THE CAPILLARY LEVEL OF POWER: METHODS AND HYPOTHESES FOR THE STUDY OF LAW AND SOCIETY IN LATE-NINETEENTH CENTURY VICTORIA, BRITISH COLUMBIA

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ABSTRACT

This study of the police and police magistrate's court in late-nineteenth-century Victoria, British Columbia, has two mandates. Its methodological arguments stress the importance of integrating legal and social history approaches in understanding law at the level of enforcement. The micro-study framework helps demonstrate the importance of understanding the provenance of sources before generating hypotheses from legal records. The second aim of the study is to offer an explanation of how law maintains its authority in an urban milieu.

From the current literature in the field, three themes were selected for examination. First, the nature of law's authority was defined in terms of a balance between coercion and ideology. The contours of that ideology were found in the related expression of "majesty, justice and mercy." Because law is a vital aspect of the ideology of the state, changes to the institutional structure should encompass a corresponding shift in the contours of the ideology of law. Second, during the late-nineteenth century, North American cities underwent a process of modernization. This transformation gave rise to increasing attachments to "democratic, bureaucratic and rational" expressions of state power. Expansion of the role of urban governments and of the police underscored those attachments. Third, within the network of law itself the dichotomy between discretion and legal formalism is a significant agent of change.

Part One focuses on the institutional and social contexts of law enforcement in Victoria. The transformation of the police force from quasi-military adjuncts of the colonial government to a vital part of the urban bureaucracy can be viewed as a step in

the modernization of the state. However, these changes did not progress in a linear fashion. Thus it is possible to apprehend two separate conceptions of the ideology of law within the same statutory framework. The need for a legitimating ideology can be demonstrated through the class-based structure of enforcement. Law was administered by members of the ruling elite while convicts were overwhelmingly members of the labouring classes.

Part Two offers a close examination of routinely-generated sources available in both published and manuscript forms. The collection and publication of "moral statistics" and reforms to disciplinary mechanisms were both aspects of the shifting contours of the ideology of law. Personal aspects of "majesty" diffused under the bureaucratic regime. The concepts of a rational and democratic state profoundly influenced the public face of law. One of the most direct expressions of this shift in ideology was the adoption of measurements of the "criminal classes." The self-sustaining racial and ethnic designations of the criminal classes would help to obscure the economic basis of social divisions.

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DEDICATION

For A.J.B.

INTRODUCTION

Models and Perspectives: Toward a Framework for Studying Nineteenth-Century Law Enforcement in Victoria, B.C.

This study is based on the premise that the routine activities of the city police and police magistrate's court reveal the interactions between legal institutions and social formations in late nineteenth century Victoria. These routine activities encompass more than simply clearing drunks off the streets: law enforcement embodies a wide range of bureaucratic and social welfare functions. However, it is not sufficient to examine these activities strictly in terms of the evolution of civic administration. Law is dynamic: it responds to, and expresses fundamental power relationships in society. The structure of property rights and the changing definitions of disorderly behaviour provide direct evidence of the interplay between law and society. Thus this study concerns itself with the dynamics of law at its most fundamental level: the level of implementation. Such an examination must, however, be predicated on an understanding of how law maintains its authority.

To assume that police hold an absolute monopoly on force, and to turn the study of their records to questions of criminal deviance, avoids many critical historical issues. Law enforcement is not simply a matter of coercive force. Enforcement depends upon a degree of consent. That consensus finds its roots in perceptions of "justice," or law for the common good. What then is the relationship between this conception of law and the inherent inequalities in the application of force? A key element

in this relationship is the contrast between the discretionary power of law enforcement agencies and the function of law as ideology. Direct links between the police and Victoria's commercial elites were masked by the ideal of an autonomous professional police force. Similarly, at the magisterial level the attachment to the ideology of the "rule of law" obscured the structural bias in the formal legal administration.

Legal records, and the correspondence between agents at different administrative levels, must be examined within their legislative and social contexts. The micro-study framework allows for a rigorous examination of the provenance of each source, and in particular reveals the limitations of available published statistics from national and municipal agencies. By integrating both qualitative and quantitative approaches, trends in prosecutions and sentencing can be linked both with the changing structure of the law and with the process of legitimating legal institutions in an urban setting. The themes which emerge in this study of the forms and functions of law at the level of implementation are at once multi-faceted and inter-related. Aspects of legal administration such as bureaucratic controls, legal formalism, professionalization, discretionary power, and ideology can not be adequately depicted in isolation from one another. The study of the dynamics of any behaviour, and the behaviour of law especially, will not yield a simple linear flow chart: nor should social theories resemble a chain of box cars rolling across the historical reality. On the other hand, one hopes to avoid the analogy of a derailment. This presentation of the framework for the study of law and society in nineteenth-century Victoria strives to find the middle ground between those two extremes.

The purpose of this chapter is to provide a survey of models for examining law and society, and to discuss some of the hypotheses derived from those models. However, it is not within the scope of this study to resolve all of the issues raised in the available literature. The data for this thesis will be drawn from records of police and

court activities in Victoria during the years from the incorporation of the city in 1862 to the codification of the national criminal laws in 1892. In the broadest sense the questions addressed will concern power, property and class and how these are expressed through and influence the law.

There are a number of reasons why late-nineteenth century Victoria is an ideal setting for this study. Victoria's municipal police force is one of the oldest in Western Canada, and many of their records have been preserved.[1] In fact, the Victoria police are also unusual in that their formation pre-dates the incorporation of the city. The design of the force was largely shaped by intentions to replicate the model of the London Metropolitan Police.[2] This clearly articulated notion of professionalism, and the role of police in urban administration, does not emerge from direct observation of their behaviour. In other words, there was a very large gap between stated intentions and actions. The measure of that gap suggests much of the nature of law's authority. In the time frame selected significant social, economic, and statutory changes helped shape the nature of authority in modern society.

Like most other nineteenth-century law enforcement agencies, the Victoria city police had a broad, and somewhat contradictory mandate: one which can not be wholly explicated through an analysis of statutory or even doctrinal developments. That is not to suggest that such changes were insignificant. However, an approach confined to the structural elements of law neglects many vital issues, particularly implementation. The enactment of any piece of legislation does not necessarily reveal how it will be received or interpreted by the courts and police. While some may find such an assertion to be self-evident, it represents a significant departure from the mainstream in the field of legal history. Similarly, the acknowledgement of the need

[1] There is an extensive collection of manuscript sources held at the Victoria Police Archives; hereafter V.P.A. For information on the colonial police force see W.S. Thackray, "Keeping the Peace on Vancouver Island: The Colonial Police and the Royal Navy, 1850-1866" (M.A. Thesis: University of Victoria, 1980).

[2] A. F. Pemberton cit. Thackray, 102.

to address "top down" elements places this study in opposition to a number of social histories of crime and policing.[3] In order to clarify these distinctions it is necessary to outline some of the developments in both fields.

Legal history has often been perceived as being a rarefied field, the preserve of the professionally trained interpreters of doctrine. All too frequently, legal history has appeared to be the work of lawyers, writing for an audience of lawyers, behind a veil of professional mystique. From this tradition comes, at best, a staid type of political history, with a few "great men" or "great case" biographies.[4] The most pervasive assumption common to these types of history is the unquestioned support for the notion of the autonomous nature of law. In part, the development of professional schools which promote the study of law as a discrete body of knowledge, at once systematic and scientific, contributes to the notion of autonomy. In particular the case method of teaching law stresses how law develops according to rules generated within the system or body of law, independent of external influences.[5] The conception of law as a rational system which rests above or beyond direct manipulation by social, economic or political forces is a direct embodiment of the ideology of law being transmitted and legitimated through the discipline. The difficulty of adopting the "autonomous nature of law" as a primary theoretical framework is not an absence of change within the system of law itself but the assumption that those dynamics lie entirely beyond the society in which the law operates. Such a framework begs the question: if law is wholly autonomous why is it not static? Nevertheless there is a

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[3] Many social historians have viewed legal records as a means to examine the "bottom up" elements of society, the anonymous men and women who may not have left any other historical record of their behaviour. On social history in general see: Peter N. Stearns, "Social History and History: A Progress Report," *Journal of Social History* 19.2 (Winter, 1985), 319-334; for history of policing as social history see: Eric Monkkonen, "From Cop History to Social History: the Significance of the Police in American History," *Journal of Social History*, 15 (Summer 1982): 575-591.

[4] See: Graham Parker, "The Masochism of the Legal Historian," *University of Toronto Law Journal* XXIV (1974): 313-16.

[5] Charles Austin Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Macmillan, 1957), 6-9.

long tradition in legal scholarship which is devoted to explaining doctrinal evolution strictly within the system of law.[6]

The first main challenge to this approach, in the United States, was the examination of the economic motivations behind the constitution by Charles Beard.[7] Law was thus to become "contextualized," at least with reference to economic factors. The next step, labeled the "progressive school" of American legal history,[8] is best exemplified by the works of James Willard Hurst. His studies of the Wisconsin lumber industry were pioneering efforts in how state power was served by law. Hurst defined legal history in terms of a broad conception of the legal process. Ultimately he showed how the law was more than just a self-sufficient institution. The role of law was, he claimed, to "organize, channel, legitimate, and in a substantial measure to redirect the course of changes that started outside the law."[9] His primary thesis in *Law and the Conditions of Freedom in the Nineteenth Century United States* held that the central impulse of the legal system during the early and mid-nineteenth century fostered a "release of energies"; in particular, "rules and precedents that cleared away impediments to the free play of the market."[10] Further, the impetus for "the release of energy" was challenged by a tradition which sought to control rather than liberate the economic environment. In what has been called Hurst's master work *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin 1836-1915*,[11]

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[6] Robert Gordon has provided the categories of "internal" and "external" legal histories. An internal legal history "stays as much as possible within the box of distinctive-appearing legal things." Issues in the process of legal development such as procedure, the judiciary, the legal profession, and the jurisdiction of courts, all fall into this category. External legal histories are more concerned with the "social context of law and its social effects." [Robert W. Gordon, "Willard Hurst and the Common Law Tradition in American Legal Historiography," *Law and Society Review*, 10 (Fall 1975): 9-11.]

[7] Beard, *An Economic Interpretation*.

[8] Gordon, "Willard Hurst and the Common Law Tradition in American Legal Historiography," 9-56.

[9] James Willard Hurst, *The Growth of American Law: The Law Makers* (Boston, 1950), 9.

[10] Hurst, *Law and the Conditions of Freedom in the Nineteenth Century United States* (Madison, Wisconsin: University of Wisconsin Press, 1956), 6.

[11] J. Willard Hurst, *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin, 1836-1915* (Cambridge, Mass.: Harvard University Press, 1964): description of this work by David Flaherty, "Writing Canadian Legal History," *Essays in Canadian Legal History*, I (Toronto: Osgoode Society, 1981), 7.

he integrated legal history and events in the growth of the lumber industry to encompass "the history and theory of social processes involved in law."[12] He saw the defining feature of the law as the contradictions between inertia and aspects of control: the balance of power between creative and destructive tensions.[13]

The most notable challenge to Hurst's "release of energy" hypothesis, came in the form of Morton Horwitz's *Transformation of American Law*.[14] Horwitz characterized the late nineteenth and early twentieth century legal system as being governed by "formalism" in a "rigid, static, rule-bound judicial style that served to protect vested economic interests rather than foster new ones."[15] This controversial work traces the alliances between the courts and industry which helped to redistribute law into more instrumental forms in the early nineteenth-century. However, once wealth had been accumulated, the increased legal formalism served as a barrier to entry into industry. Whether one subscribes to Hurst's "release of energy" balancing against "control over the environment" or Horwitz's "instrumentalism" and legal formalism the central issue appears to be how laws have been used to fulfill "the dual (and often contradictory) goals of economic growth and social order."[16] While the division between these two works serves to illustrate the ideological split within the field of legal history both advocate the need for theory in examining law and society.

The importance of the relationship between law and economics is now more readily accepted in the field. Canadian legal history appears heavily indebted to "Hurs-

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[12] For a brief overview of Hurst's work see David Flaherty, "Writing Canadian Legal History," 6-8.

[13] See: Harry N. Scheiber, "At the Borderland of Law and Economic History: The Contribution of Willard Hurst," *American History Review* LXXV (1976): 744-56.

[14] Morton Horwitz, *The Transformation of American Law* (Cambridge, Mass.: Harvard University Press, 1977); also Morton Horwitz, "The Rise of Legal Formalism," *American Journal of Legal History*, 19 (October, 1975): 251-264. For an alternate perspective see: S. F. Williams, "Transforming American Law: Doubtful Economics Makes Doubtful History," *University of California, Los Angeles Law Review*, xxv (1978): 1187-1218.

[15] Horwitz, "The Rise of Legal Formalism," 253.

[16] See: Harry N. Scheiber, "American Constitutional History and the New Legal History: Complimentary Themes in Two Modes," *The Journal of American History*, 68, 2 (Sept. 1981): 337-350.

tian" approaches.[17] However, inquiry into law's relationship with economic development is only one aspect of the "new" legal history.[18] The growing number of social historians who have turned to legal records as sources for "bottom up" history have been equally influential. This "law and society movement" approaches law "with a vision and with methods that come from outside the discipline [of law] itself; and they share a commitment to explain legal phenomena. . . in terms of their social setting."[19] This approach has come under attack from various quarters: one being the traditional suspicion reserved for non-lawyers who challenge the profession's specialized knowledge mandate; another, the general attacks on adapting social science methodologies to historical inquiry.[20] Finally it has been claimed that legal history has become altogether too "ideological:" and these new orientations "tend to be diversions from the main task of understanding the past."[21] Much of the debate revolves around the autonomy of law, and the notion of the ideological functions of law.[22] These splits in the field are best understood through an examination of selected works.

Since its publication over ten years ago, Douglas Hay's article, "Property, Authority and the Criminal Law,"[23] has become a pre-eminent theoretical work for studies in the history of criminal law. Hay's aim was to explain the seeming contradiction of the dramatic increase in the number of capital statutes in England between the years 1688

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[17] Flaherty, "Writing Canadian Legal History," 8, for a recent overview of legal history in Canada see: Brian Young, "Law 'in the Round'" *Acadiensis*, xvi,1 (Autumn 1986): 155-165.

[18] For the definition of "new" legal history see: Stephen B. Presser, "Revising the Conservative Tradition: Towards a New American Legal History," *New York Law Review*, lii (1977): 700-725.

[19] Lawrence M. Friedman, "The Law and Society Movement" *Stanford Law Review* 38. 3 (Feb 1986):763.

[20] Friedman, 766.

[21] Stanley N. Katz, "The Problem of a Colonial Legal History," *Colonial British North America*, ed. J. Greene and J. R. Poles (Hopkins, 1984), p. 478.

[22] For additional overview see: David Sugarman, "Theory and Practice in Law and History: A Prologue to the Study of the Relationship Between Law and Economy from a Socio-Historical Perspective," *Law, State and Society*, B. Fryer, *et al*, ed. (London: Croom Helm, 1981): 70-106.

[23] Douglas Hay, "Property, Authority, and the Criminal Law," *Albion's Fatal Tree: Crime and Society in Eighteenth Century England*, Douglas Hay, et al., ed. (London: A. Lane, 1975): 17-63.

and 1820, not bringing a corresponding increase in the number of executions.[24] He offered the role of law as ideology to explain this divergence. Moreover, Hay hypothesized that "the criminal law, more than any other social institution, made it possible to govern eighteenth- century England without a police force and without a large army."[25] The three components of this powerful ideology were: "majesty, justice and mercy."[26] Majesty encompassed the elaborate rituals of the courtroom spectacle, where the rhetoric of paternalism and of righteous vengeance was expounded. Justice, although an evocative word in the eighteenth-century, bore "a much more limited meaning than a twentieth-century (or seventeenth-century) egalitarian would give it."[27] The rule of law and the strict procedure enforced in the high court instilled this component of the ideology of law in the minds of both functionaries and observers:

> when the ruling class acquited men on technicalities they helped instill a belief in the disembodied justice of the law in the minds of all who watched. In short its very inefficiency, its absurd formalism, was part of its strength as ideology.[28]

However this conception of justice was perceived, and despite the fact that "the rules of law could be used effectively on behalf of a labouring man," the criminal law was "nine-tenths concerned with upholding a radical division of property."[29] Mercy was the most direct embodiment of the discretionary power of the ruling class throughout the administration of criminal justice. This element of the law "allowed the rulers of England to make the court a selective instrument of class justice, yet simultaneously to proclaim the law's incorruptible impartiality, and absolute determinancy."[30] The strength of this ideology was in its generality and its elasticity, through which the "hegemony of the law was never complete and unbroken;" in other words, "the law did

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[24] ibid., 18, 22.

[25] ibid., 56.

[26] ibid., 26.

[27] ibid., 39.

[28] ibid., 33.

[29] ibid., 34-35.

not enforce uniform obedience, did not seek total control; indeed, it sacrificed punishment when necessary to preserve the belief in justice."[31]

In John H. Langbein's virulent attack on Hay's thesis, he suggests that English criminal proceedings is one of a "variety of subjects on which Marxist historical method does not throw much light."[32] Rejecting Hay's notion of a "ruling class conspiracy," Langbein maintains "the criminal law and its procedures existed to serve and protect the interests of the people who suffered as victims of crime, people who were overwhelmingly non-elite."[33] By reducing Hay's arguments to a caricature, Langbein side-steps a vital issue presented by Hay's argument: the effectiveness of ideology in the ruling class hegemony. While Hay does indeed write of the "private manipulation of the law by the wealthy and powerful" as a "ruling class conspiracy,"[34] he does not generalize this point to the operation of law as a whole. Rather, Hay states:

> The law was important as gross coercion; it was equally important as ideology. Its majesty, justice and mercy helped to create the spirit of consent and submission, the 'mind-forged manacles,' which Blake saw binding the English poor.[35]

Langbein's attack continues with a critique of what he calls the "legitimization trick."[36] Langbein suggests that Marxists routinely use this trick to dismiss evidence which would run contrary to their thesis by offering it as a "sub-plot to make the conspiracy more palatable to its victims."[37] This is another example of how dependent Langbein's argument is on an acceptance of his caricature of the "ruling class conspiracy," as opposed to the notion of hegemony presented by Hay. Langbein proposed

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[30] ibid., 48.

[31] ibid., 55.

[32] John H. Langbein, "Albion's Fatal Flaws," *Past and Present*, 98 (Feb., 1983): 97; For clear rebuttal to this point, and others see Peter Linebaugh, "(Marxist) Social History and (Conservative) Legal History: A Reply to Professor Langbein," *New York University Law Review*, 60:212 (May 1985): 212-243.

[33] Langbein, "Albion's Fatal Flaws," 97.

[34] Hay, "Property, Authority and the Criminal Law," 59.

[35] ibid., 49.

[36] Langbein, "Albion's Fatal Flaws," 114.

[37] ibid.

that the "ruling class conspiracy would be equally well evidenced" had England been home to a more coercive, or despotic system.[38] However, it seems obvious that the two main components of the ideology of law as presented in Hay's article would be absent under such a regime. Thus the ideology of law would not be maintained by a legal system that was wholly despotic. This is by no means to suggest that the opposite situation was in effect.

The Hay-Langbein debate illustrates divergent conceptions of law and its autonomy. Langbein's liberal view that law protects all elements in society, including the non-elite, bears a close resemblance to Rousseau's "social contract." The key assumptions remain that law is free from direct manipulations by the ruling classes, and that law represents a common good. Hay, on the other hand, observes basic inequalities in a legal system which maintains stark divisions of property, direct manipulation of the legal system by the ruling classes, and the strength of the ideology which maintains such a system. For Hay both the notions of justice, and individual actions which might serve those notions, ultimately reinforce inequality. Given the dramatic contrast between these two conceptions of law and society it is apparent that this debate will not be resolved at a strictly theoretical level; hence the need for empirical tests. What then are some of the propositions suggested for an examination of Hay's framework?

If the ideology of law had the strength and resilience depicted by Hay, one would expect it to persist in a time and place far removed from the eighteenth-century British setting of his study. The attachment to the British conception of law and order which prevailed in nineteenth-century Victoria, suggests it as an appropriate setting for study. In testing for each element of the ideology, majesty, justice and mercy, propositions must also examine the assumptions behind Hay's thesis. The specific notion of

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[38] ibid., 114.

a legitimating ideology rests on the supposed need to sublimate basic inequalities. This point is a matter of contention because it suggests law served class interests, specifically a radical division of property. To proceed without testing such an assumption would leave the argument resting on tautological grounds. Thus the first tests must address the notion of basic inequalities of law resting in class interests. Since this conception of law challenges the notion of law serving the interests of the non-elites, a broad sample has been selected from routine cases. The tests will include an examination of statutes as well as prosecution trends to discover their relationship to race, class and gender divisions. Another area of examination will be the link between the city elites and the civic administration of law enforcement. An understanding of the structure of the legal system and the class roles of its agents should clarify whether overt manipulation of law presents itself as readily in routine cases as at other levels or stages in the development of British law. Clearly there will be a vast difference between the Assizes observed by Hay, and an urban police court.[39] The era Hay studied was one of private prosecutions, without a regularized police force or penitentiary system. From Hay's perspective, "Justice" in the sense of "rational, bureaucratic decisions made in the common interest, is a peculiarly modern conception."[40] The obvious question is what that modern conception entails, and what impact institutions such as penitentiaries, and policing had on the function of law as ideology.

Many historians have sought to explain why the development of formal policing institutions was concurrent with urbanization and industrialization.[41] Nineteenth-

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[39] See: Paul Craven, "Law and Ideology: The Toronto Police Court 1850-80," *Essays in Canadian Legal History*, II, ed. David Flaherty (Toronto: Osgoode Society, 1983): 248-307.

[40] Hay, "Property, Authority and the Criminal Law," 39.

[41] There are a number of works on the subject of policing an industrial society; in particular see: Douglas Greenberg, *Crime and Law Enforcement in Colony of New York, 1691-1776* (New York: Ithaca, 1976); Sidney L. Harring, *Policing a Class Society: The Experience of American Cities, 1865-1915* (New Brunswick, N.J.: Rutgers University Press, 1983); Roger Lane, *Policing the City: Boston, 1822-1885* (Cambridge, Mass.,: Harvard University Press, 1967); Eric H. Monkkonen, *Police in Urban America, 1860-1920* (New York: Cambridge University Press, 1981); W.R. Miller, *Cops and Bobbies: Police Authority in New York and London, 1830-1870* (Chicago: University of Chicago Press, 1977); Samuel Walker, *A Critical History of Police Reform: The Emergence of Professionalism* (Lexington, 1977).

century Whig assertions regarding a precipitous increase in criminal activity, and the simplistic assumption of a causal relationship between urbanization, crime and policing, have too often been carried forward without revision.[42] The tensions created with the rise of industrial capitalism, and attendant concerns for economic growth and social order undoubtedly influenced the nature of modern policing. Historians examining these developments fall into two general schools:

> those who emphasized consensus and who generally view the police development as a beneficial, farsighted reform; and those who see police forces largely as instruments of state or class power designed to protect property in the face of popular disorder and social crime and to control the work-force and the poor.[43]

Similarly, the rise of institutions and in particular prisons, has been interpreted in two ways. Prisons have often been viewed as a response to a crisis in criminality. This view also promotes a humanitarian view of social reform, interpreting it as a history of "progress from cruelty to enlightenment."[44] However, in the 1960's, historians re-examined this interpretation and some (the so called "revisionists") offered the theory that modern institutions such as prisons, schools, and asylums embodied a "strategy of power."[45] The central works in this school are David Rothman's *The Discovery of the Asylum;* Michel Foucault's *Discipline and Punish* and Michael Ignatieff's *A Just Measure of Pain: The Penitentiary and the Industrial Revolution.*[46]

Rothman examines the "discovery of the asylum" in the social context of the Jacksonian period in America. He argues the major failing of historians writing on reform was to assume "the asylum was an inevitable and sure step in the progress of

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[42] See Cyril D. Robinson, "Ideology as History: A Look at the Way Some English Police Historians Look at the Police," *Police Studies*, 11 (1979): 35-49.

[43] Clive Emsley *Policing and its Context, 1750-1870* (London: MacMillan Press, 1983), 161.

[44] Michael Ignatieff, "State, Civil Society and Total Institution: A Critique of Recent Social Histories of Punishment," *Legality, Ideology and the State*, David Sugarman, ed. (London: Academic Press, 1983): 183-209.

[45] ibid.

[46] David Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown and Co., 1971); Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 1977 trans., Alan Sheridan (New York: Random House, 1979); and Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Pantheon Books, 1978).

humanity."[47] To challenge this assumption, Rothman presents the search for social stability and a new sense of society which would insist that "the causes of crime, poverty and insanity lay in the faulty organization of the community."[48] The asylum would, it was supposed, both rehabilitate inmates, and "by virtue of its success set an example of right action for the larger society."[49] When asylums fell short of these utopian aspirations the "functionalism of custody perpetuated them."[50]

In *Discipline and Punish*, Foucault traces the decline of bodily punishments and the rise of a generalized disciplinary network. This shift replaced the view of the criminal as "the adversary of the sovereign" with that of a deviant social enemy "who brought with him the multiple danger of disorder, crime and madness."[51] Moreover, the organization of the "police apparatus in the eighteenth-century sanctioned a generalization of discipline that became co-extensive with the state itself."[52] The network of the carceral regime recreated the disciplinary mechanisms throughout society:

> . . .the prison transformed the punitive procedure into a penitentiary technique; the carceral archipelago transported this technique from the penal institution to the entire social body.[53]

This pervasive change in the mentality resulted in a reordering of offences to reflect a gradation in disorders.[54] The contours of discipline changed the means and meaning of government. Ultimately the transformation of punishment included a transformation in ideology:

> The generality of the punitive function that the eighteenth century sought in the 'ideological' technique of representations and signs now had as its support the extension of

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[47] Rothman, *The Discovery of the Asylum*, xiv.

[48] ibid., xix.

[49] ibid.

[50] ibid., 240.

[51] Foucault, *Discipline and Punish*, 299-300.

[52] ibid., 215.

[53] ibid., 298.

[54] These gradations were revealed through the discipline of the school system and the classifications for juvenile offences.

> the material framework, complex, dispersed, but coherent, of various carceral mechanisms.[55]

In this analysis, then, Foucault analyses the trends in punishment during the eighteenth century and the importance of the ideological function of punishment in ways similar to Hay's analysis in "Property, Authority and the Criminal Law." It follows that extensions to, and institutionalization of, the material framework of discipline transformed the functions of law as ideology.

In recent years the revisionist school has come under attack. The primary objections were their lack of sensitivity to human agency and reliance on monocausal descriptions of social reform. As with Hay, the depiction of legal powers as conspiracies of the ruling classes becomes a matter of contention. Ignatieff identifies three basic misconceptions of the revisionist school:

> that the state enjoys a monopoly over punitive regulation of behaviour in society, that its moral authority and practical power are the major binding sources of social order, and that all social relations can be described in the language of subordination.[56]

This critique does not imply Ignatieff is siding with the "counter-revisionists," whose position, he claims, has abdicated "from the task of historical explanation altogether."[57] Although Ignatieff presents some of the pitfalls of reductionist social theory he maintains that there is a need for critical models.

Ignatieff's warning seems particularly relevant to recent histories of policing, their most frequent difficulty being an overwhelming functionalist character. Two recent examinations of the rise of policing, Sidney Harring's *Policing a Class Society*, and Eric Monkkonen's *Police in Urban America*, both suffer in varying degrees from this fault. These studies are relevant because of their North American settings, a concurrent time frame, and their concern with the rise of modern, professional police

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[55] ibid., 299.

[56] Ignatieff, "State, Civil Society and Total Institution," 185.

[57] ibid.

forces. Monkkonen's framework focuses on "police as part of city government, a part that had a unique relationship mediating between people and the formal institutions of society."[58] He argues: "modernization of the police in various cities across the continent followed a common and predictable pattern that many other kinds of innovations followed in the period [1860-1920]."[59] In other words he stresses the commonality in institutional responses. Modernization was in his view characterized by a shift in emphasis from "class control" to "crime control" in policing.[60] This analysis disregards questions of how police maintained their legitimacy, and what the consequences of their contradictory class and judicial roles were through this transformation.[61] Monkkonen's focus on "nonspecific patterns of growth and change" in policing, and the attempt to discover a "baseline" of these activities, directly opposes Harring's thesis. In *Policing a Class Society*, Harring argues that the modern form of American police institutions

> emerged from class struggle under industrial capitalism and that, in spite of reform movements and professionalization, we now have essentially the same police institution that evolved in the intense class conflict of the 1870's, 1880's, and 1890's.[62]

Charting the same transformations which created the modern professional police observed by Monkkonen, Harring examines these changes in light of responses to class violence:

> Rationalization alone does not offer an alternative explanation of the rise and expansion of policing; it is another aspect of the same class struggle.[63]

Professionalization was a measure taken to increase legitimacy, and by "adhering to an

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[58] Monkkonen, p.2.

[59] Monkkonen, p.3.

[60] Monkkonen, p.157.

[61] For an analysis of the contradictory class role of police in a Canadian setting see: Gregory Kealey, "Orangemen and the Corporation," *Forging a Consensus: Historical Essays on Toronto*, Victor 1. Russell ed. (Toronto: University of Toronto Press, 1984): 41-86; and Greg Marquis, "'A Machine of Oppression Under the Guise of the Law:' The Saint John Police Establishment, 1860-1890," *Acadiensis* xvi, 1 (Autumn 1986): 58-77.

[62] Harring, p.3.

[63] Harring, p. 256.

apparently neutral law-and-order ideology" the police were made much more efficient.[64] The law, in Harring's analysis, appears as a blunt object wielded by capitalists in a series of cataclysmic confrontations. Here, Ignatieff's cautions regarding the language of subordination, and the misconception that the state enjoys a monopoly on force are particularly germane.

Theories of policing and law are inextricably linked to views of class and state. None of these elements can be adequately portrayed with the simple vocabulary of absolutes: whether it be absolute control or absolute liberty. The service functions of the state are not without their repressive qualities, yet views of law and policing must not exclude these observations:

> 1) state's bureaucratic dimension, is not only a phenomenon of domination but also has a managerial task. 2) The state is not only an instrument of repression but also an ideological system.[65]

Law is central to the contradictions of policing a liberal state; it is the "organizational frame for the practice of repression and, under the form of the reference to justice and legality, the legitimation of that practice."[66] Theories which hope to reveal the nature of power in the modern institutional state must therefore recognize the role of ideology in the ruling hegemony and its relationship to law and policing.

The current trend in legal history increasingly emphasizes plurality.[67] In rejecting the structural/functionalist theory, the argument has been made for theory which acknowledges the complex relationship between law and society: a relationship which can not be viewed in strictly materialist terms nor generalized as a "triumph of Weberian rationalization."[68] While historians now choose to stress the need for empirical studies

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[64] Harring, p. 256.

[65] Gleizal, 371.

[66] Gleizal, 375.

[67] Gregor McLennan, "Review of *Legality, Ideology and the State*, David Sugarman, ed." *International Journal of the Sociology of Law*, 14 (1986): 67-73.

[68] Ignatieff, "State, Civil Society and Total Institution," and David Sugarman, "Introduction," *Legality, Ideology and the State;* also: Alan Hunt, "The Ideology of Law: Advances and Problems in Recent Applications

which have a sensitivity to the "complex" one wonders if this does not signal a retreat from theory altogether. In dealing with sources as rich and varied as the available legal records, the importance of theory can not be understated. Without an analytic framework the mass of details can overwhelm the research, leaving more anecdotes than insights. A temptation which must be resisted is to plunge in and operate with a "naive empiricism" to use "research simply to document the unexamined assumptions and prejudices of common sense or tradition, or behaving as if . . meaning could be squeezed out of data by the sheer weight of their accumulation."[69] Social histories of crime and policing probably provide the best illustration of this point.

Often source selections reveal the hazards of vaguely articulated assumptions, and demonstrate the need for conscious use of critical theory. Some of the most common sources for the study of crime and policing are the records of arrests found in either aggregate published forms or in manuscript sources. There are several reasons why criminal statistics are "notoriously difficult to handle":[70] chief among them an inadequate definition of crime. Although social historians have turned to the study of crime for what it can reveal about the behaviour of "ordinary men and women who have left few records of their lives and attitudes," and the fundamental power relations in society, there has been little agreement on "what the study of 'crime' entails."[71] While it may be true that the most manageable definition of crime for the historian, "has to be simply that a crime is an action which violates the criminal law of a specific state at a specific time,"[72] such a definition tends to preclude the application of long term or cross-cultural analysis. Moreover this notion does not eliminate the ambiguity

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of the Concept of Ideology to the Analysis of Law," *Law and Society Review*, 19, 1 (1985): 11-37.

[69] James Willard Hurst, cit. David Flaherty, "Introduction," *Essays in the History of Canadian Law*, vol. I (Toronto: University of Toronto Press, 1981): 9.

[70] Emsley, 120.

[71] J. M. Beattie, *Crime and the Courts in England 1660-1800* (New Jersey: Princeton University Press, 1986), p.4.

[72] Emsley, 117.

engendered by the "dark figure" or the "'real' crime committed" as opposed to the crime dealt with by the courts."[73] Clearly, when dealing with prosecution records the term "crime" carries with it ambiguities. Though patterns in the frequency of litigation may emerge, it should be readily apparent that police and court records provide no objective measures of criminal activities. They are, rather, a direct embodiment of the dynamics of law enforcement agencies themselves. The role of the police can not be adequately portrayed as a direct response to fluctuations in criminal behaviour. Similarly, changes in law enforcement policies and administrative structure are more than simple reactive or loosely defined contextual factors.

There are a number of pitfalls open to social historians engaged in the study of crime. The first, as discussed, is the assumption police records are an objective measure of criminal behaviour. Most historians recognize the fault in this methodology, but as John Beattie states "crime" appears to be "too common and too handy" a term to be abandoned.[74] Unfortunately, it is also seriously misleading. The second follows directly; the application of models based on modern criminology leading to normative judgements of past criminal actions. This obviously entails, at the very least, ahistorical endeavor. The reliance on "crime" as a method of explanation often leads to overlooking the provenance of the sources. What then emerges is a lack of sensitivity for the dynamics of laws which help create the criminal statistics. The most notable example of a Canadian historian falling into this trap is Michael Katz, who in "The Criminal Class: Image and Reality," states:

> In Hamilton between the 1850's and the early 1880's the criminal code did not alter in any significant way. Hence, the legal definition of crime remained relatively constant.[75]

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[73] J. M. Beattie, in *Crime and Criminal Justice in Europe and Canada*, Louis Knafla, ed. (Waterloo, 1981), p. 127.

[74] John Beattie, *Crime and the Courts in England*, 4.

[75] Michael Katz, "The Criminal Class: Image and Reality," in *The Social Organization of Early Industrial Capitalism*, Michael Katz, Michael Doucet, and Mark Stern (Cambridge, Mass.: Harvard University Press, 1982), 205.

