Regulation Act" of 1896 broke the caloric intake of prisoners into two scales. Scale 1 was for prisoners awaiting trial, or under sentence with hard labour for 30 days or less, where the labour done was "ordinary Gaol work." Scale 2 was for prisoners sentenced with hard labour for a term of over 30 days, and when the labour consisted of cutting wood or breaking stones.<sup>28</sup> (See Figure 3.2.)

---

<sup>26</sup> Green et al., 11-12.

<sup>27</sup> "List of provisions and other stores issued," Provincial Archives of British Columbia (PABC) GR 308 vol. 90 " May 1889 – December 1913.

<sup>28</sup> "Annual Report of the Superintendent of Police Respecting the Police and Prisons of British Columbia for the Year Ending 31<sup>st</sup> October, 1896," 929.

**Figure 3.2**  
**Food Rations for Prisoners with Short Term and Long Term Hard Labour**<sup>29</sup>

<p>SCALE NO. 1</p> <p><i>Breakfast.</i></p> <p>One pint of gruel (made from oatmeal or Indian corn meal) and eight ounces of bread every morning.</p> <p><i>Dinner.</i></p> <p>Five ounces of cooked meat (without bone), eight ounces of bread, and eight ounces of potatoes, on three days of the week.</p> <p>Eight ounces of bread, one pound of potatoes, and one pint of gruel on two days of the week.</p> <p>One pint of soup and eight ounces of bread, on two days in the week.</p> <p><i>Supper.</i></p> <p>One pint of gruel and eight ounces of bread, every night.</p> <hr style="width: 10%; margin: 20px auto;"/> <p>SCALE NO. 2</p> <p><i>Breakfast.</i></p> <p>One pint of gruel, eight ounces of bread, and one pint of pea coffee sweetened with molasses, or brown sugar every morning.</p> <p><i>Dinner.</i></p> <p>Six ounces of cooked meat (without bone), eight ounces of bread, and eight ounces of potatoes, on each day that hard labour is performed; otherwise Scale No. 1 to be followed.</p> <p><i>Supper.</i></p> <p>One pint of gruel and eight ounces of bread, every night.</p>
--

In *Unwilling Idlers: The Urban Unemployed and Their Families in Late Victorian Canada*, relying on the work of Bettina Bradbury as well as contemporary family budget and dietary reports, Peter Baskerville and Eric Sager estimate the food consumption of adult males in Victoria in 1900. Baskerville and Sager note that the food allocations they have calculated "are significantly lower than those of the 'typical' working class family."<sup>30</sup> According to their calculations, lower working-class adult males consumed an average of 13.9 ounces of bread, 4 ounces of oatmeal/porridge, one ounce of tea or coffee per day, and 2.9 ounces of vegetable broth, 4.6 ounces of potatoes, 3 ounces of butter, 12 ounces

<sup>29</sup> "Annual Report of the Superintendent of Police Respecting the Police and Prisons of British Columbia for the Year Ending 31<sup>st</sup> October, 1896," 929.

<sup>30</sup> Baskerville and Sager, 217.

of cheese, 5 ounces of sugar, and only 8 ounces of mutton or beef per week.<sup>31</sup> Significantly, although the diet may not have been as varied as the one Baskerville and Sager present, the average daily caloric intake of bread, beef, potatoes, and oatmeal of all prisoners in the Victoria gaol, regardless of what kind of labour they performed, was either greater than or equal to the amount consumed by working class men on the "outside."

For those who were unemployed, homeless, hungry, and/or charged for taking up public spaces in particular ways, considering the daily amount of food rationed, perhaps the Victoria gaol was an ideal place in which to satisfy their most basic bodily needs. However, when we move from an examination of prison dietary regimes to a scrutiny of the punishments meted out for breaking prison rules, it becomes overwhelmingly clear that for prisoners to actually receive the allotted daily intake of food was not a right, but a privilege, easily and often revoked for breaching disciplinary guidelines. The 1879 "Act to provide for the proper management of Gaols" legislated that "it shall be lawful for the Superintendent of Police for the Province ... to make rules and regulations for ... the diet, clothing, maintenance, employment, discipline, correction, and punishment of persons confined therein."<sup>32</sup> After this Act was passed in 1879, Superintendent Todd made and posted the rules for the Victoria gaol, which were in place until at least the turn of the century. Todd outlined the roles and responsibilities of the gaolers and the guards, the procedure for admitting prisoners, and the working hours of the chain gang. He dictated, among other things, that the cells in use must be whitewashed once a week, that "prisoners shall have clean underclothing and a bath when required," and that "hard labour prisoners shall have their hair cut to one inch in length." In addition he noted that, "the gaoler may place ... irons on any prisoner ... as he may deem necessary," "the Senior Convict Guard may refuse to allow any prisoner to go out in the Chain-gang until he is ironed to his satisfaction," and "strict silence must be observed in the cells, and no shouting or loud talking shall be allowed in the Goal Yard."<sup>33</sup> Todd's 1879 Annual Report specifying the prison rules further decreed:

---

<sup>31</sup> Baskerville and Sager, 217, 221-2.

<sup>32</sup> S.B.C. 42 Vict. (1879) c. 19, s. 1.

<sup>33</sup> "First Annual Report of the Superintendent of Police Respecting the Prisons of British Columbia for the Year Ending 31<sup>st</sup> October, 1879," 376-7.

Any prisoner who shall be proved guilty of willfully disobeying the orders of the officer in charge of the Gaol, or of fighting in the Gaol or Chain-gang, or of refusing to work, or of making an unnecessary noise in the prison, or of destroying clothing or other property of the prison, or of refusing to keep himself clean, or of refusing or neglecting to clean his cell when necessary or when ordered to do so, or of breaking any of the prison rules, may be punished.<sup>34</sup>

From 1879 onwards there were three official punishments meted out for the breach of prison regulations: "1. Solitary confinement in dark cells, with or without bedding, not to exceed six days for any one offence, nor three days at any one time. 2. Bread and water diet, full or half rations, combined or not with (No.1). 3. Cold water punishment, with the approval of the visiting Physician."<sup>35</sup>

An in-depth perusal of the "Conduct of Prisoners in the Victoria Gaol" for all years from 1875 to 1901 reveals that by far the most common punishment for a breach of prison rules was solitary confinement on bread and water, often at half rations. Almost *every day* between 1875 and 1901 that an inmate was punished in prison, at least one person's punishment was a bread and water diet. As noted above, in terms of "embodied offenders" in the early years, it was difficult to determine who went to prison and who did not. From 1889 onwards, a number of those sent to prison by the police court magistrate for occupying public city spaces in ways deemed undesirable by certain city builders received punishments of bread and water in solitary confinement while inside. The following examples of the prison experiences of offenders charged with embodied infractions of public space are significant with respect to the impact that solitary confinement in the "Dark Cell" and a diet of bread and water would have had on the ability of these men to perform hard labour once released from solitary. Equally important to consider are the longer term implications of this combined mode of punishment for the minds and bodies of people who – from want of food, lack of

---

<sup>34</sup> "First Annual Report of the Superintendent of Police Respecting the Prisons of British Columbia for the Year Ending 31<sup>st</sup> October, 1879," 377. These punishments were likely in place before 1879. However, 1879 was the first year that the Superintendent of Police was required by legislation to make an official report, thus reifying prison practices that may have already been in place.

<sup>35</sup> "First Annual Report of the Superintendent of Police Respecting the Prisons of British Columbia for the Year Ending 31<sup>st</sup> October, 1879," 378.

employment, addiction to alcohol, and/or want of shelter – may already have been fragile.

On 22 June 1889 Lawrence M. who "for a number of years past has been almost a constant inmate of the jail"<sup>36</sup> was caught "Skulking work on Saturday mornings, and making a practice of doing it."<sup>37</sup> For this he received 30 hours in solitary confinement on a bread and water diet. In March 1891, George H., a 53-year-old Englishman who was in for three months for vagrancy, was recorded in the prison discipline book for "making an unnecessary noise repeatedly." The Warden decided that "Hughes [George H.] being an old man will be let off this time with a forfeiture of all time served to date."<sup>38</sup> In April 1892 when George H. was once more imprisoned, the warden did not treat him as leniently. He was again reprimanded for "making an unnecessary noise in his cell" and this time, received 30 hours in the solitary cell with bread and water, despite his age and perhaps frail bodily condition.<sup>39</sup> On 23 September 1892, John B. in for a month for "being found drunk" was given three days in the solitary cell on bread and water for "refusing to obey orders and [being] very insolent in general."<sup>40</sup> Less than two weeks later, he again spent time in the solitary cell on bread and water, this time for two days for "refusing to obey the order of the Warden viz. refusing to tie his shoe. Remaining in from his Work and very insolent."<sup>41</sup> In one week in March 1900, Arthur C., imprisoned for various drunkenness and vagrancy offences between 1899 and 1901 made

use of impudent language to the Warden when spoken to about talking loud in his cell. And using bad language in cell ... Told the warden, when passing his cell that he was not good and you can do as you damn please about it ... Loud talking in his cell when I [Gaoler Hunter] went down and cautioned him he said I don't care a fuck you can report me. When I brought him up he said to me, you are a damn cock-sucker.<sup>42</sup>

For his repeated lack of discipline he was put in the dark cell with half rations of bread, full allowance of water, and bedding at night for six days. In June 1900 Joseph M., only

---

<sup>36</sup> "The Police Court," *Daily Colonist*, 2 October 1900, 5.

<sup>37</sup> PABC GR 308, vol. 17, 22 June 1889.

<sup>38</sup> PABC GR 308, vol. 17, 22 March 1891.

<sup>39</sup> PABC GR 308, vol. 17, 8 April 1892.

<sup>40</sup> PABC GR 308, vol. 17, 23 September 1892.

<sup>41</sup> PABC GR 308, vol. 17, 5 October 1892.

<sup>42</sup> PABC GR 308, vol. 17, 28 March 1900.

in prison for one to two weeks with hard labour for "being drunk," was caught "talking in the gang, neglecting his work and using impudent language to me [1<sup>st</sup> Guard Thomas]." His punishment was "Five days in Dark Cell half ration of Bread and Bedding at night," which indicates that he spent a large portion of his sentence in solitary confinement on bread and water.<sup>43</sup> In July of that same year, Henry W., who had been in prison in May 1900 for "being drunk," was again imprisoned, this time with hard labour. On 23 July he received six days in the "Dark Cell" with half rations of bread and a full allowance of water for "breaking away from the chain gang at 3pm this afternoon."<sup>44</sup>

What I want to make clear is that the regimes instituted inside the Victoria gaol – in this particular instance the allotment of food, or lack there of – contributed to the making of the city's public, and of bodies public outside the prison. Part of the impetus for imprisoning those arrested for embodied infractions was to attempt to shape them in some way into respectable and productive citizens. Because the gaol rules were both severe ("strict silence must be observed while in the cells") and discretionary ("*willfully* disobeying orders," "making an *unnecessary* noise," refusing to keep himself or his cell *clean*), once subject to these rules, the bodies of "drunks," "vagrants," and other embodied offenders were at the whim of the warden, the gaoler, and the guards. Evident in the examples cited above is the fact that prisoners resisted their keepers – Arthur C. used profanity and insulted the warden and the guard; John B. refused to tie his shoe, asserting basic control over his own body – knowing full well the potential consequences of their resistance. However, when meting out punishments of time in solitary with or without bedding on a bread and water diet, the warden contributed to the ma(r)king of drunk and vagrant bodies that would extend beyond the prison walls. Samira Kawash has argued in a twenty-first century context that "the homeless body does not refer to an original body, a body outside history or culture" nor is the "homeless body" the "same thing as the homeless person or the human body that homeless people necessarily possess or inhabit. Rather the homeless body emerges as a particular mode of corporeality in contingent circumstances through which the public struggles to define itself as distinct and whole."<sup>45</sup> I posit that drunk and vagrant bodies can be understood similarly; the dietary,

<sup>43</sup> PABC GR 308, vol. 17, 16 June 1900.

<sup>44</sup> PABC GR 308, vol. 17, 23 July 1900.

<sup>45</sup> Samira Kawash, "The Homeless Body," *Public Culture* 10.2 (1998): 334, 324.

punishment, and labour regimes in the prison are one such set of "contingent circumstances" through which the public in late nineteenth-century Victoria struggled to define itself. Reducing the caloric intake of punished prisoners, placing them in a dark cell for one to six days and then expecting them to emerge obedient, ready to work, or to undergo further punishment if they did not appears somewhat counterintuitive to the desires of the public-shaping city builders. What happened to these people once they were released from prison, particularly if they had served bread-and-water solitary time near the end of their terms? How would they find work in a weakened condition? How would they secure food upon their release?

If the intent of such punishment was to reform "vagrants" and "drunks" so as to render them useful and to aim to integrate them into the city's public and perhaps into the labour force upon their departure from the gaol, the disciplinary regimes in the prison can be interpreted as a failure. But if the result of such punishment was the re-formation of the bodies of "drunks" and "vagrants" – weaker from lack of food, more vulnerable to discrimination from being recognized as belonging to the chain gang, psychologically impacted from doing solitary time – who would have a more difficult time (re)entering the public, finding work, supporting themselves, and becoming part of the legitimate public, then on a certain level, the disciplinary regimes might be viewed as a "success" in that they ensured the existence of the public's other. Michel Foucault has argued that if one were asked, "what is served by the failure of the prison ... one would be forced to suppose that the prison, and no doubt punishment in general, is not intended to eliminate offences, but rather to distinguish them ... to use them."<sup>46</sup> It is these useful offences (and offenders/delinquents) which Foucault terms "tolerated illegalities." He sees them as necessary to the functioning of the legal system by providing its outside, that which it seeks to control. Similarly the bodies of those so-called drunks and vagrants can be understood as the necessary outside and other of the respectable inhabitants of Victoria and their becoming public. Through policing practices, courtroom pronouncements, and newspaper representations these citizens attempted to define themselves and their spaces against the bodies of "vagrants" and "drunks." In addition, and more materially, once

---

<sup>46</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1977), 272.

released from prison and back onto the streets in a potentially weakened state, these bodies were even more recognizable as the respectable public's other.

Together with diet and discipline, a third – and perhaps the most tangible – connection between the prison practices and the making of the city's public was the work of those who performed hard labour in the chain gang.<sup>47</sup> According to Peter Baskerville, the chain gang "does not seem to have been common in Canadian cities" and, along with Vancouver, Victoria was the only other Canadian city to have employed prisoners in this way.<sup>48</sup> Prisoners sentenced to hard labour became workers in the gang, and in the city's nascent decades "provided ... relatively cheap labour for road work, sanitation removal, and general construction."<sup>49</sup> In 1868, perhaps evidence of city building priorities in the early years, the chain gang even laid a croquet ground at Government House.<sup>50</sup> By the 1890s the most common activity performed by those sentenced to work in the gang was breaking rock and loading it into wagons – not a skill-building enterprise.<sup>51</sup> The gang worked five and a half days a week, in the summer from 7:30 a.m. until 5:30 p.m. and in the winter from 8:00 a.m. until dark.<sup>52</sup>

At the same time as those who laboured in the chain gang built the city materially, their bodies themselves were also materially and discursively made through the conditions in which they worked. As noted above, prison rules dictated that members of the gang had to have their hair cut to one inch and that before going out to work their irons had to be securely fastened. The spectacle of iron-bound, brush-cut men moving through the city streets from the gaol to their rock-breaking location *every day* made the bodies of these

---

<sup>47</sup> The chain gang was the exclusive domain of male prisoners. Certainly women who committed embodied infractions were sentenced to hard labour in the last decades of the century. However, the gaol employment records do not reveal exactly what women's work in the prison was, but merely note that they were "variously employed" either in their cells or in the gaol more generally. "Employment registers from the Victoria Gaol," PABC, GR 305 1861-1914.

<sup>48</sup> Peter Baskerville, *Beyond the Island: An Illustrated History of Victoria* (Burlington: Windsor Publications, 1986), 43.

<sup>49</sup> Baskerville, *Beyond the Island*, 43.

<sup>50</sup> Derek Pethick, *Summer of Promise: Victoria 1864-1914* (Victoria: Sono Nis Press, 1980), 40.

<sup>51</sup> "Warden's Diaries," PABC GR 2, 1893, 1896, 1899.

<sup>52</sup> "First Annual Report of the Superintendent of Police Respecting the Prisons of British Columbia for the Year Ending 31<sup>st</sup> October, 1879," 378.

men explicitly public. Through their strictly surveilled daily promenade they became *marked* so that even upon release from prison, Victoria's citizens would have come to know them as specific "chain-gang" bodies. In his first annual report, Superintendent of Provincial Police Todd made a plea attempting to do away with the chain gang. He argued that "marching the prisoners through the streets in irons does not improve them morally, besides it is a disagreeable sight to most citizens, as well as to strangers who visit."<sup>53</sup> Yet was such a sight truly disagreeable to "citizens"? A similar argument might be made about the chain gang as was made about the making of the public through prisoners' diets of bread and water and time spent in solitary confinement: the iron-bound bodies of the chain gang moving daily through city streets provided the necessary outside (as well as the necessary support) for the becoming respectable public.<sup>54</sup>

Indeed, had citizens disagreed with prisoners moving chained through the streets and performing hard labour surely this practice would have been abolished over the course of the late nineteenth century. My findings suggest the opposite. As outlined above, the amount of time that non-First Nations men and women spent in prison decreased from the early 1890s to 1901 while sentence length for First Nations men remained relatively consistent and that of First Nations women increased. However, as Tables 3.7 and 3.8 clearly illustrate, at the same time as overall average sentence length went down, the percentage of people sentenced to hard labour rose drastically over this period. Between 1890 and 1892 only 29.6 per cent of those sentenced received hard labour whereas from 1899 to 1901, 84 per cent of those sentenced for embodied infractions got hard labour.