Aside from the trivial observation that the national criminal law had not been codified at that point, and the not so trivial observation that in looking at the police court records Katz gives no indication of any examination of civic by-law infractions, he has omitted examination of important aspects of the reform impulses he attempted to trace. These included legal reforms which led to the Consolidated Statutes of 1859 in Upper Canada, and social reforms which would be embodied in later legislation, such as the School Acts and penitentiary reforms.[76] In this light, the absence of a clear analysis of the jurisdiction of the agencies which created the records of "crime" comes as no surprise. Finally, and perhaps the least obvious difficulty of social histories of crime is an assumption implicit in using legal records as a source for understanding the lives of "ordinary men and women." Whether such an analysis inclines toward notions of deviance or toward a materialist explanation of criminal behaviour, the curious undercurrent is that arrest and prosecution is in some way a voluntary action. Equally misplaced is the assumption that arrest records demonstrate that an offence occurred. The problem then, with using police records to measure crime, is that such records are evidence of policing policies and any view from "the bottom up" will be dictated from "the top down."

Legal records remain a largely untapped source for historical research in British Columbia. While topics such as the colonial police force[77] the use of the Royal Navy,[78] and the personalities of men such as Matthew Baillie Begbie[79] have been examined, most historians have seemed content to rely on newspaper reports and correspondence

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[76] Given any number of the social control theories it is particularly startling that the changing definition of delinquency in terms of truancy was not included. For background to some of these changes see: Susan Houston, "Victorian Origins of Juvenile Delinquency: A Canadian Experience," *History of Education Quarterly*, 12 (Fall 1972): 254-260; and Rainer Beahre, "Origins of the Penitentiary System in Upper Canada," *Ontario History* 69 (1977): 185-207.

[77] W. S. Thackray, "Keeping the Peace on Vancouver Island: The Colonial Police and the Royal Navy, 1850-1866" (M.A. Thesis: University of Victoria, 1980).

[78] Barry M. Gough, *The Gunboat Frontier: British Maritime Authority and Northwest Coast Indians, 1846-1890* (Vancouver: UBC Press, 1984).

[79] David R. Williams, *The Man for a New Country: Sir Matthew Baillie Begbie* (Sidney, B.C.: Gray's Publishing, 1977).

rather than the records of the agencies involved. A recurrent theme in the few legal histories of British Columbia has been the frontier justice system and in particular the presumably "lawless" nature of the gold rushes.[80] While such topics are colorful, they provide only limited insight on the later developments of law enforcement agencies. The tendency to focus on exceptional cases, either for their notoriety or for the jurisdictional squabbles they engendered, is equally problematic. In order to gain a more complete understanding of the development of legal institutions and the social context in which they operated it is necessary to examine more routine cases.

Before turning to an examination of the the structure of the legal administration in late-nineteenth century Victoria, B.C., and records available for the study of enforcement practices, it is useful to address the themes and propositions selected from the preceding review of the field. The broad issues regarding the forms and functions of law at the level of implementation include: the impulse behind the creation of regularized disciplinary mechanisms as part of the city's bureaucratic functions, the interaction of legal formalism and discretionary powers, and the role of ideology in maintaining law's authority in an urban setting. All of these themes can be used to discover aspects of power, property and class as they are expressed through, and influence, the law.

Since the function of law in the urban setting must be predicated on an understanding of how law maintains its authority, the role of law as ideology will be an important aspect of investigation. The first tests will examine the notion of basic inequalities of law resting in class interests. Those interests could be demonstrated through a number of conditions; for example, maintenance of hierarchical property relations through law, the suppression of working class resistance, or the generalization

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[80] For example: Donald D. McKnight, "A Little Bit of Old Harry: Crime and Disorder in Victoria, 1859," *The Register*, 3, 2 (September 1982): 158-183, and Thomas R.G. Brown, "Crime and Disorder in Colonial Victoria, 1862" (unpublished paper, University of Victoria, 1983); for an alternate view see David R. Williams, "The Administration of Criminal and Civil Justice in the Mining Camps and Frontier Communities of British Columbia," Knafla, ed., *Law and Justice in a New Land:* 216-232.

of discipline to control social relations. Next, aspects of the legitimating ideology will be examined. Does Victoria's police court show evidence of law functioning as ideology in a combination of "imagery and force, ideals and practice?" Are its essential characteristics "majesty, justice and mercy?" The examination of prosecution procedures will emphasize the second component of Hay's conception of law as ideology. Justice, it has been claimed, was a necessary element of law's authority:

> The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just. It can not seem to be so without upholding its own logic and criteria of equity. . . [81]

How then should "criteria of equity" be defined in light of the precondition of a legitimating ideology that law expresses and maintains class interests? One task will be to discover features of the conception of justice in late-nineteenth-century Victoria. Given the rise in a regularized, and institutional response to disorder, can "justice" be shown as moving toward "rational, bureaucratic decisions made in the common interest?" This question suggests the next area of exploration: the relationship between the police and the city's bureaucratic functions.

The transformation of the Victoria police from adjuncts of the colonial administration to an integral part of the city's bureaucracy reveals an important aspect of the nature of law at the level of implementation. In the period 1862 to 1892 structural changes in police administration moved the Victoria force toward a recognizable model of modern, professional policing as observed in other North American cities. A number of questions stem from this increased regularization. While Victoria can be shown as manifesting the same "nonspecific patterns of growth and change" observed by Monkkonen, the explanation of that change may be examined in more detail. The direct relationship between class violence and police reforms observed by Harring provides

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[81] E. P. Thompson, *Whigs and Hunters: the Origins of the Black Act* (Middlesex: Penguin Books, 1975), 263.

one test. Alternatively, the shift away from social welfare functions of policing can be examined in light of the extension of the material framework of discipline. Ultimately, the network created to maintain order would then be viewed beyond simply "class" or even "crime" control. The interaction between a generalized acceptance of discipline and an equally widespread acceptance of the ideology of law can be characterized in terms of the dialectic between a need for order and a need for equity. The question then becomes how the bureaucratic transformation of disciplinary mechanisms influenced the ideology of law.

The contrast between the maintenance of discretionary powers and the rise of legal formalism could be read through either the ideology of law or through the bureaucratization of discipline. Intuitively, this suggests the distance between discretion and formalism will uncover some of the interactions between ideology and the structure of the disciplinary network. The interplay between discretion and formalism must be examined as an independent variable because it expresses aspects of law which carry intrinsic momentum and logic. Whether measured in terms of "instrumentalism" or "release of energy" the importance of this interplay in "judge made law" can not be overlooked. This is not to say that the tension between legal formalism and discretionary powers wholly defines the function of law in society, nor that it completely obscures class elements in the application of force. The three elements identified through the literature: the tension between legal formalism and discretionary power; the regularization of disciplinary mechanisms; and the role of ideology in maintaining law's authority, must be viewed in concert to reduce the danger of over-simplification.

How then can these issues be addressed at a micro-level? The questions to be investigated direct the way legal records should be selected and viewed. Three important strictures must be kept in mind: 1) criminal records should be used to measure the behaviour of the police and judiciary, not the behaviour of "criminals;" 2) norma-

tive judgements based on current conceptions of the behaviour of law are not applicable in historical study; 3) the "top down" structural elements and "bottom up" social elements of law can not be viewed in isolation from one another. Since much of the evidence of the forms and functions of law at the level of implementation rest on the distance between stated intentions and measurable actions, the best sources would reveal both. Ideally they would be immediate records of events and their antecedents; however, with distinct legislative, judicial, policing and punishment mechanisms, complete records will not likely be found. Thus it is necessary to combine both qualitative and quantitative sources with attention to the strengths and limitations of each source.

Two separate mandates are addressed throughout the material which follows. One is the demonstration of the importance of integrating "top down" and "bottom up" approaches to the study of law and society. This methodological argument also embraces the need for thorough understanding of the sources. The organization of the study into two parts: the first providing overviews of the judicial contexts, the second an analysis of the sources reflects those concerns. However, this study aims beyond a simple methodological exercise: it seeks to discover the source of law's authority in late nineteenth-century Victoria.

The question of how law maintained its authority will be examined with particular reference to Hay's depiction of majesty, justice and mercy. As shown by Paul Craven, majesty is not easy to find in the police court setting.[82] The legitimating function of the professional ethos may have by this point replaced the theatre of terror which maintained majesty. The next chapter will address this particular aspect of the transformation of the judicial system; the city's role in that transformation will also be explored, especially regarding the regularization of the police mandate. A fundamental issue in examining the ideological function of law rests in the need to legitimate

[82] Craven, "Law and Ideology," 265.

basic inequity. Therefore, the some of the ways that the legal system reflect hierarchical property relations will be presented in Chapter Two. This investigation will focus on the social distances between the agents of the legal administration and their victims as a point of intersection between class and justice.

The published reports, from three separate administrative levels, provide a means to further explore the implications of regularization of law at the level of enforcement. Comparison of the published statistics with manuscript data reveals how the form and content of the reports was governed by specific mandates. Such an understanding of the provenance of each source is essential before the general propositions can be tested. Finally, the manuscript sources will be used to examine the result of the regularization of the police and police magistrates court. The perceptions of members of the law enforcement hierarchy, as revealed in the published reports, will be tested against the arrest records. In particular assumptions about the "criminal classes" and how these notions affected the arrest and conviction rates of visible minorities will be scrutinized.

Part One:

STRUCTURE AND SYMBOL

CHAPTER ONE

The Regularization of Law Enforcement, 1862-1892.

> the change at the capillary level of power is absolutely tied to institutional changes at the level of the centralized forms of the state.[1]

Any understanding of power in society is predicated on an understanding of both the most localized (and extreme) level of its exercise and the broadest level of its authority. Just as class relations can not be wholly explained by focusing solely on the least powerful in society, enforcement mechanisms can not be explicated without an understanding of the matrix of state power. That matrix is defined and recreated, bounded and legitimated through law. To write about law then is to explore state power. The structure of the legal hierarchy must be understood in its state context as well at the local level of enforcement. Within the framework of general institutional changes, municipal law enforcement will be given a detailed analysis. The central focus of this chapter is to explore the subtle links between the structural and symbolic force of law in both its inception and its exercise.

The genesis of modern state apparatus in British Columbia came in January 1849 with the creation of the colony of Vancouver Island. Through a royal charter the Hudson's Bay Company became "true and absolute lords and proprietors" of the island in return for covering the costs of any civil and military establishments from revenue

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[1] Michel Foucault, "Prison Talk, an interview with J. J. Brochier," *Magazine Litteraire* (June 1975) translated and reprinted in *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, ed. Colin Gordon (New York: Pantheon Books, 1980), 39.

generated by the sale of land and other resources.[2] This charter did not deal directly with the administration of justice, leaving the provisions of 43 George III, c.138 and 1 & 2 George IV, c.66, intact. Those acts had extended the jurisdiction of the courts of Upper and Lower Canada to all British territories west of the provinces. The provisions were repealed in July 1849 with the passage of the Act to Provide for the Administration of Justice in Vancouver's Island.[3] This gave the local legislature, once it had been established, the power to regulate the administration of justice and the crown the authority to create courts of record and to commission justices of the peace in the colony.

Beyond the general statement of intent—to provide "peace, order and good government"—what was the purpose of the Colonial administration? The notion that this was an expedient means to legitimate the Company's authority in the region, is perhaps an oversimplification of the issues involved. Securing the area for the British government, from the viewpoint of the Colonial Office, required settlement. From the point of view of James Douglas this policy was not as desirable for the company's aims:

> The interests of the Colony, and Fur Trade will never harmonize, the former can flourish, only, through the protection of equal laws, the influence of free trade, the accession of respectable inhabitants: in short by establishing a new order of things, while the fur Trade must suffer each innovation.[4]

The new order arrived in March 1850 when the first governor, Richard Blanshard, read his commission and "thereby inaugurated British rule west of the Rockies."[5] Blanshard had the authority to establish a council and to summon a General Assembly, and with

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[2] For a complete overview of the constitutional developments of the British Columbia see: James E. Hendrickson, "The Constitutional Development of Colonial Vancouver Island and British Columbia," W. Peter Ward and Robert A. J. McDonald, ed., *British Columbia: Historical Readings* (Vancouver: Douglas & McIntyre Ltd., 1981): 245-274.

[3] 12 & 13 Vict., c.48.

[4] Douglas to governor, deputy governor and committee, 18 October 1838 cit. Robin Fisher, *Contact and Conflict* (Vancouver: University of British Columbia Press, 1977), 49.

[5] Hendrickson, "The Constititutional Development," 217.

the aid of those two bodies enact laws for the colony. While the company in effect owned the colony, the structure of its government was to follow the prescriptions of the colonial office in London. Blanshard quit the colony once it became clear that this combination was inoperable. Sovereignty was in the hands of the Hudson's Bay Company, not in the person of the crown's representative. The potential impasse was resolved through the appointment of James Douglas, then Chief Factor at the Victoria post, as the crown's representative in the colony. Douglas summoned a Council which served "both executive and legislative functions" and thereby fulfilled one half of the commission's provisions for a bicameral legislature. The first elected General Assembly was not summoned until 1856. In May 1859 the Hudson's Bay Company grant was terminated and the British government gained more direct control of the island colony. This transfer marked the end of the fur trade era. Douglas, however, remained the governor until 1864. The next major governmental shift came with the unification of the colonies of Vancouver Island and British Columbia in 1866. British colonial rule ended when the colony joined Canada in 1871.

The impact of these constitutional developments on the "capillary level" of power while not always direct, are undeniable. One example with significant doctrinal implications is the accepted date of the reception of British Common Law.[6] Upon unification of the colonies an ordinance was passed to put in force "the civil and criminal laws of England, as the same existed on the 19th day of November 1858." This date coincided with the reception of common law in the mainland colony. These laws took effect in the united colony to the extent that they were "not from local circumstances inapplicable" and were "held modified and altered by all past legislation" of each of the colonies prior to union.[7] The common law in British Columbia, therefore, was entirely bounded

[6] See: R. G. Herbert, "A Brief History of the Introduction of English Law in British Columbia," *UBC Legal Notes*, 11, 2 (March 1954): 93-101.

[7] British Columbia Ordinances, cit. Herbert, 96.

by this notion of local expediency.

From 1862 to 1892 both the state and local law enforcement agencies were in flux. Views of these institutions are often overshadowed by the idiosyncratic behavior of their administrators. In itself this fact should not prevent contact with the broader question of state power. It does, however, provide a warning to the danger of a one dimensional framework. Modifications to the justice system did not demonstrate a relentless drive toward "modernity," neither were they entirely aimless. Any interpretations of the function of law during this period must encompass its dynamics.

One of the aims of the Colonial administration was to establish the authority of British law and order over the indigenous people of the region. Blanshard believed "hostile tribes should be 'speedily coerced'" and thought that the colony should have a military force for that purpose.[8] His dealings with the Newitty tribe were reflective of that attitude.[9] Douglas's conceptions, based on his experience in the fur trade were dramatically different:

> In all our intercourse with the natives. . . we have invariably acted on the principle that it is inexpedient and unjust to hold *tribes* responsible for the acts of *individuals*.[10]

His policy of selective punishment, coupled with intimidation provided by the Royal Navy was relatively effective in controlling inter-racial conflict. While Douglas was willing to recognize that disputes among the Indians were probably settled "in accordance with the laws of natural justice" and therefore did not require government intervention,[11] his treatment of inter-racial disputes made it clear that the "two races did not stand equal before the law."[12]

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[8] Blanshard to Moresby, 28 June 1851 cit., Fisher, 53.

[9] See Fisher, 50-53.

[10] Douglas to Blenkinsop, 27 October and 13 November 1850, cit. Fisher, 53.

[11] Douglas to Newcastle, 28 July 1852, cit. Fisher, 56.

[12] Fisher, 57.

The question of whether the court system could provide fair treatment for Indians came before the House of Assembly in 1861. Amendments were proposed to the procedures for the trial of Indians. In giving notice of the intentions for the legislation it was suggested that:

> The trial of Indian prisoners before the ordinary tribunals, being found to involve considerable expense, without any compensating certainty in the result, a less expensive system, more adapted to the ends of justice, will be prepared and submitted. . .[13]

The system suggested entailed the establishment of a Board of Commissioners to try all Indians arrested for any offences other than murder, and proposed modifications to expedite punishments. The debates in the House were quite heated, providing divergent views of how justice was perceived.

John Sebastian Helmcken, who had been Vancouver Island's first justice of the peace, was at odds with Attorney General Cary's legislation. Helmcken called the proposal "unfair, illiberal and unjust," and maintained that Indians "should be tried just the same as white. . .[as] they were no less human beings." He continued, that to place an Indian "on the same level with the white man. . . will raise him to a higher standard than at present"[14] Cary responded to this by stating: "During the two years and-a-half in which he had filled the position of Attorney General for this colony, he had never known a correct verdict in Indian cases to be rendered."[15] He considered the jury system to be particularly limited because "in a small place juries are invariably wrong, their minds are usually made up beforehand."[16] Other members of the Assembly expounded on these flaws in the jury system, but it is doubtful that their commitment was to fair treatment when the proposed system was to provide summary punish-

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[13] Governor Douglas to the House of Assembly, 26 June 1861, *Journals of the Colonial Legislature of the Colonies of Vancouver Island and British Columbia, 1851-1871*, vol 2, James E. Hendrickson, ed. (Victoria: Public Archives of British Columbia, 1980), 282; hereafter *Journals*.

[14] "Indian Criminal Bill," *British Colonist*, 21 Sept 1861.

[15] ibid.

[16] ibid.

ments:

> There had always been a great deal of humbug in their trials here: and often times when one of them was fed and clothed at the expense of the Colony, awaiting trial, a good round dozen would be the best punishment he could receive.[17]

This statement was met with cheers. The Act would have allowed the commissioners to authorize floggings at a time when they were not in common use for punishing white offenders. The measure passed in the Assembly but was not given Royal Assent. However, the aim of the legislation—to insure the immediacy of punishment for Indian offenders—remained a theme in law enforcement during the Provincial era.

Within the confines of a structural analysis the question of how law was enforced can not be ascertained. However, it is possible to suggest that the transition from colonial to provincial authority brought with it a re-alignment of dominant elements in the ideology of law. While it is possible to identify elements of "majesty, justice, and mercy," the institutional model which developed, particularly in urban centers, tended toward a more "professional, bureaucratic and democratic," expression of law. In both modes (personal and institutional) legal formalism was a key aspect in sustaining law's legitimacy. When describing "frontier justice" to the Colonial Secretary Judge Begbie observed:

> I need not point out that popular confidence in the rigidity of justice is practically of more importance than justice itself. A trial which is suspected will, though in fact strictly just have ill effects—a trial which is reputed to be above suspicion will, though in fact not strictly just, satisfy all men.[18]

This observation leaves little doubt as to the ideological importance of the rule of law in British Columbia.

The Colonial administration can provide numerous examples of law being a combination of "imagery and force." Justice was an essential component of that imagery

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[17] ibid.

[18] Begbie to W.A.G. Young, 29 Mar 1861 cit. D. R. Williams "Criminal and Civil Justice on the Frontier," *Law and Justice in a New Land: Essays in Western Canadian Legal History*, Louis A. Knafla. ed. (Cars-

even though it was not administered in a way which would conform to modern notions of equity. Selective punishments can also be identified with the majesty and mercy found in earlier British conceptions of law. As the Colony was transformed both constitutionally and economically the contours of the ideology of law also changed. This is not to suggest that "majesty, justice and mercy" would be wholly replaced, but there are additional aspects to consider in the broader institutional matrix of discipline of the Province. The question thus becomes what elements of that ideology were exhibited on a localized level. This issue can not be addressed without a thorough examination of the role of law enforcement in urban government.

Whether it is viewed as a broadly based institutional response to a changing economy, or as the direct outcome of class struggle, the general pattern of the dynamics of law enforcement in nineteenth-century North America entailed the creation of regularized disciplinary mechanisms as part of the city's bureaucratic function.[19] The shift to civic authority in law enforcement in Victoria can be understood in light of both the structural components of that transformation, and its ideological force. In general terms, localized control was equated with democratic forms of state authority. The eventual ascendence of the concepts of professionalism and of rationalized bureaucratic structures meant that judicial authority would seem less personal, and therefore more distant from the ruling elite. While these are the general trends throughout North America, local developments can not be said to have followed a direct path in progressive rationalization.

One model of the dynamics of urban justice systems in Canada has been offered by Greg Marquis.[20] In his examination of nineteenth-century urban administrations, Marquis charts their transformation from a "voluntary, *ad hoc* response to a more

well: Toronto, 1986), 228.

[19] Monkkonen and Harring, see Introduction.

[20] Greg Marquis, "The Contours of Canadian Urban Justice, 1830-1875," *Urban History Review*, XV, 3 (February 1987): 269-273.

bureaucratic and professional system,"[21] and identifies three distinct phases. The first, "paternalistic justice," was marked by "crown-appointed justices who also administered local affairs."[22] This magistracy was "generally appointed from the ranks of the elite and functioned on a reactive, part-time basis."[23] The second, "civic justice" accompanied the struggle for responsible urban governments. It was marked by mayors and aldermen participating in city court administration. The third stage introduced permanent salaried professionals, "Stipendiary Magistrates," with the "intention of introducing a degree of non-partisan professionalism to police courts."[24] While this model has been successfully applied to major urban centres such as Toronto, Montreal and St. Johns, it does not appear to hold true for Victoria. The urban government did not succeed in operating the courts in a second, or democratic phase. Rather, the city council employed a stipendiary magistrate immediately following the resignation of the crown-appointed magistrate. This deviation can be explained by any number of factors, including: timing and relative size at incorporation, the strength of the colonial elites, and the nature of the crown-appointments.

Victoria's police force actually preceded incorporation. The first call for a police force in the colony came in 1855. In June of that year Douglas made a request to the Council to provide for a company of ten men to help prevent inter-racial conflicts in the settlement. The council resolved:

> a Company of ten, to consist of eight privates, 1 corporal, 1 sergeant, besides a competent officer to act as commander be immediately raised, and maintained at the public expense until the Northern Savages leave. . .[25]

While the arrival of the Northern tribes for trading was viewed as a threat to order in the community, the arrival of miners heading for the gold fields prompted the desire

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[21] ibid, 269.

[22] ibid.

[23] ibid., 270.

[24] ibid., 271.

[25] *Journals*, 1, p. 15-16.

for a standing, rather than exigency force. That force was to be supported by the Hudson's Bay Company from revenues from land sales until their grant was extinguished.

Augustus Fredrick Pemberton was appointed to the offices of stipendiary magistrate and commissioner of police on June 1, 1858.[26] Since that time reports of his ability to maintain control over the miners have reached mythic proportions. One historian has stated Pemberton "had only to go among the miners to restore order."[27] Whatever his effect on the populace, his critical role in the legal administration of Colonial Victoria can not be disputed. In 1867 Pemberton was appointed County Court judge for Victoria.[28] The precedent of crown appointed magistrates serving as chief police officers was followed throughout the province. The multi-faceted office of gold commissioner on the mainland often included sitting in the county court with other government agencies.[29] Like other magistrates Pemberton also served on the Legislative Council for the united colonies from 1868 to 1871.[30] He resigned as commissioner of police and police magistrate for the city in 1873,[31] but remained in the county court of Victoria. He was re-appointed police magistrate for the city in 1879,[32] and appears to have held simultaneous appointments in the county and police courts until 1884. In that year the lay-judges were retired from the county courts and the city dismissed Pemberton from the police court.

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[26] *Colonist*, 1 June 1858.

[27] Margaret A. Ormsby, *British Columbia: A History* (Toronto: Macmillan, 1958), 141.

[28] D. M. L. Farr, "The Organization of the Judicial System of the Colonies of Vancouver Island and British Columbia, 1849-1871," *UBC Law Review*, 3, 1 (1967), 30.

[29] D. R. Williams, "Justice on the Frontier," and Fredrick John Hatch, "The British Columbia Police, 1858-1871" (University of Victoria: M. A. Thesis, 1955).

[30] Farr, 30.

[31] *Colonist*, 22 March 1873, 3.

[32] Victoria City Council to Provincial Secretary, Provincial Secretary Papers, Correspondence Inward, G.R. 526, Public Archives of British Columbia; hereafter P.A.B.C.

At incorporation the city had a police force and a police magistrate, neither under municipal control. When the colonies united, the British Columbia government remained in charge of both the Victoria and the mainland police forces. This situation did not change until after confederation.[33] A persistent issue was whether Victoria's police force should be a municipal or provincial force. While there were provisions for policing in other districts of the province, they were less formal. When the municipality did gain control over the Victoria police this left the Provincial Superintendent of Police in the position of being "a commander without an army. . ."[34] Various solutions to this problem were attempted, including a brief period during which the Superintendent of Police served both the province and municipality. After 1881 the separate provincial and municipal forces became more firmly established.

The shift to a more professional police force while conforming to the general trends found in other elements of the disciplinary mechanism was not accomplished at the same rate. Changes in police practices were localized and not consistent over time. However, by 1891, codes of behavior were established and the number of career officers on the Victoria city force had increased. Seven of the officers who served in 1891 would still be on the roster of the Victoria Police Department in 1902. Five of those seven had previous policing or military experience.[35] The persistence of these members on the force after 1891 provides a dramatic contrast to the previous decade. The only member of the Victoria Police on the roster for both 1881 and 1891 was Henry Sheppard. Professionalization in policing, as it would in the courts, caused both the range of tasks to narrow and the administrative hierarchy to be more clearly delineated..

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[33] In 1871 the police force in Victoria in 1871 consisted of one inspector, one sergeant and two constables with additional "specials" sworn in as required [1871 Directory], while the rest of the province was policed by a total of eighteen constables [Hatch, "Appendix B"].

[34] *Colonist*, 18 April 1873, 2.

[35] John Hawton had served nine years in the Cornwall Constabulatory, S. L. Redgraves had two years with the B.C. Provincial Police, Edward Carter had ten years with the Wicklow Militia, William P. Allen had two years with the Mounted Volunteers in Plymouth, John C. MacDonald had three years with the 93 Highlanders and twelve years with the Royal Canadian Artillery. The two other officers present from 1891 were Robert H. Walker and Thomas Collin. [P.R. 1.7a. V.P.A.].

The contrast between the personal, *ad hoc* approach to policing during the colonial administration and the later urban bureaucratic approach was not simply a question of staffing. Under Superintendent Henry Sheppard the hierarchy within the force was spelled out in the beat descriptions with each Sergeant being "held responsible for the conduct of the men under his charge during his watch"[36] On March 1, 1891 Henry Sheppard issued the following warning in his order book:

> I wish to call the attention of the *Sergeants* and Constables to this fact that it is my intention to see that the Police *Rules* and *Regulations* are carried out to the letter . . .[37]

These regulations pertained to behavior while on or off duty and in particular the demeanor of the officers in uniform. Controlling the behavior of the men on their beats was not, however, a straightforward task. Superintendent Sheppard repeatedly urged the Constables to "keep a sharper look out on their beats" and insisted that for Constables, "Loitering on the corners of Streets is strictly prohibited also talking to persons on the Streets."[38] In one extreme case a Constable was discharged for neglect of duty because "he was found beastly drunk and asleep in an Indian woman's cabin in uniform whilst on duty."[39] This might indicate that strides toward professionalism had not notably increased from the decade previous when it was reported in the Police Court that "it was a very common occurrence for bribes to be offered to officers"[40] but it did not discourage the impression that attempts were being made to improve discipline. The police became an inextricable aspect of the urban bureaucracy as the city's by-law authority increased. While contrasts between the 1862 and 1891 forces are indicative of some of their new functions the process of change can best be understood in the framework of urban governments in the province.

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[36] Superintendant's Order Book, 1 March 1891, P.R. 1.5, V.P.A.

[37] ibid. (emphasis in the original).

[38] Superintendent's Order Book, June 12, 1891, P.R. 1.5, V.P.A.

[39] Superintendent's Order Book, March 23, 1891, P.R. 1.5, V.P.A.

[40] *Colonist*, 7 Jan 1881, 3.

When Victoria was incorporated a number of provisions were made for the "improvement of the finances, health, security, cleanliness and comfort of the city."[41] To that end the city was empowered to create by-laws for some forty-one separate purposes. The city was thus able to regulate a wide range of services, including traffic control, meat inspection, public lighting and sewage, fire prevention, and snow removal. In particular four purposes related to social conditions and law enforcement:

> [1] The prevention and removal of nuisances within the city;. . .
> [12] To regulate the sanitary condition of the said city;. . .
> [27] To suppress houses of ill-fame;. . .
> [38] To give aid to charitable institutions;. . .[42]

The first two provisions gave authority to a number of health ordinances used to regulate both the structural and the ethnic dimensions of the city. Health inspections were initiated by the city. When the municipality gained control over the police these inspections were added to their duties. Eventually these duties were separated again and by 1891 by-laws provided for both police and regulatory agents. The city could authorize and appoint:

> officers to enter, at all reasonable times, upon any property subject to the regulations of the Council, in order to ascertain whether such regulations are obeyed and to carry into effect the same.

The regulations included provisions for ventilation and sanitation requirements of houses, and for regulating the number of persons occupying dwelling or lodging houses. Enforcement of Victoria's "cubic-space" by-law, directed at the Chinese tenements, was under this authority.

The control of nuisances was a provision that offered the city a great deal of latitude in by-law creation. Although the first report of the city council's nuisance committee commmented on accumulated refuse, and improper sewage disposal, it also commented on the number of prostitutes in the city. Thus it is somewhat peculiar that

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[41] "An Ordinance to Incorporate the City of Victoria," 30 Vict. c.94, s.41.

[42] ibid, s.35.

subsection 27 specified that the city could pass by-laws to suppress houses of ill-fame. This provision was, in part, a response to public complaints that had reached the Legislative Council.[43] The police already had instructions to act on this issue but evidently the Governor and Council preferred civic regulation in this situation. This clause in the Incorporation Act would support a number of possible explanations. First, the common laws and applicable statutes were not enforced sufficiently to relieve public concern about prostitution.[44] Second, prostitution was less tolerated in the city than in other areas of the colony. Third, while the colonial government was willing to recognize that measures should be taken to control prostitution, there was reluctance to press for a vigorous programme of enforcement: prostitution was viewed as a "necessary evil."[45] Fourth, prostitution offences were not considered serious enough to warrant penalties greater than those provided for by by-law infractions.[46] Finally revenues from fines and court fees were an important source of income for the government and by-law infractions could offset the costs of law enforcement in the city. Regardless of the original source for the 1862 provision, regulation of vice was another area where civic authority expanded. The language of the 1891 Act was less directly related to prostitution than with by-law authority over public morals and for:

> preventing vice, drunkenness, profane swearing, obscene blasphemous or grossly insulting language, and other immorality and indecency.[47]

This provision offered a wide range of interpretation and, as with the 1862 regulation, overlapped other statutes. Most notably this by-law authority was remarkably simi-

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[43] In particular "gatherings of Indian prostitutes" were a persistent cause of complaint, for example see: *Journals*, 1, 12 Sept 1865, p. 198.

[44] C. L. Hansen-Brett, "Ladies in Scarlett: An Historical Overview of Prostitution In Victoria, British Columbia, 1870-1939," *B.C. Historical News*, 19, 1 (1986): 21-26.

[45] This hypothesis has found some support in samples from the police chargebooks for the years 1858 and 1862: see McKnight, and Jones.

[46] The maximum penalties for By-Law enfractions established in the 1862 statute was a fine of fifty-dollars or a term not exceeding one month. These penalties were to be enforced "at the discretion of any Justice or Justices of the Peace have jurisdiction within the municipality."

[47] S.B.C. 1891 [54 Vict.] c.29, s.95.

lar to provisions in the federal vagrancy act.[48]

Vagrancy, was defined in the 1892 Criminal Code, as being "a loose, idle or disorderly person" who exhibited any of ten listed behaviors. These included not having visible means of employment, indecent exhibition, begging without a signed certificate, loitering or using insulting language, causing a disturbance by being drunk, riotous or disorderly conduct in any street or highway, being able to work but wilfully refuses or neglects to maintain himself and family, for the most part supporting himself by gaming, crime or the avails of prostitution, and what would now be termed vandalism.[49] The three provisions which directly related to prostitution were:

> being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering of people, and does not give a satisfactory account of herself;
>
> is a keeper or inmate of a disorderly house, bawdy-house of house of ill-fame, or house for the resort of prostitutes;
>
> is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself.[50]

All three of these provisions would have corresponded to the municipal authority to prevent vice. The penalty for vagrancy was under summary conviction, "a fine not exceeding fifty dollars" and/or "imprisonment, with or without hard labour, for any term not exceeding six months."[51] By allowing municipal regulation in these areas there was a potential for greater discretion in sentencing. The minimum penalties for by-law infractions, and especially terms imposed when fines were not forthcoming, were less severe than the statutory penalties the criminal charge of vagrancy. The overlapping jurisdictions also allowed municipal revenues to be generated from fines for these

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[48] The federal act in force for most of the time period was 32-33 Vict., c.28, its provisions were not changed when vagrancy was included in the criminal code in 1892.

[49] This last provision reads as any person who "tears down or deface signs, breaks windows, or doors or door plates, or the walls of houses, roads or gardens, or destroys fences;" *The Criminal Code*, 1892 [55-56 Vict.] c.29, s.207.

[50] ibid.

[51] ibid, s.208.

offences. The common denominator to both the federal and municipal regulation was not an elusively defined concept of morality: both vice and vagrancy charges were inextricably linked to economic power.

Assistance to the poor and sick was delivered on a private, *ad hoc* basis. While the jail was sometimes used to provide shelter for those persons incapable of caring for themselves, charitable institutions were preferred. Thus subsection 38 was a means of insuring civic participation in social welfare. Municipal responsibility for charities increased during the thirty years after the first incorporation acts and by 1891 some provincial assistance was required to defray costs. While each city was ultimately responsible to make "suitable provisions for its poor and destitute" the public moneys of the Province could be used for that maintenance up to "an amount not exceeding twenty-five per cent of the moneys expended for such purposes by any such municipality."[52] Suitable provision was spelled out in so far as the municipalities had by-law authority:

> For granting aid to charitable institutions, and for the relief of the poor, and for establishing and maintaining a poor-house, either within or without the municipal limits, for disabled or decrepit persons.[53]

Other social welfare responsibilities acquired by 1891 included: aid to education, aid to hospitals, and to establish, regulate and provide for the expenses of "an inebriate asylum."[54] The tradition of civic responsibility for these support mechanisms was to become entrenched in Canada well into the twentieth century.

The growth of the city's regulatory authority and its social welfare responsibilities apparently followed much the same pattern as other North American urban governments. Where Victoria appears unique is in the battles for control over policing and over the administration of the police magistrate's court. The Mayor was an *ex-*

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[52] S.B.C. 1891 [54 Vict.] c.29, s.253.

[53] S.B.C. 1891 [54 Vict.] c.29, s.96.