---

<sup>53</sup> "First Annual Report of the Superintendent of Police Respecting the Prisons of British Columbia for the Year Ending 31<sup>st</sup> October, 1879," 378.

<sup>54</sup> This concept of the constitutive outside is drawn from Judith Butler, *Bodies that Matter: On the Discursive Limits of 'Sex'* (New York: Routledge, 1993), 16. By "necessary support," I am referring literally to the material – rock – that the chain gang provided for the building of the city.

**Table 3.7**  
**Hard Labour by Gender and Race, 1890-1892**

	<b>Number Sentenced</b>	<b>Number with Hard Labour</b>	<b>Per cent with Hard Labor</b>
Non-First Nations Men	217	68	31.3
First Nations Men	30	6	20
Non-First Nations Women	15	3	20
First Nations Women	15	5	33
<i>Total</i>	<i>277</i>	<i>82</i>	<i>29.6</i>

**Table 3.8**  
**Hard Labour by Gender and Race, 1899-1901**

	<b>Number Sentenced</b>	<b>Number with Hard Labour</b>	<b>Per cent with Hard Labor</b>
Non-First Nations Men	166	146	87.8
First Nations Men	37	25	67.6
Non-First Nations Women	21	18	85.7
First Nations Women	20	16	80
<i>Total</i>	<i>244</i>	<i>205</i>	<i>84</i>

For those "vagrants," "drunks," and other embodied offenders who could not pay their fines, could not leave town, or explicitly received a sentence for their infraction, the prison was a site in which they suffered particular consequences for their public ways of being. Yet the dietary, punishment, and labour regimes enforced inside the prison were not actually contained by the gaol walls. Prison practices ensured the material and discursive ma(r)king of drunk and vagrant bodies – given bread and water, solitary confinement, heads shaved, bound in irons, made chain gang members – and contributed to the larger city building enterprise in late nineteenth-century Victoria both by providing the public's "outside/other" and by reifying its "inside/self."

### **Regulating Bodies and City Spaces**

Clearly the consequences for being an "inmate," a "keeper," a "drunk," or a "vagrant" and for embodying public spaces in specific and undesirable ways became increasingly severe over the last three decades of the nineteenth century. By the end of the century, First Nations people had to pay higher fines and spent more time in prison, non-First Nations men and women were more frequently sentenced to hard labour, and so-called inmates and keepers were threatened with jail sentences if they could not pay their fines. Yet one question still remains. Was the creation of a specific conception-enactment of the public in Victoria different than in other North American cities in this same period? In other words, according to trends evidenced in the police court data, was Victoria unique or can it be situated within the context of other cities? In an aggregate sample of 27 American cities, Eric Monkkonen has found a decline in arrest rates from just over 45 per 1000 in 1860 to just over 20 per 1000 in 1900 for "police initiated offences." This category is comprised of drunkenness, vagrancy, disorderly behaviour, corner lounging – offences which attach "more to a person's condition than to offences with suffering and complaining victims."<sup>55</sup> In Hamilton, John C. Weaver has uncovered a similar pattern. In 1871 he charts 60 court appearances per 100,000 inhabitants for "vagrancy, vice and moral order charges," and by 1901 only 15 per 100,000.<sup>56</sup> Even though Victoria was likely less established than the cities which Monkkonen examines, and certainly less so than Hamilton, Table 9 indicates a similar decrease in rates of arrest per 1000 inhabitants for "police initiated" or "moral order" offences.<sup>57</sup> Considering that it was a young, colonial, frontier city, we might expect that Victoria would be less "orderly" than more established cities. The congruence between Victoria and other cities in this regard suggests that while the making of the city's public in Victoria was clearly a local endeavour, this process must be scrutinized in terms of larger contemporary practices, discourses, and ideologies.

---

<sup>55</sup> Eric H. Monkkonen, *Police in Urban America, 1860-1920* (Cambridge: Cambridge University Press, 1981), 72-3.

<sup>56</sup> John C. Weaver, *Crimes, Constables, and Courts: Order and Transgression in a Canadian City, 1816-1970* (Montreal and Kingston: McGill-Queen's University Press, 1995), 78.

<sup>57</sup> As Table 9 indicates, the rate of arrests for embodied infractions was not entirely straightforward, rising in the 1880s and then more or less declining from 1883 to the end of the century.

Given that I have examined distinctly defined "embodied infractions of public space," that is, I have foregrounded bodies and spaces in my analysis rather than examining more general offences against public or moral order, it is possible to comment on one way in which Victoria may stand apart from other Canadian cities. However, at this point there are no studies against which to compare these findings. Table 9 indicates that over the last three decades of the nineteenth century, the police court increasingly became a forum for explicitly regulating bodies and spaces as much as, if not more than, punishing crime per se. As Table 9 demonstrates, in 1871-1872 and 1872-1873, 19.2 per cent and 24.2 per cent respectively of the total charges in the police court were for embodied infractions of public space. By 1881 this percentage had increased to 49.8 and remained close to or above this per cent for the rest of the decade. What these numbers reveal is a qualitative shift in the function of the police court vis à vis the becoming city. The daily activities in the police court became increasingly directed at creating a certain type of public space and concomitantly, specific bodies public. Yet what occurred between 1873 and 1881 that would have caused such a drastic change in the role of the police court? Although Baskerville and others have characterized the 1870s in Victoria as a quiet decade in which "nothing much happened," the data in Table 3.9 clearly suggest otherwise.<sup>58</sup>

There are four possible explanations for the evident shift in the overall activities of the police court. The first three are connected to the police court itself and not overtly linked to the type of city building enterprise which I have illustrated throughout this work. The fourth and most compelling explanation is explicitly related to the making of a specific public, and sets the activities of the police court in the wider context of the participation of so-called respectable citizens and the local state in building a liberal hegemonic order. First, in 1873 Augustus Pemberton, who had been police magistrate since 1858 when the force was established, resigned. Although it was the city police officers and not Pemberton himself who made the arrests and brought people before the court on particular charges, he likely set a particular tone and certain precedents in the court in terms of the offences he would punish, thus influencing the types of cases officers

---

<sup>58</sup> Peter Baskerville, personal communication, 28 April 2005.

**Table 3.9**  
**Embodied Infractions as Percentage of Total Police Court Charges, 1871 - 1901**

<b>Year</b>	<b>Total Cases</b>	<b>Total cases per population 1000</b>	<b>Embodied Infractions of Public space</b>	<b>Embodied Infractions per population 1000</b>	<b>Embodied Infractions as % of Total Cases</b>	<b>Population of Victoria as of Most Recent Census</b>
Mar 9 1871 - Mar 8 1872	506	154.7	97	29.7	19.2	3270
Mar 9 1872 - Mar 8 1873	446	136.4	108	33	24.2	3270
Mar 11 1881 - Mar 11 1882	607	102.4	302	50.2	49.8	5925
Mar 12 1882 - Mar 12 1883	685	115.6	349	58.9	59.9	5925
Jul 24 1889 - Jul 23 1890	774	55.3	428	30.6	55.3	14000**
Jul 24 1890 - Jul 23	1041	61.8	610	36.6	58.6	16841

1891						
Jul 24 1891– Jul 23 1892	1286	73.4	710	42.2	55.2	16841
Jul 24 1892 – Jul 29 1893	1110*	65.9	481	28.6	37.7	16841
1899	662	31.7	314	15	47.4	20919
1900	727	34.8	450	21.5	61.9	20919
1901	751	35.9	412	20.4	54.9	20919

\* Large number of infractions of the Consolidated Health By-Law all of which were leveled against the Chinese

\*\*Census undertaken by City Council in the spring of 1886.

would bother to bring to court in the first place. There is no way to know *how* Pemberton ruled in the police courtroom, but perhaps the post-1873 qualitative shift in police court activity was related to this change in the presiding magistrate.

Second, as a result of an amendment to the Municipalities Act in 1873 cities were able to make bylaws for "establishing, regulating and maintaining a Police force" and were also given the power to appoint, fix and pay the salary of a police magistrate.<sup>59</sup> Nancy Parker has argued that the Victoria City Council "gained control over law enforcement with these provisions."<sup>60</sup> However, Victoria already *had* a police force by the time this amendment was passed, and, as outlined in Chapter One, despite the legislated local control, policing in Victoria was very much a shared endeavour between the city and the province in the 1870s. Nonetheless, perhaps the possible *perception* of local control over policing over the course of the 1870s was accompanied by a perception that public spaces were coming to belong more *to* the city and were thus in need of regulation *by* the city, resulting in increased arrest rates of embodied offenders.

Third, in 1877 through "The Police Court Fines Act" all municipalities "paying the annual salary of a Police Magistrate and maintaining a Police Force" could retain

<sup>59</sup> "An Act to Amend 'The Municipality Act, 1872'," S.B.C. 36 Vict. (1873), c. 5, s. 42.