[54] ibid.

officio Justice of the Peace having "precedence of all Justices of the Peace," but the Mayor could not hold a separate court "apart from that of Stipendiary Magistrate" of the city.[55] At incorporation the city was not given any power over the police or police magistrate beyond this clause and there were soon conflicts.

The first disagreement was over the use of the courtroom for city council meetings. When the city council assembled on the 15th of September 1862, they found that the Police Court was in session and Pemberton suggested the council use the room above the Police Court for their meeting. Councillors Copland and Hicks read into this action an attack on representative institutions in the colony. The Mayor was not in a position to end the dispute, having no officers to clear Pemberton's court. Councillor Hicks suggested that the mayor could swear in "forty special policemen" and Copland moved that the Mayor adjourn the court.[56] The mayor's response to these suggestions was negative: "He had never sat as magistrate, and did not feel like taking the initiative now."[57] This response did not satisfy Hicks and Copland who continued to argue that British institutions were sorely abused in the colony.

> If the Mayor was Chief Magistrate, who was above him but the Governor?. . . The petty magistrate says to the Chief Magistrate, 'I want this room; you may take the one up stairs.' This was a real indignity. It was the duty of the petty Magistrate to have adjourned his court at the summons of the Chief Magistrate, and to have come up stairs himself. That was the proper course to be pursued in a British colony.[58]

Eventually the council adjourned with the intention of holding a public meeting on this issue. The *British Colonist* reported this as "the first battle for the possession of the city property."[59] The outcome of the skirmish was for the council to search for a more appropriate meeting room.

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[55] ibid.

[56] *Colonist*, 16 Sept. 1862, p.3

[57] ibid.

[58] ibid.

[59] ibid.

Less than two weeks later Copland and Hicks lodged another complaint against Pemberton. This time the use of the chain gang on public streets was the issue. The employment of the chain-gang on Humbolt street was viewed as interfering with the Council's power over the streets. Copland argued that the "gang should be put under the control of the city, and the Council should root out the rotten state of things which had existed so long."[60] Hicks suggested: "If the chain gang could go to work and cut up the streets when they pleased the Council might as well cease its labours."[61] It was observed during the discussion that the council had no control over the chain gang nor the public money laid out for this road work.[62] The question was deferred and Pemberton maintained his control over the deployment of the chain gang. Indeed, by 1864 the chain gang was described by one citizen as "Pemberton's Corps of Civil Engineers."[63]

There were a number of sources for the tension between the Police Magistrate and the city council. The ambiguous nature of the Mayor's position relative to the incumbent magistrate was due in part to the fact that Pemberton had been appointed by colonial authorities. Moreover, Pemberton was, in the minds of most observers, closely allied with the ruling elite.[64] By the fall of 1864 the editor of the *Colonist*, Amor De Cosmos, was calling for radical amendments to the Incorporation Act which would redress this situation:

> We want an Act that will place the Mayor not only in the position of Chief Magistrate, but in the pecuniary position of Commissioner of Police. The existence, in fact, in a small town like this of two functionaries such as Mayor and Stipendiary Magistrate, is absurd in the extreme. One official of the kind is ample enough for a community four times the size. To have the position of Mayor, however, sought after by our ablest citizens it is necessary to give substance as well as dignity to the office, and as a

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[60] *Colonist*, 27 Sept 1862, p.3.

[61] ibid.

[62] ibid.

[63] *Colonist*, 15 January 1864, p.3.

[64] A. F. Pemberton was an uncle of Joseph Despard Pemberton, the Surveyor-General of Vancouver Island, and the brother-in-law of Chartes Brew Chief Inspector of Police and Stipendiary Magistrate for New Westminster. [see Hatch, "Appendix A"]

> matter of economy we cannot do better than transfer the Mayor's Court to that of the Police. Let us give the head of the City Council the Salary which is at present attached to the office of Stipendiary Magistrate, merging the two positions into one; and let the Mayor, as in many other cities, preside over the Police Court. By this means we will bring the whole management of police under the control of the municipal authorities.[65]

De Cosmos also suggested that municipal funds would be saved if the office of Police Court Clerk was combined with the duties of Town Clerk and that the Inspector of Nuisances be replaced by the regular police patrol.[66] A related benefit to this slate of reform would be that the city would no longer pay rent for its use of the Police buildings. De Cosmos characterized the Legislature's reluctance to take these steps as conservative jealousy for their dubious perogatives. Both Houses of the Legislature, were, he claimed:

> obliged to do something to stop the never ceasing demand for municipal privileges, and so they concocted a wretched act which was intended. . . to be the most powerless institutions to effect good that the ingenious minds of a fourteenth century legislature could conceive.[67]

While the actions of the Colonial Government may not have been as extreme as this depiction they were extremely reticent in adopting any measure that might approach republicanism. De Cosmos' proposals would have moved Victoria into the "democratic phase" of urban law administration but this measure was not adopted. The municipal council was depicted as a vital institution and changes to its authority seen as an attack on representative government. While the city had been incorporated during the colonial period, civic authority was slow to expand. Indeed there were some measures which were intended to circumscribe the city's activities.

Following the unification of the colonies in 1866 there was an additional ordinance passed regarding Victoria's incorporation. It included in its provisions a section requiring the consent of the Lieutenant-Governor to be given to any by-laws. This provision was extended to other municipalities after Confederation. The *Colonist*

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[65] *Colonist*, 26 October 1864, p.2.

[66] ibid.

[67] ibid.

maintained that this position was absurd: undercutting municipal institutions which were "essential to self-government in this Province, where distances are so great and the means of communication so imperfect."[68] Another measure in this same bill restricted municipal franchise to British Subjects. These amendments, it was claimed, were the work of an "Addle-pated Attorney-General" and the "Cabinet of lawyers."[69] The first government of the province did not provide the democratic leadership its opposition claimed was necessary. According to the *Colonist* Lieutenant-Governor Trutch had "passed over all the old and experienced public men who had taken a prominent part in the affairs of the country," and selected as his first minister, John Foster McCreight a man:

> whose history in this country had been chiefly remarkable for the uniformity of his shrinking from every public movement, and the morbid antipathy with which he regarded those liberal institutions he was thus so strangely called to work out.[70]

The selection of McCreight on the basis of his legal background and his subsequent selection of a "cabinet of lawyers" created a "Fool's Paradise" for the "Legal Triumvirate." While legal professionals were reported as assets to some government agencies and in magistrate courts, it appears that they were not held in high esteem as legislators. This marks an interesting contrast to the lay-judges who had been well received in the legislative council of the colony.

The government of Amor De Cosmos was responsible for the 1873 Act to Amend the Municipality Act. It extended the provisions of the 1872 act to New Westminster and Victoria and contained a number of important changes to the structure of municipal law enforcement. The additional subjects for which By-laws could be passed included: "assistance and regulation of Fire Departments," and "establishing, regulating,

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[68] *Colonist*, 22 November 1872, p.2.

[69] ibid.

[70] *Colonist*, 27 October 1872, p.2.

and maintaining a Police force."[71] City councillors were also given the power to appoint, and fix and pay the salary of a Police Magistrate who would:

> have and exercise all the same lawful powers and authorities as have hitherto been had and exercised by any Stipendiary Magistrate of this Province;[72]

There were a few restrictions on the council's authority, while the council had the power to revoke any appointments:

> Provided, always, that no such appointment be valid until assented to by the Lieutenant-Governor in Council; Provided, always, that nothing in any Act contained shall prevent the Mayor or Warden of a municipality from holding such appointment of Police Magistrate.[73]

There was an additional clarification of the role of mayors as *ex-officio* Justices of the Peace: during their office they would have "jurisdiction over all municipal matters within the municipality."[74] This distinction restricted the judicial role of the Mayor, unless he had also been appointed Police Magistrate with the approval of the Lieutenant-Governor.

Section 45 of The Municipality Act Amendment Act, 1873, stated:

> The members of the Police force shall be appointed by and hold their office at the pleasure of the [municipal] council,[75]

and set their oath of office. Further to this articulation of municipal control over police appointments was the stipulation that municipalities who retained a portion of the trading licence revenues would "within the limits of such municipality, be under the direction of the Superintendent of police for the Province."[76] When the Victoria Council gained control over law enforcement with these provisions a number of disputes

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[71] S.B.C. 1873 [38 Vict.] c.5, s.5.

[72] ibid.

[73] ibid, s.42.

[74] ibid., s.43.

[75] S.B.C. 1873 [36 Vict.] c.5, s.45.

[76] The 1876 amendments broadened that jurisdiction with the clause: "The Police Force of all municipalities shall be under the direction of the Superintendent of Police of the Province." [S.B.C. 1876 [39 Vict.] c.1, s.12.]

with the province ensued.

The first issue was ownership of the police barracks and gaols. The Provincial Secretary suggested the city offer to pay rent for the gaols. The city complied offering a sum of five dollars per month to the province.[77] This seemingly simple transaction had a number of immediate consequences. The city gaol held more than persons charged with municipal infractions and the upkeep of prisoners charged with provincial and federal offences had to be negotiated. Until the jurisdiction was established in each case the city was charged with upkeep. The response was not to give rations to any prisoner until he or she had appeared before the magistrate.[78] This practice had been approved by the Provincial Superintendent of Police (Sullivan) but his authority was questioned.

The province had also requested that the City Council extend the "limits for Police duty for a distance of 6 miles outside the city limits."[79] The motion to affect this change brought dissent. While Councillor Hayward stated the "Council had promised to provide Police for the rural districts if the Police were given over to them" other members of the council disputed this claim. They maintained the agreement was "to allow its Police to go outside the city to make arrests" not to "supply Police for the country outside the city." When it had been implied that this police extension was a requisite step to allow the city to be able to extend its limits Councillor Taylor responded:

> if the Government had got itself into difficulty it was not the place of this Council to help it out. . . . Let the Council defend its rights. . . .[80]

The mayor cautioned that "if the Council was not careful it would be saddled with the

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[77] *Colonist*, 6 Mar 1873, p.3.

[78] Victoria Gaoler to Attorney General, 8 June 1874, Attorney General Papers, Correspondence Inward, G.R. 429, P.A.B.C.

[79] *Colonist*, 6 March 1873, p.3.

[80] ibid.

support of the Police outside the city." This opened the question as to whether the city was responsible to pay the salary of the constable in Esquimalt. Although a memorandum from the Attorney General showed that the city had agreed to this provision this aspect of the agreement was also disputed. The Council's position was not to provide a policeman at Esquimalt "unless the trades licenses of that town be first handed over to the city." The rejoinder was Victoria's responsibility to provide this aid to prevent desertions from the Royal Navy but Councillor Taylor "denounced the Governor and his satellites and asked, who and what are they that they should thus dictate to this Council?" Once again the rhetoric of the debate turned on the question of the city's democratic rights and this was the issue picked up in the *Colonist's* editorial response. The paper attacked the province's proposal as untenable both financially and constitutionally[81] and recommended that the Council "take a firm and dignified stand" and not "be led into a false position either by threats or promises."[82] Council members who had presented the issue in terms of striking a bargain with the Provincial Government were falling into a trap which might ultimately make the civic government responsible for the costs of policing the rest of the island. The stand to be taken, then, was that the city's responsibilities ended at the city's limits.

Another consequence of the transfer of law enforcement to the city was the debate over the distribution of fines, fees and forfeitures. These funds were used to offset the costs of the judicial system. While all court fees were to be remitted to the province the city felt justified in requesting that the province then pay the salary of the police magistrate.[83] The first change to this arrangement was legislated in 1877. The "Police Court Fines Act" provided that these funds "could be retained as part of the Municipal Revenues" for every Municipality "paying the annual salary of a Police

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[81] *Colonist*, 9 March 1873, p.2

[82] *Colonist*, 14 March 1873, p.3.

[83] Victoria City Council to Provincial Secretary, April 22, 1875, Provincial Secretary Papers, G.R. 526, P.A.B.C.

Magistrate and maintaining a Police Force."[84] In 1881 this distribution was clarified and extended in an amendment to the Municipal Act. It was then lawful for every municipality:

> . . .paying an annual salary of $500 or more to a police magistrate and maintaining a police force, to retain and use, as part of the municipal revenues, all police court fines, fees, and forfeitures incurred for breach of any of its by-laws or of the laws of the Province made in relation to matters coming within the classes of subjects over which the Provincial Legislature has exclusive legislative authority.[85]

By 1891 the salary proviso had been reduced to the sum of two hundred and fifty dollars.[86] The distribution of fees was contingent upon the municipality paying the salary of the magistrate, and this encouraged municipalities to hire new magistrates rather than rely on those who were already receiving salaries for their district court duties. The impact in Victoria during the city's establishment of control over policing was Pemberton's 1873 resignation. When the city council voted to elect a new police magistrate only one member "advised delay" maintaining it was a needless expense because Pemberton was paid by the Dominion government.[87] The rest of the council was apparently happy to proceed with the assurance that they "could not receive the fines and fees of Court unless the Council elected a Police Magistrate."[88] After some debate the salary for the new magistrate was set at $1,500 and Andrew Charles Elliot was elected. Elliot was legally trained,[89] and unlike one of the other candidates for the position was not a member of the provincial legislature.[90]

Elliot had previously been a Gold Commissioner in the mainland colony and had

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[84] S.B.C. 1877 [40 Vict.] c.9, s.1.

[85] S.B.C. 1881 [44 Vict.] c.16, s.91.

[86] S.B.C. 1891 [54 Vict.] c.26, s.225.

[87] *Colonist*, 13 Mar 1873.

[88] ibid.

[89] *Colonist*, 22 Mar 1873.

[90] *Colonist*, 21 Feb 1873, p.2.

also been the High Sheriff of British Columbia.[91] His appointment in Victoria marked a new style in judicial administration as J. H. Sullivan was hired to be the Superintendent of Police and Warden of the Victoria Gaol. Separating the magistracy from police duties was an innovation in the province and it had a direct effect on the relationship between the police magistrate and the city police. When Pemberton had held simultaneous appointments the flow of information was relatively informal. This did not allow for a smooth transition for his replacement. Elliot was confronted with complaints from Supreme Court Justice Gray about the depositions received at the Assize. The police magistrate responded, in part, by publically chastising the police for their negligence:

> It is altogether absurd to suppose that a magistrate's duty is to hunt up evidence in any case; and it is more than absurd to suppose that he must know by instinct what has taken place. It is the duty of the police to put before him all the evidence which they think can bear upon the case, and to ask the Magistrate to compel the attendance of such witnesses as they consider necessary, and it is then for him to determine whether their evidence is material or not.[92]

Under a professional police magistrate the duties of each level of the law enforcement network were to become more clearly delineated.

Elliot's tenure as Police Magistrate in Victoria was not long: he left that office and became the Premier in 1876. Under his government a number of significant changes were made to the way municipal police forces were to be administered in the province. The 1876 Municipal Act provided for the establishment of police boards. This measure repealed section 45 of the 1873 Act.

> Notwithstanding anything to the contrary contained in section 5 of the "Municipality Act Amendment Act, 1873" [the power of the city to create by-laws for governing the police] the members of the Police Force for all Municipalities shall be appointed by a Board to be composed of the Provincial Secretary, the Mayor or Warden of any municipality, and a Justice of the Peace resident in such municipality to be appointed by the Lieutenant-Governor, at such annual salaries as the said Board shall deem fit, payable in equal monthly payments, which salaries shall be a charge on the revenues of the respective municipalities, and the said Board shall have the power of revoking such appointments at pleasure. The Board shall from time to time make such regulations as

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[91] For more background on Elliot's career see Hatch, "Appendix A."

[92] *Colonist*, 21 March 1874, p.3

> they may deem expedient for the government of the Municipal Police Force, and for preventing neglect or abuse, and for rendering the Force efficient in the discharge of all its duties. . . .[93]

Additionally it was made possible for the Lieutenant-Governor in Council to appoint a Police Magistrate for any municipality, and to revoke such appointments.[94] These changes clearly were aimed at putting municipal police forces more directly under the control of the Provincial government. Even more dramatic were the changes that directly affected Victoria.

In 1876 the police magistrate for Victoria was made synonymous with the office of Superintendent of Police for the Province of British Columbia. This required the following legislative provisions:

> [1] It shall be lawful for the Lieutenant-Governor in Council, to appoint a fit and proper person to be a Police Magistrate for the City of Victoria, at such annual salary as such Lieutenant-Governor in Council shall direct, payable by equal monthly payments, which shall be a charge on the revenues of the Municipal Council of Victoria, and such Magistrate shall have jurisdiction throughout the Province, and the Lieutenant-Governor in Council shall have the power of revoking such appointments.[95]
>
> [2] It shall be the duty of the Municipal Council of the City of Victoria to provide a suitable barrack room for the police, and a proper uniform and arms and accouterments for the same, to be approved of by the Lieutenant-Governor in Council.[96]
>
> [3] It shall be the duty of the Municipal Council of the City of Victoria to provide a Clerk to the Police Court, a suitable court house, and other proper accommodation required for the use of the Police Magistrate, to be approved of by the Lieutenant-Governor in Council.[97]

While it can safely be assumed that this arrangement was initially amenable to both the city and province it did not remain so.

The city's ability to provide an adequate lock-up was brought into question by an 1879 report on the Victoria Prison.[98] Judge Begbie had been prompted by a number of

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[93] S.B.C. 1876 [39 Vict.] c.1 s.11.

[94] ibid., c.10.

[95] S.B.C. 1876 [39 Vict.] c.1, s.10.

[96] ibid., s.14.

[97] ibid., s.13.

[98] Begbie to Attorney General of British Columbia, 7 June 1879, Correspondence Inward, G.R. 429, P.A.B.C.

incidents at the jail to investigate its conditions. The 1876 Municipal Act placed the responsibility for providing a jail in the hands of the corporation but it appears that the province retained ownership of the structure. Thus both the city and the Dominion paid for prisoners under charge in their jurisdictions to the province. In Begbie's view this arrangement was wholly unacceptable:

> the state of the jail is such, as that neither serious sentences can be safely carried into execution, nor light or reformatory sentences be inflicted at all.[99]

There were a total of sixteen cells in the Victoria jail, half of them measured 12 feet by 6 feet, the other eight were "only about 6 1/2 ft square." In addition to these sixteen cells, one of which was a "dark or punishment cell," the debtors apartment was occasionally pressed into use.[100]

As Begbie made no specific mention of the condition of the debtor's apartment it must be assumed that its condition had improved over the report in the 1864 *Colonist*.[101] In drawing a contrast between the "cleanliness and comfort of the apartments provided for the criminals in. . .[the] prison, and the filth, discomfort and annoyance imposed upon the debtor," the report was quite vivid. One room, of the debtor apartment, was used by three members of the chain-gang for "plying the trade of Cobbler," with the attendant noise and odors:

> The floor of this room was covered with the accumulated filth of weeks, perhaps months, the walls with dust and tobacco juice; in one corner were some thirty pairs of old shoes, fresh from the long-unwashed feet of members of the chain-gang. . .

Another room used for accommodating debtors was partitioned and used for storage:

> for prison blankets, Indian pledges of security, and such as old blankets, old clothing, all with their usual accompaniments, both animate and inanimate.[102]

What ever improvements may have been rendered in the interceding fifteen years the

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[99] ibid.

[100] ibid.

[101] "What I saw in Victoria Prison," *Colonist*, 13 July 1864.

[102] ibid.

Victoria gaol was clearly not equipped for an ever increasing prison population.

Begbie stated: "the usual number of prisoners in custody at night. . .[was] about 64."[103] Police court cases, either under sentence, or remanded on "charge before the magistrate for non-indictable offences," would account for forty-one of that number. Provincial prisoners, who were awaiting trial on indictable offences or who were "under sentence originally under 2 years," would account for fifteen. The other thirteen were "under sentences originally exceeding 2 yrs hard labour, and therefore properly subject to the Penitentiary, or Dominion." It was this final category of prisoner who caused the greatest concern. First, the statutory punishment for confinement in penitentiaries, of which "it is an essential feature, that each prisoner is separately confined at night" was not upheld in the Victoria lock-up. Second, these penitentiary prisoners,

> generally with more experience in crime, and with greater incitement to escape, —are not in safe custody in the Victoria prison. And the crowded state of the prison—even if the 13 penitentiary prisoners were removed, there wod.[sic] yet remain 57 prisoners for 16 cells, (of wch [sic] 8 , including the dark cell, are only fit for 1 tenant each) show that no mere money arrangement between the Province [and] the City will suffice for proper punishment, or custody.[104]

Begbie suggested that the city be compelled to build an additional twenty cells, and that the Dominion prisoners be removed. He also suggested another armed guard for the chain-gang and another turnkey be added to the prison staff.[105] The city of course was reluctant to take on the additional expenses without substantial assistance from the province.

The city did not remain happy with the arrangement made in the 1876 Act which was carried forward through verbal agreements until 1880.[106] The primary concern was the cost for the upkeep of the police and prison. While the joint payment of the

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[103] Begbie to Attorney General, 7 June 1879.

[104] ibid.

[105] ibid.

[106] Victoria City Council to Provincial Secretary, 3 December 1880, G.R. 526, P.A.B.C.

Police Superintendent was designed as a measure of economy, this arrangement did not produce a satisfactory result. An 1880 report to the Council compared the three years of civic control (1874-1876) to three years of joint control (1877-1879) found that the amount paid for "salaries, clothing of police, and keep of prisoners" was considerably more in the latter period. They cited a provincial report which stated "the cost of prisoners in gaols in 1878 was 23 2/3 cents per man per day, and in 1879 was only 11 1/2 cents per man per day," and were outraged that the "average cost of prisoners to the city amounts to nearly 60 cents per man per day."[107] Clearly the implication was the city subsidized costs for provincial prisoners under the combined system. This fiscal argument was supported by reference to the city's statutory rights to control its own police force. The provincial involvement with the city's police was seen as less than desirable:

> The appointment of the Superintendent being in the hands of the Government gives to the position more of a political character than we [the committee] think it should possess, and also makes it pretty certain that provincial duty will be attended to even if the interests of the city have been neglected. The ByLaws passed by the Council can not be carried into effect unless there is a permanent head of the police force who is placed above and beyond all political parties.[108]

The insinuation that provincial appointees were partisan is an interesting departure from other centres in Canada.

The rhetoric of democracy and of British traditions were basic to the arguments for civic control of the police and police magistrate. It must be understood that democracy, as defined in terms of the franchise in both the city and province was much more limited than the debates implied. Only ratepayers, and for the most part that translated as property owners, were entitled to vote in civic elections.[109] Provincial franchise required the resident voter to be a male, British subject, of the "full age of 21

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[107] ibid.

[108] ibid.

[109] S.B.C. 1872 [35 Vict.] c.35, s.13 & 14.

years."[110] The Qualification and Registration of Voters Amendment Act of 1872 also contained the proviso that:

> Nothing in this Act shall be construed to extend to or include or apply to Chinese or Indians.[111]

With these exclusions, notions of "democratic principles" appear to have the force of legitimating a structured inequality.

In the Marquis study, hiring Stipendiary Magistrates was thought to move the urban justice systems out of the fray of municipal politics. In Victoria suspicions were laid at the steps of the provincial legislature. However, that government returned control over the municipal police to the city in 1881. This was accomplished with the proviso that:

> The police of all municipalities shall within the limits of such municipalities be under the direction of the Superintendent of Police of the Province.[112]

All police in the province, whether hired by a municipal government or serving directly in the provincial police were answerable to provincial Superintendent. Whenever there was deemed to be a civil emergency on the Island members of the Victoria force were called upon for assistance. Thus even after the city had control over police the lines of the enforcement hierarchy were not clear cut. The situation within the hierarchy of the courts was equally ambiguous.

The most basic level of the courts were the justices of the peace, acting alone or in quarter sessions. Their authority in the colony, and later in the province was prescribed through British traditions until modified by statutes. In 1850, the first justice of the peace was appointed in the colony: John Sebastian Helmcken, a doctor employed by the Hudson's Bay Company at Fort Rupert. His appointment originated during labour unrest among the coal miners working for the company. The Governor

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[110] S.B.C. 1872 [35 Vict.] c.37, s.12.

[111] ibid., s.13.

[112] S.B.C. 1881 [44 Vict.] c.16, s.7.

feared that this lack of solidarity and discipline might allow "the Indian population, being numerous, savage and treacherous," to do irreparable harm to the community.[113] Douglas was responsible for the next four commissions. In 1853 he found it necessary to dispense with "the qualifications as to estate required by the Act of Parliament" and allow the Magistrates to "make charge for their services."[114] With these provisions he was, in the absence of landed gentry, able to appoint the managers of the farms in the Victoria area.[115] Since the farms, for the most part, were owned by the Puget Sound Agricultural Company, a subsidiary of the Hudson's Bay Company the four men selected were one step removed from the Island's "lord's and proprietors." They were, however, directly responsible for supervising a substantial labour force, and to that end the commissions were undoubtedly very expedient. This link between judicial appointees and labour control appears to have continued in British Columbia throughout the late-nineteenth-century.[116] Until the 1873 Justice of the Peace Jurisdiction Act,[117] J.P.'s were limited in some cases which required two magistrates acting together to effect a decision. The chief difference between Justices of the Peace and Stipendiary Magistrates, up until that act was that Stipendiary Magistrates had the authority of two Justices of the Peace.

At the next level of the court hierarchy then were the Stipendiary Magistrates. The term itself was ambiguous, alternately referring to County Court Judges or to police magistrates. This issue was highlighted by the attempts to remove lay judges from the County Courts. The first requests for professional replacements were made to

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[113] Blanshard to Helmcken, 22 June 1850 cit. Thackray, 8.

[114] Douglas to Newcastle, 11 April 1853, cit. Farr, 4.

[115] The appointees were: Thomas James Skinner, Edward Edwards Langford, Kenneth McKenzie and Thomas Blenkhorn. See Farr, 3-4.

[116] See Chapter Two.

[117] 1873 S.B.C. [36 Vict.] c.2, s.1, allowed one justice of the peace to act in the place of two.

Ottawa in November 1872.[118] The call was made publicly the following month. Noting that the "importance of having. . . County Courts administered by men learned in law was felt long prior to Confederation," the *Colonist* editor refrained from citing "decisions which would both astonish and amuse."[119] His main argument was, however, that "a Court with a jurisdiction embracing the great bulk of the litigation in the Province" required individuals with legal training and experience.[120] The change to a professional judiciary was to take more than a decade.

After confederation the legislature carried forward the duties of the Stipendiary Magistrates. In an 1873 report, it was made clear that these magistrates would be "entitled and required to discharge all the functions discharged by them prior to the Union."[121] These duties included, in addition to acting as county court judges, the offices of "Indian Agents, Assistant Commissioners of Lands and Works, Collectors of Revenue and general government agents in the different Departments of the Public Service."[122] These multiple duties caused disparities between the salaries of those who the federal government paid "in the single capacity of County Court Judges."[123] The Attorney-General observed, while the government had expressed the wish that:

> these gentlemen should be superceded by others learned in the law, it will obviously be for the interest of the country that no change should take place, in view of the more general and multiform services rendered without involving any charge upon the local revenue.[124]

There were some difficulties with these multi-duty positions. The combination of stipendiary magistrate and county court judges was a particular problem for appeals.

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[118] Hamar Foster, "The Struggle for the Supreme Court: Law and Politics in British Columbia, 1871-1885," *Law and Justice in a New Land*, 171.

[119] *Colonist*, 12 Dec 1872, 2.

[120] ibid.

[121] *Gazzette*, cit. *British Colonist*, 3 Aug 1873, p.3.

[122] ibid.

[123] ibid.

[124] ibid.

However the 1877 act continued these provisions for the county courts in the districts of Vancouver Island, New Westminster, Lillooet, Cariboo, Kooteney and Cassiar. In the latter two districts, exceptions to the rule that supreme court judges could not sit in the county courts were made.[125] The jurisdiction of the county courts were extended by the 1877 act, increasing the amounts recoverable from five hundred dollars [County Court Ordinance 1867] to one thousand dollars.[126] Lay-judges remained on the bench unless they were provided with alternate employment or suitable annual allowances by the Dominion government. Unless those provisions were met, the incumbent of the county court bench "shall not be removed. . . for the purpose of appointing professional men."[127] This act also clarified the jurisdiction of the county courts, with particular reference to probate, debtors, and the federal speedy trials act. In addition the office of Stipendiary Magistrate was clarified in another 1877 act:

> Every Stipendiary Magistrate. . . shall have. . . full power, authority, and jurisdiction to do alone, within the limits of his commission. . . all and whatsoever is, or may be, authorized to be done by any one or more Justice or Justices of the Peace. . . . every such magistrate shall. . . . have and take rank and precedence before all other Justices of the Peace, whatsoever, except Justice of Assize, or Judges of any Supreme Court. . . .[128]

This section seemingly suggests that Stipendiary Magistrates had the same power and authority as County Court judges. They were, however, were appointed by the Lieutenant-Governor in Council, not the Dominion. As provincial officials in the court system they would not have the authority of the higher or Dominion courts. More definite was the "Justices of the Peace Appeal Act 1877" which provided that appeals on convictions or orders by "Justice or Justices of the Peace, or by a Police or Stipendiary Magistrate" could be made to the "County Court held nearest to where the cause of

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[125] S.B.C. 1877 [40 Vict.] c.22, s.9.

[126] ibid., s.20.

[127] ibid., s.27; The definition of "professional" was not provided. These qualifications were not spelled out until the 1888 amendments which stated: county court judges "shall be a barrister of solicitor having been in actual practice for seven years immediately proceeding his appointment" [S.B.C. 1888 [51 Vict.] c.25 s.12].

[128] S.B.C. 1877 [40 Vict.] c.113, s.5.

the information or complaint arose. . ."[129] In theory, then there were three distinct levels of court in British Columbia. The exceptions were the instances when the Supreme Court Justices also sat in County Court cases and when a Stipendiary Magistrate held simultaneous appointments to the Police and County Court.

In a letter to G.A. Walkem, the Attorney General, A. F. Pemberton responded to the complaints of the grand jury having to deal with "trivial" cases.[130] He acknowledged that some of the cases "which ought to have been disposed of in a summary manner" had been sent to the Supreme Court. However he claimed this situation was "unavoidable under the Canadian Criminal Law, which almost wholly deprives the magistrates of summary jurisdiction, unless by consent," of the accused. He also elaborated on the difficulties of not having Courts of Quarter Sessions, alluding to fears that the native population would take their own retributions in cases left untried. Pemberton wanted the summary jurisdiction of magistrates extended to cases of common and aggravated assault, and to cases of petty larceny. He cited the transitory nature of Victoria's population as a reason for the former amendment. The reasoning for the latter was that:

> there are so many Indians, and Chinese roaming about day and night an expeditious means of punishment is necessary.[131]

He also recommended that the regulations for appeals for convictions by Justices of the Peace and Stipendiary Magistrates be amended. While normally the appeal would be to the County Court the instances where the magistrates also sat in the County Court created the need for those appeals to be handled in the Supreme Court.[132] Pemberton's reference to the summary jurisdiction of magistrates appears to be somewhat out of

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[129] S.B.C. 1877 [40 Vict.] c.23, s.1.

[130] A. F. Pemberton to G. A. Walkem, Attorney General, 22 Jan 1880, County Court Letter Book, G.R. 583, P.A.B.C.

[131] ibid.

[132] ibid.

place with the Dominion and Imperial statutes. However, the complaints by the grand jury were cited by the Council during the meeting which retired Pemberton from the police court.[133] His retirement coincided with a number of other changes in the judicial administration which would mark the rise of provincial authority over the courts.[134]

What is the significance of this redistribution of authority? A narrow view might suggest that these changes were confined to the ruling elite and of minor consequence to the interactions between legal institutions and social formations in Victoria. Set in the context of the regularization of urban administration, and the coincidental transformations of the ideology of law, these changes provide insights to state power. At the localized level the pivotal elements of the legal system which defined the forms and functions of law at the level of enforcement in the city of Victoria were the establishment of civic authority over policing, and the operation of the police magistrate's court.

This is not simply the story of the transformation of the frontier. While it is true that during the gold rush and earlier, justice may have been delivered with less than formal rigor, it must be remembered that Victoria was the seat of the Colonial Government, and as such retained an attachment to British forms and procedures. Demands for more regularized law enforcement practices often accompanied demands for more representative government. Frequently such demands made reference to the notions of upholding British traditions. Municipal control over the police and police magistrate's court was a prominent aspect of these assertions. As the impact of increased population and the transformation of the economy was felt in the urban administration, arguments for the extension of democratic rights, including control over policing, were more virulent. In order for the judiciary to maintain its presumed

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[133] *Colonist*, "Special Meeting of the Municipal Council," 13 December 1884.

[134] In particular the retirement of lay-judges and the outcome of the Thrasher case: See Foster, "The Struggle for the Supreme Court."

autonomy, and hence its legitimacy, the legal administration had to be removed from the hands of the more prominent ruling elite—the family-company-compact.[135] Depicted in broad terms, the transformation of Victoria's police from quasi-military adjuncts of the colonial administration into a professionalized element of the urban bureaucracy could be shown as a progressive rationalization of urban bureaucratic functions. However, such an explanation would not illuminate the tensions and ambiguities engendered in the balance between coercion and ideology, and between discretion and legal formalism. In order to address those issues sources which reveal the operation of law at the level of enforcement must be examined.

[135] This term identified and defined in Ormsby, 119.

CHAPTER TWO

The Context of Class Justice

> I will do equal right to the poor and to the rich, after my cunning wit, and power and after the laws and customs of the Realm and the Statues thereof made.
> [Oath of Justices of the Peace][1]

Can there be "equal right" in a judicial system whose purpose is to reinforce class divisions? The answer is an unequivocal no, but what is the proof that the justice system functioned to maintain radical divisions of property in late-nineteenth-century Victoria? This question is not rhetorical for if there is no inequity surely there would be no need for a legitimating ideology.[2] Without exploring the relationship of class and law identifying such an ideology would be a strictly tautological exercise.

How is class defined? The answer to that question can and has filled volumes of scholarly studies. The classical interpretation is that class is defined by relationships to the means of production. A more expansive response is this definition by E. P. Thompson:

> class happens when some men, as a result of common experiences (inherited or shared), feel and articulate the identity of their interests as between themselves, and as against other men whose interests are different from (and usually opposed to) theirs.[3]

It is at once a cultural experience and an historical process, and best understood in terms of its dynamics over time. This definition, however, gives rise to methodological difficulties when relating class to the equally dynamic processes of legal authority.

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[1] S.B.C. 1874 [37 Vict.], c. 7, form a.

[2] In this context the term "legitimating ideology" describes a system of beliefs that maintain consensus despite the contradictions of state repression. See Introduction.