<sup>60</sup> Nancy Parker, "The Capillary Level of Power: Methods and Hypotheses for the Study of Law and Society in Late Nineteenth-Century Victoria, British Columbia" (MA thesis, University of Victoria, 1987), 45.

police court fines as part of their municipal revenue.<sup>61</sup> This legislative change might be a reason for the *overall* increase in arrests per 1000 in the early 1880s illustrated in Table 9. Following 1877 it was in the city's interest to bring people before the courts, fine them, and bank the revenue generated by the fines. However, while the passing of the "Police Court Fines Act" might explain the increase in arrests per 1000, it only satisfactorily relates to the sharp rise in the percentage of embodied infractions between 1873 and 1881. As outlined above, the standard fine for drunkenness related offences in the 1870s and 1880s – by far the most common embodied infraction – was only \$2.50. Even if *all* people charged for drunkenness between 1881 and 1883 had paid their fines the total revenue would have been \$1412.5 or \$706.25 per full year, not a large portion of the city's income in these years. Nonetheless, it is possible that as it became more lucrative for the city to arrest and fine people, embodied offenders such as "drunks" and more particularly "vagrants" – who could be fined more – did not escape the general trend of the overall increased rate of arrest in the early 1880s.

Fourth, a close reading of City Council minutes from 1873, 1877, and 1881 suggests that something in fact did "happen" in Victoria in the 1870s: city residents began to transform space into place, to articulate the importance of access, passage, and lack of obstruction, and eventually to leave the regulation of such matters in the hands of Council. In a compelling article on street stalls and the transformation of public space in late nineteenth century Melbourne, Australia, Andrew Brown-May argues that Council attempted to create spaces which were a "locus of respectability, unobstructed circulation, nationalism, and civic pride."<sup>62</sup> Kathleen Lord makes a similar argument about Saint-Henri, Quebec at the turn of twentieth century. She maintains that "the local propertied elite desired a well-ordered and managed central commercial street free of disturbance."<sup>63</sup> Both of these works conceive of public space as created and ordered through regulation. Yet neither employs an analysis that takes into account bodies-spaces. What I am suggesting is a parallel, simultaneous, and related shift between

---

<sup>61</sup> S.B.C. Vict. (1877), 40 c.9, s.1

<sup>62</sup> Brown-May, 122.

<sup>63</sup> Kathleen Lord, "Permeable Boundaries: Negotiation, Resistance, and Transgression of Street Space in Saint-Henri, Quebec, 1875-1905," *Urban History Review / Revue d'histoire urbain* XXXIII.2 (Spring 2005): 19.

citizens' wishes in terms of the built environment of the city and the increased use of the police court for regulating bodies and spaces; at the same time as certain residents began to demand of City Council streets and sidewalks that would facilitate their movement and consented to the regulation of these, the police court increasingly became a place that dealt with obstructive bodies.

Over the course of the 1870s City Council and the citizens of Victoria who petitioned it were overwhelmingly concerned with the built environment of the city. The project of city building entailed activities ranging from laying sidewalks, to leveling, gravelling, and grading city streets, to raising awnings, to preventing fires, to laying foundations for a city waterworks. Yet during this decade there was a notable shift in the *reasons* citizens gave in their petitions as to why they needed a sidewalk built, a street graded, an awning raised, and so on. On 6 February 1873 all incoming correspondence read at the Council meeting was from residents unhappy with the "state of disrepair" of the sidewalks in front of their houses.<sup>64</sup> On 26 February 1873 "a petition was read from certain property owners on the N. side of Johns Street, laying between Vancouver and Cook Street, asking the Council to cause a new side walk 6 feet wide to be laid on said street between the above mentioned Streets." On 6 March 1873 "Willis Bond applied on behalf of Mr. F. Greenbaum for permission to replace the awning fronting their House lately removed to Store St. Coun. Gowen moved that permission be granted, subject to the supervision of the Street Committee, but on condition that the said awning should be constructed as to cover the Side Walk fronting said Building."<sup>65</sup> Gowen's motion was carried. On 25 April 1873 Columbus Jones appealed to Council that "as he had laid his side walk on Johnston Street as decided by the Council, that the property owners who had not laid theirs might be compelled to do so." On 10 December 1873 "Coun, Taylor moved that a good substantial Hand Rail be constructed along the Side Walks fronting lots nos 620, 637 and 327 and that the property owners of said Lots be notified to cause the said Rails to be constructed." His motion was carried. These are just a few of many examples, which exhibit the primary focus of City Council and city residents in 1873. Important here is that neither the petitioning residents, nor the motion-making councilors

---

<sup>64</sup> VCA City Council Minutes (CCM), 6 February 1873.

<sup>65</sup> VCA CCM, 6 March 1873.

gave any rationale as to why sidewalks, handrails, and awnings should be built or repaired.

By 1877 the language used by Victorians in letters, motions, and reports to Council reveals the emergence of a discourse of movement. On 24 January 1877,

a communication was read from Sir. Mall B. Begbie calling the attention of the Council to the condition of Franklin Street on which he had recently erected a Residence and made other improvements of considerable expense & stating that he thought it not unreasonable to suggest that the Western portion of Franklin Street should so far *be leveled and graded as to enable carriages* to reach his gate from Vancouver Street, which could be done at a slight cost.<sup>66</sup>

At the same meeting, "Coun. Trounce verbally reported that the Street Committee had examined the state of the Roads, had made arrangements for repairing Fort Street, and to have a Walk laid *so that the school children could gain access* to the public school."<sup>67</sup> On 31 January a petition was read from residents of James Bay that they had no "*access to the water*" and wanted Oswego Street graded and graveled. On this same day, James Bay residents also implored that "*Montreal Street be made passable it being at present impassable during all seasons of the year.*"<sup>68</sup> On 7 February Council received a petition "signed by 30 residents and property owners on Yates Street and Waddington Alley, alleging that it was *in an almost impassable state,*" and requesting that Council take action. Later in 1877 eight property owners on Richardson street wrote "calling the attention of the Council to the very bad conditions of Richardson street which is alleged to be impassable during the winter months, *that it was the intention of some of them to build and requesting that Council to place said Street in a passable condition* to having it properly drained (and if Council were in such a position to have it graded and graveled)."<sup>69</sup> Their request was referred to the City Surveyor.

Perhaps the most telling illustration of the city's concern with obstruction and movement is evidenced in a direction that Council gave to the City Surveyor in early 1877, the Surveyor's testimony, and Council's corresponding action. On 14 February, "Coun. Trounce moved that the City Surveyor be instructed to ascertain and Report for

---

<sup>66</sup> VCA CCM, 24 January 1877. Emphasis mine.

<sup>67</sup> VCA CCM, 24 January 1877. Emphasis mine.

<sup>68</sup> VCA CCM, 31 January 1877. Emphasis mine.

<sup>69</sup> VCA CCM, 26 September 1877. Emphasis mine.

the information of the Council all *obstruction* on such Streets leading down to the water of the Victoria Harbour."<sup>70</sup> His motion was carried and by the next meeting the surveyor had prepared a report. The Surveyor noted first, that on Herald Street between Store Street and the harbour "there are 6 Cottages upon said Street, one being in the centre thereof." Second, that "on a short unnamed street leading from Store St., to the Water, between Herald and Fisgard One Cottage stands on the Street; and there are at this point fisherman's cottages built over the water." Third, that Discovery Street at the intersection with Graham "is entirely occupied with sawn lumber."<sup>71</sup> Councilor Trounce responded proactively by moving that "the occupiers of all the buildings referred to in the said report, as also the proprietor of the said Lumber be notified to *cause the said obstruction to be removed* within 30 days. And in default of their so doing, then that the City Barrister be instructed to *cause the said obstruction to be removed* by legal process."<sup>72</sup> His motion was carried.

How can we be sure that the petitions of citizens and the actions of Council with regard to alleviating obstructions, and the increased use of the police courts for regulating bodies and spaces over the course of the 1870s was not merely a coincidence? The 1873 Council minutes reveal a concern with materially *building* the city, those of 1877 with making the city *passable*, and by 1881, the focus of Council had shifted again to *regulation* of becoming passable public spaces, and access to other public works. To this end, by 1881, Council had appointed a "Supervisor of Sidewalks"<sup>73</sup> to report on the condition of the city's sidewalks thus demonstrating Council's willingness to regulate the state of sidewalks rather than citizens having to do so through petitions. Furthermore, both petitions to, and motions and reports of, Council in 1881 were explicitly concerned with regulation. For example, on 2 February 1881 Councilor Smith moved that,

the water works Engineer be, and he is hereby instructed to shut off the water from all dwelling and Taps where water is allowed to run to waste (except during the time it is freezing) and further before the water shall be again turned on the person or persons found guilty of wasting said water

---

<sup>70</sup> VCA CCM, 14 February 1877. Emphasis mine.

<sup>71</sup> VCA CCM, 21 February 1877.

<sup>72</sup> VCA CCM, 21 February 1877. Emphasis mine.

<sup>73</sup> VCA CCM 6 February 1881.

shall be subject to the payment of one dollar, for each and every time this regulation is violated.<sup>74</sup>

His motion was carried. On 9 March Samuel Evans wrote a letter to Council "stating that a number of Gentlemen being desirous of amusing themselves by shooting at Glass Balls from a trap and asking permission of the Council to allow the sport to be practiced close to the edge of the embankment on Beacon Hill fronting seaward so as to preclude the possibility of accident or annoyance ... of persons traveling around the Hill."<sup>75</sup>

By 1881, then, it is clear that certain residents had consented to being regulated by the local state apparatus and – in some instances – to subsuming their own interests in order to serve the greater good of the city as a whole. So-called respectable citizens and the local governing state apparatus had, if only for fleeting moments, a shared vision of what the city was and what it was to become. The change in the qualitative function and role of the police constables and the police court more generally illustrated in Table 3.9 can be clearly set within this context. Like the state of the sidewalks, access to water, and the appropriate location in the park for gentlemen to shoot glass balls, bodies that occupied city spaces in undesirable ways were increasingly regulated over the course of the late nineteenth century. Those who did not consent, those who continued to both disrupt and simultaneously confirm the public's sense of itself by embodying public city spaces in unruly, obstructive, and undesirable ways faced increasingly severe consequences for their bodies-actions/modes of being and doing.

### **Conclusions**

Throughout this chapter we have wended our way from the police court room, to the city gaol, to the chambers of City Council, and finally, back onto the streets again. Although these four spaces might be seen as discrete and unrelated, what I have hopefully demonstrated is that with respect to the late nineteenth-century city building enterprise in Victoria, they were inextricably linked. The nexus point – their convergence – is that each was a space in which the city, embodied by the police, the magistrate, the warden, city councilors, and respectable citizens more generally, attempted to define its public.

---

<sup>74</sup> VCA CCM 2 February 1881.

<sup>75</sup> VCA CCM 9 March 1881.

First Nations people, on average, spent more time in prison by the turn of the century than did non-First Nations men and women, thus containing them and removing their racialized bodies from the city's public spaces, if only temporarily. All men and women were increasingly sentenced to hard labour. In addition, all of those who ended up in the city gaol, whether they were sentenced to hard labour or not, were subject to the disciplinary regimes there, including, most prevalently, a diet of bread and water in solitary confinement, the impacts of which they continued to embody when released from prison and back out on the streets. The consequence, and the possibility, of each of these shifts over the course of the late nineteenth century, was that the public – both people and space – was formed through the attempt to exclude those whose ways of being and doing were incongruent with the city as a becoming place. This exclusion, however, was never complete. Those arrested as "inmates," "keepers," "drunks," and "vagrants" – albeit differently situated within relations of power than those who ruled the city and those who consented to being ruled – helped to make the public both by providing its outside and its other and by shaping living spaces of contest and resistance.

Set within the context of the emergence of a discourse of movement/obstruction in the late 1870s, and the consent of certain citizens to regulation by the early 1880s, the significance of these findings is twofold. First, the city building enterprise in Victoria may indeed have been distinct from that in other late nineteenth century North American cities. Second, given the way in which I have used police court records to measure the regulation of bodies and spaces, rather than to classify and understand offences against public or moral order, there is no way to compare these results to studies of other cities. Historiographically, this lack of comparative capacity is important and points to the possibility of utilizing police court and jail records to understand not only the nature of crime and punishment per se, but also the ma(r)king of specific cities, spaces, and bodies. In other words, measuring the regulation of bodies and spaces in the police court can reveal aspects of late nineteenth-century city building that are difficult to discern through studying, for example, urban reform movements, city beautification efforts, city governance models, architectural trends, or histories of policing. By examining the city building enterprise in late nineteenth-century Victoria using a bodies-spaces approach it

was possible to flesh out the tensions of disorderly bodies and becoming orderly spaces,<sup>76</sup> to illuminate the ways in which those deemed disorderly themselves shaped urban spaces in particular ways, and finally to understand the ways in which Victoria's streetscape was built through both the punishment and the incorporation of those whose public ways of being and doing were incongruent with the desires of certain city builders.

---

<sup>76</sup> I use "tensions of" rather than "tension between" because, as outlined in the introduction, in my analysis *there is no space between* bodies-spaces.

---

## DIFFRACTIONS

---

### Reconsidering Bodies Public City Spaces

Physically, let's think about what diffraction is ... when light passes through slits, the light rays that pass through are broken up. And if you have a screen at one end to register what happens, what you get is a record of the passage of the light rays onto the screen. This 'record' shows the history of the passage through the slits.<sup>1</sup>

Donna Haraway posits that diffraction is a critical analytical strategy because it makes possible an examination of the "history of interaction, interference, reinforcement, difference."<sup>2</sup> In her estimation diffraction is "simply to make visible all those things that have been lost in an object; not in order to make the other meanings disappear, but rather to make it impossible for the bottom line to be one single statement."<sup>3</sup> In his translator's forward to Gilles Deleuze and Felix Guattari's volume, *A Thousand Plateaus: Capitalism and Schizophrenia*, Brian Masumi maintains that the work must be evaluated not on the basis of whether or not it is true but in terms of whether it works and what new thoughts it makes possible to think.<sup>4</sup> Taking Haraway's concept and Masumi's evaluative criteria in tandem let us reconsider together some of the questions laid out in the introduction.

First, drawing on Lefebvre and others I asserted that I did not want to start with the premise that the body is "real." In other words, I wanted to attempt to unravel the notion of the body as a stable concept-object which is the same across all historical times

---

<sup>1</sup> Donna Haraway, *How Like A Leaf: An Interview with Thyrza Nichols Goodeve* (New York: Routledge, 2000), 103.

<sup>2</sup> Haraway, 102.

<sup>3</sup> Haraway, 105.

<sup>4</sup> Gilles Deleuze and Felix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia*, trans. Brian Masumi (Minneapolis: University of Minneapolis Press, 1987), xv.

and places and to ask specifically what activities produced the bodies of those charged for vagrancy and related offences in Victoria in the late nineteenth century. What I hope has become overwhelmingly clear is that it was the productive activities of city building – activities of both the supposedly legitimate city builders and those who they sought to regulate – that gave rise to the bodies public of "vagrants," "drunks," "prostitutes," and others over the course of the late nineteenth century. City builders such as Council and its petitioning residents, the police, the magistrate, and, less directly perhaps, members of the provincial legislature attempted to create public spaces free of obstruction which would enable the flow of goods and people required in a burgeoning capitalist marketplace. Arresting people whose public modes of being and doing were incongruent with obstruction-free spaces, requiring them to come before the police court, often time and again, detailing their activities in the press, and confining them to prison, increasingly with hard labour, contributed to the ma(r)king of specific bodies public. This dual and simultaneous discursive marking and material making was enacted as a result of the synchronous union of specific material conditions (lack of shelter, want of employment, need of food, addiction to alcohol, displacement from traditional lands) and general ideological conditions (notions of productivity, respectability, modernity, liberalism, colonialism) at work in Victoria in the late nineteenth century. In short, because of the particular convergence of both material and discursive conditions certain bodies were made public through regulation – whether in the police court, the press, or on the street in the chain gang – while others, like those of so-called respectable citizens, the police, the magistrate and City Council members, became part of the legitimate public with entitlement and access to public spaces which accompanied their legitimacy.

If we stop here, however, we lend credence to the idea of city building as a process enacted only by those in positions of power or privilege. The evidence presented throughout this work clearly suggests otherwise. Those charged in the police court for embodied infractions of public space certainly contributed to the city building enterprise. As we have seen, men who performed labour in the chain gang laid a croquet ground at Government House, they broke rock that was likely used in leveling and gravelling streets and in raising some of the "fine stone buildings" so celebrated in the pages of the *Daily Colonist*. Although the work of women in the prison is difficult to determine given the

records, it is likely that they too contributed materially to the making of the city through performing traditionally female labour. By sewing, washing, and cleaning women sentenced to hard labour helped to enable the work of male prisoners and to ensure the sustenance and survival of the Victoria gaol more generally. Women fined for being "inmates" or "keepers" of houses of ill-fame also served in a city building capacity through the high fines that they paid – some of them repeatedly – to the municipal treasury in order to be able to continue work in their trade. People charged and punished for embodied infractions came to embody the labour and material means necessary for the construction of a modern city. Yet at the same time, through this punishment, which was seen as legitimate, necessary, and above all legal, they also came to conceal or perhaps to normalize the power relations through which their money and labour were procured.