[3] E.P. Thompson, *The Making of the English Working Class* (Middlesex, England: Penguin Books, 1968),

The historian can only aspire to freeze moments at the point of intersection and provide snapshots indicative of how each process was experienced. The usual approach in labour history to these points of intersection is episodic: the historical record used to document how interests arising from productive relations create dramatic confrontations. However, if class is something that is lived day to day, class interests should be evident in more routine events. The events selected for this exploration of class and justice are: the appointments of justices of the peace in the province, and the convictions to the Victoria jail during 1881.[4]

During the 1880's two listings of the Justices of the Peace in the Province were published. The first, in the 1884-5, *William's Directory* listed: name, jurisdiction, and address. The second, in the 1889 *B.C. Sessional Papers*, provided: name, jurisdiction, date of appointment, and residence. The sample was created by combining the 1884-5 list of 210 appointees with six from the 1889 list who had been appointed prior to 1885 but had not been included in the directory. Occupational data for the justices of the peace was taken from the 1884-5 Directory and from British Columbia voters lists. Additional appointment information was taken from the *B.C. Gazzette*.

A brief comparison of the two lists shows a marked persistence over time in appointments. Only thirty-eight of the justices of the peace listed in the Directory did not appear in the Sessional listing. This strongly suggests that the men chosen to be justices of the peace were selected from those considered to be permanent residents of the province. The exceptions to this rule were four appointees whose 1884 addresses were not within the province.[5] This persistence over time is also revealed through the dates of appointments found in the 1889 listing. The yearly distribution of appoint-

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p.8.

[4] Routine events of course may have episodic character as well. The analysis chosen, however, confines itself to the repetetive rather than confrontational aspects of these actions.

[5] The four were: Grohman W. A. Baillie of Sand Point, Idaho Terr.; W. Macauley Herchermer of Calgary, N.W.T; Acheson Gosford Irvine of Regina, N.W.T.; and Samuel D. Steele.

ments prior to 1885 shows two distinct peaks: in 1883 with 44, and in 1873 with 31. The average number of appointments per year between 1885 and 1889 was 21. In 1889 two-thirds of the men holding commissions of justice of the peace had more than five years experience [see Table 1]. Assuming that these appointments were more than honorific, and that level of skill could be equated to experience, it is likely that although these positions were voluntary they were not strictly amateur.

There were three types of jurisdictions for the justices of the peace: municipal, district and provincial. There were six Justices of the Peace with municipal jurisdiction in 1884: one in each of the municipalities of Maple Ridge and Surrey, and four serving in the city and district of New Westminster. District jurisdictions corresponded to one or more of the province's electoral districts: Of the sample 101 (or 46.8%) were assigned to these. The remaining 107 (49.5%) held province wide jurisdiction. The number of justices of the peace in an electoral district did not necessarily correspond to the size or population of that district.[6] Nor did a person commissioned to a given district necessarily reside there. For example, 23.6% of the justices of the peace in the Province resided in Victoria.[7] That figure includes 44 or 41.1% of the provincially commissioned Justices of the Peace. However, it is likely the number of magistrates residing in Victoria was actually greater than the lists indicated because those justices of the peace who were also members of the provincial legislature would live in the city. A singular example of under reporting for Victoria residence is the case of Robert Dunsmuir whose 1885 address was given as Nanaimo and was listed in 1889 as Victoria. Even with this under-reporting Victoria is over represented in the sample. This is indicative of the city's importance as the seat of government and as a rising industrial centre.

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[6] See Tables 2 and 3.

[7] In 1881 the city constituted 13.5% of the provincial population. Canada, Census 1881.

Since the appointments of justices of the peace would follow British legal traditions it is expected that these men would be drawn from the more prominent ruling elite. The only indication that there was some democratization in appointments was a critical editorial in the *Colonist*. The substitution of the salaried Colonial system to fee based public offices would require "the greatest care" to be taken "in the selection of suitable persons to discharge the various duties."[8] The success of such a system would be a "conservative staff of Justices," who might not be found through among the petitioners for the position.

> It is not always the man who pushes himself forward or gets his personal friends to push him forward, that is the best man in the neighborhood .... He who would, from personal ambition or from private revenge, thrust himself into the Commission, is a dangerous man, in whose hands magisterial powers would ever be liable to abuse.[9]

This editorial was directed at one petition in particular but there is no clear indication of the personalities involved. Despite its implication, the magistrates in the province, occasioned few complaints.

For many of the magistrates the commission was just one aspect of government service. Ten of the sample had also served as members of the British Columbia Police.[10] The additional governmental positions of justices of the peace can be divided into two categories: elected and appointed. They range from coroners and road inspectors to the Premier and Lieutenant-Governor of the Province. Other than those associated with the Provincial Police, seven of the justices of the peace were also stipendiary mag-

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[8] *Colonist*, 18 Feb 1873, p.2

[9] ibid.

[10] The ten were: Henry Maynard Ball, Gold Commissioner (1871); Hugh Boyd, Chief Constable at Lytton (1869, 1870); Andrew Charles Elliot, Constable at Yale (1858), Police Magistrate Victoria (1873), Premier (1876-1878); Thomas Elwyn, Chief Constable at Yale (1858); John C. Haynes, Constable and Revenue Clerk at Yale (1859), Chief Constable at Yale (1860), Magistrate and County Court Judge Osoyoos and Kootenay Districts (1865,1866); William Henry Ladner, first constable appointed on Mainland (1858); Peter O'Reilly, High Sheriff and County Court Judge (1861), Magistrate and Gold Commissioner Caribou (1862-1865), Kootenay-Columbia (1867-1881); Francis Page, Special Constable Ominica (1871); Warner R. Spalding, Stipendiary Magistrate New Westminster (1859), Post Master General of B.C. (1864), Assistant Gold Commissioner, Caribou (1866), Magistrate, Nanaimo (1867); Arthur W. Vowell, Chief Constable Columbia (1866), Gold Commissioner (1876-1883), Superintendent of Indian Affairs for B.C. (1889). For additional information see: F.J. Hatch, "The British Columbia Police, 1858-1871" (Victoria: M.A. Thesis, 1955).

istrates or gold commissioners, two were Indian Agents, eight served in connection to road and land taxes and two were returning officers. The others in the appointee category were: the Lieutenant-Governor, the Inspector of Post Offices, the Superintendent of Indian Affairs, a road inspector, a drainage commissioner, and two coroners. When combined with the number who had also served with the B.C. Police, the total with additional government appointments was thirty-six. If these men could be considered part of a rising bureaucracy, the older colonial elite was equally evident in the sample. This included: John S. Helmcken, Joseph Despard Pemberton, William Fraser Tolmie, and Roderick Finlayson. In addition two of the sample were Senators: William John Macdonald, and Hugh Nelson.[11] Eleven of the justices of the peace from the elected category of government service, were members of the provincial legislature during the 1880's. This included the Premier and the Attorney General of the province. Three of the provincial members also had connections with the city of Victoria, being past mayors. City Councils were well represented in the sample, two other members of Victoria's council appeared on the 1885 list as well as the Mayor Robert P. Rithet. Nanaimo's long serving mayor, Mark Bates and Robert Dickson from New Westminster were also commissioned. These last three were as expected since the Mayor of any municipality in the province was *ex officio*, Justice of the Peace.

The connection between the appointees and government was significant but in itself is not a definitive picture of their class role. While it has its own limitations occupational data can be used to view socio-economic divisions. To that end the occupations of the sample group were collected from the voter's list for the year closest to appointment date and from the Directory for 1885. The advantage of the voter's list was that electoral districts provided an additional check for the nominal linkage. Of the 216 justices of the peace, 18 (8.3%), could not be reliably linked to the occupational sources, an additional 9, while located in the directory and voter's list did not

[11] For further background on these men see Ormsby.

state occupations. Only three offered their primary occupation as Justice of the Peace.

Since the sample was selected from province-wide data, it was necessary to establish some of the dimensions of the provincial economy. One indicator was the census classifications of occupations by sector.[12] There were six "classes" of occupations used in the 1881 recapitulation of occupations in the province: agricultural, commercial, domestic, industrial, professional, and not classified. These classifications were not a direct indicator of socio-economic status. The agricultural class included farmers as well as veterinary surgeons, the commercial class ranged from accountants, to mariners and merchants, the domestic class included servants and innkeepers, the industrial class had blacksmiths, factory operatives, manufacturers and miners, the professional class included court officers, government employees, policemen and teachers. The widest range was encompassed in the not classified, with labourers and gentlemen of private means falling into the same category. While the range of occupations corresponding to each of these classifications limits their applications, they are useful because they roughly correspond to the classifications in the national Criminal Statistics which classed occupations as: agricultural, commercial, domestic, industrial, professional, labourer.[13]

Table 5 shows the census classes of occupations for each census district in 1881. The Victoria district included Esquimalt and Metchosin, and the Vancouver district was primarily devoted to the rest of Vancouver Island. Both numerically, and in terms of territory, New Westminster was the largest census district in the province. In order of size the classifications for the province were: not classified (31.2%), industrial (21.8%), agricultural (14.5%), commercial (7.4%), domestic (5.6%), and professional (2.8%). Victoria shows a marked deviation from this pattern with over forty

[12] For list of census classification see Appendix 1.

[13] See Table 4. This table was derived from: Canada, Parliament, "Report of the Minister of Agriculture," *Sessional Papers* 1882 and 1892; reports cited in tables are listed in Appendix 2, hereafter all such reports are cited as Canada, *Criminal Statistics*.

per cent of the province's total in each of the commercial, domestic and professional classes. As was expected the industrial class was the largest and the agricultural class the smallest among Victoria classifications. The disproportionately high numbers of Victoria's commercial class can be partially explained by the presence of mariners in that category.

The occupations of the justices of the peace were reclassified following the census classes (Table 6). The most frequent occupation in the sample group was farmer (55) hence the largest occupational class was agricultural (28.7%). This distribution underscores the importance of property ownership in the appointments. The next highest class was commercial (19.4%), including both merchants (15) and traders (8). The category that was most dramatically under-represented was domestic with only two innkeepers appointed.

The distribution of occupations for justices of the peace provides a sharp contrast to the reported occupations for persons charged in British Columbia in 1881.[14] Even with the remarkably high number of missing cases, it is clear that professional and agricultural classes were under-represented in those charged. Labourer was the most frequent occupational class for chargee, followed by commercial. If as the census reporting suggests, mariners were considered commercial this would account for its frequency. With the high number of missing cases in the National Statistics, another source for persons charged was needed for comparison.

The 1881 Prison Report for Victoria was used because it contained a nominal listing of convicts sentenced to the Victoria Gaol.[15] Data from all three Statements—Prisoners remaining in Victoria Gaol, Prisoners who have died in Victoria Gaol, and Prisoners liberated from Victoria Gaol—was coded for manipulation through SPSSX.

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[14] See Table 4.

[15] British Columbia, Legislative Assembly, "Third Annual Report of the Superintendent of Police Respecting the Prisons of British Columbia, for the year ending 31st October 1881," *B.C. Sessional Papers*, 1882 [45 Vict.]: 459-481; hereafter such reports are cited as B.C. Prison Report.

The listing provided: name, age, country, calling, place of residence, crime and sentence, for each case. A racial variable was created by recording whether or not the word "Indian" appeared after the name. Additional variables were created for identification purposes, and the sentence information split into type of sentence and term (length of sentence in days). The charges were coded following the classifications of offences found in the published criminal statistics. A three digit number was assigned, the first of which corresponding to the class of offence: Class 1, Offences against the Person, Class 2, Offences against Property with Violence, Class 3, Offences against Property without Violence, Class 4, Malicious Offences against Property, Class 5, Forgery and Offences against the currency, Class 6, Other Offences, and a final category for offences not found in the national report. In this last category the offences were coded as found and then when appropriate recoded into the national classifications.[16] In all the other variables codes were assigned for each value, as they appeared, and later grouped into broader categories.

On October 31, 1881 there were thirty-four prisoners remaining in the Victoria Gaol, two deaths had occurred among the prisoners during 1881, and two hundred and forty-two had been released. Thus the total sample was two hundred and seventy-eight cases. Because the information was collated only for the Victoria jail there are some significant omissions from the total number of charges in Victoria. Charges for which there was only a fine did not appear, and only one indictable offence with a penitentiary term was found in the sample. In one case the name was the only variable listed (Charles Olson), and three others cases provided only names and sentence. In the later cases all were Indians, two were confined for "Safekeeping" and one as a "Witness," sentences which had indefinite terms. All of the cases with substantial gaps in their information were on the list of persons remaining in the gaol.

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[16] See Appendix 3.

A vertical occupational classification system was selected to further explore these divisions among the convicts and general population. This system, adapted from the five-cities scheme used in *The People of Hamilton, Canada West*,[17] divides occupations into five socio-economic ranks, rank 1 being the highest. A sixth rank included those occupations which could not be classified in the scheme. That rank is divided between those not classified from the Hamilton study and occupations which did not have classifications from the sample. The scheme was employed with the occupations in the census return for 1881 (see Appendix 4).[18] This application provided an additional indication of the prominence of Victoria in the province. The provincial return contained 377 members of the highest occupational rank, 154 of them (or 40.8%) lived in the city. The second ranked occupations were also over represented in the city with twenty per cent of the province's total residing in Victoria. While the fourth rank was the largest single group in the provincial total, the third rank was the largest in the city. Two types of employment: fishing (with 1,850) and mining (with 2,792) account for seventy per cent of the provincial total of the fourth ranked occupations. These occupations were thirty-three per cent of the city's fourth ranked occupation while mariners were an additional twenty-six per cent of that group. There was a more even distribution among the third ranked occupations both in British Columbia and in Victoria. Of the third ranked occupations, carpenters and joiners were the largest single group with the city representing almost a quarter of the province's total. The lowest ranked occupations, while twenty-two per cent of the province's total, were only twelve per cent of the city's total. The overview of the city provided in the census of 1881 shows that the three highest occupational groups were over-represented in the city, while the lowest was dramatically under-represented. In contrast, the most

[17] Michael B. Katz, "Appendix Two," *The People of Hamilton, Canada West: Family and Class in a Mid-Nineteenth Century City* (Cambridge: Harvard University Press, 1975).

[18] There is some disparity in the population returns between the aggregate numbers reported for class of occupation and the list of occupations upon which it was based. The difference was however less than two per cent of the total.

frequently reported occupation for convicts in 1881 was labourer (169 or 60.8%), the next most frequent was seaman (48 or 17.3%). The other occupations reported totaled 61 (or 21.9%): see Table 7.

The same ranking system was applied to the occupations reported by justices of the peace. According to the five cities scheme justices of the peace would have all fallen into the second rank of occupations. However, from the information recorded in the list of voters it is clear being a Justice of the Peace was not the primary occupation of many of the magistrates appointed prior to 1885. The highest two occupational rankings did however, account for over three quarters of the justice of the peace in the province [Table 6]. The apparent anomalies to the rule that the justices of the peace would come from the highest two rankings and the convicts from the lowest three can be explained through individual examples. For the two convicts who were in the highest ranking the explanation is direct: one merchant was imprisoned for debt, the other who was Chinese was imprisoned for gambling. For the justices of the peace, while miners account for almost all of the fourth ranked occupations, it is quite clear that being a miner, particularly in the Cariboo was not a direct indication of property or economic rank. Similarly, occupations reported by the justices of the peace, did not indicate whether they were proprietors or employees. Therefore a number of the justices of the peace in the sample erroneously have lower occupational rankings. One example, a ship chandler, while ranked by occupation in the third division, was reported in Kerr's *Biographical Dictionary of Well-Known British Columbians* as owning the "largest ship chandlery business in Victoria" as well as having interests in sealing vessels.[19] One carpenter (Walter Josiah) was reported as having interests in the B.C. Tanning Company, as well as several coal mines on Vancouver and Texada islands,[20]

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[19] E. B. Marivin also sat on Victoria's city council from 1876 to 1878. J. B. Kerr, *Biographical Dictionary of Well-Known British Columbians* (Vancouver: Kerr and Begg, 1890).

[20] ibid.

and a printer (J. E. McMillan) owned his business, had been the editor of the *Standard*, and the mayor of Victoria in 1874.

Does the basic observation that justices of the peace were drawn from the higher occupational ranks and the convicts from the lower demonstrate a class interest in law? Or is this dichotomy little more that what one might reasonably expect in the comparison of such samples? The relationship of most justices of the peace to the means of production is not easily dismissed. It seems plausible that those managers or proprietors of coal mines, sawmills and canneries, particularly in the isolated districts on the north coast, through having legal authority would have an additional means of control in the community and the work place. Whether or not this potential use of law to support class divisions was realized through direct coercion, the identification of the ruling elite with the administration of law undoubtedly had a force of its own.

The assertion that laws served to protect the "non-elites" is undercut by the overwhelming distance between those who would make law and those who were its victims. Moreover, such an assertion rests on the notion that the "real" incidence of crime was entirely confined to the least powerful socio-economic groups. This equates "deviance" to economic power in a way which suggests the active persistence of the interests of one group being expressed in opposition to another.

Is this hypothesis that law supports class divisions supported by the types of charges found in the convict data for 1881? This question obviously depends on how each offence could be classified. If the divisions presented in the National Criminal Statistics are followed the first five classes of offences account for less than thirty per cent of all offences from the sample [see Table 9]. Even if serious offences are considered separately (in a natural rather than positivist view of justice) other charges definitely suggest class interests were expressed in law in late-nineteenth century Victoria. The "other" category of offences, both in the National Criminal Statistics, and in

the data from the 1881 prison report, are the greatest bulk of all charges. Two charge types in particular are related to employment (or the lack thereof): Naval Discipline and Vagrancy. In the data from the prison report these two offences combined account for roughly twenty percent of the charges in the "other" category. While such results are suggestive further analysis requires additional information as to which section of the vagrancy act was applied in these cases, and the possibility of differential sentencing.

TABLE 1
Years Served by Justices of the Peace
in British Columbia, 1889

Year Appointed	Years as JP	Number	% of JPs in 1889	Cumulative %
1864-1869	20-25	8	2.82	2.82
1870-1874	15-19	48	16.96	19.79
1875-1879	10-14	48	16.96	36.75
1880-1884	5-9	76	26.86	63.60
1885-1888	1-4	101	35.69	99.29
1889	<1	2	.71	100.00
Totals		283	100.00	100.00

TABLE 2
Jurisdictions of Justices of the Peace,
British Columbia, 1885

Jurisdiction	Place	Number	
Municipal	Surrey	1	
	New Westminster*	4	
	Maple Ridge	1	
	Total Municipal	6	2.7%
Electoral District *Vancouver Island-Gulf Islands*	Victoria	5	
	Nanaimo	10	
	Nanaimo/Alberni	1	
	Esquimalt	1	
	Cowichan	12	
	Comox	4	
	Total Island	33	15.3%
Electoral District *Mainland*	New Westminster	16	
	Yale	20	
	Yale/New Westminster	1	
	Lilloet	2	
	Cariboo/Lilloet	5	
	Cariboo	7	
	Kootenay	6	
	Cassiar	4	
	Coast District	7	
	Total Mainland	68	31.5%
Provincial		107	49.5%
Missing		2	
TOTAL		216	100.

* City and District of New Westminster

TABLE 3
Population of British Columbia
by Census District (1881)

Region	Population	Percent of B.C.
New Westminster		
South	1640	
North	4003	
Cassiar, Northern Interior	3566	
Coast of Mainland	6208	
Total New Westminster	15417	31.2%
Cariboo		
Richfield, Barkerville, etc.	1702	
Quesnelmouth	799	
William's Lake, Canoe Creek	1329	
Keithly	1015	
Clinton, Lilloet	1529	
Omenica	1176	
Total Cariboo	7550	15.3%
Yale		
Yale, Hope	2296	
Lytton, Cash Creek, etc.	4725	
Nicola, O'Kanagan	1199	
Osoyoos	117	
Kootenai	863	
Total Yale	9200	18.6%
Victoria		
Yates Street Ward	1260	
Johnson Street Ward	2665	
James Bay Ward	2000	
Victoria District	762	
Esquimalt, Mechosin	614	
Total Victoria	7301	14.8%
Vancouver		
Nanaimo, Noonas Bay	2803	
Comox, Alberni	279	
Cowichan, SaltSpring Island	848	
Saanich, South and North	488	
Sooke, Lake, Highland, etc.	286	
Western Coast	5287	
Total Vancouver	9991	20.2
B.C. Total	49459	100

TABLE 4
Occupations Reported for Persons Charged in British Columbia, 1881 and 1891

1881								
	Charged	Agricultural	Commercial	Domestic	Industrial	Professional	Labourer	Missing
Number	611	7	101	21	50	3	199	230
Percent	100	1.2	16.5	3.4	8.2	.5	32.6	37.6
1891								
	Charged	Agricultural	Commercial	Domestic	Industrial	Professional	Labourer	Missing
Number	176*	3	17	7	30	1	46	72
Percent	100	1.7	9.7	4.0	17.0	.6	26.1	40.9

* Occupational data available only for indictable offences.

TABLE 5
Occupations by Census Classification:
Census Districts, British Columbia, 1881

Census District	Agricultural No.	%	Commercial No.	%	Domestic No.	%	Industrial No.	%	Professional No.	%	Not Class.	TOTAL
New West.	645	24.6	354	26.7	218	21.6	1606	23.2	118	23.3	2285	5526
Cariboo	309	11.8	112	8.4	72	7.1	1717	24.8	29	5.7	280	2519
Yale	707	27.0	190	14.3	191	18.9	619	8.9	57	11.3	1933	3697
Victoria	278	10.6	547	41.2	449	44.5	1067	15.4	230	45.5	535	3106
Vancouver	678	25.9	124	9.3	80	7.9	1928	27.8	72	14.2	597	3479
B.C. Total	2617		1327		1010		6937		506		5630	18027
% of B.C.		14.5		7.4		5.6		21.8		2.8	31.2	100

TABLE 6
Occupations of Justices of the Peace, 1885
By Dominion Classes of Occupations

Agricultural	
Farmer	55
Farmer and Stockraiser	2
Stockraiser	2
Rancher	1
Nurseryman	1
Farmer and Merchant	1
Total Agricultural	62
Commercial	
Accountant/Bookkeeper	4
Agent	4
Banker	1
Clerk	1
Employment Agent/Collector	1
Merchant	15
Paymaster	1
Real Estate Broker	1
Shopkeeper	4
Telegraph Operator	1
Telephone Manager	1
Trader	8
Total Commercial	42
Domestic	
Innkeeper	2
Total Domestic	2
Industrial	
Blacksmith	1
Boilermaker	1
Brick Manufacturer	1
Butcher	1
Cannery Proprietor	2
Cannery Manager	1
Carpenter	1
Chemist/Druggist	3
Colliery Proprietor	1
Colliery Manager	3
Coal Company Superintendent	1

Industrial cont'd	
Miner	4
Printer	1
Saddler/Harness Manufacturer	4
Sawmill Owner	5
Sawmill Manager	1
Ship Chandler	1
Shoemaker	1
Engineer	1
Total Industrial	34
Professional	
Barrister	5
Civil Engineer	2
Government Employee	16
Judge	6
Land Surveyor	1
Physician and Surgeon	3
Sherrif	1
Postmaster	1
Teacher	1
Total Professional	36
Other	
Contractor	2
Gentleman	6
Teamster	1
Yoeman	1
J.P. as Occupation	3
None Stated	9
Missing	18
TOTAL	40
B.C. TOTAL	216

TABLE 7
Occupations of Persons held in Victoria Gaol,
1881 and 1891

Year	1881	1891
Baker	1	-
Bartender	-	2
Beggar	1	-
Blacksmith	3	-
Boilermaker	1	1
Bootblack	-	1
Bricklayer	3	1
Butcher	1	-
C-Battery	-	7
Carpenter	3	11
Clerk	1	3
Cook	7	11
Druggist	2	-
Engineer	1	-
Farmer	1	9
Fireman	4	-
Fisherman	4	19
Gasfitter	1	-
Hostler	-	1
Hunter	-	1
Innkeeper	-	2
Jewler	1	-
Labourer	169	61
Landagent	1	-
Longshoreman	-	9
Machinist	3	4
Marine	-	4
Mechanic	1	-
Merchant	2	-
Miner (and gold miner)	2	21
Moulder	1	1
Musician	-	1
Painter	1	3
Peddler	1	-
Printer	3	-
Prostitute	2	-
Sailor/Seaman	48	44
Shoemaker	1	1
Stocker	-	13
Stonecutter	1	-
Stonemason	-	1
Tailor	-	1
Teamster	-	5
Trader	-	6
Tinsmith	-	2
Washerwoman	1	-
Other: Married	1	-
No Occupation	6	39
Total Number of Prisoners	278	258

TABLE 8
Comparison of Ordinal Ranked Occupations

Rank	Census Group				Sample Group			
	B.C. 1881		Victoria 1881		Convicts 1881		J.P. 1885	
	number	percent	number	percent	number	percent	number	percent
HIGHEST	377	2.1	154	4.9	2	.7	55	25.5
II	3495	19.3	709	22.7	6	2.2	112	51.9
III	1767	9.8	814	26.0	31	11.2	12	5.5
IV	6567	36.4	438	13	7	59	21.2	5
LOWEST	4075	22.6	377	12.1	169	60.8	0	0.0
VI	824	4.6	392	12.5	11	4.0	0	0.0
Others	951	5.3	251	8.0	0	0.0	32	14.8
Totals	18056	100	3125	100	278	100	216	100

TABLE 9
Frequency of Charges:
Victoria Convicts, 1881

Charge Grouped by Charge Type	Number	Percent
I: Crimes Against The Person		
Murder	3	1.1
Rape	1	0.4
Assaulting Police Officer	3	0.4
Misc. Assualt	19	6.
Resisting Officer	1	0.4
Buggery	2	0.7
Total Crimes Against The Person	29	10.4
II: Offences Against Property With Violence		
Burglary	1	0.4
III: Offences Against Property Without Violence		
Larceny	6	2.2
Receiving/Possessing Stolen Goods	1	0.4
III cont'd: Miscellaneous Property Offences		
Stealing	30	10.8
Attempting to Rob	1	0.4
Attempting Burglary	1	0.4
IV: Malicious Offences Against Property		
Arson	4	1.4
Cattle Wounding	1	0.4
Destroying Property	1	0.4
Total Property Offences	46	16.5
VI: Other Offences		
Drunk and Disorderly	103	37.1
Indecent Exposure of Person	(2)	0.7
Vagrancy	21	7.5
Gambling	2	0.7
Delerium Tremens	(2)	0.7
Breaking Windows	1	0.4
Bad Boy	1	0.4
Safekeeping	(3)	1.0
Witness	(1)	0.4
Insane	(6)	2.2
Debtor	1	0.4
Selling Liquor to Indians	32	11.5
Missing	1	0.4
Naval Offences: or Merchant Seamen?		
—Breech of Discipline/Disobeying Orders	20	7.2
—Desertion	6	2.2
City Bylaws:		
—Refusing to leave town	1	0.4
Total Other Offences	203	73.0
Total Offences	278	100

Part Two:

SOURCES AND HYPOTHESES

CHAPTER THREE

The Public Face of Law

> Hitheroto we have had no information before us, even as to the existence of certain classes of crime. We shall now be able to see what the effect of our legislation has been—whether justice has been administered satisfactorily under the laws we enact, as well as obtain some reliable information relative to the social condition of the people—a subject in which we are all interested.[1]

The overview of the dynamics of the legal administration in British Columbia between 1862 and 1892 suggested a number avenues for exploring law at the level of enforcement. The question then becomes which of the available sources are the most appropriate to study this capillary level of power. Each level of government, federal, provincial, and municipal, published reports relevant to the study of law enforcement. For the most part, these reports were founded on a need to measure levels of "crime" but the definition of that concept was not static. Other mandates in reporting—to measure the administration of "justice" and the efficiency of enforcement and punishment mechanisms—suggest that the changes in the structure and the related shifts in the contours of the ideology of law would be reflected in reporting mechanisms. Thus it is vital in selecting sources to have a thorough understanding of their provenance.

The importance of the use of statistics in nineteenth-century criminal reporting can not be overstated. Within the context of the rise of institutional, rather than idiosyncratic, responses to disorder, these reports served an important ideological function. The chief principle of statistical reporting was to funnel individual events into numerical categories. The assumption that objectivity reigned within a rational

[1] Canada, *House of Commons Debates*, 22 February 1876.

bureaucratic order underlay the translation of the activities of accused, police and magistrates into quantified trends. Ultimately a "science" of understanding "deviance" would arise and the subsequent focus on criminality would blur the connections between the dynamics of law and the definitions of crime. The published reports must, therefore, be treated with caution. If treated as narrative sources they can be used to test a number of propositions: that is, they should be read for what they can reveal about perceptions of law and definitions of criminality, rather than for objective or precise measurements of the level of crime in late-nineteenth-century Victoria.

The link between the creation of statistical reporting mechanisms and the regularization of law is revealed through the form and provenance, as well as the content of the reports. Each report type addressed a different level of government and demonstrated a different aim or mandate. None of the three levels of reports is published consistently and in the same form for the entire period; nor does the "year end" coincide from report to report. Consequently it is not possible to do extensive longitudinal (over time in the same record group) or latitudinal (between different report types) linkages. In this chapter, each report type (federal, provincial and municipal) will be examined separately in order to indicate how they portray the public face of law. A consistent concern which directed the collection of the statistics, and shaped the reports, was to isolate and measure the impact of a presumably urban criminal class. How that class was defined, and how its perceived threat of "moral disease" was dealt with, are questions which can be addressed through each level of reporting.

The variables used to identify the criminal class, such as place of residence, occupation, temperance and race create a number of expectations regarding the behavior of the police and police magistrates. A basic proposition is that control over perceived criminal classes and efficiency in law enforcement practices combined in what can best be described as a "feedback-loop" in measuring criminality: expectations of disorder

differed for each social group, and policing practices would be governed by those expectations. The notion of a criminal class has an equally important ideological purpose. The rhetoric that disorder was a social ill, that crime signalled widespread moral deficiency, provided a rationalle for extensive reforms in the material provisions of discipline. Possibly, these perspectives also served to widen the gap between the "respectable" and the "disorderly," and to mask the fact that such concepts were defined through economic status.

I

Two types of reports were generated at the federal level and both provide insight to the interaction of the criminal law and late-nineteenth-century society. The most extensive of these two reports, the National Criminal Statistics, were published as an appendix to the Ministry of Agriculture annual report in the *Sessional Papers*.[2] These statistics, however, were not direct products of the administration of law, and were entirely distinct from the federal penitentiary reports found in the Ministry of Justice annual reports.[3] While the federal penitentiary reports were primarily concerned with the management of penal institutions, the reports also collated information on convicts. The variables listed in Ministry of Justice reports, one of the first presentations of criminal statistics in the country, included race, marital status, age, moral habits (temperance), country (of origin), religion, occupation, crime and sentence. The reports from the penitentiary in British Columbia provided these statistics only for those who had been convicted at the General Assizes and therefore represent a very small percentage of those who were identified as criminals in the province. Moreover, there was no indication from which part of the province the convicts originated. This severely limits the possibilities of comparative analysis of these statistics with other reports. The

[2] For a complete listing of all the government publications cited see Appendix 2.

[3] For example see: Canada, Minister of Justice, "Annual Report of the Directors of Penitentiaries of the Dominion of Canada for the Year 1881," *Sessional Papers*, 46, 60, no. 12 [45 Vict.]; hereafter Dominion Penitentiaries Report.

Annual Penitentiary Reports do, however, reveal some of the views of criminality and the effectiveness of punishment in the late-nineteenth-century.

Initially the proportion of the population confined to federal penitentiaries was expected to remain constant. In his 1881 report J.G. Moylan, the Inspector of Penitentiaries for Canada, stated:

> Experience proves that a certain quota of criminals, who graduate for the penitentiary in the reformatory and common gaol, are irreclaimable, and this class will, I believe, maintain the present average number in our penal institutions.[4]

Expansion of penal facilities was, however, required in order to respond to the "urgent necessity" of providing for the "separation of hardened and habitual criminals from the less depraved."[5] In order to prevent undesirable "associations" which would make the prisons "schools of corruption," separate treatment of "hard cases" was recommended. This would offer "opportunities ...[for] self-examination, and of receiving uninterruptedly moral and religious instruction, which it alone supplies."[6] Reclaiming the criminals meant the provision of a highly structured environment, work, isolation, and a strict adherence to penitentiary regulations. Breaches of prison rules were treated severely: punishments listed in the 1881 report on the British Columbia Penitentiaries were

> admonished, 13;
> deprived of bed, 12;
> in solitary cell, 8;
> bread and water, 17;
> lost part of remission, 15;
> deprived of lamp, 5;
> chained, 6;
> [and]
> Corporal Punishment:
> lashes awarded, 24;
> lashes inflicted, 24.[7]

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[4] ibid.

[5] ibid.

[6] ibid.

This snapshot of attitudes toward punishment in Canada coincides with the depiction of these institutions found in Rothman's study, *The Discovery of the Asylum*.[8] These definitions and distinctions tell us, not about those who were charged or convicted, but about the assumptions of lawmakers and law enforcers. A primary assumption was that moral corruption was endemic in certain groups of society. Criminal statistics would allow the identification and to some extent the isolation of those groups. Crime was a disease to be cured with an exact set of punishments, and by the example and warnings of those punishments. The message of terror provided in the practice of bodily punishment was almost wholly replaced by the reform messages of the surety of punishment in a bureaucratic regime.[9] While majesty and terror appear to have been less overt in the institutional models of punishment, this is not to suggest that penal institutions did not have a function in the ideology of law. Indeed, the form and message of these institutions were inseparable.

As Moylan's statement in 1881 suggests, the major thrust of reporting at the national level (and as will be shown at the local level) was the desire to identify a distinctive urban criminal class. That urbanization and industrialization would bring a coincidental rise in disorder was another theme expounded by law enforcement agents. The National Criminal Statistics for 1891 reported that British Columbia had the highest per capita number of convictions in the country.[10] Among Canadian cities, Victoria and New Westminster had the second and third highest rates of summary convictions: being 51.83 and 50.89 (respectively) for every one thousand residents.[11] Because the census for that year reported New Westminster and Victoria as having the two of

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[7] "Summary punishments awarded to Convicts in the British Columbia Penitentiary," B.C. Prison Report, 1881.

[8] See Introduction, 12.

[9] See Foucault, *Discipline and Punish*, and Rothman, *Birth of the Asylum*.

[10] For British Columbia, the 1890 Ratio of Convictions per 10,000 inhabitants was 19.75; The 1891 Ratio of convictions per 10,000 inhabitants was 14.85 [Canada, Criminal Statistics 1891].

[11] ibid. The highest rate per 1,000 inhabitants was 54.88 in Ingersoll, Ontario.

the higher rates of growth in the country, the impression given by these statistics is that rapid urban expansion brought a disproportionate increase in disorder. The connection between urban expansion and disorder was also tied to the identification of the criminal class. The view was that crimes were largely committed by an irreclaimable criminal class and increases in "depravity" were the natural outcome of population increases. Thus rapid expansion in the prison populations was thought to be the result of large-scale emigration to the province. Foreigners, not long-term residents, were believed to form the bulk of the "criminal class." Concern was expressed about the construction of the railway. The 1881 penitentiary report maintained:

> Increased Penitentiary accommodation must, at no distant day, engage the attention of the Government. The large influx of strangers consequent upon railway construction, among whom are a large number of the Sand Lot class of San Francisco, will add to the number of serious cases at the regular assizes. To these may be added a large illegitimate half-breed population who are just approaching manhood.[12]

It is clear that race and socio-economic status among the convicted were inextricably linked. In punishment and in policing the "criminal class" in late nineteenth-century British Columbia was specifically defined in terms of race:

> In British Columbia the Chinese and Indians largely make up the criminal class, and have contributed their share to the increase which has taken place in that province.[13]

Special provisions were made for the Chinese in convict labour; in particular, a shoe shop was built in the penitentiary. The reasons for this addition were:

> Some of our Chinese convicts having worked in shoe factories in California, could be more profitably employed in this was [better] than at anything else that I could put them to do here. Inside work agrees better with Chinese than with Indians or whites.[14]

Punishment facilities themselves were shaped by notions of criminal classes found in the National Reports.

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[12] Dominion Penitentiaries Report 1881, 119.

[13] Dominion Penitentiaries Report 1884, p.iii.

[14] ibid., 84. While there was some opposition to the plan the warden responded that the shop "would in no way interfere with free labour in British Columbia." Industrial labour by convicts was considered as a vital aspect of rehabilitation. Whatever its rationalizations it seems to have much in common with the long-standing physical side to punishments, that of employment on the chain gang.

There is some indication that the federal criminal law was equally influenced by the content and structure of the national reports. For example, the debate which introduced the legislative provisions for collecting National Criminal Statistics stressed the importance of such statistics to:

> inform the minds of us who are responsible for those laws which prescribe what are crimes, the penalties for them, the criminal procedure, and the general effect of those laws upon the criminal class, as might enable us, perchance, with wisdom to amend them.[15]

The debate also made it clear that National Criminal Statistics were compiled to record the "level of depravity" in Canada's population. Therefore, defining the "criminal type," and for some levels the efficiency of the courts in dealing with crime was part of their mandate.

Prior to the 1876 legislation which provided for the collection and publication of national criminal statistics,[16] local agencies had routinely reported from the penitentiaries, gaols and courts. The provisions in the national act to utilize existing provincial reporting systems explains some of the discrepancies in the national figures. Initially, the National Criminal Statistics reports were modeled after the Ontario provincial reports.[17] Along with charge and sentencing information, residence, occupation, marital status, education, age, birthplace, religion, and use of liquor were recorded for every person charged. The Provincial Secretary compiled provincial statistics using one of the chief reporting mechanisms for the province of British Columbia, the quarterly returns from the Justices of the Peace. Unfortunately these returns are not available consistently, nor did they contain all of the information required by the National Criminal Statistics Act. To further complicate matters, the form of the national reports changed several times in the first two decades of reporting. The first three

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[15] Canada, *House of Commons Debates*, 22 Feb., 1876.

[16] 39 Vict., c.13, "An Act to Make Provision for the Collection and Registration of Criminal Statistics of Canada."

[17] Canada, House of Commons, Debates (February 22, 1876).

years, 1876 to 1879, were printed in the 1880 *Sessional Papers*. These tables show the charges for each county or judicial district, making it possible to ascertain which areas of the province were included in the national reports. In 1876, the counties of Caribou, Clinton, Vancouver and Victoria reported; in 1877 and 1878 there were no returns from the County of Vancouver. During the year 1884, the County of Victoria did not report. Nor were all variables included for each judicial district: for most years Victoria did not return statistics for any details beyond charge and sentencing. Despite these difficulties, the National Criminal Statistics can be used to measure aspects of the legal structure and elements of the ideology of law.

The national statistics are consistent in some aspects: the indictable offences and summary convictions were fully separated, and the figures for summary convictions reported only by Province, not judicial district. This emphasis on the indictable offences was further illustrated by the restructuring of the indictable offence table to show each offence in each judicial district, then summarized in a separate table showing indictable offences by class of offence and province.

This design of the reports addressed a number of concerns expressed by law makers. On the surface, the close attention given to indictable offences suggests that cases subject to the jurisdiction of higher (rather than petty) courts were considered to be the most important indicators of the behavior of the "criminal element." Similarly, the separate compilation of indictable offences was directed towards measuring the effectiveness of more severe punishments. The concept of deterrence through surety of punishment had an important ideological function, exhibited in the structuring of the reports. Another aspect of the separation of offences related to the ideology of law was the provision of a means for comparing the conviction rates for summary trials and trial by juries. Equal rates of conviction for each jurisdiction supported the ideal that all means of trial were equally just. Moreover, the summary table for class of

offence by province in the national reports provides some perspectives as to the structure of charging under the criminal law. Charges were grouped into six general offence types: Offences against the person, Offences against property with violence, Offences against property without violence, Malicious offences against property, Forgery and offences against currency, and other offences.[18] Four of the six offence types directly relate to property. While property offences are not always the most frequently reported charge type in the British Columbia section of the national reports, they were the most frequent charge-types for the summary offences recorded for 1888 and for indictable offences recorded in 1891 [see Table 11].

The first difficulty with the use of these figures to examine the frequency of property charges comes from the heading of "other charges." This category includes an number of unspecified minor offences which may have related to property or to work. Whether any of these offences could be interpreted as class resistance to hierarchical property relations is also a matter of conjecture. What can be ascertained is the sensitivity of the reporting, and presumably the disciplinary mechanisms for the protection of property.

The second difficulty relates to a spurious distinction drawn between summary and indictable offences in the British Columbia data. The passage of the "Speedy Trials Act" made provisions for magistrates to make summary convictions for indictable offences. This caused some discrepancies in the National reports, which separated the summary and indictable offences. While it was generally the case that the serious offences were those reported in the tables of indictable offences, after the passage of this act, this distinction can not be assumed. This is yet another example of how the nature of statutory provisions for the administration of justice directly affected the criminal statistics reported at the national and provincial level.

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[18] For a listing of charges by class of charge in the national reports see Appendix 4.

The separation of the indictable offences from those tried under summary jurisdiction can not be used as a reliable indicator as to the seriousness of the charge. While the bulk of the cases in the police court were for minor offences such as drunk and disorderly or city By-laws one change in the jurisdiction of the police magistrate (under the Speedy Trials Act) did expand the number of indictable offences that would be tried at this level. J. H. John, the warden of the Victoria Gaol, welcomed this legislation claiming it had reduced the daily average of prisoners because:

> in nearly every instance a prisoner when committed for trial elects to be tried under the "Speedy Trials Act" rather than remain in custody for the general Court of Assize, and is at once sentenced or discharged, so that there is not the large accumulation of committed prisoners on hand awaiting trial as formerly.[19]

However, the change does not appear to have affected the number of indictable offences tried summarily in Victoria. According to the National Criminal Statistics in 1881 there were a total of seventy-six cases subject to trial by jury in the district of Victoria, of thoses cases fifty (65.8%) were tried summarily (by consent) by the police magistrate [see Table 11]. In 1891 there were seventy one indictable offences reported, of those fifty-four (76%) were tried summarily [Tables 12 and 13]. Only seventeen cases were tried under the Speedy Trials Act in Victoria in 1891 so the impact of this legislation seems to have been overstated by the Victoria warden. Obviously notions of expediency and efficient enforcement governed the interpretation of the statistics regarding the summary trials.

Examining the published statistics for evidence of law's ideological function need not be entirely defined in terms of law maintaining hierarchical property relations and judicial discretion. Even if such tests could be made conclusive, they would ignore the nature of the legitimating aspects of law. Since majesty is more properly defined in terms of courtroom activities, and justice depends largely on adherence to procedural rules and some criteria of equity the best sources for examining these elements of law

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[19] B.C. *Prison Report 1890.*

as ideology will not be found in the aggregate prosecution figures. Thus qualitative sources, which provide insight to courts in action, would be more directly applicable. However, at a superficial level mercy seems to be one element of the ideology of law that is captured in the published criminal reports. Tables listing "Cases in which the Perogative of Mercy has been exercised, during the year..." were published for each province in the national *Sessional Papers*. Separate tables identify two different levels of mercy: one for those held in the common gaol and one for death sentences commuted during the year. These tables listed the crime, original sentence, date of committal, date of pardon or commutation, age and sex of offender, court which set original sentence, and other remarks. These reports suggest that mercy still retained an important symbolic function in the maintenance of law's authority.

The National Criminal Statistics are not without contradictions. Reading the reports for their ideological message requires an evaluation of what they obscure as much as what they reveal. That the bulk of law enforcement, the presumed minor offences, were collapsed into broad categories can be seen as an aspect of legitimation. The dramatic increase of localized regulation was cloaked by those broad categories. Simultaneously, indictable offences which would appeal to "natural" as opposed to state designed conceptions of justice were stressed.

Another example of contradiction in the National Reports comes in the identification of criminals by ethnic origin. Given the fact that the penitentiary reports reveal a direct concern with race and ethnicity as defining features of British Columbia's criminal classes it is curious that ethnicity was one of the most inconsistently recorded variables in the B.C. section of the National Criminal Statistics. For example, the National Criminal Statistics for 1891 gives a breakdown of the birth place of offenders by the class of offence [Table 14]. While the numbers reported are claimed to be for the whole province it is clear that only a portion of the indictable

offences were included in this table. The birthplaces were categorized in a system analogous to the 1891 census report on the provincial population: England and Wales, Ireland, Scotland, Canada, United States, Other Foreign Countries, and Other British Possessions. Compared to their relative proportions in the provincial population, those offenders born in Ireland, and Scotland were marginally over-represented. Offenders from the United States (20.2% of all offenders) were dramatically over-represented as persons born in that country made up 6.7% of the province's population [see Table 15]. Because the National Report contains so few offenders, and uses the broader categories for birth place it is not possible to separate the Chinese and Indians from its data.

The obvious conclusion which can be drawn from this fact is that the identification of these two visible minorities as part of the "criminal classes" was a localized phenomenon, while at the national level ethnicity, and in particular whether or not the person charged was "foreign born," was considered to be the more important variable.

The formulation of the criminal law in Canada was the responsibility of the federal government. For that reason, the statistics generated at the national level are vital to understanding the context of the criminal law. The reporting and punishment mechanisms reflected both the dynamics of laws and the assumptions behind their enforcement. The identification of "moral disease" through the collation of variables such as ethnicity, occupation, education and temperance was an important aspect of the ideological force of criminal statistics. Other elements in the ideology of law, such as justice (as filtered through judicial discretion and surety of punishment) and mercy were also present in the reports, as was a structural emphasis on the protection of property. While the mandates of provincial and municipal reports differed from the national reports, similar themes in the local framework of law enforcement can be explored.

II

Like the National Criminal Statistics, the creation of provincial reporting mechanisms was a statutory measure. In 1879 the Superintendent of Police for the Province was given the power to regulate the management of "every prison, lock-up, and other place of imprisonment, other than Penitentiaries under the control of the Dominion of Canada."[20] At the same time the Superintendent was to prepare an annual report that included statistical information including:

> A return of the names, ages, county, calling, and crimes of the prisoners received into each
> ...gaols during the year, and the city, town or district from which each came.[21]

A similar return was to be filed for offenders who had died in the gaols, and for those who had completed their sentences. The Annual reports on the Prisons were published in the British Columbia Sessional papers.[22] In the 1881 returns, sentence replaced date of discharge in schedule C, and from the 1883 report onward the disaggregate information on calling appears to have been dropped. For the years 1885 through 1889, the detailed returns were not printed for the Victoria gaol: names, age, country, and sentencing were only shown for those who had died in the gaols. In 1892, aggregate rather than nominal data was recorded. The nominal returns (1881-1884), were alphabetically rather than chronologically ordered. The reason as stated by C. Todd, Superintendent of Police, was:

> The statement containing the names and crimes of offenders published in my former reports have proved most useful to Magistrates, Justices of the Peace, and Peace Officers in dealing with many of the persons coming before them, enabling them to ascertain even in distant parts of the country the character and former offences of those who

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[20] S.B.C. 1879 [42 Vict.] c.19, s.8.

[21] ibid., s.7.

[22] Because these annual reports were to be laid before the legislative assembly, the year end was taken at October 31st. Unfortunately the year end for the Dominion Inspector of Penitentiaries was taken at June 10th [Dominion Penitentiaries Report, 1881] so it is not possible to combine the totals for all places of incarceration in the province.

> have been previously convicted. To make these statements still more convenient in this respect, I have arranged the names of convicts in alphabetical order...[23]

This practice was continued by H. B. Roycraft in his report for 1884, but not in following years.[24]

Because the Provincial reports were primarily concerned with the management of prisons (other than penitentiaries), it is important to understand the material circumstances of those institutions. In fact, the detailed presentation of these material conditions provided the interested public with a blueprint for the proper handling of hardened criminals. Regularity, strict discipline, and harsh conditions were mixed with an increased sensitivity to the needs of juveniles and some convicts who for whatever mitigating circumstance required special treatment. Thus, reporting at the provincial level emphasized majesty, justice and mercy in ways different but complementary to the federal reports.

The final quarter of the nineteenth-century was a period of reform in the material provisions for punishment in the province. The federal penitentiary in New Westminster was opened in September 1878. Designed to house convicts whose statutory penalty exceeded two years this facility was under nearly constant repair and expansion. Similarly, the Victoria gaol underwent numerous improvements, causing the warden to anticipate in 1888 "that institution will be near as perfection as could be desired for a prison."[25] While enthusiasm for this facility did not persist, by the 1890's places of incarceration reflected the hierarchy of criminal jurisdictions. Rather than confining all offenders to a common gaol, there was a provincial jail and city lock-up in use in Victoria in 1891. Subdividing types of criminals became more evident with the legislative provisions and the construction of a Juvenile Reformatory in

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[23] B.C. Prison Report 1881.

[24] B.C. Prison Report 1884.

[25] B.C. Prison Report 1888, 483.

1890.[26] The Reformatory was built "in close connection with the [Victoria] gaol" to enable "the administration of the establishment to be conducted at a minimum cost."[27] With nine cells, a shoe shop, an enclosed yard for exercise, the Reformatory was designed to accommodate eighteen prisoners. It was anticipated this arrangement would:

> fully answer the purpose for which it is intended for a number of years..., or until such time as a larger and better institution is required, according to the increase of juvenile depravity, which may be anticipated with an increase of population.[28]

The province also ran a lunatic asylum in New Westminster but this did not prevent people charged with insanity from being held in the jails on occasion. While hospitals and asylums were available the jail continued to be a source of social welfare. Apart from the people who applied for lodging, those who were incapable of caring for themselves were often brought to the jail. R. F. John, the warden of the Victoria Gaol in 1890 objected to the practice of admitting prisoners "unfit through insanity, old age, or diseases," stating it was "a matter of surprise that more frequent deaths do not occur considering their numbers." In the same report he observed:

> As there are nearly always more or less lunatics confined in this gaol I would suggest that in order to prevent suicides and other injuries, a few cells be specially constructed for insane prisoners until they can be removed to the Asylum.[29]

He also suggested that there was a need for "a separate ward for debtors."

Once an offender had been confined their daily routine was defined by the prison rules. The rules included that:

> [5] Strict silence must be observed in the cells...
>
> [8] The prisoners shall rise at 6.30 o'clock a.m. from April 1st to September 30th, and at 7 o'clock form October 1st to March 31st, and will be allowed half an hour to wash and dress themselves....

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[26] S.B.C. 1890 [53 Vict.] c.21.

[27] B.C. Prison Report 1891, 663.

[28] ibid.

[29] B.C. Prison Report, 1891, 541.

> [10] The Chain-gang shall leave the prison for work at 7.30 o'clock in the summer (*vide* Rule 8), returning at 5.30 o'clock p.m.; and in the winter time at 8 o'clock a.m., returning before dark...
>
> [17] Any prisoner who shall be proved guilty of wilfully 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 by order of the Superintendent of Police, or in his absence, by order of any Police or Stipendiary Magistrate, or of any Justice of the Peace when there is no such Magistrate...[30]

The punishments for breaking the prison rules were:

> [1] Solitary confinement in dark cell, 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 with No. 1.
>
> [3] Cold water punishment, with the approval of the visiting physician.[31]

These rules when strictly enforced were found to have "answered all the requirements of gaol discipline."[32] They appear to have stayed intact though the 1880's with the only substantial additions coming with the ability of prisoners "earn" sentence remissions.[33]

In 1891 prisoners subject to hard labour were:

> mostly employed on the gaol premises clearing and grubbing new land, improving ground generally, and the usual garden work. A shed...[was] constructed at the rear of the gaol for the use of prisoners during the wet winter months, when employed breaking stone for roads...[34]

Prison labour had also been used on the Government House grounds and the Government Buildings. The city and province by 1891 had reportedly stopped employing the chaingang to repair public streets because the effect of "marching prisoners through the streets and working them in irons" was, for "white prisoners in particular... most

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[30] B.C. Prison Report 1879.

[31] ibid.

[32] B.C. Prison Report 1880.

[33] B.C. Prison Report 1890.

[34] B.C. Prison Report 1891.

degrading."[35] However, employment on the chain gang remained an important aspect of punishment, and the daily average of prisoners employed on the chain gang for over half of 1891 exceeded the daily average of those employed inside the gaol.[36]

While the material provisions for punishment appear to have changed dramatically through the period for which the Provincial Reports are available, the convict population in the Victoria jail for the years 1881, 1882, and from 1887 to 1897 averaged little over three hundred. The exceptional years, 1884, 1885, and 1886 have reported totals at least double that average (see Table 17). Should those exception years be viewed as anomalies or as a crime wave? The answer to that question lies in whether convict data can be used to estimate the number of arrests or the "real" incidence of crime. Obviously the list of prisoners liberated from the gaol will not correspond to the total of all persons charged. While direct comparisons are not possible for the years 1881 and 1891 there is some indication of the percentage of those contacted by the gaol which the nominal list excludes. The 1882 report lists the number of persons charged who do not appear in the nominal list of those released from the gaol as:

> Paid fine, 215;
> Bail Estreated, 35;
> In for Safekeeping, 12;
> In for Lodgings, 107;
> Discharged from Court, 12;
> Sent to Penitentiary, 6;
> Sent to Asylum, 2;
> [with the total being: 389].[37]

In other words the nominal lists in the year 1882 contained 46.7% of the total number of people contacted by the gaol. Thus while the 1884 list of prisoners released, totaling some 802 prisoners, might indeed indicate a crime wave, it is not as dramatic a

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[35] B.C. Prison Report 1891.

[36] See Table 16.

[37] B.C. Prison Report 1882.

shift in the number of arrests once adjustments have been made for different counting procedures. There were great fluctuations in the number of prisoners listed in the gaol's reports [see Table 17]. Counting procedures which excluded many of the people charged explains at least some discrepancies between national and provincial reports. These fluctuations also underline the problems of using prison reports to measure criminality.

Despite the difficulties inherent in reading these reports as direct measures of criminality, figures taken from these reports influenced perceptions of police efficiency. While one drop in the number of prisoners brought to the Victoria Gaols was interpreted by Police Superintendent John Warden as an indication of the "law-abiding character" of the residents in the County of Victoria,[38] there are other factors to be considered. First, as noted in the 1890 prison report, there was "a decrease in the number of vagrants, drunk and disorderly, and of others liable to the payment of fines received from the City Police Court of Victoria since a charge of fifty cents per diem... (was) made for the keep of that class of prisoner."[39] Evidently the city did not wish to increase the amount it paid to the province for the upkeep of prisoners thus the arrest rate declined. Moreover, the warden claimed that the "Speedy Trials Act" had reduced the number of prisoners awaiting trial. Clearly then, statistics in provincial reports were often presented and interpreted in ways which benefitted the office of the purveyor of statistics; and the underlying reasons for shifts in arrest rates were, at least at times, kept from the public purview.

While there are difficulties in trying to measure criminality through Provincial Reports, the disaggregate prison reports provide a means to closely analyze the dimensions of the convict population, and then test those results against perceptions of law enforcement agents. The 1881 disaggregate prison data for the Victoria Gaol was coded

[38] B.C. Prison Report 1890, 541.

[39] ibid.

for analysis through SPSSX. While the occupational dimensions of the convict population have been presented, other social divisions, relevant to the perception of the criminal classes have not yet been addressed.

Gender divisions are one of the most pervasive aspects in the social order. In one study of nineteenth-century police court data it was found:

> Women, especially those who were poor, were in fact the principal losers in the process of criminal justice. Though arrested less frequently, those women charged with crimes were jailed more often and for longer periods than men who had committed the same offences.[40]

This result can not be replicated from a sample which only includes those who were jailed but aspects of the treatment of women convicts can be investigated.[41]

Names were used to discern the gender of each of the convicts. While this is not the best method, as there were names such as "Comma (Indian)" which defied classification, they were the only gender indicators in the data. There were twenty-one female names found in the Prison Report, seventeen of which were only first names followed by the word "Indian." In those seventeen there was a high incidence of repetition: Jennie (six times), Kitty (three times), Mary (three times), Annie (twice), Sally (twice), and the only names not repeated: Lucy and Susan. This repetition in the names of Indian women does not, however, absolutely indicate a high incidence of repeat arrests among them. When the other variables of age, country, and place of residence are considered two separate Jennies could have had two arrests. One Annie was age twenty-five, the other thirty-five, with all other variables the same, including calling and charge. This is a plausible, but not absolute link. The same difficulty is presented by two of the non-Indian cases: one Mrs. Williams, age twenty-nine, the other age twenty-five. The calling variable was different for each with one reported as

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[40] Katz, Doucet, and Stern, *The Social Organization of Early Industrial Capitalism*, 240.

[41] At this point it is premature to attempt to isolate gender divisions from the issue of class relations, and for that reason the women will not be separated from the rest of the sample when occupation frequencies are reported.

labourer, the other as married. In both of these cases the charge was vagrancy and the second sentence was considerable more severe than the first.[42] However, since the place of residence, Metchosin, was unusual (these being the only two cases in the sample),it seems very likely that these were indeed charges against the same person. If that was the case, a repeat offence would explain the differential in the sentences. The other non-Indian cases were for the same person: Ellen Robertson. The certainty of this link was consistent information for the variables: residence (Victoria), country (West Indies), calling (prostitute). She was charged once for being drunk and disorderly, and once for vagrancy. Only these three of the four non-Indian cases reported occupations for women convicts other than labourer.

As with the other labourers in the sample, the most frequent charge against the women was for being drunk and disorderly (fourteen, or two-thirds of the women had this charge, all of that number received the standard penalty of six hours in jail). It has been suggested that the women, and in particular Indian women, who were arrested as drunk and disorderly could be assumed to be connected with prostitution.[43] This sample, with one person giving their occupation as prostitute, and with the provisions in the Vagrancy Act for that charge, undercuts such an assumption. There were four vagrancy charges in the cases against women, interestingly only one was against an Indian-woman. The one other charge in the sample which might pertain to prostitution was a violation of an 1869 city health ordinance, under which an Indian-woman was imprisoned for thirty days for "refusing to leave town." The only other charge type found for women convicts was "supplying liquor to Indians." This racially specific charge carried a relatively severe term of thirty days. The longest sentence served by any of the women was one of six months for vagrancy. The sample used in

[42] The first Mrs. Williams, received fourteen days imprisonment for vagrancy, the second, received one month with hard labour.

[43] See Hansen-Brett, McKnight, and, more recently, Constance Backhouse, "Nineteenth-Century Canadian Prostitution Law: Reflection of a Discriminatory Society." *Histoire Social/Social History*, Vol XVIII, 36 (November 1985): 387-423.

this instance precludes longitudinal analysis, and its size can only offer impressionistic examples of differential sentence on the basis of gender.

Neither the aggregate nor the nominal sources reveal much regarding official attitudes towards women and the law. Relatively few women were convicted; moreover, those present in the prison data and all the charges against women in the sample fall under the classification, "victimless moral charges." This result is consistent with the results found in studies of manuscript sources from the colonial period.[44] The almost total absence of women charged with other offences, such as crimes against property suggests a number of possibilities. It appears that law enforcement practices were directed more towards policing women's morality than for other "crimes." There is no evidence to suggest that women did not commit other offences, only that they were not convicted for them. Whether or not the prevalence of minor offences against the female convicts represents discrimination on the basis of gender is a question which can not be resolved with the convict data. There is no clear evidence that women were given unusually long sentences, but the data does suggest that race may be a more important variable than gender: eighty per cent of women in the convict data were Indian.

The official records and pronouncements of law makers lead to the same conclusion: there was no official obsession with women law-breakers. There was, however, an obsession with race. The importance of racial divisions has led at least one historian to suggest that these divisions in British Columbia precluded the development of class identity as defined by E. P. Thompson.[45] There is little doubt that as members of the least powerful socio-economic group in the Province, visible minorities were discriminated against by labour organizations and law enforcement agencies alike. There is also little doubt that the provincial reports were structured in ways which

[44] McKnight, "A Little Bit of Old Harry."

[45] W. Peter Ward, "Class and Race in the Social Structure of British Columbia, 1870-1939," *B.C. Studies*, 45 (Spring 1980): 17-35.

tended to blur class differences and to emphasize race differences. With the assumption that some races were more prone to "moral disease" than others came a justification for victimization. That the visible minorities were marginalized could thus be blamed on the defects of their race rather than economic exploitation. The potential effects of this emphasis would be to subdivide the labouring classes while at the same time protecting broadly held beliefs in social mobility. Thus from the point of view of the state, race rather than class differences were less divisive in a bourgeois perception of an ideal middle class society.[46]

Whether or not it is considered as a manifestation of class divisions, in terms of the application of law in nineteenth-century Victoria, race is an important variable. Indeed studies of law in British Columbia have come to suggest that Indians were the chief victims of the justice system.[47] The Prison Report provides two means to capture racial, and ethnic values. The first indicator is the inclusion of the word "Indian" in the name of a convict. The second indicator is found in the category of "country." While not in direct correspondence to the data on ethnic origins found in the 1881 census, these variables do provide some measures for comparison.

The ethnic distribution of the city of Victoria shown in the 1881 census appears to support the popular notion that the city was predominantly British (see Table 18). The origin of the residents was reported in the proportions: 39% British, 15% Scots, and 14% Irish. The next largest ethnic group was the Chinese who represented 10% of the population. Another visible minority in the city were people of African origin: over half of the province's total resided in Victoria and District, being 2.3% of the city's population. Curiously although over half of British Columbia's population were Indian, they made up only 2.7% of the city's population. Thus according to the census

[46] See Rennie Warburton, "Race and Class in British Columbia: A Comment," *B.C. Studies* 49 (Spring 1981): 79-85.

[47] Hamar Foster, "Law Enforcement in Nineteenth Century British Columbia: A Brief and Comparative Overview," *B.C. Studies*, 63 (Autumn 1984), 16.

only 1% of the total Indian population in the province resided in Victoria. This dramatic under-representation can be explained in part by the practice of enumerating the reserves separately and the Songish population would not appear as part of the City. Another possibility is that many of the Indians in the city did not qualify as residents. In order to estimate the local Indian population it is necessary to turn to another federally generated report: that of the Superintendant of Indian Affairs.[48] In 1881 Indian Agents throughout the province conducted a census of the Indian population which was estimated at a total of 35,052, a figure which was more than 9000 (or 37%) greater than the returns of the federal census. This difference is even more dramatic when the Indian agents reported that they had underenumerated many of the tribes because the census was undertaken during the salmon fishing season. The tribes local to the City of Victoria, the Esquimalt and the Songhees, were listed as having populations of 77 and 182 respectively.[49] When these populations are added to the Victoria and District total from the federal census, Indians comprise 7.25% of that region's population.

Beyond providing a correction to the population estimates, the reports from the Indian agents and those from the provincially appointed surveyor, Edward Mohun, provide insights as to the importance of indigenous labourers to British Columbia's economy, and their treatment under the law. J. W. Powell, the Indian Superintendent, claimed in his annual report for 1881 that:

> there never was a time in the history of the province when Indians have been so prosperous. . . or a period when more general contentment prevailed among both coast and interior tribes.[50]

He goes on to state that a marked improvement was evident in the conditions of various bands:

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[48] Canada, Parliament, "Report of the Superintendent of Indian Affairs," no. 6 [45 Vict.] 1882, 219.

[49] "Census Return of Resident and Nomadic Indians in the Dominion of Canada, by Province," Superintendent of Indian Affairs, *Sessional Papers* 1882 (45 Vict).

[50] Canada, Parliament, "Report of the Superintendent of Indian Affairs," no. 6 [45 Vict.] 1882.

> except [in] the vicinity of towns such as Victoria and New Westminster, where they are unfortunately allowed to reside and become victims to the contaminating vices of whites. . .[51]

In addition to this indication of a marked difference in the natural conditions of tribes attached to urban areas, Powell's report also reveals a vastly different view on the administration of justice in outlying districts.

The annual visit of the Indian Superintendent was an occasion for the settlement of grievances. Powell carried with his office a commission as Justice of the Peace, and when accompanied by A. C. Anderson (the Inspector of Fisheries) was able to perform a preliminary trial and committed a "Salmon River Indian" for trial for murder at the Assize. Powell reported that:

> Apart from the necessity of taking notice of such a case, and thus preventing trouble between Indians, I am quite sure the example of enforcing authority at this remote village [Kwaw-Kewlth, Knight's Inlet] will be attended with most beneficial results, and no doubt greatly aid the Agent in the performance of his duty hereafter.[52]

At another coastal village Powell was asked to intercede, and to provide materials to assist in rebuilding a village which had been bombarded in a search for witnesses "in the matter of the 'George S. Wright.'" At the time of the shelling it had been assumed that the crew of that lost steamer had been murdered by Indians. Powell concluded that the village had been "unfortunately too hastily shelled" and readily conceded that building materials be provided to help prevent the village people from dying of exposure. Powell's attention to these cases embodied the notions of majesty, justice and mercy which continued to reinforce British legal authority in both the colonial and provincial eras.

While the Superintendent's report contains many references which were more compatible with colonial attitudes, the role of the indigenous population in the economy was changing. Indians, particularly on the coast, were an increasingly important

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[51] ibid.

[52] ibid.

part of the province's labour pool. The success of the salmon canneries, especially on the Nass and Skeena Rivers, hinged on that labour supply. Edward Mohun reported that canneries on the Skeena River attracted "Indians from all the tribes within a hundred miles":

> the men enter into contracts to supply salmon, and the women and children are handy workers and most useful in the various steps necessary to prepare the fish for market.[53]

The attraction of the indigenous populace to this "lucrative occupation" and "their superior expertness as boatmen and fishermen" was applauded by Mohun. He was especially pleased because:

> there appears no reason to doubt that the extensive employment of Indians will shortly do away with the necessity and. . . the undesirability of importing Chinese for the labour portion of the canning operation. . . . very few Chinese comparatively are, even now, required at the canneries on the north-west coast, and the necessity of having them on the Fraser has every year been growing less.[54]

Clearly both the Chinese and Indians were regarded as belonging in the lower economic ranks of the Province. That both of these visible minorities were disenfranchised is another inescapable mark of their social ranking. These two observations suggests the attachment to race as a means of identifying the "criminal element" was related to economic and social ranking. This hypothesis can be tested with data available from the nominal return of convicts for 1881.

The records of enforcement agents suggest that the Chinese and Indians were considered to be the most disorderly elements of Victoria's population. Other historical studies also suggest that the Irish would be over-represented in the prison population.[55] The distribution for the "country" variable for the convicts is shown in Table 19. When this data is combined with the race information a rough comparison to ethnic origins can be made. Of the one hundred and nine convicts reporting their country

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[53] ibid.

[54] ibid.

[55] Katz, Doucet, and Stern, 240.

as "British Columbia," ninety-five were Indians. The remaining three Indians in the sample were from the United States. This entails a dramatic over-representation of Indians in the jail population when compared to the city's population. Thirty-five percent of the convicts were Indians, using the corrected estimate of the city and district population. Providing a generous margin for underenumeration, this percentage is five times greater than their reported share of the district population. The Irish were the only other ethnic group whose proportion of the jail population exceeded their percentage of the city's population. With the respective rates being 15.8% of the convicts as opposed to 14% of the city population, this can not be viewed as a statistically significant difference.. The most interesting result, however, was relatively low numbers of Chinese in the sample: being only 5.8% of the convicts. It is possible that the prison record is dramatically different from the arrest records but even a dramatic disparity between arrests and imprisonments would not wholly explain the hysteria against the Chinese as a "dangerous class."

The convict data shows that the link between ethnicity and occupation can not be dismissed.[56] There were 169 labourers in the sample, and the two ethnic groups whose percentage of the convict population was greater than their respective percentage of the city population accounted for over 70 percent of the convicted labourers. More directly, ninety-six of the ninety-eight Indians in the sample reported their occupation as "labourer." Among labourers in the sample, the next largest ethnic group were the Irish: 61.4% of convicts from Ireland were labourers, comprising 16% of members of that calling. Because the Indian Agents did not report on occupations it is not possible to compare the occupational distribution of the convict population with the occupational distribution Indians in the region. Thus it is not possible to resolve whether race was a more important variable in convictions than occupation.

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[56] Based on crosstabulations of race by occupational ranking; similarly tests of country by occupational ranking do not allow the dismissal of that link either.

The 1881 convict data can be used to test the pervasive assumption that the disorderly members of Victoria's population were predominantly transients. The Victoria Prison record of place of residence for the convicts suggests that this might not be the case (see Table 20). Over two thirds of all the convicts were residents of the city. More dramatically, a cross tabulation of residence (Victoria/Victoria District/Other) by race (Indian/Not Stated) shows that well over half of the Indians in the sample resided in Victoria and its immediate vicinity (see Table 21). However, when compared to those with no race stated, of whom 92.6 per cent considered themselves residents, the possibility that non-residence among the Indians might be a factor in convictions can not be dismissed. One occupational group which was expected to skew the residency results were the seamen. However, of the 48 seamen in the sample only 2 reported their residence as being outside of Victoria and district. If itinerant low-skilled workers made up the bulk of Victoria's "dangerous classes," it would be likely that non-resident labourers would be vastly over-represented in the convict population. However, non-residents who reported their occupations as labourers comprised less than thirty percent of that occupational group.[57] The obvious question that both the results on the racial distribution, and the residency pattern of convicts raises is why these factors in identification of the criminal classes persisted when the data in the published reports did not support such assumptions? Was 1881 simply an anomaly? The possibility that the convict data was highly unusual in its racial distribution can be tested against the aggregate report from 1891.