Engaged in these legalized relations of power, however, men and women brought before the court also had a role in determining their own embodied fates and realities and in the ma(r)king of their own bodies-spaces. By paying their fines, so-called inmates and keepers, and others fined for various embodied offences, asserted the legitimacy of their bodies to the city's public spaces, if only for the time being. In a developing capitalist economy in which the accumulation of goods and capital was critical, by having money – even \$5.00 to pay a fine for being drunk – these men and women emphasized that they were not as far outside of the legitimate public as the officers of the peace and the police magistrate might have attempted to cast them. When appearing before the court those charged employed a variety of narratives through which they attempted to align themselves with notions of productivity and accumulation and to situate their bodies as belonging in the context of the late nineteenth-century city. If believed by the magistrate they were set free; if found guilty, fined or imprisoned. Either way, and critical to a bodies-spaces mode of investigation, they did not disappear. Through resisting penal practices, despite knowing the harsh consequences, by refusing to tie a shoe, making noise in a cell, throwing water in a guard's face, or breaking away from the chain gang, people in prison for embodied infractions and the bodies-actions which they occupied-enacted shaped the prison space itself. Witnessing one prisoner's defiance or success in staying in from work on a given day may have incited others to action. Repeatedly refusing to work on the basis that the quality of the food was inferior may eventually have resulted in

better food. These are the stories that the sources do not reveal. Likewise we are missing many of the stories from the streets. The police court records reveal who was charged, for what, and when; they tell us about the bodies-actions of the police on the beat. However, we can imagine the ways in which those who the officers arrested for embodied infractions shaped city spaces. We can conjure up images of "ladies" waltzing and winking into the California Saloon on Douglas Street, picture Phillip C. reciting drunken poetry at the corner of Fort and Blanshard streets, envision the "crowd which completely fills the sidewalk every evening on the N.W. corner of Government and Yates streets," see William T.D. laughing with "undue hilarity" at the arrival of his friends by steamer. Just because the dominant narrative and desire of those situated in/embodying positions of power was to have obstruction-free, movement-oriented city spaces does not mean that these were the only types of city spaces that existed. We must imagine, in fact, that they were not.

The overarching aim of this work has been to investigate the enterprise of city building in a late nineteenth-century West Coast colonial city. The centerpiece of my analysis has been to deconstruct, or more aptly, to diffract bodies, the public, and space through the lens of the city in order to contribute to the historical project of conceiving bodies, spaces, and the public itself as products of history. In other words, because the body, and to a lesser degree space and the public have been taken as objects of historical study rather than as historical processes themselves, my aim was, in Haraway's words, "simply to make visible all those things that have been lost in an object; not in order to make the other meanings disappear, but rather to make it impossible for the bottom line to be one single statement." Lost in the story of (drunk and vagrant) bodies were the petitions to Council to level and grade the streets, to repair the sidewalks, to remove physical obstructions. Lost in the story of the public was the labour of the chain gang. Lost in the story of the city spaces was an intensification of the police court activities in regulating bodies. Yet does this mode of analysis – examining bodies, the public, and spaces as historical and therefore incomplete processes – work? Does it make possible new thoughts? If it makes possible only one thought I hope it is this: that seemingly commonsense contemporary conceptions-enactments of public spaces by which homeless

people are locked out of washrooms and forced out of downtown city places might also be incomplete, might also be undone.

**APPENDIX 1****Charges Included Under Heading "Embodied Infractions of Public Space"**

1. drunk
2. being drunk
3. being found drunk
4. found drunk
5. being drunk and disorderly
6. being drunk and disorderly in the public streets
7. drunk and disorderly
8. causing a disturbance by fighting
9. causing a disturbance by screaming
10. causing a disturbance by being drunk
11. being a vagrant, rogue or vagabond
12. vagrancy/mendicancy
13. vagrant
14. being a suspicious character
15. being of unsound mind (and not under proper care and control)
16. obstructing/impeding (peaceable passengers) by doing anything
17. fighting in (the public) streets
18. infraction of the street bylaw
19. infraction of the public morals bylaw
20. infraction of the park bylaw
21. disturbing the (public) peace (by doing anything)
22. indecently exposing his person
23. being an inmate of a house of ill-fame/bawdy house
24. being a frequenter of a house of ill-fame/bawdy house
25. frequenting a house of ill-fame
26. keeping a house of ill-fame/bawdy house
27. being out in the public streets for the purposes of prostitution
28. drunk and disorderly/her person being exposed
29. taking indecent liberties with someone in the public streets
30. being a scandalous person of evil fame
31. being found in a state of intoxication
32. using obscene/grossly insulting/threatening/profane language (to no one in particular)
33. infraction of the public grounds bylaw (could be same as park bylaw)
34. disorderly
35. inmate of a bawdy house
36. frequenter of a bawdy house
37. obstructing street
38. keeper of a bawdy house
39. being an idle person
40. causing a disturbance
41. being disguised
42. being a night walker
43. loitering
44. damaging public property
45. begging (on the street)

**APPENDIX 2**  
**Years Examined in Police Court Records, 1871 - 1901**

March 1871\* – March 1872

March 1872 – March 1873

Mar 1881 – March 11 1882

Mar 1882 – March 1883

July 1889 – July 1890

July 1890 – July 1891

July 1891 – July 1892

July 1892 – July 1893

January – December 1899

January – December 1900

January – December 1901

\*The police court records for 1871 began in March. Those for 1889 began in July. In order to capture the seasonal pattern of public space related infractions, I charted a year from the date the records began when necessary.

**APPENDIX 3**  
**Police Court Code Book**

- a. Name
- b. Date of record
- c. year
- d. month
- e. gender
  - 1. female
  - 2. male
- f. Age
- g. Charge
- h. Charcode (see chargecodebook)
- i. First time charged
  - 1. yes
  - 2. no
- j. Plea
  - 1. guilty
  - 2. not guilty
- k. Remanded
  - 1. yes
- l. First Remand Date
- m. Result
- n. Second Remand Date
- o. Committed
  - 1. yes
  - 2. no
- p. notes
- q. commcode
- r. Sentence
  - 1. one week or more
  - 2. two weeks or more
  - 3. three weeks or more
  - 4. one month or more
  - 5. two months or more
  - 6. three months or more
  - 7. four months or more
  - 8. five months or more
  - 9. six months or more
  - 10. 24 hours or less
  - 11. to insane asylum
  - 12. 2-6 days
- s. With Hard Labour
  - 1. Yes
  - 2. No
- t. Fine
  - 1. 0-4.99
  - 2. 5.00- 9 or gaol term
  - 3. 10.00 – 24 or gaol term
  - 4. 5.00
  - 5. 10.00
  - 6. 20-29
  - 7. 30-39
  - 8. 40-49
  - 9. 50-59
  - 10. 60-69
  - 11. 70-79
  - 12. 80-89
  - 13. 90-99
  - 14. 100 or more
  - 15. 200 or more
  - 16. 50-74 or gaol term
  - 17. 25-49 or gaol term
  - 18. 75-99 or gaol term
  - 19. 100-200 or gaol term
  - 20. 0-4.99 or gaol term
- u. Fine Paid
  - 1. yes
  - 2. no
- v. notes
- w. Race/Ethnicity
  - 1. Irish
  - 2. First Nations
  - 3. Scottish
  - 4. American
  - 5. English
  - 6. Chinese
  - 7. Japanese
  - 8. Russian
  - 9. Italian
  - 10. French

- x. Notes
- y. Nation
  - 1. haida
  - 2. songhees
  - 3. tsimsian
  - 4. cowichan
  - 5. fort Rupert
  - 6. bella bella
  - 7. fraser river
  - 8. skidegate
  - 9. stickeen
  - 10. Victoria
  - 11. beckely bay
  - 12. other
  - 13. kitimat
  - 14. halfbreed
  - 15. saanich
  - 16. kuper island
- z. location
  - 1. fort
  - 2. Johnson
  - 3. Douglas
  - 4. government
  - 5. store
  - 6. Yates
  - 7. kane (?)
  - 8. cormorant
  - 9. broad
  - 10. near Rock Bay Bridge
  - 11. figgard
  - 12. on Indian reserve
  - 13. Hearld
  - 14. Oswego
  - 15. view
  - 16. wharf
  - 17. broughton
  - 18. in gaol
  - 19. Courtenay
  - 20. chatham
  - 21. Pandora
  - 22. Langley
  - 23. blanshard
  - 24. work
  - 25. cook
  - 26. quadra
  - 27. Humboldt
  - 28. bastion square
  - 29. pioneer st
  - 30. st. Lawrence
  - 31. south road
  - 32. porters' wharf
  - 33. discovery st
  - 34. bridge st
  - 35. Belleville
  - 36. Burdett
  - 37. Pembroke
  - 38. bay
  - 39. oriental alley
  - 40. saanich rd
  - 41. simcoe st
  - 42. E&R depot
  - 43. Michigan
  - 44. E & R bridge
  - 45. st. john
  - 46. esquimalt rd
  - 47. Vancouver st
  - 48. james bay bridge
  - 49. farquahar
  - 50. park rd
  - 51. Waddington alley
  - 52. the police station
  - 53. mclure st
  - 54. in city hall
  - 55. erie st
  - 56. menzies
  - 57. hydah alley
  - 58. pt. Ellice bridge
  - 59. chambers
  - 60. Rupert
  - 61. grants wharf
  - 62. Beacon Hill Park
  - 63. Trounce Alley
  - 64. 4 & 6
  - 65. outer wharf
  - 66. kings rd.

## APPENDIX 4

### Language of Charges in Relation to Language of Legislation

- |  |  |
|--|--|
| 1. drunk   | 24. being a frequenter of a house of ill-fame/bawdy house                                  |
| 2. being drunk   | 25. frequenting a house of ill-fame  |
| 3. being found drunk   | 26. keeping a house of ill-fame/bawdy house  |
| 4. found drunk   | 27. <del>being out in the public streets for the purposes of prostitution</del>            |
| 5. being drunk and disorderly  | 28. drunk and disorderly/her person being exposed  |
| 6. being drunk and disorderly in the public streets                          | 29. <del>taking indecent liberties with someone in the public streets</del>                |
| 7. drunk and disorderly  | 30. <del>being a scandalous person of evil fame</del>                                      |
| 8. causing a disturbance by fighting   | 31. being found in a state of intoxication   |
| 9. causing a disturbance by screaming  | 32. using obscene/grossly insulting/threatening/profane language (to no one in particular) |
| 10. causing a disturbance by being drunk                                     | 33. infraction of the public grounds bylaw (could be same as park bylaw)                   |
| 11. being a vagrant, rogue or vagabond                                       | 34. disorderly   |
| 12. vagrancy/mendicancy  | 35. inmate of a bawdy house  |
| 13. vagrant  | 36. <del>frequenter of a bawdy house</del>   |
| 14. <del>being a suspicious character**</del>                                | 37. obstructing street   |
| 15. <del>being of unsound mind (and not under proper care and control)</del> | 38. keeper of a bawdy house  |
| 16. obstructing/impeding (peaceable passengers) by doing anything            | 39. being an idle person   |
| 17. fighting in (the public) streets   | 40. causing a disturbance  |
| 18. infraction of the street bylaw   | 41. <del>being disguised</del>   |
| 19. infraction of the public morals bylaw                                    | 42. being a night walker   |
| 20. infraction of the park bylaw   | 43. loitering  |
| 21. disturbing the (public) peace (by doing anything)                        | 44. <del>damaging public property</del>  |
| 22. indecently exposing his person   | 45. begging (on the street)  |
| 23. being an inmate of a house of ill-fame/bawdy house                       |  |

**\*\*** Indicates instances in which charge language cannot be found in the legislation.

## APPENDIX 5

### Aggregation of Charges by Language

#### Being

Being drunk  
 Being found drunk  
 Being drunk and disorderly  
 Being drunk and disorderly in the public streets  
 Being a vagrant  
 Being a suspicious character  
 Being of unsound mind  
 Being an inmate of a house of ill-fame/bawdy house  
 Being a frequenter of a house of ill-fame/bawdy house  
 Being out in the public streets for the purposes of prostitution  
 Being a scandalous person of evil fame  
 Being found in a state of intoxication  
 Being an idle person  
 Being disguised  
 Being a night walker

#### Doing

Causing a disturbance by fighting  
 Causing a disturbance by screaming  
 Causing a disturbance by being drunk  
 Obstructing/impeding (peaceable passengers) by doing anything  
 Fighting in (the public) streets  
 Disturbing the (public) peace (by doing anything)  
 Indecently exposing his person

Frequenting a house of ill-fame  
 Keeping a house of ill-fame  
 Taking indecent liberties with someone in the public streets  
 Using obscene/grossly insulting/threatening/profane language (to no one in particular, just in general)  
 Obstructing street  
 Causing a disturbance  
 Loitering  
 Damaging public property  
 Begging (on the street)

#### Noun

Drunk  
 Found drunk  
 Vagrant  
 Drunk and disorderly/her person being exposed  
 Disorderly  
 Inmate of a bawdy house  
 Frequenter of a bawdy house  
 Keeper of a bawdy house

#### Offence

Vagrancy  
 Infraction of the street bylaw  
 Infraction of the public morals bylaw  
 Infraction of the park bylaw  
 Infraction of the public grounds bylaw (could be same as park bylaw)

## BIBLIOGRAPHY

**Unpublished Primary Sources**

## PROVINCIAL ARCHIVES OF BRITISH COLUMBIA

Employment Registers from the Victoria Gaol. 1871 – 1901. (GR 0305)

Victoria Gaol Records. 1871 – 1901. (GR 0308 Vols. 4, 5, 7, 10-12, 14, 15, 20, 21, 35, 37-39, 52, 80-82)

Warden's Diaries. 1893, 1899. (GR 0002)

## VICTORIA CITY ARCHIVES

Police Court Magistrate's Record Book, 1871-1873, 1881-1883, 1889-1893, 1899-1901

Police Court Charge Book, 1871-1873, 1881-1883, 1889-1893, 1899-1901

Corporation of the City of Victoria, *Minutes of Council Meetings*, 1873, 1877, 1881.

**Published Primary Sources**

Annual Reports of the Superintendent of Police Respecting the Police and Prisons of British Columbia, 1879 – 1901.

*(British) Daily Colonist* 1871-1873, 1881-1883, 1889-1893, 1899-1901.

Burbidge, G.W. *A Digest of the Criminal Law of Canada*. Toronto: Carswell Co., 1890.

*By-Laws of the Corporation of the City of Victoria Province of B.C.*; 1871 – 1901.

*Second Census of Canada, 1881.*

*Third Census of Canada, 1891.*

*Fourth Census of Canada, 1901.*

*Third Census of Canada, Instructions to Officers. 1891.* Ottawa, 1891.

*Manual Containing the 'Census Act' and the Instructions to Officers Employed in Taking the Second Census of Canada.* Ottawa: Department of Agriculture, Census Branch, 1881.

Reports of the Superintendent of Police, *Annual Reports: Corporation of the City of Victoria* 1889 – 1901.

Statutes of British Columbia, 1871 – 1901.

Statutes of Canada, 1869 – 1901.

Taschereau, Henri. "Report on the police investigation and its results." In *Saving the Canadian City: The First Phase 1880-1920*. Ed. Paul Rutherford. Toronto: University of Toronto Press, 1974.

### Secondary Sources: Books

Baskerville, Peter. *Beyond the Island: An Illustrated History of Victoria*. Burlington: Windsor Publications, 1986.

Baskerville, Peter and Eric W. Sager. *Unwilling Idlers: The Urban Unemployed and Their Families in Late Victorian Canada*. Toronto: University of Toronto Press, 1998.

Boyer, Paul. *Urban Masses and Moral Order In America, 1820-1920*. Cambridge: Harvard University Press, 1978.

Butler, Judith. *Bodies that Matter: On the Discursive Limits of "Sex."* New York: Routledge, 1993.

Calhoun, Craig, ed. *Habermas and the Public Sphere*. Cambridge: MIT Press, 1992.

Deleuze, Gilles and Felix Guattari. *A Thousand Plateaus: Capitalism and Schizophrenia*. Trans. Brian Masumi. Minneapolis: University of Minneapolis Press, 1987.

Ethington, Philip J. *The Public City: The Political Construction of Urban Life in San Francisco. 1850 – 1900*. London: Cambridge University Press, 1994.

Feldman, Leonard C. *Citizens Without Shelter: Homelessness, Democracy and Political Exclusion*. Ithaca: Cornell University Press, 2004.

Fingard, Judith. *The Dark Side of Life in Victorian Halifax*. Porters Lake: Pottersfield Press, 1989.

Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. Trans. Alan Sheridan. New York: Vintage, 1977.

Garland, David. *Punishment and Welfare: A History of Penal Strategies*. Aldershot: Gower Publishing Co., 1985.

Gough, Lyn. *As Wise as Serpents: 1883 – 1939 Five Women & An Organization that Changed British Columbia*. Victoria: Swan Lake Publishing, 1988.