The Victoria Gaol Annual Report for 1891 provided aggregate data on nationalities of convicts, and race of offenders. The Victoria jail population, was predominantly composed of native born (nationality reported as Canada and British Columbia accounted for 27% of the convicts), and British (England, Scotland, Ireland and Wales

[57] There were 169 labourers: 117 residents of Victoria, 5 from the surrounding district, 47 from places other than the city area.

combined to account for 41% of the convicts). The next largest group was reported to be from the United States (14%) [see Table 22]. In terms of their relative proportions of the city's population persons from England, and the United States were marginally over-represented. Among these groups the Irish rate was the most dramatic with their relative proportion of convicts was more than double their percentage of Victoria's population. The Chinese comprised seven percent of the prison population in Victoria, while persons born in China were eleven percent of the city's population. The provincial reports do not provide a means to test the conviction rates for each race but the impression offered by these reports is that either the conviction or the arrest rates (or both) for the Chinese were much lower than the enforcement agents implied. The answer to the question as to why racial identification of the criminal classes persisted despite evidence to the contrary in the self-same reports may, in part, be answered by understanding the mandate of the provincial reports. The Superintendent of Police of the province was an office which had tenuous authority.[58] Reports on the management of prisons reflected on that office and thus the reports addressed the concerns of local legislators. Since agitation against Chinese immigrants was a preoccupation of British Columbia's provincial legislature it seems doubtful that an officer appointed by that body would contradict that trend. The mandate of the provincial reports also ensured that the effectiveness of prison discipline and the benefits of reforms to the material provisions for punishment would be stressed. The employment of the chaingang on the streets of the capital provided a daily example of the consequences of being convicted. While much less dramatic than the shelling of Indian villages on the Northern Coast, these practices fulfill the same ideological function: to enforce authority through example of terror. The provincial reports leave little doubt that the contours of the ideology of law were changing, but within those dynamics differential treatment rooted in social divisions persisted. The data on the convicts in the provincial jail is

[58] See Chapter One.

limited as it represents only a portion of the arrests. The next level of reports, those from the municipality, offer some information both on the arrest rates and on how the city was policed.

III

The municipal level of reporting was directly concerned with policing. There are six annual reports available from the Victoria Superintendent of Police: 1881, 1882, and 1888 through 1891.[59] A significant proportion of the information available on policing in the city exists only in manuscript form, either as communications from the police Superintendent to the city council or internal communications in the Superintendent's Order Books, However, the most visible face of the law in the city was the men on the beats.

Until the addition of the "outside beats" the structure of the foot patrols does not appear to have altered substantially from those earlier in the decade. If the place the patrols were to meet can be considered to represent the outside boundaries of the beats the patrols up until March 1891, concentrated exclusively in the downtown core. Delineated in 1885 the first and second beats remained unaltered even after Sheppard's additions.[60] Beat number one, for Johnson Street was met at the corner of Government and Fisgard at one end and at Johnson and Douglas at the other. Beat number two for Government Street was met at the south end of the James Bay Bridge and at the corner of Fort and Douglas.[60] The additional beat descriptions were much more detailed:

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[59] Annual Reports from the Victoria Superintendent of Police for the years 1881 and 1882 exist in manuscript form in daily report books [P.R. 1.17 and P.R. 3.7, V.P.A.]. The Annual Police Reports for 1888 through 1891 are published in "Corporation of the City of Victoria," *Annual Reports* [Victoria City Archives]; hereafter City Police Reports.

[60] P.R. 3.8, V.P.A.

> [Number Three]... This beat extends from the North side of Herald Street along Douglas to the Fountain, thence down John Street—to Point Ellice Bridge—back over Rock Bay Bridge and Store Street to Herald Street—and all intermediate streets.
>
> [Number Four] This Beat is East of Blanshard Street, from the Northside of Pandora to Cook Street, along Cook to Chatham and down to Blanshard Street—along Blanshard to Pandora and all intermediate Streets.
>
> [Number Five] This Beat is East of Blanchard Street form the North Side of Fort Street up to Cook Street, taking in all the intermediate Streets as far as Humbolt Street.[61]

From these descriptions the beats appear to have been concentrated in areas where they would be the most visible to Victoria's rate payers. While the use of foot patrols may have centered on deterrence there is no means of testing the effectiveness of the patrols in that role. The pattern of the beats appears to have been more responsive to those who wanted visible signs that their property would be protected than by concerted efforts for crime control. The basic contradiction in the manner in which the city was policed was that areas with high concentrations of those elements identified in public reports as being members of the dangerous classes were not regularly patroled. Instructions to the men on the beats that they should ensure "the ladies of Broad Street" keep their windows closed, and that men would be prevented from loitering on the street,[62] provide an indication of the ambivalent role of the patrols. Although clearly known to the police (Superintendent Bloomfield's census included owners, keepers, and inmates of the city's bawdy houses)[63] brothel owners were not pursued. Similarly while there was a police census of Chinese[64] and periodic campaigns for health inspections, mapping the extreme point of the beats seems to indicate that there was no regular patrol through Chinatown. This did not mean that the municipal officials escaped from the persistent racial identification of the criminal class found in other levels of reporting.

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[61] P.R. 1.5, V.P.A.

[62] P.R. 3.8. V.P.A.

[63] P.R. 1.1. V.P.A. Reprinted as Appendix 5.

[64] Appendix 6.

Policing the Chinese population was considered to be a problem which required special attention from the city council. In the 1882 report Superintendent William Francis O'Connor requested that the City regulate the hours of Chinese theatres because:

> Chinamen are continually prowling the streets to and from these places, and often times Serious difficulty arises when the Peace is broken to detect the right. Party on the slightest noise hundreds of Chinamen will congregate in a group to try and hamper the Police and endeavor to deter them from Performing their duty.[sic][65]

The Chinese resistance to policing was evident in more than these circumstances: O'Connor deplored that "Chinamen will not bear witness against each other."[66] A further request to the council to enhance "Public Safety" was

> to have a law in force authorizing all Chinamen out after a certain hour at night to carry and exhibit a lamp or some sort of light, failing to do so to be subject to a heavy fine.[67]

Superintendent O'Connor felt it necessary to explain his position on these requests to the city council with the following claim:

> I beg to state that I have no personal motive for bringing this matter to the Notice of your honourable body. Neither do I so because they are Chinamen. I have carefully studied this matter and from my experience as Superintendent of Police and Personal knowledge of Chinamen I believe by having the above enforced law and order would be better maintained and property more secure.[68]

O'Connor's attitude toward the Chinese population in Victoria was not simply an individual aberration. His counterparts through the decade would make similar requests of the council and of the men on the beats.[69]

The concern over race in the criminal class is reflected in the structure of police reports. The 1881 report delineated race of offenders in the categories: whitemen, indians, chinamen, halfbreeds, and coloured. The 1882 report adds categories for women

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[65] P.R. 1.15, V.P.A., p. 38.

[66] ibid.

[67] City Police Report 1882.

[68] ibid.

[69] See Chapter Four.

of each race as well as "white boys." All the published reports are structured to separate Indians, Chinese, and all others but Indians and Chinese. Clearly the structure of the municipal reports was governed by the local obsession with race as an indicator of criminality. This structure also appears to have responded to the existence of racially specific charges such as playing FanTan, and being an Indian in possession of liquor.

The 1881 municipal report classified the charges with the following distribution: larceny, 8%, offences against the person, 16.3% drunkenness, 38.8%, vagrancy, 3.2% supplying liquor to Indians, 3.4%, and others 30.3%. The only three categories for which there were Chinese arrests reported were larceny (six arrests), offences against the person (five) and vagrancy (two). Even when the "other" category of charges for which there are no race breakdowns are excluded, Chinese offenders accounted for only 2.4% of reported arrests. Compared to their percentage of the city's population in 1881 (10%) this is a remarkably low distribution among those arrested. The arrest rate for Chinese in 1881 was the lowest for any of the years for which there are Annual Police Reports. The highest reported rate for Chinese arrests occurred in 1890 when they represented 14% of the total arrests in the city. In 1891, when the Chinese were enumerated at 11.2% of the city's population they accounted for only eight per cent of the reported arrests.

While it appears that the percentages of Chinese among all those arrested was increasing, with a peak in 1890, this is almost the inverse of the reported rates for Indian arrests. The lowest rate for Indians as a per cent of total arrested was reported as eleven per cent in 1890: the highest rate was reported in 1882 (33.2% of arrested). While there was some tendency for Prison officials to group the Chinese and Indians together when discussing the criminal classes, there was clearly a distinction in their treatment at the localized level.

The municipal level of reports demonstrate the same tendencies as the provincial prison returns. While the chief officers claimed that the Chinese represented a particular threat to civil order, neither arrests nor convictions seem to support these claims. The most common types of charges according to the municipal reports were drunkenness and vagrancy, but these charges were rarely applied to the Chinese. Either these "crimes" did not occur among the Chinese populace or the police chose not to arrest on that basis. The latter possibility seems the most likely, especially in light of the absence of regular patrols through Chinatown. The observations of Superintendent Bloomfield suggest that Chinese people did prowl about the streets, and they even did so in noisy groups. However, they were not arrested for doing so. This could indicate a successful resistance to policing but such a conclusion can not be affirmed through the public documents. The contradiction between the literary and statistical evidence found in the municipal reports confirms that "criminality" was a function of police behavior, not the behavior of the population. The persistent identification of visible minorities with social disorder was clearly an aspect of a legitimating ideology.

While other levels of reports stressed the link between urban growth and disorder, the Victoria Police Superintendent stressed the "orderly nature" of Victoria's residents. Despite Victoria's population increasing by nearly two hundred per cent between 1881 and 1891 the number of arrests (as recorded in the municipal reports) per one thousand residents declined dramatically: the rate in 1881 was 115.90; and in 1891 was 77.35. The notions, propounded by police and prison officials that the disorderly portion of the population would be a constant or increasing factor was not supported by the basic arrest rates. However, it seems possible that there might be a link between the relative size of the police force and the arrest rates.

In his annual report for 1881, O'Connor lists the arrests per officer by charge

type.[70] He divides arrests into the categories of larceny, drunkenness, offences against the person, vagrancy, and selling liquor to Indians. Absent from this report on arrests are Bylaw infractions, and persons detained for non-criminal offences. The totals for each category do not agree with the numbers listed in the "calendar of arrests" for 1881, nor with the prison information. However, the arrests per officer totals provide some insights into the operation of the force. From this report it is clear that both the Superintendent and Sergeant had more than a supervisory role, being responsible for twenty and forty-two arrests respectively. The officer credited with the most arrests was Constable Hough. The night watchmen were responsible for the fewest arrest. The average number of arrests per officer in 1881 was sixty. The professionalization of the police force did not appear to substantially alter that rate: in 1891 the average number of arrests per officer was sixty-two. The number of police officers per capita declined between 1881 and 1891 while the number of arrests per officer remained relatively constant. The declining arrest rate therefore appears to have been more a function of the size of the police force than of the size of the city or its "criminal classes."

One common feature of all three levels of criminal reports is the collapsing of city by-law infractions into one aggregate figure. This severely limits the utility of the published reports for the study of routine law enforcement in urban centers. The volume of these charges indicates by-law enforcement was a major aspect of nineteenth-century policing. This was, in part, due to the broad mandate of the city government in regulating nuisances, health and sanitation. For example, one of the first ordinances for "improving the sanitary condition" of the City of Victoria made it unlawful to "harbour Indian women within the precincts of the city" unless they were "bona fide" hired servants or married.[71] A number of other civic charges also show the interface between discipline and social formations in the city. These charges in

[70] City Police Report 1881, V.P.A.

[71] Corporation of the City of Victoria, Council Minutes, 29 Dec. 1862, Victoria City Archives.

particular suggest the bias and limitations of an approach confined to published reports on criminal behavior.

The mandate of the published reports limits their utility for micro-level analysis of enforcement practices. the structure of all levels of reporting tended to mask the effects of the growth of the city's regulatory functions. This is just one of the basic difficulties presented by the published statistics. More significantly, the various "year end's" and numerous gaps make it impossible to compare or verify different levels of reporting. Overall, the routinized presentation of statistics minimized the importance of the dynamics of the legal structure. It also furnished an impression of objectivity in an increasingly rational bureaucratic order. The focus on criminality blurred the basic fact that the reported offences were a function of law enforcement. The published reports do, however, reveal many of the assumptions behind the administration of the criminal law.

Statistics were presented and interpreted in ways which enhanced the position of each administrator. This aspect of reporting was particularly evident at the municipal level at which the efficiency of the police and the law-abiding character of the city's residents were stressed. Disorder was depicted as an unfortunate consequence of employing transient labourers. The provincial reports, through which prison budgets were justified, stressed the effectiveness of reforms to the material provisions for punishment. At both of these levels of reports the localized obsession with visible minorities was expressed. While ethnicity was considered a factor in defining the "criminal classes" at the national level, it was only one of a number of variables collected. The contradictions between the literary and statistical evidence found in the published reports can be linked to the mandates of each of the reports, the concerns of administrators, and the functions of law as ideology.

In the late nineteenth century the contours of the ideology of law were not static. While the published reports reveal the operation of a legal system which expressed "majesty, justice and mercy," they were in themselves an aspect of a rising institutional model that was "professional, bureaucratic and democratic." It is in the latter that the ideological function of "criminal classes" can be explicated. Since the notion of a democratic state is founded on both equality of treatment under law and open access to the opportunity structure (or social mobility) criminality was seen as a signal to the failure of the individual and of society. Hence the identification of a hardened class of criminals and the association of visible minorities within that class was presented as a moral disease which could be cured with an exact set of punishments. Any recognition that economic status was implicit in definitions of criminality would be antithetic to the democratic face of the law. Race was therefore a more acceptable means of isolating the "dangerous classes" in late nineteenth-century British Columbia, especially since neither the Indians nor the Chinese were accorded full membership in that democracy.

The public reports provide an interesting contrast between the stated importance of race in determining the criminal classes, and the rates at which the Chinese were arrested and confined to the prisons. This disparity leads to the question whether these rates would be be the same as those found in the "non-public" sources. Because of the differences between the arrest and convict racial distribution it seems likely that the conviction rate for racial minorities was very high. However, in order to measure those rates other sources must be consulted. Deficiencies in the published sources, such as gaps in reporting, and the use of broad charge types requires the examination of the available manuscript sources. As mentioned the "Returns of Convictions and Orders" are available in the Provincial Secretary's papers. The reports which preceded the national criminal statistics in British Columbia included the 1874 "Justice of the Peace and Coroner's Oath Act," which ordered quarterly returns from every Stipendiary Magistrate, Police Magistrate and Justice of the Peace. Primarily concerned with the

accounting of fines, fees and forfeitures, the "Return of Convictions and Orders" were also to include information on the charge, conviction or order, and the statute under which the conviction or order had been made.[72] These reports do not always identify the offender, and more importantly, they are not available consistently through the time period. The returns from the gaols, available in the Attorney General's papers, are the reports which formed the basis of the provincial gaols statistics. As with the justice of the peace returns, these reports are not consistently available. Since these returns were summaries of information compiled on a day to day basis the obvious recourse is to examine the daily records themselves: in particular, the police magistrate's benchbooks and the police chargebooks.[73]

[72] S.B.C. 1874 [37 Vict.] c.7, s.5.

[73] Chargebooks are in record groups C.B. 5—C.B. 9; police magistrates' benchbooks are in record groups C.B. 3.1—C.B. 3.5, V.P.A.

TABLE 10
Charges by Class of Offence for British Columbia:
1876, 1879, 1881, 1884, 1888, 1891

Class of Offence	1876 (all)			1879 (all)			1881 (summary)		
	Charge	Acquit	Convict	Charge	Acquit	Convict	Charge	Acquit	Convict
Class 1 *Against Person*	149 (13.2%)	53	92	44 (45.4%)	10	34	79 (12.9%)	20	52
Class 2 *Property With Violence*	10 (0.9%)	4	5	- (1.8%)	-	-	11 (12.1%)	5	5
Class 3 *Property Without Violence*	81 (7.2%)	41	32	19 (19.6%)	8	11	63 (10.3%)	25	37
Class 4 *Malicious Property*	7 (0.6%)	5	2	(0.0%)			5 (0.8%)	2	3
Class 5 *Forgery*	- (0.0%)	-	-	2 (2.1%)	2	-	- (0.0%)	-	-
Class 6 *Others*	881 (78.1%)	184	625	32 (33.0%)	9	23	453 (74.1%)	94	354
Totals *Percent by Charge*	1128 (100%)	287	756	97 (100%)	29	68	611 (100%)	146	451

Class of Offence	1884 (indictable)			1888 (summary)			1891 (indictable)		
	Charge	Acquit	Convict	Charge	Acquit	Convict	Charge	Acquit	Convict
Class 1 *Against Person*	18 (54.5%)	5	13	41 (22.8%)	5	36	50 (28.4%)	6	-
Class 2 *Property With Violence*	4 (12.1%)	-	4	9 (5.0%)	4	4	19 (10.8%)	2	1
Class 3 *Property Without Violence*	8 (24.2%)	1	7	102 (56.7%)	43	58	86 (48.9%)	20	-
Class 4 *Malicious Property*	- (0.0%)	-	-	2 (1.1%)	2	-	3 (1.7%)	1	-
Class 5 *Forgery*	- (0.0%)	-	-	3 (1.7%)	-	-	1 (0.5%)	-	-
Class 6 *Others*	3 (9.1%)	-	3	23 (12.8%)	2	21	17 (9.7%)	-	-
Totals *Percent by Charge*	33 (99.9%)	6	27	180 (100.1%)	56	122	176 (100%)	29	

* Canada, Criminal Statistics. Missing cases used in calculations of conviction rates include those committed to insane asylums, those remanded for trial, and deaths.

TABLE 11
Cases subject to Trial by Jury
and summary convictions and orders
British Columbia 1881*

Judicial District	Cases Subject to Trial by Jury									
	Tried Summarily			Tried by Jury			Totals			
	Convict	Acquit	Total	Convict	Acquit	Total	Convict	Acquit	Carried	Total
Cariboo									1	1
Clinton				9	4	13	9	4		13
New West				26	7	33	26	7		33
Victoria	33	17	50	7	9	16	40	26	10	76
B.C. Total	33	17	50	42	20	62	75	37	11	123

Judicial District	Summary Convictions and Order				Total				
	Convict	Dismiss	Acquit	Total	Convict	Acquit	Inst'n	Carried	Total
Cariboo	13	4		17	13	4		1	18
Clinton					9	4			13
New West					26	7			33
Victoria	363	105	3	471	403	131	3	10	547
B.C. Total	376	109	3	488	451	146	3	11	611

* Canada, "National Criminal Statistics," *Sessional Papers*, no. 14, vol.16, 10 (1883), Table III.

TABLE 12
Indictable Offences:
British Columbia, 1891*

Judicial District	Indictable Offences			Tried by Jury			Percent Tried Summarily		
	Convict	Acquit	Total	Convict	Acquit	Total	Convict	Acquit	Total
Cariboo	3	-	3	-	-	-	100	-	100
Clinton	22	8	30	22	8	30	0	-	0
New Westminster	58	12	70	9	5	14	84	58	80
Victoria	62	9	71	12	5	17	80.6	44.0	76.0
B.C. Total	145	29	174	43	18	61	70.3	37.9	64.9

* Canada, Criminal Statistics 1891.

TABLE 13
Summary Convictions and Cases Subject to Trial by Jury but Tried Summarily by Consent: British Columbia, 1891*

Judicial District	By Police or Other Magistrate			By Speedy Trials Act			TOTALS			Summary Conviction
	Convict	Acquit	Total	Convict	Acquit	Total	Convict	Acquit	Total	
Cariboo	-	-	-	3	-	3	3	-	3	-
Clinton	-	-	-	-	-	-	-	-	-	18
New Westminster	35	1	36	14	6	20	49	7	56	389
Victoria	37	-	37	13	4	17	50	4	54	808
B.C. Total	72	1	73	30	10	40	102	11	113	1215

* Canada, Criminal Statistics 1891.

TABLE 14
Birthplace of Offenders
By Class of Offence, *
British Columbia 1891

Class of Offence	British Isles			Canada	U.S	Other Foreign Countries	Other British Possessions	Total
	England and Wales	Ireland	Scotland					
Class I	3	2	1	16	7	7		36
Class II	2		1	3	4			10
Class III	8	2	4	16	9	16	1	56
Class IV		1				1		
Class V								
Class VI		2	1	7	3	3		16
Total	13	6	8	42	24	26	1	119
(Percent)	10.9%	5.0%	6.7%	35.3%	20.2%	21.8%	0.8%	100%

* Canada, Criminal Statistics 1891.

TABLE 15
Places of Birth of
the People of Victoria
and British Columbia, 1891*

Places of Birth	Victoria District			British Columbia	
	Number	Percent of District	Percent of B.C.	Number	Percent
Ontario	1779	9.6	15.3	11,658	11.9
Quebec	333	1.8	13.0	2,567	2.6
Nova Scotia	775	4.2	29.1	2656	2.7
New Brunswick	216	1.2	12.2	1,767	1.8
Manitoba	126	0.7	15.5	813	0.8
British Columbia	4,376	23.6	11.9	36,701	37.4
Prince Edward Island	109	0.6	20.4	535	0.5
N.W. Territories	23	0.1	14.9	154	0.2
Total Canadian Born	7,737	41.7	13.6	56,851	57.9
NewFoundland	183	1.0	41.8	437	0.4
England and Wales	3,869	20.9	29.9	12,959	13.2
Channel Islands	21	0.1	31.3	67	0.1
Scotland	1,66	6.3	26.7	4,4,368	4.4
Ireland	702	3.8	25.3	2,771	2.8
Other British Poss.	226	1.2	45.6	507	0.5
United States	1,568	8.5	23.9	6,567	6.7
Germany	288	1.5	31.8	904	0.9
Scandinavia	182	1.0	17.1	1,065	1.1
Poland	5	0.02	12.5	40	>.1
Russia	16	0.08	5.	276	0.3
France	63	0.3	23.5	268	0.3
Italy	68	0.4	12.1	560	0.6
Spain and Portugal	9	.04	33.3	27	<.1
China	2,080	11.2	23.3	8,910	9.1
Other Countries	269	1.5	18.6	1,447	1.5
At Sea	31	0.16	83.8	37	
Unknown	55	0.3	49.1	112	0.1
Total Foreign Born	10,801	58.3	26.1	41,322	42.1
TOTAL	18,538	100	18.9	98,173	100

* Census of Canada, 1891, v.1, table v, p.332.

TABLE 16
Employment of Prisoners 1891*

Month	Total in Gaol	Under Sentence	Awaiting Trial	Employed Inside Daily Average	Chain Gang Daily Average	Female	Sick	Insane
Nov. (1890)	47	42	5	13	8	4	1	1
Dec. (1890)	58	48	2	17	14	4	9	1
Jan.	58	50	3	12	15	2	9	1
Feb.	36	33	2	13	7	1	7	2
Mar.	50	27	20	12	7	1	5	2
April	43	37	5	11	14	3	5	1
May	39	38	3	9	12	4	1	1
June	57	39	4	10	12	2	7	2
July	57	45	5	12	17	3	4	1
Aug.	61	47	7	14	17	2	4	1
Sept.	66	48	12	16	14	5	5	2
Oct.	76	55	15	18	22	4	3	3

* B.C. Prisons Report 1891.

TABLE 17
Number of Prisoners Reported by the Victoria Gaol 1879-1891

Year	1879	1880	1881	1882	1883	1884	1885	1886	1887	1888	1889	1890	1891
Remaining[1]	45	24	33	43	40	53	97	48	89	34	54	26	53
Discharged[2]	32	205	243	210	287	802	939	643	242	274	266	265	258
Others	201	241	*	389	*	*	*	*	*	*	*	*	*
Convict	-	-	276	-	327	-	-	-	331	308	320	291	311
Charged	578	470	-	542	-	855	1036	691	-	-	-	-	-
Average[3]	45.1	71	*	34.6	42.5	52	60.3	80	51.8	55	*	42	32.5

[1] Statement A.

[2] Statement C.

[3] Average is daily average.

TABLE 18
Birthplace of the People of Victoria
and British Columbia 1881

Place	African	Chinese	Indian	English	Irish	Scots	German	All Others	Not Given	Total
Wards:										
Yates St.	80	84	2	460	209	175	76	89	85	1260
Johnson St.	54	466	115	930	385	311	140	192	72	2665
James Bay	3	42	42	928	237	431	92	145	80	2000
City:										
Total	137	592	159	2318	831	917	308	426	237	5925
Percent	2.3	10.0	2.7	39.1	14.0	15.5	5.2	7.2	4.0	100
District:										
Total	14	73	86	290	88	166	3	30	12	762
City & District										
Total	141	665	245	2608	919	1083	311	456	249	6687
Province										
Total	274	4350	25661	7297	3172	3892	858	2273	1682	49459
Percent	0.6	8.8	51.9	14.8	6.4	7.9	1.7	4.6	3.4	100
Percent of Province in City & Dist.	55.3	15.3	1.0	35.7	28.9	27.8	36.2	20.1	14.8	13.5

TABLE 19
Country of Convicts
Victoria Gaol 1881

Country	Number	Per Cent
British Columbia	109	39.9
Canada	3	1.1
United States	21	7.6
England	50	18.0
Ireland	44	15.8
Scotland	9	3.2
China	16	5.8
Germany	7	2.5
Denmark	1	0.4
Norway	4	1.4
Holland	2	0.7
Sanwich Islands	1	0.4
West Indies	2	0.7
Algeria	1	0.4
Russia	1	0.4
Italy	2	0.7
Total†	273	100

† Missing cases: 5

TABLE 20
Residence of Convicts
Victoria Gaol, 1881

Place	Number	Percent
Victoria	189	69.0
Esquimalt	24	8.7
Metchosin	2	0.7
Saanich	2	0.7
Cowichan	4	1.4
Fort Rupert	18	6.6
Beech Bay	1	0.4
Metlakathla	1	0.4
Sitka	3	1.0
Queen Charlottes	11	4.0
Skeena	3	1.0
Bella Bella	2	0.7
Bella Coola	1	0.4
Tongas	1	0.4
Harrison River	1	0.4
Leech River	1	0.4
Fraser River	2	0.7
Yale	1	0.4
Kamloops	1	0.4
Cassiar	1	0.4
Port Townsend	1	0.4
Puget Sound	1	0.4
San Juan Islands	1	0.4
San Fransico	2	0.7
Total†	274	100

† Missing cases: 4.

TABLE 21
Crosstabulation of Race by Residence:
Convicts, Victoria Gaol, 1881

Residence	Race		
	Indian	Not Stated	Total
Victoria	51	138	189
Victoria District	3	25	28
Others	44	13	57
Total[†]	98	176	274

[†] Missing Observations: 5; Chi-Square: 56.57315; Significance: 0.0000

TABLE 22
Nationality of Convicts
Victoria Gaol, 1891*

Nationality	Number	Per Cent
England	69	24.2
Ireland	24	8.4
Scotland	16	5.6
Wales	7	2.5
Canada	20	7.0
British Columbia	57	20.0
United States	39	13.7
China	20	7.0
Norway and Sweden	11	3.9
Germany	5	1.8
France	3	1.0
Italy	3	1.0
Australia	4	1.4
Other Countries	7	2.5
Total	285	100

* B.C. Prison Report 1891.

TABLE 23
Race of Offenders, Annual Police Reports:
City of Victoria, 1881, 1882, 1888-1891

Race		Year					
		1881	1882	1888	1889	1890	1891
Chinese	Number	13	35	57	55	148	116
	Percent	1.7%	5.7%	6.5%	6.7%	14%	8%
Indians & Halfbreed	Number	203	204	166	121	119	251
	Percent	26.2%	33.2%	18.9%	14.8%	11%	18%
Coloured	Number	2	5				
	Percent	.3%	.8%				
Whites	Number	322	331				
	Percent	41.5%	53.9%				
All but Chinese and Indians	Number			653	639	811	1067
	Percent			74.5%	78.4%	75%	74%
Other Chargees	Number	235	39				
	Percent	30.3%	6.7%				
Totals		775	614	876	815	1078	1434

CHAPTER FOUR:

Law at the Level of Enforcement: 1881 and 1891

> one should try to locate power at the extreme points of its exercise, where it is always less legal in character.[1]

The central question in this examination of the police and police court is not how they operate in the legal domain, or how they represent sovereign or democratic rights but what they reveal of state power. Viewing law at the level of enforcement as part of a network of domination provides its own definition of the interaction between law and social formations. The advantage of such a definition is that it removes from the study of law implicit suppositions of justice. But is this language of control appropriate for understanding law and society in late-nineteenth century Victoria? To fully answer that question it is necessary to go beyond the theoretical debates, and the structural aspects of the administration of law to examine the behavior of the police and police magistrates. The published sources were governed by the specific mandates of the administration of the state. While they provide an important view of the public face of the law they also raise unsolved questions. Therefore it is necessary to turn to sources generated through the routine activities of the police and police magistrates. Before proceeding with a discussion of these sources or specific questions, the general framework from which the hypotheses were derived will be reviewed.

In reading both the historiographic debates and the narrative sources the central issue has been to identify the nature of law's authority in late-nineteenth century Vic-

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[1] Foucault, *Power/Knowledge*, 97.

toria. The theoretical models suggest three defining features in the dynamics of law. First, doctrinal evolution can be viewed as the product of the creative tension between legal formalism and discretionary power. This explanation, with its assumption of an autonomous quality in law, does not provide a bridge for understanding the function of law in society. While this model has limited utility as an expression of modern conceptions of justice it cannot be dismissed. Second, the regularization of disciplinary networks can be interpreted as the result of the development of the rational (or modern) institutional state. Through the process of regularization, policing became a profession intimately tied to the urban bureaucracy. This model provides a description of recognizable trends but the impetus behind "modernization" remains undefined. Third, the nature of law's authority rests in the balance between coercion and ideology. The key elements of the ideology of law have been identified as "majesty, justice, and mercy."[2] While the flexibility of this mode of explanation makes it attractive, this same flexibility is, in some respects, a fault.[3] In part one of this thesis the context of the administration of law in late-nineteenth century Victoria was examined. This evidence suggested ways in which the theoretical models could be refined.

A key feature in the dynamics of law enforcement in Victoria was the transformation of the police force from quasi-military adjuncts of the colonial administration to a professional element of the urban bureaucracy. While this transformation could be viewed as an expression of rationalization, such an explanation does not accommodate the non-linear aspects of this change. The struggle between the city and the province over control of both the police and the city lock-up revealed competing conceptions of the state. The full dimensions of this transformation included shifts in the control of the ideology of law. The need for a legitimizing ideology was demonstrated by the distance between those who administered justice and those who would receive

[2] Douglas Hay, "Property, Authority and Criminal Law."

[3] See Langbein, "Albion's Fatal Flaws."

it. The pervasive quality of the ideology was seen in both the material provisions for punishment and the public reporting mechanisms.

The regularization of the administration of law in late nineteenth-century Victoria entailed a transformation of both its structure and the contours of its legitimating ideology. But how did those changes affect enforcement practices? The creation of enforcement mechanisms which were professional, bureaucratic, and democratic has been presented in general terms through the changing contours of the ideology of law, but a more detailed analysis is desirable. Elements of a regularized and institutional response to "disorder" should be evident in the operations of the police, the police court, and the prisons. The distance between the public perceptions of law and how law was enforced is key to understanding the ideology of law within the matrix of state power. The ideal sources to test that relationship would be those generated as part of real events in policing and court proceedings. It is for that reason that the chargebooks and police magistrates' benchbooks have been selected for analysis.

There are several ways in which the chargebooks are a superior source of information. The chargebook itself was daily taken to the police court where the sentencing information, including the number of days the case was remanded, was recorded by the magistrate. Thus the chargebooks constituted an immediate record of the activities of the police and police magistrate. There is an entry for each person charged, and those who came to the lock-up for lodgings and those summoned to the police court. Each entry for those arrested records: date; time admitted to gaol (where applicable); name of chargee; race where chargee is Indian or Chinese; gender where female; offence, and some of the circumstances of arrest, including the name of arresting officer; name of person who received the chargee into the gaol; discharge information (in particular when a fine was paid); dates case was remanded; conviction or order, signed by the Superintendent of Police; and notes on the disbursement of the fines. The entries are

not entirely consistent: place of arrest and details of goods in the chargee's possession are not always recorded. The entries for persons summoned to the police court do not contain information on the gaol or police officers, nor the time received. The chargebooks are preferable to the police magistrate's benchbook for their depth of information on the charge and arrest, and the discharge information which indicates whether or not a fine was paid. This is an important variable because there were default terms for chargees who did not pay their fines. The chargebooks also include those persons who stayed in the gaol for non-criminal reasons: lodgings, safekeeping, and necessary witnesses.

Beyond questions of immediacy in reporting, the published statistics eliminate many details in the charging procedure. While this may be expected, the differences between the chargebooks and the police magistrate's benchbook are often dramatic. One example of the reduction that occurred between these two manuscript sources can be seen in the case of a man arrested on October 11, 1891. According to the chargebook, Constable O'Connor charged that the man in question

> is an idle and disorderly person and is in the habit of frequenting Houses of Illfame and for the most part does support himself by the avails of prostitution and is charged with being a vagrant.[4]

The police magistrate's benchbook only indicates that the man, charged with vagrancy, was discharged on October 12, 1891.[5]

While the chargebooks provide the most detailed information they are not without some limitations. The chargebooks and the benchbooks are essentially literary sources and translating their information into machine-readable form creates some difficulties. The general aim in coding was to record the data as closely to the source descriptions as possible, this however created single variables with hundreds of values.

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[4] C.B. 1.8, 1891, V.P.A.

[5] C.B. 3.5, 1891, V.P.A.

The data, once the variables of charge, type of sentence, arresting officers, and time of arrest had been entered, was recoded into broader categories. Another difficulty with the chargebooks and police magistrates benchbooks is that the results of indictable offences tried by jury (as opposed to summarily tried by consent) are not available. The sampling and testing procedures were designed so as to accommodate some of these limitations.

The samples were taken from the years 1881 and 1891 and aside from the convenience of these being census years there were a number of other reasons for their selection. The former was selected because is was the first year the city had fiscal control over policing. The dates selected for the year November 1, 1880 to October 31, 1881, were chosen to coincide with the disaggregate information in the provincial prison report, making it possible to link the records. 1891 was selected because it was the year preceding the implementation of the national criminal code and the first full year of the operation of the juvenile reformatory. A systematic sample was created by coding every second case from the charge books. This procedure circumvented the difficulties presented by the variable number of cases per page, and per day.

The sample provided three hundred and twenty-five cases taken from the 1880-1881 police charge book.[6] During coding these cases were checked against the police magistrate's bench book for the same period to insure that there were no significant gaps in the police record of charges.[7] For the most part the chargebooks proved to be the richer source, with more detailed descriptions of the charges and arrests. In some cases, primarily civil charges, the benchbook provided lists of witnesses absent in the charge book. Unfortunately this type of information was not consistently recorded in the sources and was therefore not captured during coding. The police chargebook for

[6] C.B. 6 "Chargebook October 1880 to October 1882" V.P.A.

[7] C.B. 3.2 "Police Magistrate's Bench Book, November 1878 to November 1882" V.P.A.

1890 through 1891 only runs from October to August.[8] The sample drawn from this charge book provided four hundred and forty-four cases. Since the comparison of these charges to those found in the Police Magistrate's benchbook corresponded in all cases for the variables of name, race, charge and sentence, the magistrate's benchbook was used to complete the sample. The cases in the sample from the magistrate's benchbook for the months of August through October 1891 number two hundred and thirty-three. Detailed information on the arrests, such as name of arresting officer, time of arrest, and discharge, was not available for these cases. Nor were the instances of people applying for lodgings, or held for safekeeping available in the benchbook data. The total number of cases coded for statistical manipulation through SPSSX was nine hundred and ninety nine.

The sample can be used to test a number of propositions relating to the dynamics of law enforcement in late-nineteenth-century Victoria. The first questions to be explored relate to the context of urban policing. Although during the first decades of their existence the Victoria Police could be more accurately characterized as being quasi-military adjuncts to the state, the claim was made that the force was founded upon professionalized models of urban policing. Thus one question is whether municipal control over policing would allow that model to be realized. Related to this theme is the question of the role of the police as part of the regulatory bureaucracy of the city.

The chargebooks provide an opportunity to examine aspects of the behavior of the police force; but before describing the information from the sample, the general character of the police forces in 1881 and 1891 should be noted. The 1881 police force consisted of Superintendent O'Connor, Sergeant Bloomfield, eight Constables, and four special constables who acted as night watchmen. The police were equipped with full

[8] C.B. 9 "Police Charge Book, October 1890 to August 1891" V.P.A.

uniform, lamp, and whistle for each member. There were seven pistols, eight batons, and seven pairs of handcuffs for the entire force. With the exception of the uniforms, this distribution of equipment and the manpower suggests that the 1881 force was closer to the earlier models of policing, that of the village watch, than the metropolitan model it claimed as its heritage. Even though the 1891 force appears to have moved toward a more regularized model of policing it had become a proportionally smaller force. In 1881 there was one police officer for every four hundred and twenty-three people in the city; by 1891 that proportion decreased to one officer for every seven hundred and thirty-two residents.

Six months, from November to April 1881 were selected to explore the operations of the police force from the chargebook sample. There were 149 cases in those six months with a per month average of twenty four. The arresting officers were coded with a unique number for each officer, and combination of officers responsible for arrest. A value was also assessed for persons summoned to the police courts, and when stated, who they were summoned by. Contrary to the impression given by the Annual reports, officers acting alone accounted for little more than half the arrests. Persons who were summoned directly to the police court accounted for ten per cent of the chargees. The second watch, from four p.m. to midnight, accounted for forty-seven per cent of all arrests [see Table 24].

The six months, from November to April 1891, selected for comparison to the 1881 results indicate that the pattern of policing in the city had changed in the intervening decade. Even during the six sample months there was a significant shift in the distribution of police in the city. In November 1890 there were twelve officers under the guidance of one sergeant and Superintendent Henry Sheppard. By April 1891 the number of Constables had increased to fourteen regulars, and two specials, with three Sergeants. Three beats had been added in March 1891, and a regular rotation for

watches had been established.[9]

Not only did the central beats remain consistent between 1881 and 1891 other patterns in policing appeared to have remained the same. While the second watch provided the most arrests, these were only a third of the charges. Officers acting alone were responsible for less than half the arrests, with arrests involving two officers providing fourteen per cent of the charges [see Table 25]. These two results were similar to the 1881 data, however there were two other categories of arrests found in the 1891 data. There were arrests which involved three officers, and arrests which involved members of the B.C. Provincial Police. This co-operation between the municipal and provincial forces represents a substantial change in the attitudes of their administrators.

The senior officers appear to be have been less involved with routine arrests in 1891. Arrests by Superintendent Sheppard, and Sergeants Walker and Hawton were eight percent of all charges in the sample. Another change between 1881 and 1891 was the increase in the proportion of charges which were the results of summons to the Police Court: the rate had nearly tripled. It was expected that enforcement of the city by-laws would be largely responsible for this increase.[10] The types of charges were recoded into the eight categories suggested by the comparison to the published reports for 1881 [see Table 26].[11] City Bylaw infractions accounted for forty-two per cent of all the charges summoned to the police court, the next most frequent charge type summoned was vagrancy, (including prostitution and gambling offences) at twenty-nine per cent.

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[9] P.R. 1.5 "Superintendent's Order Book" V.P.A.

[10] This was the claim in the City Police Report, 1891.

[11] The categories were offences against the person, offences against property, drunkenness and breach of the peace, Indian liquor offences, city bylaw infractions, vagrancy and gambling, naval and work related offences, and other offences.

The public reports indicated that the arrest-per-officer rate remained relatively constant between 1881 and 1891. However, if the charges which were the result of summons are considered the arrest-per-officer rate declined. Cases summoned to the police court were not processed through the lock-up, suggesting that law enforcement agents made distinctions between by-law and vagrancy charges and other "crimes". Another hypothesis suggested by the increase in cases which were summoned is that there was a greater degree of co-operation between the chargees and the police. In other words, the effectiveness of ideology can be seen in the application of less coercive methods of enforcement. This possibility is also confirmed by the numbers of officers involved in arrests. It was expected that there would be a correspondence between increased numbers of arresting officers and the seriousness of the offence. However, the more serious charge-types: person, property and Indian liquor do not support this supposition. Arrests involving more than two officers, and those involving the provincial police were predominantly for drunkenness, while nearly all the serious charges were handled by single officers.

The changes in staffing, and in particular the more clearly defined hierarchy within the force itself, are indications that by 1891 the Victoria police had moved toward a more professional model. Their importance in the city bureaucracy can only be approximated through the dramatic increase in prosecutions for by-law infractions. The question thus becomes whether these changes represented a fundamental shift in the authority of the police. Central to understanding the autonomy and authority of the force is the question of discretionary power. The discretionary power of the police is usually viewed as a question of whether or not an arrest will take place and after arrest whether the charge will be processed. While there is no means to examine the former, the latter might be estimated through variations in the number of cases dismissed or withdrawn before they reached the police court. The reasons for dismissal of charges, however, were not always clear, nor was the time of release recorded

consistently thus a larger sample would be needed to test this proposition. Nevertheless the sample drawn here does permit the testing of another aspect of police discretion: arrests relating to class or racially specific charges.

The charge of vagrancy was itself a crucial element in policing the presumed criminal classes. The instructions from the Superintendent's day-book for December 11, 1891 state:

> Sergeants and Constables will keep a sharp look out on their beats and stop all Chinamen after midnight and search them and ask them were [sic] they live and what they are doing out so late and if they cannot give any satisfactory account of themselves lock them up under the Vagrant Act also Whitemen who [are] not know[n] to the Police...[12]

These nativistic tendencies were clearly articulated with regards to both the visible minorities and the "men employed on public works."[13] These instructions also demonstrate the police involvement in regulating the urban labour pool. Even though some work-related offences, especially those originating with the merchant fleets, remained relatively constant, a number of city-by-laws and moral offences appear more closely related to the labour demand cycles. The discretionary power of the police, exercised through provisions such as the vagrancy act, was also supplemented by a number of city health ordinances designed to remove Indians and Chinese from the city.

The officer duty book for 1891 and the annual reports for 1881 led to the expectation that the charge of vagrancy would be frequently employed after midnight. In particular, the instructions indicated that Chinese and migrant whites would be over-represented among vagrancy arrests. In the 1881 sample there were eleven vagrancy arrests, three in each of the first two watches, five in the third. The only Chinese charged with vagrancy was received into the gaol after midnight. In the 1891 sample there were thirteen vagrancy arrests: four in the first watch, three in the second, and

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[12] P.R. 1.4, Officer Duty Book, 1886-1891, V.P.A.

[13] In particular: "Annual Reports of Henry W. Sheppard, Superintendent of Police," City Police Reports, 1888-1890, V.C.A.

six in the third. The only non-whites charged with vagrancy were two Chinese but these arrests took place during the first two watchs, not after midnight as expected. Thus despite Superintendent Sheppard's instructions there were no Chinese arrests for vagrancy after midnight, in fact there were no Chinese arrested during the third watch. The possibility that this absence of Chinese arrested for Vagrancy was an aberration in the six month sample was tested against the total sample for 1891. The two vagrancy type charges: gambling and loitering found in the first six months of the sample year were the only ones during the full year. There were other gambling charges, such as "playing the unlawful game of fan tan" but there was no time of arrest recorded for those charges. There is no direct parallel between these results and the evidence found in the published reports. In both instances the statements made by the superintendent regarding the Chinese are not supported by the number of arrests. In this instance there is a strong suggestion that there was resistance to the Superintendent's instructions by the men on the beats. However, there is no means to test such an assertion.

The creation of an institutional or "de-personalized" enforcement hierarchy also rests on the bureaucratization of its administration. While this was inherent in the drive toward professionalism, the separation of enforcement functions from social welfare, and the ranking of disciplinary mechanisms, are equally significant. Bureaucratization can also be seen in the expansion of the city's regulatory functions and the role of the police in them. The one element of the civic administration which can be explored through the chargebooks is the enforcement of city by-laws. It can be expected that the proportion of the charges which were by-law infractions would increase as the police became more firmly established as part of the urban bureaucracy.

A central theme in the transformation from the colonial to the provincial

administration of laws was the dramatic expansion the city's regulatory functions.[14] This shift reflects the expansion of "democratic" notions of justice. A key question then is whether that shift is equally evident in the chargebook data. The Annual reports indicate that the number of by-law infractions had dramatically increased in the decade between 1881 and 1891 but they do not indicate the types of infractions.

In the sample for 1881 there were four by-law infractions: two for driving across a bridge at a pace faster than a walk, one for allowing a horse to stand untied in the streets, and one for carrying on a trade (hawker) without a license. Contrary to the report from the Police Superintendent for 1881,[15] city by-laws accounted for less than two per cent of the charges found in the manuscript sources. The difference between the manuscript sources and the published reports is a further indication of the way in which public reports were governed by the interests of those who compiled them. Since 1881 was the first year of civic control over policing it was expected that the Superintendent's report would stress the responsiveness of the police to civic concerns. The published and manuscript sources for 1891 are much closer in reporting by-law infractions. Thirteen per cent of the charges found in the sample were clearly by-law offences while the published report provides the figure of fourteen per cent.

Not only did the number of infractions increase dramatically, there was a wide range of civic charge types. In 1891 there were eighteen different types of By-law offences found in the sample [see Table 27]. The most common infractions were for the Street By-law, the next most common was "allowing thistles to grow" and/or "come to flower." These infractions, and those pertaining to driving offences seem to support the notion of an increasingly democratic ideology in the application of laws. Property owners were summoned and fined five dollars for allowing thistle to bloom. It seems that one of the consequences of extended land speculation was that the names

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[14] See Chapter One

[15] By-law offences reported as 7% of all charges in the City Police Report 1881, V.P.A.

of some of Victoria's more prominent citizens appeared in the charge books. Similarly for some of the driving offences, the carriage owner was summoned, providing the superficial support for the notion that there was equality under the laws of the city. While on one end of the economic scale employers who failed to pay their provincial taxes can be found among civic charges, failing to have employment was also a civic infraction.

Regulating "public morals" was another area where the numbers of charges increased under municipal administration. There are some difficulties with trying to assess these charges as the city and federal laws over-lap for many of the vagrancy types. Of the charges with these ambiguous jurisdictions keeping a house of ill-fame was the most frequent [see Table 28]. The evidence that these were civic charges was in their regularity. Nearly every month the same people were summoned and fined fifty dollars for this offence. Fines in this instance seemed to have more in common with business licensing than with morality. Charges relating to gambling, on the other hand, do not appear with any sort of regularity with one incident producing fourteen of the fifteen arrests for "unlawfully looking on..." and/ playing an unlawful game "in a common gaming house in the City of Victoria." Among these charges were the more racially specific gaming offences related to "fan tan." There is every indication that policing the gaming houses in the city was a haphazard operation. The officer's duty book contains numerous entries which indicate that the men on the beats did not pursue this offence. Orders to search suspected houses were not always acted upon promptly. In one instance an order to enter a house issued in January 1889 was not executed until March 1892. The delay in this case provided the grounds for an appeal on a conviction for obstructing an officer.[16]

[16] Regina v. Ah Sing, *B.C. Reports*, vol. 11 (Victoria: Law Society of B.C., 1895), p. 167.

The charge book data regarding the behaviour of Victoria's police force in 1881 and 1891 demonstrates the need to refine current models. This confirms aspects of the narrative evidence but also raises other issues. The data provides indications that the police force was moving towards a regularized, professional, and bureaucratic conception of law enforcement. However, it is also evident that these changes had not yet transformed fundamental police practices. In particular, the patterns of beats and watches, and the exercise of discretionary power show an on going tension between the way officers represented policing and the actual record of arrests. The process of "modernizing" the Victoria police was not a case of linear progression nor was it accomplished simply through the circumstance of municipal control. Localized control of policing, however, does confirm expansion of "democratic" aspects in the ideology of law. This observation raises the question of the role of policing within the matrix of state power.

Is it sufficient to define arrests as acts of coercion and use that definition as evidence of law enforcement being an exercise of state power? By employing that methodology is there a need to define law's function as ideology? The chargebooks offer one answer to these questions: policing was not entirely a matter of coercive force. The continuing social welfare aspects of policing, such as providing lodgings, and the cases resolved through summons suggest a different type of police force control. But just as there is no means to apprehend the "dark figure" of crime there is no means to evaluate state control mechanisms. The absence of a given charge in the arrest records cannot be read as the extinction of that "crime".

A second theme in the transformation of the administration of law from colonial to provincial control centered on the need to professionalize the courts. County Court Judges and Stipendary Magistrates were to be selected from the legally trained. Authority was to be derived more from the claim to a specific code of knowledge than

from individual prestige. Another aspect of professionalization was the narrowing of the range of tasks which court officials administered. This provided a greater distance between those who would make law and those who would enforce it. The propositions stemming from this observation, which can be tested with the sample data relate to the meaning of regularization and professionalization in the police courts. Does this transformation provide a more "rational" treatment of offences? What is its impact on judicial discretion? Both of these questions can be addressed by comparing the patterns in sentencing for 1881 and for 1891.

In the two decades after British Columbia joined confederation the office of police magistrate had been the target of a drive towards a more professional and regularized administration of justice. While A. F. Pemberton still served in the City of Victoria in 1881 he, and the colonial conception of law he embodied, were soon replaced.[17] By 1888 it was made requisite for any police magistrate in the province to have had at least seven years experience as a lawyer.[18] An important question is whether this drive towards professionalism substantially altered the application of law in Victoria's police court.

The professionalization of the police court can be expected to have an impact in the way charges were recorded. A more regularized treatment of charges should produce descriptions which conform to domestic statutes. Non-statutory charges such as "bad boy" found in the 1881 prison report would not be expected to appear in the 1891 records. This appears to be the case when a record of Summary Convictions by Police Magistrates and Justices [Table 29] is compared with those charges found in the 1881 prison report[19] but this result is strictly impressionistic. Because the chargebooks often include a broader description of the charge, for example "assaulting a Chinaman

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[17] See Chapter 1.

[18] ibid.

[19] See Table 9 (Chapter Two).

with a snowball" as opposed to simple assault, the sample data does not provide any additional means to test this hypothesis.

The police magistrate had access to a number of options when sentencing an offender. Those options included a fine, and in default of payment a term; a combination of term and fine; imprisonment, presumably in the statutorily appropriate penal institution; and imprisonment with hard labour. Both in 1881 and in 1891 the most common penalties were fines [see Tables 30 and 31]. While the percentage of charges receiving fines as penalties increased, the percentage of cases for which there was an optional default term decreased from forty-nine in 1881 to thirty-three in 1891. Similarly the percentage of cases which received hard labour in 1891 decreased. These changes in the pattern of sentencing conform to the general reforms in the punishment regime. In particular, the application of bodily punishments was declining while gradations in the treatment of disorder became more clearly defined. The question then becomes, what effect did these changes have on the discretionary powers of the magistrates.

One model for understanding the dynamics of the law establishes that there is a dichotomy between legal formalism and discretionary powers. While this model is more aptly applied to doctrinal evolution the dichotomy it establishes can be examined at the level of the police court. One aspect of the drive toward a more professional administration of justice was codification of the the criminal laws. Presumably, this also entailed an increase in legal formalism. If the dichotomy holds under a professionalized judicial administration the number of options employed in sentencing should decrease. It is, therefore, expected that the range in sentences for each offence would be narrower in 1891 than it was in 1881. There were two types of sentences tested: terms and fines. In 1881 charges with prison terms total 185 (56.9% of total

sample cases), and charges with fines totaled 153 (47% of sample cases).[20] The five most frequent charges with terms were selected for comparison, these were: drunk and disorderly, vagrancy, Indian in possession of an intoxicant, assault, and selling liquor to Indians [see Tables 32 and 33]. Combined, these five charges equaled eighty per cent of the cases with terms, and eighty two per cent of the cases with fines. While these charges were not the five most frequent in 1891 they were used for comparison [see Tables 34 and 35].[21] The range for sentences, for the selected charges did not produce the expected result. When the range of terms from the samples in 1881 and 1891 were compared only the charge of vagrancy showed a marked decrease in the number of different terms imposed. The most surprising result was the range of terms for drunk and disorderly in 1891. While in 1881 the two types of terms imposed (six hours and thirty days) in 1891 there were eight different term lengths for this charge ranging from one to fifty days. The patterns in the range of fines were similar, with the range for drunk and disorderly fines being from five to fifty dollars. Thus it appears that the professionalization of the police court did not produce narrower ranges in sentences.

This result indicates that there is a need to re-examine the notion of an absolute dichotomy between legal formalism and discretionary powers. While there might be a tendency to assume that a more bureaucratic administration of justice would circumscribe these discretionary powers there seems to be little evidence this was the case. Indeed, it is equally plausible that professionalization, with its incumbent reliance on the expertise of the legally trained, would be accompanied by greater discre-

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[20] Because some cases had both fines and terms recorded, especially those with terms in case of default in the payment of the fine these numbers exceed the total number of convictions in 1881.

[21] The five charges were seventy three per cent of the charges with terms, and sixty-four per cent of the charges with fines in 1891. The five most frequent charges receiving terms in 1891 were: drunk and disorderly (147), being found in a common gaming house, looking on etc. (15), Indians in possession of an intoxicant (13), selling liquor to Indians (12), and vagrancy (11). The five most frequent charges receiving fines in 1891 were: drunk and disorderly (266), infraction of the Street By-law (23—range for fines from two to fifteen dollars), keeping a house of illfame (17—range for fines from five to fifty dollars), allowing thistles to grow,

tionary powers for magistrates. The ways to test judicial discretion with the charge book data are limited. While the aggregate charge types can be tested for the severity of sentences there is no clear result. However, the types of punishments available had increased, and this in itself would provide a broader range in sentence types. Thus, it is likely that the general pattern of reforms, including the movement toward codification may not have effectively increased legal formalism.

One of the most important themes discovered in the published reports was the identification of a criminal class being rooted in the social divisions of class, gender and race. The content of those reports suggests that the identification of the criminal classes, particularly in terms of race, may not have been contingent upon arrest or sentencing rates. This finding can be further explored with the chargebook data. Whether the perceptions of a criminal class translated into significant differentials in sentencing and racially specific enforcement practices can also be tested.

While charges such as vagrancy have an explicit relationship with economic status, the relationship between class and justice is not always so direct. One of the aims in law enforcement was to protect property and while Langbein maintains that this element of justice was used to protect those who were overwhelmingly members of the "non-elite" it is difficult to test such an assertion with the sources available for late nineteenth-century Victoria. Neither the chargebooks nor the police magistrate's benchbooks give any indication of the social-economic status of victims, and the types of property stolen are only sporadically recorded [see Appendix 7]. The only occupational data available is from the prison reports for 1881 and 1891, and from that data it is clear that the people confined to the gaols were almost exclusively from labouring classes.[22] Beyond that generalization it is possible to examine other social divisions (those of race and gender) from the chargebook sample.

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and or bloom (17—all fines five dollars), and selling liquor to Indians (14).

[22] See Chapter 2.

One of the ways in which a class bias could be detected in law at the level of enforcement concerns the default penalties for non-payment of fines. It was expected that for both sample years the terms imposed as a default would be linked to the offender's ability to pay the fine. The most common fine amount in 1881 was five shillings (or $1.25), the most common amount in 1891 was five dollars. The average labourer in the city could expect to earn roughly half that amount for a day's work.[23] It was therefore expected that those who paid the fine, when there was an option, would be fewer than those who did not. [Tables 36 and 37]. While the 1881 sample data has fewer fines paid than not paid the difference was not as great as expected. There are some indictions that a link exists between the length of terms and the non-payment of fines. In the 1891 sample data the number of fines paid exceeded the number which were not paid. While there is again a link between non-payment of fees and length of terms the number of undetermined and inapplicable cases makes this result less reliable. The economic bias in sentencing remains a structural issue where the severity of a fine as a punishment is obviously determined by the chargee's economic status. In other words a five dollar fine is a relatively greater penalty for a labourer working for two dollars a day than for a chargee with a higher income.

Another aspect of class bias in law enforcement which requires more investigation is the meaning of different charge types. However, there are a number of difficulties in trying to determine the nature of class interests evident in the records of arrests nd prosecutions. If a theft from the store rooms of the Canadian Pacific Railway is viewed as an expression of working class resistance, does the theft of an equivalent sum from a fraternal organization provide proof that there was no working class consciousness as defined by E.P. Thompson?[24] Labour historians in Canada have viewed

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[23] William's Directory, 1891

[24] E.P. Thompson, *Making of the English Working Class*. See also Chapter 2.

taverns as a meeting place for working class culture.[25] This is not a new discovery: the nineteenth century moral reformers also identified drinking with the dangerous lower orders. Does it then follow that the higher number of arrests for drunkenness represents a concerted effort on the part of the police to undermine working class culture? While this may be a valid conclusion the normative judgement upon which it rests appears to be self-fulfilling. In such a framework a decline in the number of arrests for drunkenness could be read either as successful working class resistance to law enforcement or the ultimate triumph of the forces of control. This tautological impasse can only be resolved through an understanding of the provenance of the sources. The records of arrests and prosecutions must be examined as the products of policing not the real or imagined behaviour of the criminal classes.

The charge books provide an insight into whether or not the notion of a "criminal class" was translated into arrests. One element which appears to be consistent throughout the law enforcement hierarchy is that transients represented a threat to civil order. Because much of British Columbia's labour force was engaged in seasonal work it was expected that there would be a marked seasonal pattern in the arrest rates. In particular, if transients were a major portion of those arrested the late-fall and winter months were expected to show a marked increase in the number of arrests per month. This does not appear to be the case in either 1881 or 1891 [see Tables 38 and 39]. As with other aspects of the public face of law enforcement the notion that "strangers" were a large proportion of the criminal class did not translate into arrests. The conclusions which can be drawn from this fact are: 1) the persistence of officers reporting transiency as a key factor in identifying the criminal classes was another example of self-interest governing the public reports; 2) the "myth" of the dangerous classes had an ideological function. Similarly, that the women who were convicted

[25] Peter DeLottinville, "Joe Beef of Montreal: Working-Class Culture and The Tavern, 1869-1889," *Labour/Le Travailleur*, 8 and 9 (1981-82): 9-40.

were considered to be "of the worst class" by prison officials,[26] suggests that notions of "criminal classes" are self-perpetuating.

The published reports provided a very limited view of the effects of gender divisions in law enforcement. The nominal list of convicts for 1881 suggested there was a high number of repeat arrests among women. Since this proposition rested on nominal linkages there are some difficulties with testing it. The chargebook data has the same difficulty but the inference drawn from the distribution of names has the same results as the published data. In the 1881 sample the nineteen cases with the first names and racial designations were drawn from a pool of nine individual names, in the eleven cases with last names indicated there was a pool of seven names. In the 1891 sample the forty two cases with first names and racial designation were drawn from a pool of sixteen individual names, in the forty-one cases with the last names indicated there was a pool of thirty-seven names. Repetition of names was, therefore, much more common among non-white women chargees in the sample.

When the cases which received terms in the chargebook data for 1881 were compared to the nominal convict list there was a clear indication of under-reporting of women offenders. In the list of convicts for 1881 women were less than eight percent of the sample. In the chargebooks women were nine percent of the chargees. While this difference does not appear to be statistically significant there were three cases where women convicted in the chargebooks sample did not appear in the nominal list. In all of these cases the women convicted were white. This result, when considered in conjunction with the elimination of the gender classifications in the published municipal reports provides an insight to the public face of the law. Public reporting of disorder among women, and among white women in particular, was obviously undesirable. It is possible to suggest that this facade of moral purity also governed which

[26] B.C. Prison Report 1886.

laws would be enforced.

The type of charges against women in the 1881 sample were predominantly those which could be termed minor offences. The two exceptions were "stealing a gold watch and chain" (dismissed) and assault (received fine); the latter case was the result of a summons by the victim. There were nineteen women arrested for drunkenness and three Indian women arrested for having intoxicants in their possession. The remaining six cases had non-criminal origins: four for safekeeping, one necessary witness, and one applicant for lodgings. There was a distinct change in the prosecution patterns for 1891. The proportion of women arrested increased to twelve per cent of all arrests. While drunkenness remained the most frequent charge against women (42 or 50% of women charged) there was a dramatic increase in offences relating to prostitution. (There were eighteen charges of keeping a house of illfame and two for being inmates of houses of illfame). Non-criminal charges: lunacy (2), safekeeping (1), and necessary witness (7) were the next most frequent charge type for the women in the sample. Again there were few serious charges against women: one assault and three for stealing. Thus, not only in the public reporting, but also in the types of enforcement, disorder among women seems to have been defined in terms of morality.

The different treatment of women can also be tested through the rates of the imposition of fines and terms.[27] For the 1881 sample the combined total of fines and terms for women (26) represented 86.7% of the number of women charged. The comparable rate for men (173) was 58.6%. This differential appears to support the notion that women were more likely to be convicted of an offence than men. However, by 1891 the male and female percentages of fines and terms among all charges demonstrated no significant difference.[28]

[27] Because there are a number of indeterminate sentences a combined total of fines and terms will be used instead of a "conviction rate."

[28] The number of men in the 1891 sample was 591, of those 432 (73%) received a fine or term. The number of women in the sample was 83, of those 63 (76%) received a fine or term.

The data from the 1881 Prison Report suggested that that race may have been a more significant social division than gender. However, the under-reporting of non-Indian offenders obviously influenced that result. The racial distribution of women arrested, based on manuscript sources is substantially different from the public sources. Only two-thirds of women in the sample for 1881 and just over half of the women in the sample for 1891 were Indian [Table 40]. Clearly, before the relative importance of each of the social divisions of race, class and gender can also be assessed more extensive samples should be taken. These would allow for further linkages, and longitudinal analysis.

The published sources do, however, suggest that race would be a factor in differential sentencing. If the notion that the Indians of British Columbia were the chief victims of the justice system is correct then, the rate that they received fines and terms should be much higher than the rate for the general population. This was indeed the case in both 1881 and in 1891, with an increase in the rate for the latter.[29] Another interesting shift was in the way the race of offenders was recorded in the chargebooks. Between 1881 and 1891 differentiation between the various indigenous nations appears to have decreased, while the number of Indians with no tribal or national association recorded increased [Tables 41 and 42]. It seems likely that this shift is reflective of both the decimation of the native population and their declining importance in the economy.

The other main ethnic group identified as likely to have a higher rate of fines and terms than the general population was the Chinese. While this was the case in 1881, their rate for 1891 was even lower than the "all but Chinese and Indian" in the sample.[30] Once again the expectations founded on the published sources are not supported

[29] In 1881 of the total number of cases (325), 199 (61.2%) received fines or terms. For that sample 79 of 103 Indians (76.7%) received fines or terms. In 1891 of the total number of cases (674), 492 (73%) received fines or terms. During that year 102 of 122 Indians (83.6%) received fines or terms.

[30] Rates 1881 for Chinese: 6/9 (66.7%); for 1891: 34/53 (64.2%)

with the data from the chargebooks. If the perceptions of criminality among the Chinese was founded on arrest rates, it can be expected that the chargebooks would reveal substantially different results than the published sources. Moreover, significant numbers of racially specific charges, and differential applications of regulations would demonstrate how perceptions of criminality reinforce themselves.

The obvious question is why the arrests in this instance did not conform to expectations founded on the narrative sources. There are a number of possible explanations for this difference. The most obvious explanation is, that despite all the statements to the contrary, the Chinese were not, as a group, as disorderly as other ethnic groups in the city. Unfortunately to test this hypothesis one would have to establish what the "real incidence" of offences for each group were, and as already stated that "dark figure of crime" creates insurmountable methodological problems.[31] The second hypothesis is that the police on the beats did not attempt to enforce law in Chinatown. Whether that represents successful resistance on the part of the Chinese, as was indicated by O'Connor's 1882 report, or a resistance by the men on the beat to instructions from their superiors, or a combination of both, must remain a matter of speculation. Another possibility is that the usual information network which facilitated arrests did not extend to the Chinese population. All of these explanations rest on the assumption that the arrests are not reflective of the incidence of crime among the Chinese. There is, however, no real support for such an assumption. These few examples demonstrate that rather than speculating about the arrest and crime rates, the question should be how the public presentation of the "criminal classes" served law enforcement and hence state power.

Conceptions of "democratic" justice are almost entirely rooted in notions of equity. Access of the "non-elite" to courts, and the expectation of equality before the

[31] See Introduction.

law are key elements in that conception. The shift to a more localized administration of the police and police magistrate's court can also be viewed as a part of this process. However, democracy in late nineteenth-century Victoria was not founded on universal suffrage. Indians, Chinese and women were all barred from even the most superficial participation in the democratic state. It, therefore, seems likely that presentation of a "criminal class" which was defined in terms of race would be less divisive than an acknowledgement of differential treatment based on wealth.

One of the most significant findings from the examination of the chargebooks was that, contrary to expectations founded on published documents, identification of the Chinese as part of the criminal classes did not produce high arrest or conviction rates. One of the advantages of testing public perceptions of crime against the reality of arrests is to open up such areas for future investigation where both a larger statistical base and wider range of correspondence can be utilized. At present the possible explanations for this result must be left untested. However, it does not seem likely that increasingly vocal expressions of "scientific racism" during this period of rapid industrial expansion were accidental: such a construct would ultimately serve both economic and state power.

The general conclusions which can be drawn from this examination of law at the level of enforcement involve basic issues in the applications of current models. While all three explanations of the defining features of the dynamics of law have their own limitations they should not be wholly dismissed. The process of regularization, although evolving in a non-linear fashion, is important to understanding both the structure of the legal administration and the changing contours of the ideology of law. As an aspect of regularization the question of legal formalism requires further investigation. This aspect of the evolution of law should be tested at the level of enforcement for a fuller understanding of the criminal process both before and after

codification.

When investigating law enforcement as an aspect of state power it is vital to understand the non-coercive sources of authority: that is the ideology of law. This is not, however, to suggest that the extreme view of absolute control should be invoked. Within the changing contours of the ideology of law in the late nineteenth century the public perceptions of the "criminal classes" provide the best examples of the interface between coercion and ideology. In certain cases, as with the transients and the Chinese, identification as part of the criminal classes can not be shown to have influenced arrest or sentencing rates. For others, especially the Indians, there was clear evidence of differential treatment. A bureaucratic conception of the law did not remove the notion of threat by example—it only depersonalized "terror".

TABLE 24
Arrest Per Officer
By Watch
Sample: November—April 1881

Name	First	Second	Third	Total
Superintendent O'Connor	8	2	1	11
Sergeant Bloomfield	1	3		4
Constable Kirkop	4	9	1	14
Constable Mills	2	2		4
Constable Hough	6	8	1	15
Constable Flewin	1	6		1
Constable Sheppard	1	5	2	8
Constable Walsh	2		2	4
Constable McCleod				
Constable Lindsay		3	2	5
Constable Black				
Constable Speed				
Constable Hart		1		1
Constable Ogilvy		2	1	3
Constable Lewis	1			1
Arrests by Single Officers	26	41	10	77
O'Connor and Flewin			1	1
Kirkop and Ogilvy			1	1
Kirkop and Mills			1	1
Kirkop and Hough	2	2	1	5
Ogilvy and Lindsay		1	1	2
Lindsay and Hart			1	1
Lindsay and Hough			1	1
Hough and Flewin		1	1	2
Hough and Mills	1			1
Hough and Bloomfield		1		1
Sheppard and Flewin	1	1		2
Walsh and Speed		1		1
Arrests by Two Officers	4	7	8	19
No Officer Named	4	22	5	31
Warrants/Summoned				15
Missing				7
Total	33	70	23	149

TABLE 25
Arrest Per Officer
By Watch
Sample Data: November 1890—April 1891

Name	1st Watch	2nd Watch	3rd Watch	Total
Superintendent H. Sheppard	2	1		3
Sergeant Walker	5	12	2	19
Sergeant Hawton		1		1
Constable Abel		4		4
Constable Redgrave	4	4	3	11
Constable Irvine	3	12	5	20
Constable Smith	4	7	1	12
Constable MacDonald	4	4	5	13
Constable Walker	4	9	8	21
Constable Hawton	2	3	1	6
Constable McNeil	1			1
Constable Kenny		1	1	2
Constable Driscol	1	3		4
Constable Cameron	1	3	1	5
Constable Hildreth		3	2	5
Constable Levine		1	3	4
Special Const. Campbell		2		2
Arrests by Single Officer	31	70	32	133
Redgrave and Special Const. Thompson			3	3
Redgrave and Smith		1		1
Redgrave and Sgt. Walker			2	2
Redgrave and MacDonald			2	2
Sgt. Walker and Walker	3		1	4
Sgt. Walker and MacDonald	3			3
Abel and Irvine		1		1
Irvine and Capt. Charley			1	1
Irvine and Special Const. Thompson		1	1	2
Irvine and MacDonald	1			1
Irvine and Levine			2	2
Irvine and Hawton			1	1
Irvine and Special Const. Campbell		1		1
Irvine and James	1			1
Smith and Walker	1			1
MacDonald and Walker	2	2	2	6
MacDonald and James		1		1
MacDonald and Hawton			1	1
Walker and Special Const. Campbell	2			2
Hawton and Special Const. Campbell			1	1
Sgt. Hawton and Kenny		1		1
Hawton and Cameron		1	1	2
Arrests by Two Officers	13	12	16	41

TABLE 25 Continued
Arrest Per Officer
By Watch
Sample Data: November 1890 - April 1891

Name	1st Watch	2nd Watch	3rd Watch	Total
Walker, Hawton, MacDonald			3	3
MacDonald, Abel, Carter		1		1
Hawton, Irvine, MacDonald		1		1
Levine, Kenny, Hawton		1		1
Arrests by Three Officers		3	3	6
(Provincial Police Arrests)				
P. Const. McNeil				1
P. Const. Robb		1		1
P. Sgt. Langley and Redgrave		1		1
P. Const. McNeil and Capt. Charley		1		1
P. Const. James and Irvine		1		1
P. Const. James and Levin		1		1
Dominion. Const. Lewis and S. Const. James	1			1
Arrests with Provincial Constables	1	5		7
No Officer Stated		1	1	2
Warrants				2
Summoned to Police Court				78
Missing				8
Total	45	91	52	277

TABLE 26
Number of Arresting Officers
By Charge Types
Sample: November 1890—April 1891

Number of Officers	Charge Types								
	Against Person	Against Property	Drunk/ Disorderly	Indian Liquor	City By-Laws	Vagrancy/ Gambling	Naval/ Work	Others	TOTAL
Not Stated	1		1					1	3
One	7	16	79	5	2	10	1	17	137
Two		5	23	2		3		5	38
Three			7						7
Provincial		1	4		1			1	7
Summoned	9	5	1		34	23		8	80
Total[‡]	17	27	115	7	37	36	1	32	272
(Percent)	6.3	9.9	42.3	2.6	13.6	13.2	0.4	11.8	100

[‡] Missing Observations: 5; Siginificance: 0.0000

TABLE 27
City By-law Infractions
Sample Year 1891

Charge	Number	Per Cent	Average Fine
Infraction of Street By-law	27	30.3	4.50
Allowing thistles to grow and/or come to flower	19	21.3	5.00
Infraction of Revenue By-law	9	10.1	2.00
Infraction of Park By-law	8	9.0	2.50
Infraction of Fire Regulations	6	6.7	8.75
Infraction of Health By-law	4	4.5	4.00
Furious Driving	3	3.4	12.00
Driving Across a Bridge at pace faster than a walk	2	2.2	5.00
Unlawfully carrying on the busines of retail trade w/o a license	2	2.2	3.50
Unlawfully firing a gun in Beacon Hill Park	2	2.2	3.75
Firing a gun within City Limits	1	1.1	2.00
Pasturing a horse in Beacon Hill Park	1	1.1	dismissed
Riding a horse on the turf in Beacon Hill Park	1	1.1	5.00
Infraction of Hack By-law	1	1.1	dismissed
Infraction of Building By-law	1	1.1	2.00
Nuisance (on premisis)	1	1.1	10.00
Total By-law infractions[†]	89	100	

[†] By-law infractions were 13% of all charges in the 1891 sample year.