- Green, Valerie. *Upstarts and Outcasts: Victoria's Not-So-Proper Past*. Victoria: TouchWood Editions, 2000.
- Habermas, Jürgen. *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Trans. Thomas Burger. Cambridge: MIT Press, 1989.
- Haraway, Donna. *How Like A Leaf: An Interview with Thyrza Nicols Goodeve*. New York: Routledge, 2000.
- Harring, Sidney L. *Policing a Class Society: The Experience of American Cities, 1865–1915*. New Jersey: Rutgers University Press, 1983.
- Harris, Cole. *Making Native Space: Colonialism, Resistance and Reserves in British Columbia*. Vancouver: University of British Columbia Press, 2002.
- Lees, Lynn Hollen. *The Solidarity of Strangers: The English Poor Laws and the People, 1700–1948*. Cambridge: Cambridge University Press, 1998.
- Lefebvre, Henri. *The Production of Space*. Trans. Donald Nicholson Smith. Oxford: Blackwell, 1991.
- Kelm, Mary Ellen. *Colonizing Bodies: Aboriginal Health and Healing in British Columbia, 1900–50*. University of British Columbia Press, 2001.
- Miller, J.R. *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*. Toronto: University of Toronto Press, 1991.
- Miller, Zane L. *Boss Cox's Cincinnati: Urban Politics in the Progressive Era*. New York: Oxford University Press, 1968.
- Monkkonen, Eric H. *Walking to Work: Tramps in Urban America, 1790–1935*. Lincoln: University of Nebraska Press, 1984.
- . *Police in Urban America 1860–1920*. London: Cambridge University Press, 1981.
- Moss, Pamela and Isabel Dyck. *Women, Body, Illness: Space and Identity in the Everyday Lives of Women with Chronic Illness*. Maryland: Rowman and Littlefield Publishers, 2002.
- Murphy, Barbara. *On the Street: How We Created the Homeless*. Winnipeg: J. Gordon Shillingford, 2000.
- Oliver, Peter. *'Terror to the Evil-Doers': Prisons and Punishments in Nineteenth-Century Ontario*. Toronto: University of Toronto Press, 1998.
- Pethick, Derek. *Summer of Promise: Victoria 1864–1914*. Victoria: Sono Nis Press, 1980.

- Puwar, Nirmal. *Space Invaders: Race, Gender and Bodies out of Place*. New York: Berg, 2004.
- Rose, Lionel. *'Rogues and Vagabonds': Vagrant Underworld in Britain 1815-1985*. New York: Routledge, 1988.
- Sangster, Joan. *Regulating Girls and Women: Sexuality, Family and the Law in Ontario, 1920-1960*. Don Mills: Oxford University Press, 2001.
- Strange, Carolyn and Tina Loo. *Making Good: Law and Moral Regulation in Canada, 1867-1939*. Toronto: University of Toronto Press, 1997.
- Valverde, Mariana. *The Age of Light, Soap and Water: Moral Reform in English Canada, 1885-1925*. Toronto: McLelland and Stewart, 1991.
- Walkowitz, Judith R. *Prostitution and Victorian Society: Women, Class and the State*. London: Cambridge University Press, 1980.
- Weaver, John C. *Crimes, Constables, and Courts: Order and Transgression in a Canadian City, 1816-1970*. Montreal and Kingston: McGill-Queen's University Press, 1995.

#### **Secondary Sources: Articles**

- Abelson, Elaine. "Homeless in America." *Journal of Urban History* 25.2 (January 1999): 258-70.
- Anderson, Richard. "'The Irrepressible Stampede': Tramps in Ontario, 1870-1880." *Ontario History* LXXXIV.1 (March 1992): 33-56.
- Baehre, Rainer. "From Bridewell to Federal Penitentiary: Prisons and Punishment in Nova Scotia before 1880." In *Essays in the History of Canadian Law, Volume III: Nova Scotia*. Eds. Philip Girard and Jim Phillips. Toronto: University of Toronto Press, 1990. 163-99.
- Barman, Jean. "Taming Aboriginal Sexuality: Gender, Power, and Race in British Columbia, 1850-1900." *B.C. Studies* 115/116 (1997-1998): 237-66.
- Bray, Abigail and Claire Colebrook. "The Haunted Flesh: Corporeal Feminism and the Politics of (Dis)Embodiment." *Signs: Journal of Women in Culture and Society* 24.1 (1998): 35-67.
- Bright, David. "'Go Home. Straighten Up. Live Decent Lives': Female Vagrancy and Social Respectability in Alberta, 1918-1993." *Prairie Forum* 28.2 (Fall 2003): 161-71.

- . "Loafers Are Not Going to Subsist Upon Public Credulence: Vagrancy and the Law in Calgary, 1900-1914." *Labour/Le travail* 36 (Fall 1995): 37-58.
- Brown-May, Andrew. "A Charitable Indulgence: Street Stalls and the Transformation of Public Space in Melbourne, c. 1850-1920." *Urban History* 23.1 (May 1996): 48-71.
- Canning, Kathleen. "The Body as Method? Reflections on the Place of the Body in Gender History." *Gender and History* 11.3 (1999): 499-513.
- Craven, Paul. "Law and Ideology: The Toronto Police Court 1850-80." In *Essays in the History of Canadian Law, Volume II*. Ed. David Flaherty. Toronto: University of Toronto Press, 1983. 248-307.
- Fowler, Simon. "Vagrancy in mid-Victorian Richmond, Surrey." *Local Historian* 21.2 (1988): 66-69.
- Grosz, Elizabeth. "Bodies-Cities." In *Feminist Theory and the Body: A Reader*. Eds. Janet Price and Margrit Shildrick. New York: Routledge, 1999. 380-87.
- Harring, Sidney L. and L.M. McMillin. "Buffalo Police, 1872 – 1900, Labor Unrest, Political Power and the Creation of the Police Institute." *Crime and Social Justice* 4 (1975): 5-14.
- Harring, Sidney L. "Class Conflict and the Suppression of Tramps in Buffalo, 1892 – 1894." *Law and Society Review* 11 (1976-7): 874-911.
- Hayles, N. Katherine. "The Materiality of Informatics." *Configurations* 1.1 (1993): 147-70.
- Kawash, Samira. "The Homeless Body." *Public Culture* 10.2 (1998): 319-39.
- Langdon, M. Elizabeth. "Female Crime in Calgary, 1914 – 1941." In *Law & Justice in a New Land: Essays in Western Canadian Legal History*. ed. Louis A. Knafla. Toronto: Carswell, 1986. 293-309.
- Levine, Phillipa. "Orientalist Sociology and the Creation of Colonial Sexualities." *Feminist Review* 65 (Summer 2000): 5-21.
- Lord, Kathleen. "Permeable Boundaries: Negotiation, Resistance, and Transgression of Street Space in Saint-Henri, Quebec, 1875-1905." *Urban History Review / Revue d'histoire urbaine*. XXXIII.2 (Spring 2005): 17-29.
- Matthews, Glen. "The Search for a Cure for Vagrancy in Worchestershire, 1870-1920." *Midland History* 11 (1986): 100-116.
- Otter, Chris. "Making liberalism durable: vision and civility in the late Victorian city." *Social History* 27.1 (January 2002): 1-15.

- Phillips, Jim. "Poverty, Unemployment and the Administration of the Criminal Law: Vagrancy Laws in Halifax, 1864 – 1890." In *Essays in the History of Canadian Law, Volume III: Nova Scotia*, eds. Philip Girard and Jim Phillips. Toronto: University of Toronto Press, 1990. 128-60.
- Pitsula, James M. "The Treatment of Tramps in Late Nineteenth-Century Toronto." *Historical Papers* (1980): 116-33.
- Poole, Steve. "'Til Our Liberties be Secure': Popular Sovereignty and Public Space in Bristol, 1780-1850." *Urban History* 26.1 (1999): 40-54.
- Poutanen, Mary Anne. "Regulating Public Space in Early Nineteenth-Century Montreal: Vagrancy Laws and Gender in a Colonial Context." *Histoire sociale/Social History* XXXV.69 (May 2002): 35-58.
- . "The Homeless, the Whore, the Drunkard and the Disorderly: Contours of Female Vagrancy in the Montreal Courts, 1810-1842." In *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, eds. Kathryn McPherson, Cecilia Morgan and Nancy M. Forestall. Don Mills: Oxford University Press, 1999. 29-47.
- Razack, Sherene H. "Introduction," In *Race, Space and the Law: Un-Mapping a White Settler Society*. Toronto: Between the Lines, 2002). 1-17.
- Rogers, Nicholas. "Policing the Poor in Eighteenth-Century London: The Vagrancy Laws and Their Administration." *Histoire sociale/Social History* XXIV.47 (May 1991): 127-47.
- Ross, Ian Jeffery. "The Historical Treatment of Urban Policing in Canada." *Urban History Review / Revue d'histoire urbaine* XXIV.1 (October 1995): 36-41.
- Szczygiel, Bonj. "'City Beautiful' Revisited: An Analysis of Nineteenth-Century Civic Improvement Efforts." *Journal of Urban History* 29.2 (December 2003): 107-32.
- Vorspan, Rachel. "Vagrancy and the New Poor Law in Late-Victorian and Edwardian England." *The English Historical Review* 92.362 (January 1977): 59-81.

### **Secondary Sources: Theses and Unpublished Papers**

- Green, Alan, Mary MacKinnon and Chris Minns. "The Costs of Doing Hard Time: A penitentiary-based regional price index for Canada 1880-1926." Unpublished paper presented at *Annual Meeting of the Canadian Economics Association*, June 2004.
- Parker, Nancy. "The Capillary Level of Power: Methods and Hypotheses for the Study of Law and Society in Late-Nineteenth Century Victoria, British Columbia." MA thesis, University of Victoria, 1987.