TABLE 28
Charges with Ambiguous Jurisdictions
Administered by the City
Sample Year 1891

Charge	Number	Per Cent of All 1891Charges†
Keeping a House of Ill-fame	20	3.0
Unlawfully looking on/ and/or playing an unlawful game in a common gaming house in the City	15	2.2
Being an idle and disorderly person: living without employment in the City	3	0.4
Frequenting a house of illfame	3	0.4
Selling lottery tickets	3	0.4
Refusing to give a list of his employees or to pay their provincial taxes	3	0.4
Gambling, and/or being found in a common gaming house	2	0.3
Unlawfully looking on while others were unlawfully playing a common game called Fan Tan	2	0.3
Being an inmate of a house of illfame	2	0.3
Having no peaceful calling... living by the avails of prositution	1	0.1
Begging in the streets	1	0.1
Playing the unlawful game of Fan Tan	1	0.1
Total	58	8.6

† n=674

TABLE 29
Summary Convictions by Police Magistrates and Other Justices: Victoria and British Columbia, 1891†

Crime	Victoria				British Columbia			
	Convictions	Sentence			Convictions	Sentence		
		Option of fine	No option of fine	Defer etc.		Option of fine	No option of fine	Defer etc.
Assaults	33	28	5	-	70	65	5	-
Breach of Peace	8	7	1	-	13	12	1	-
Carrying Firearms/Unlawful Weapons	2	1	1	-	4	3	1	-
Contempt of Court	-	-	-	-	6	5	1	-
Cruelty to animals	2	2	-	-	7	7	-	-
Disturbing Religious & Like Meetings	1	-	1	-	1	-	1	-
Gambling Acts	43	42	1	-	69	68	1	-
Game Laws	-	-	-	-	1	1	-	-
Larceny	-	-	-	-	1	1	-	-
Liquor Licence Act:								
Selling to Indians	45	26	19	-	142	48	94	-
Selling w/out a Licence	1	1	0	-	5	4	1	-
Malicious Injury to Property	2	2	-	-	2	2	-	-
Other Damage to Property	-	-	-	-	11	11	-	-
Miscellaneous Minor Offences	-	-	-	-	2	2	-	-
Municipal Acts and Bylaws:	72	72	-	-	119	119	-	-
Exercising various callings w/out Licence	5	5	-	-	5	5	-	-
Offences against Health Bylaws	3	3	-	-	3	3	-	-
Offences relating to Highway	8	8	-	-	8	8	-	-
Pharmacy Act, Offences Against	-	-	-	-	2	1	1	-
Railways Act, Offences Against	1	1	-	-	1	1	-	-
Seamans Act, Offences Against	-	-	-	-	1	1	-	-
Threats and Abusive Language	2	2	-	-	3	3	-	-
Vagrancy:	20	5	15	-	36	5	31	-
Drunkenness	520	480	40	-	651	599	52	-
Indecent Exposure	-	-	-	1	1	-	-	
Insulting, Obscene language, etc.	1	1	-	-	8	8	-	-
Keeping/Frequenting/ Inmates of Bawdy House	34	33	1	34	33	1	-	
Loose/Idle/Disorderly	5	4	1	-	6	5	1	-
Insanity	-	-	-	-	3	-	-	3
TOTALS	808	723	85	-	1215	1020	192	3

† Canada, Criminal Statistics, table 3.

TABLE 30
Frequency of Sentence Types
Sample Year, 1881.

Type of Sentence	Number	Percent
Fined	5	1.6
Fined/Default Imprisonment	24	7.6
Fined/Default Hard Labour	18	5.7
Bail Estreated	6	1.9
Fined/Default 6 hours	114	36.0
Total Fined	167	52.7
Imprisoned	3	0.9
With Hard Labour	22	6.9
Imprisoned with hard labour, Capt. of Ship to take on board when required	1	0.3
Total Imprisoned	26	8.2
Delivered to Capt. Irving	1	0.3
Handed over to Naval Authorities	1	0.3
Sent on Board Ship	1	0.3
Handed over to C-Battery	1	0.3
Imprisoned until Ship Departs	2	0.6
Accused returned to New Westminster	1	0.3
Sent to Insane Asylum	1	0.3
Total given to other authorities	8	2.5
Bound to Keep Peace upon Payment of Surity/ Default Imprisonment	4	1.3
SafeKeeping	5	1.6
Committed for Trial	1	0.3
Witness	1	0.3
Total Others	11	3.5
Dismissed/Discharged/Withdawn/Cancelled	105	33.1
Unknown/ Missing/Not Applicable	8	2.5
Total Cases	325	100.

TABLE 31
Frequency of Sentence Types
Sample Year 1891

Sentence Type	Number	Per Cent
Fined	233	33.2
Bail Estreated	10	1.5
Fined/ Half to Informant	1	0.1
Caution pay costs	1	0.1
Ordered to fund Surities	2	0.3
Fined/ Default—Imprisonment	137	20.4
Fined/ Default—Hard Labour	59	8.8
Fined/ Default—Hard Labour City Lockup	1	0.1
Provincial Gaol	27	4.0
Total with Fines	461	68.9
Imprisoned	5	0.7
Imprisoned with Hard Labour	16	2.4
Hard Labour/ Provincial Gaol	12	1.8
Imprisoned (City Lockup)	1	0.1
Total Imprisoned	34	5.1
Sent to New Westminster	1	0.1
Sent to Insane Asylum	1	0.1
Sent to Sound	1	0.1
Sent on board ship	1	0.1
Handed over to C-battery	1	0.1
Handed over to Provincial Police	1	0.1
Total given to other authorities	6	0.6
Allowed to leave country	1	0.1
Sentence Suspended	1	0.1
Warrant to be Issued	9	1.3
Summons not Served	1	0.1
Case sent for Supreme Court Opinion	1	0.1
Committed for Trial	2	0.3
Committed for Provincial Gaol	9	1.3
Committed for Bail	1	0.1
Dismissed/Discharged/Withdrawn	145	21.6
Total	671	100.
Missing Cases	3	

TABLE 32
Range of Fines:
Selected Charges, Sample Year 1881.*

Charge	Number Receiving Fine	Amount of Fine (in dollars)†							
		1.25	2	2.5	3	5	10	20	25
Drunk	102	101			1				
Vagrancy	5						3		1
Indian Possession of Liquor	9			1					8
Assault	7		2				4	1	
Selling Liquor to Indians	3								

* Selected Charges total 126 or 82% of charges with fines (153).

† One dollar and twenty-five cents was equal to five shillings at the time.

TABLE 33
Range of Terms for Five Most Frequent Charges
Sample Year 1881*

Charge	Total Terms	Term as Number of Days					
		6 Hours	14 Days	30	60	90	180
Drunk	114	113		1			
Vagrant	13		2	2	3	2	4
Indian in Possession of an Intoxicant	9		8	1			
Assault	7		2	3	2		
Selling Liquor to Indians	5		3		1		1

* Selected Charges provided 148 or 80% of all charges with terms in sample (185).

TABLE 34

Range of Fines for Selected Charges 1891*

Charge	Number Receiving Fine	Fine (in dollars)									
		5	6	7	10	15	20	25	26.5	50	100
Drunk	266	254	1	3	6			1		1	
Vagrancy	4				3					1	
Indian Poss. Liq.	12							12			
Assault	12	5		2	2	1	1		1		
Selling Liq. to Indians	14									12	2

* Selected Charges totaled 296 or 64% of the total number of fines (462). The five most frequent charges recieving fines in 1891 would have included Street By-law infractions (23-range from $2 to $15); keeping a house of illfame (17-range from $5 to $50); weed By-law (17: $5).

TABLE 35
Range of Terms
Selected Charges 1891*

Charge	Number Receiving Term	Term (Number of Days)											
		1	7	8	10	14	15	30	50	60	90	120	180
Drunk	147	1	9	58	23	3	1	51	1				
Vagrancy	11							10				1	
Indian Possessing an Intoxicant	13							5		5	3		
Assault	7			2	2				2		1		
Selling Liquor to Indians	12								5		7		

* Selected Charges provide 190 or 73% of the total number of charges receiving terms in 1891 (260). If the five most frequent charges recieving terms were selected for 1891 gambling (15 charged all received 30 days) would have replaced Assault in this table.

TABLE 36
Crosstabulation of
Term by Fine Payment
Sample Year 1881*

Number of Days	Fine Paid	Not Paid	Not Applicable	Total
6 hours	53	60	1	114
7	1			1
14	4		3	7
30	7	10	4	21
31			1	1
35			1	1
60	8	4	1	13
90		6	7	13
120			1	1
180	10	3		13
Total	73	83	29	185
Per Cent	39.5	44.9	15.7	100

* Missing cases=140; chi-square=101.48425; significance=0.0000

TABLE 37
Crosstabulation
Term by Fine Payment
Sample Year 1891*

Term (in days)	Fine Not Paid	Paid	Not Applicable	Total
1			1	1
7	3	6		9
8	3	2		5
14		2		2
30	46	31	13	90
50		1		1
60	1	2	2	5
70		1		1
90		1	5	6
120		1	5	6
180			1	1
Total	53	47	24	124
Per Cent	42.7	37.9	19.4	

* Missing cases=550; chi-square=45.42913; significance=0.0010

TABLE 38
Charges Per Month
Sample Year 1881

Month	Number	Per Cent
November 1880	24	7.4
December 1880	28	8.6
January 1881	30	9.2
February 1881	16	4.9
March 1881	24	7.4
April 1881	27	8.3
May 1881	17	5.2
June 1881	34	10.5
July 1881	34	10.5
August 1881	23	7.1
September 1881	31	9.5
October 1881	37	11.4
Total	325	100

TABLE 39
Charges Per Month
Sample Year 1891

Month	Number	Per Cent
November 1890	49	7.3
December 1890	41	6.1
January 1891	38	5.6
February 1891	36	5.3
March 1891	60	8.9
April 1891	53	7.9
May 1891	40	5.9
June 1891	70	10.4
July 1891	48	7.1
August 1891	83	12.3
September 1891	90	13.4
October 1891	66	9.8
Total	674	100

TABLE 40
Race of Women Chargees,
Sample Years 1881, 1891

Race (as coded)	1881		1891	
	Number	Percent	Number	Percent
Full Name	10	33.3	34	41.0
Chinese	0	0	2	2.4
Halfbreed	0	0	1	1.2
Indian:				
No Tribe Indicated	0	0	41	49.4
Songish	5	16.7	0	0
Hydah	5	16.7	0	0
Fort Rupert	4	13.3	1	1.2
West Coast	0	0	3	3.6
Cowichan	2	6.7	0	0
Stika	2	6.7	0	0
Stikine	1	3.3	0	0
Nit Nat	1	3.3	0	0
Beechy Bay	0	0	1	1.2
Indian Total	20	66.7	46	55.4
TOTAL	30	100.0	83	100.0

TABLE 41
Race of Chargees
Sample Year 1881

Race (as coded)	Number	Per Cent
Full Name/ No Race Indicated	209	64.3
First Name Only/ No Race Indicated	1	0.3
Chinese	9	2.8
Halfbreed Kanaka	1	0.3
Halfbreed	1	0.3
Indian:		
No Tribe Indicated	3	0.9
Hydah	26	8.0
Fort Rupert	14	4.3
Songish	12	3.7
NitNat	9	2.8
Cowichan	8	2.5
Victoria	8	2.5
Tsimpsean	5	1.5
Stika	4	1.2
Bella Bella	3	0.9
Beechy Bay	3	0.9
Kitimat	2	0.6
Skidigate	1	0.3
Stikine	1	0.3
Barkley Sound	1	0.3
Squamish	1	0.3
Quamichan	1	0.3
Saanich	1	0.3
Equimalt	1	0.3
Indian Total	104	32
Total Charged	325	100

TABLE 42
Race of Chargees
Sample Year 1891

Race (as coded)	Number	Per Cent
Full Name/No Race Indicated	493	73.1
First Name Only/No Race Indicated	2	0.3
Nationalities:		
Russian	1	0.1
Norwegian	1	0.1
Russian/Finn	1	0.1
Chinese	53	7.9
Japanese	1	0.1
HalfBreed	1	0.1
Indian:		
No Tribe Indicated	95	14.1
Westcoast	10	1.5
Cowichan	4	0.6
Barkley Sound	4	0.6
Hydah	1	0.1
Comox	1	0.1
Bella Bella	1	0.1
NitNat	1	0.1
Fort Rupert	2	0.3
Beechy Bay	1	0.3
Alberni	1	0.1
Total Indians	120	17.8
Total Charged	674	100

Determining how much criminal activity is captured in police records and the degree to which crime rates are governed by reporting practises presents insurmountable methodological difficulties. Historians must be sensitive to what the records employed actually measure. The simple observation that the record of an arrest is generated by the police is the most compelling argument against histories of "criminal behavior." Arrest records provide a direct insight to the behavior of the police but any examination of police behavior must also encompass the dynamics of law.

Changes in the legal structure are inextricably tied to the institutional developments of the state. The framework selected has defined the function of law in society in terms of state power. An alternate perspective would be that laws serve a "common good" and represent a natural expression of social order. The theoretical difficulties of determining what is "natural" or commonly "good" without systematic cross-cultural comparisons or normative judgements remain prohibitive to testing that alternative. A conception which implies that doctrinal and statutory developments are more or less spontaneous extensions of human nature appears singularly inappropriate in a discussion of the dynamics of an enforcement hierarchy. But the question remains whether it is sufficient to say whatever "good" comes from law is strictly part of its legitimation and hence a means to perpetuate inequity. Or is that perspective (as Langbein might suggest) another piece of Marxist trickery? The response to that question lies in the way this investigation of law and society has been framed. The central issue was not to determine the meaning of justice in late-nineteenth century Victoria, rather it was to suggest how than meaning was determined: to focus on events rather than intentions.

These methodological considerations guided the selection of sources. In part one of this study statutory developments which defined the jurisdictions of the police and magistrates, and the role of urban government were stressed. Government documents

also provided insight to another aspect of law's structural context: occupational analysis demonstrated the clear class distinction between those empowered to define justice and those who might receive it. In part two of this study statistical evidence was used to explore law at the level of enforcement. The question of enforcement requires attention to be focused on the common rather than exceptional cases. Thus routinely generated sources were chosen over newspaper accounts. While published reports provided insights to the public face of law, these government reports were directed to the concerns of separate levels of the administration. It was not possible to integrate the various reports to determine enforcement patterns. The criteria for selecting the manuscript sources included both immediacy of evidence and consistency over time. The police chargebooks proved to be a superior source because they record all people who stayed in the gaol, including those who were not under criminal charges. Confining the study to court records would have completely obscured this social welfare function of the police. The use of the gaol for lodgings clearly demonstrates that the role of the urban police extended beyond the exercise of coercive force upon a criminal element in society. Similarly, the differences between the public reports and the chargebook data highlighted aspects of the ideology of law.

The dynamics of the law enforcement hierarchy were central in maintaining authority through both the structure and ideology of the state. The defining feature of the changes to law at the level of enforcement in late-nineteenth century Victoria was the shift from a personal, idiosyncratic (or autocratic), administration of law to an institutional model upon which the modern conceptions of law are based. The Colonial administration's aim to impose British law and order on the indigenous populations was served by the introduction and maintenance of the ideological conceptions of "majesty, justice and mercy." Governor Douglas' insistence that the individual rather than the tribe be punished, and Judge Begbie's acknowledgement of the importance of legal formalism are examples of that self-conscious effort. The shift away from the

Colonial administration, and its links with the Hudson's Bay Company to a "democratic" government was accompanied by a shift in the ideological conceptions of law. This is not to say that the institutional model that was "professional, bureaucratic and democratic" immediately replaced the former. Indeed, there is evidence of both conceptions operating under the same statutory framework.

By 1891 the institutional model of law was becoming firmly established in the city of Victoria. That shift included the professionalization of both the judiciary and the police, the separation of enforcement functions in the urban bureaucracy, and the growth of a regularized hierarchy in the punishment mechanisms. Because their formation and application was in no way a linear progression, these aspects of the institutional model should not be interpreted as the ultimate triumph of the rational. The notion that modern law is based on a rational, scientific body of knowledge has its own place in legitimating state power. To fail to acknowledge that point would provide a perspective which merely substitutes the language of social science for the language of social reforms in the same "whig" tradition.

One question is whether this shift in the contours of the ideology of law represents a shift in the function of that ideology. To the extent that the ideology of law can be seen as legitimating state power there was little change. However, the contours of that ideology interacted with the punishment regime in different ways. The "rational" or de-personalized systems of laws redefined what was deemed to be disorderly or "criminal." While the prime definition of deviance appears to have been inextricably tied to class relations under both systems, the rhetoric of democracy and of depravity masked the extension of state control through the reform of disciplinary mechanisms. This point of view, however, tends to overshadow the non-coercive elements of the state. The ideological and bureaucratic functions of the state must also be acknowledged. Law is an integral aspect of both these functions, and the manifes-

tation of the idea of justice, or of a disembodied "common good" is not without some basis in that system. The law does not serve an idealized common good; it serves to legitimate the power of the state, and to maintain the hegemony of the propertied classes.

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APPENDIX 1

Occupations by Sector, Canada Census, 1881

Agricultural Class

Dairymen
Farmers
Farriers and Veterinary Surgeons
Gardeners
Nurserymen
Various Agricultural Occ's.

Commercial Class

Accountants
Agents
Bankers and Money Brokers
Brokers
Book-keepers
Book Sellers
Boom Keepers
Boat and Bargemen
Cabmen and Draymen
Commercial Clerks
Commercial Travellers
Dealers and Traders
Express Employees
Fruiterers
Grain Dealers
Hawkers and Pedlars
Insurance Employees
Livery Stable Keepers
Mariners
Merchants
Pilots
Railway Employees
Shop Keepers
Stage Owners and Drivers
Stevedores
Telegraph Employees
Various Commercial Occ's.

Domestic Class

Barbers and Hair Dressers
Bar-keepers
Hospital Attendants
Hotel-keepers
Laundresses
Midwives
Servants
Various Domestic Occ's.

Industrial Class

Aerated Water Makers
Bakers
Blacksmiths
Boat Builders
Boiler Builders
Book-binders
Boot and Shoe Makers
Box and Trunk Makers
Brewers and Distillers
Bricklayers
Brick-makers
Brush and Broom Makers
Builders
Butchers
Cabinet Makers
Car and Locomotive Builders
Carders and Weavers
Carpenters and Joiners
Carriage Makers
Carvers and Gilders
Chemists and Druggists
Confectioners
Coopers
Dress Makers and Milliners
Edge Tool Makers
Engineers and Machinists
Engravers and Lithographers

Industrial Class, cont'd

Factory Operatives
Fishermen
Foundrymen
Furriers
Gas Works Employees
Gold and Silversmiths
Grocers
Hatters
Hermetical Sealers
Hosiers
Lime Burners
Locksmiths
Lumbermen
Manufacturers
Meat Curers
Mechanics
Millers
Millwrights
Miners
Musical Instrument Makers
Nail Makers
Opticians and Mathematical Instrument Makers
Painters and Glaziers
Plasterers
Plumbers
Potters
Printers
Quarrymen
Riggers and Caulkers
Saddlers and Harness Makers
Sail Makers
Saw and File Cutters
Sawyers and Millmen
Seamstresses
Ship Builders
Ship Chandlers
Shirt and Collar Makers
Soap Boilers
Steam Engine Builders
Stone and Marble Cutters
Stone Masons
Tailors
Tanners and Curriers
Tin and Coppersmiths
Tobacco Workers and Dealers
Watchmakers and Jewellers
Wheelwrights
Various Industrial Occ's.

Professional

Artists and Litterateurs
Architects
Christian Brothers
Civil Engineers
Clergymen
Court Officers
Dentists
Government Employees
Judges
Land Surveyors
Lawyers
Militia Officials
Municipal Employees
Musicians
Notaries
Nuns
Physicians and Surgeons
Photographers
Policemen
Professors
Stenographers
Students at Law
Students in Medicine
Teachers
Various Professional Occ's.

Not Classified

Articled Apprentices
Contractors
Gentlemen of Private Means
Hunters
Keepers and Guards
Labourers
Messengers and Porters
Packers
Pensioners
Teamsters and Drivers
Various Indefinite Occ's.

APPENDIX 2

Government Reports Cited

British Columbia. Legislative Assembly. "Prison Reports."

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"Report of the Minister of Justice as to Penitentiaries in Canada for the Year Ended 30th June 1880." *Sessional Papers*, No. 65, 44 Vict. 1881.

"Annual Report of the Inspector of Penitentiaries of the Dominion of Canada for the Year Ended 30 September 1881." *Sessional Papaers*, No. 12, 45 Vict. 1882.

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APPENDIX 3

Charges by Class of Charge

1: Offences against Person

Murder
Attempts to Murder
Accessory to Murder after the fact
Infanticide
Manslaughter
Shooting at, Stabbing Wounding &c.
Administering nox's and pois's drugs
Attempts to commit Abortion
Rape
Sodomy and Bestiality
Carnally knowing a girl of tender years
Concealing the birth of an infant
Bigamy
Abduction
Presenting Fire-Arms
Neglecting to support Family
Assault occasioning actual bodily harm
Felonious Assault
Aggravated Assault
Indecent Ass'lt and attempts to commit rape
Ass'lt and obstructing Peace Officer
Assault and Assault and Battery
Assault with intent to commit a Felony
Assault on a Peace Officer
Assault with intent
Endangering Life of Pass'rs on R'y

II: Offences against property with violence

Highway Robbery
Robbery
Burglary and Robbery
Burglary
Having Burglars tools in possession
House and Shop Breaking and Larceny
Demanding money with menaces
Felonious Entry
Assault with intent to rob
House-breaking and Larceny

II cont'd: *property with violence*

House-breaking
Attempt at shop-braking
Stealing from a dwelling house w'h men
Forcible entry

III: Offences against property without violence

Horse Stealing
Accessory to Horse Stealing
Larceny from the Person
Larceny
Accesory to Larceny
Stealing Timber
Receiving Stolen Goods
Embezzlement
Fraud and False Pretences
Cattle Stealing
Larceny from Person
Attempt to Steal from Person
Larceny in a dwellling house
Larceny
Attempt to commit Larceny
Appropriating Timber
Stealing a Post Letter

IV: Malicious offences against the property

Arson
Attempts at Arson
Wounding a Horse
Malicious injury to Property
Killing a cow
Cutting and maiming a horse

V: Forgery and Offences against the currency

Forgery and uttering
Making, having, and utt'g count't mon'y
Having coining tools in possession
Uttering Conterfeit Coin
Selling spurious gold dust

VI: Other Offences

Perjury and Subornat'n of Perjury
Conspiracy
Escape from Prison
Riot and Breach of the Peace
Breach of Inland Revenue Laws
Removing Surveyor's posts
Contravetion of R'lw'y Regulat'
Taking and detaining a letter
Obstructing the Highway
Selling Liquor on Polling day
Nuisance
Felonies not otherwise demonin'ed
Misdemeanors not incl'd'd in above
Lunacy
Tampering with a Ballot Box
Unlawful Assembly
Prison breaking and Escape

VI cont'd: *Other Offences*

Contempt of Court
Opening a Post letter
Carrying a Post letter
Carrying Unlawful Weapon
Destroying a Writ
Riot
Compounding a Felony
Attempt to commit a Felony
Accessory to Felony
Abett'g the commis'n of a misdem'r
Unlawful Combination
Rejecting Nomination Papers
Illicit Distilling
Drunk and Drunk and Disorderly
Breach of Liquor Laws
Brach of Militia Act
Breach of Indian Act
Threatening and abusive Language
Indecent exposure of person
Refusing to pay wages
Vagrancy
Trespass
Minor Offenses
Municipal By-laws, Infractions of

APPENDIX 4

Occupations by Socio-Economic Ranking, British Columbia, 1881

Occupation	Victoria	British Columbia
HIGH		
Bankers	10	12
Clergymen	16	75
Court Officers	3	4
Gentlemen of Private Means	17	32
Judges	4	4
Lawyers & Barristers	18	31
Merchants	75	188
Physicians & Surgeons	11	31
TOTAL **HIGH**	154	377
Percent of Population	4.9	2.1
II		
Accountants & Bookkeepers	35	72
Aerated Water Manufacturers	1	1
Agents	19	29
Architects	8	10
Artists & Litterateurs	3	5
Auctioneers	3	4
Booksellers	3	5
Box & Trunk Manufacturers	-	2
Brewers & Distillers	12	19
Brokers	2	3
Builders	13	16
Chemists & Druggists	12	19
Civil Engineers	15	36
Commercial Clerks	145	261
Commerical Travellers	1	6
Contractors	20	40
Dairymen	6	16
Dealers & Traders	22	139
Dentists	2	5
Farmers	160	2115
Farriers & Veterinarians	2	2
Foundrymen	22	24
Fruiterers	1	1
Grain Dealers	2	2
Grocers	22	22

II Continued

Occupation	Victoria	British Columbia
Hotel & Board Keepers	41	141
Insurance Employees	1	3
Keepers & Guards	16	44
Land Surveyors	10	22
Manufacturers	8	11
Millers	6	31
Musicians	4	15
Municipal Employees	6	11
Notaries	-	1
Photographers	5	6
Shirt & Collar Manufacturers	-	23
Shopkeepers	46	136
Stage Coach Owners	-	6
Teacher (male)	14	51
Teamsters	18	121
Telegraph Employees	3	19
TOTAL **II**	709	3495
Percent of Population	22.7	19.3
III		
Bakers	33	58
Blacksmiths	35	178
Boat Builders	4	26
Boiler Builders	13	14
Bookbinders	3	3
Boot & Shoemakers	73	104
Bricklayers	13	21
Brick & Tilemakers	10	13
Brush & Broom Makers	1	2
Butchers	38	98
Cabinet & Furniture Makers	17	24
Carriage Builders	9	15
Carpenters & Joiners	114	481
Carvers & Gilders	-	2
Confectioners	10	10
Coopers	10	22
Engineers & Machinists	43	131
Gardeners & Nurerymen	80	101
Gold & Silversmiths	1	2
Hatters & Furriers	4	5
Hosiers & Glovers	2	2
Lock & Gunsmiths	3	4
Millwrights	1	11
Painters & Glaziers	34	55
Pilots	8	15
Plasterers	11	15
Plumbers	6	11
Policement & Constables	13	24

III Continued

Occupation	Victoria	British Columbia
Printers & Publishers	27	42
Riggers & Caulkers	5	6
Saddlers & Harness Makers	11	20
Sail Makers	2	5
Saw & File Cutters	2	2
Ship Builders	32	38
Ship Chandlers	3	3
Soap Boilers	2	3
Stone Masons	11	21
Tailors	57	70
Tanners & Curriers	8	11
Tin & Coppersmiths	18	37
Tobacco Workers & Dealers	13	23
Watchmakers & Jewellers	13	23
Wheelwrights	2	6
TOTAL **III**	814	1767
Percent of Population	26.0	9.8
IV		
Barbers & Hairdressers	16	22
Barkeepers	57	85
Boat & Bargemen	6	60
Cabmen & Draymen	22	23
Carders & Weavers	-	5
Fishermen	19	1850
Factory Operatives	1	1
Hawkers & Pedlers	3	5
Hospital Attendants	3	7
Hunters	2	856
Lime Burners	-	3
Livery & Stable Keepers	8	9
Lumbermen & Raftsmen	12	183
Mariners	110	249
Messengers & Porters	15	20
Miners	123	2792
Packers	1	158
Pensioners	-	2
Quarrymen	-	1
Railway Employees	10	66
Sawyers & Millmen	7	141
Stevedores	-	4
Stone & Marble Cutters	13	25
TOTAL **IV**	428	6567
Percent of Population	13.7	36.4

LOW		
Occupation	Victoria	British Columbia
Labourers	377	4075
TOTAL **LOW**	377	4075
Percent of Population	12.1	22.6
VI: Not Classified		
Apprentices	-	-
Dress Makers & Millners	60	76
Midwives & Nurses	27	35
Nuns	7	28
Seamstresses	3	4
Servants (male)	182	518
Servants (female)	62	90
Students at Law	6	6
Teachers (female)	45	65
TOTAL **VI**	392	824
Percent of Population	12.5	4.6
OTHERS		
Christian Brothers	-	8
Express Employees	12	14
Farmers (female)	3	12
Farmers' Sons	18	254
Government Employees	36	61
Hermetical Sealers	1	15
Laundresses	17	34
Meat Curers	3	3
Musical Instrument Makers	1	1
Students in Medicine	2	4
Various Agricultural	9	117
Various Domestic	44	78
Various Industrial	14	65
Various Professional	2	3
Various Indefinite	69	282
TOTAL **OTHERS**	251	951
Percent of Population	8.0	5.3
TOTAL POPULATION	3125	18056

APPENDIX 5

List of Houses of Ill-Fame in Victoria*

Name of Occupier	Location	Name of Owner	No. Women
Nettie Holt	Broad Street	Mrs. Doans	3
Mable Vaughn	Broad Street	Mrs. Doans	4
Jeanie Wilson	Broad Street	Mrs. Doans	3
Louisa	Broad Street	Mrs. Doans	3
Mary Kelly	Broad Street	L. Veglias	2
Jessie Williams	Broad Street	T. Duck	3
Effie Mines	Broad Street	W.H. Oliver	3
Fay Williams	Broughton	Joseph W. Carry	2
Jennie Davis	Broughton	Mrs. Haynes	5
Henrietta Morgan	Broughton	Mrs. H. Morgan	4
Carrie Morton	Trounce Alley	Dodd Estate	2
Rosa Horaard	Johnson Street	A.A Aronson	2
Pauline Bockleman	Yates Street	Geo. Stevens	1
Lizzie Lad	View Street	R. Austin Estate	1
Chinese Women	Fisgard	W.C. Buffken	†
Chinese Women	Fisgard	M. Hart	†
Chinese Women	Fisgard	R. Porter	†
Chinese Women	Fisgard	On Hing	†
Chinese Women	Fisgard	Kwong Lee	†
Chinese Women	Fisgard	J.P. Davies	†

* Compiled by C.P. Bloomfield, Chief of Police (7 April 1886)

† A total of approximately 100 women worked in the Fisgard Street establishments.

APPENDIX 6

Census of Chinese: City of Victoria*

Street	Males	Females	Total
Cormorant	1374	61	1435
Fisgard	449	107	556
Government	351	22	373
Store	209	10	219
Johnson	60	-	60
Pandora	51	-	51
Yates	61	2	63
View	12	-	12
Douglas	30	2	32
Fort	6	-	6
Rae	7	-	7
Blanshard	11	-	11
Sayward's Mill	14	-	14
Steamboats	17	-	17
Work & Estate	57	-	57
Fairfield Estate	64	-	64
TOTAL	2773	205	2978

* PR 1.1 Correspondence Outward (V.C.A), 79. Census conducted by Charles P. Bloomfield, Chief of Police, dated 1 April 1886.

APPENDIX 7

Codebook: Chargebook Data

Variable	Field	Recodes	Code	Value Name
Names	01-22			Self Coding
Identity Number	23-26			0001-5000
Source	27-30		0481	Chargebook 1880-1881
			0491	Police Chargebook 1890-91
			0591	Benchbook 1891
Month	32-33		01-12	01=Jan.to 12=Dec.
Day	34-35		01-31	Day of Month
Year	36-37			Self Coding
Gender	39		1	Male
			2	Female
			3	Not Applicable
			4	Missing
Remanded	41-42			Number of Days
Payment of Fine	44		0	Missing
			1	Paid
			2	Not Paid
			3	Not Applicable
Term	60-62		000	Six Hours
			001-180	Coded in Days
Fine	63-66			001=$0.10—999=$99.90
Bail	67-70			
Time	71-74	1	0800-1599	First Watch
		2	1600-2399	Second Watch
		3	0000-0799	Third Watch

Variable	Field	Recodes	Code	Value Name
Race	47-48	Unknown (White)	00	Has First and Last Name
			01	No Last Name
		Indians	10	Indian, No Tribe Indicated
			11	Songees/Songish
			12	Cowichan
			13	Haidia/Hydah
			14	Stikine
			15	Fort Rupert
			16	Comox
			17	Naniamo
			18	Queen Charlotte
			19	Harrison River Indian
			20	Stika Indian
			21	Victoria Indian
			22	Tsimpsean
			23	Quamichan
			24	Esquimalt Indian
			25	Bella Bella
			26	Skidigate
			27	Saanich
			28	A Kitimat
			29	NitNat Indian
			80	Squamish
			81	Beechy Bay
			82	Barclay Sound Indian
			83	Westcoast Indian
			84	Alberni Indian
		Asian	45	Japanese
			40	Chinese
		Others	30	Halfbreed
			50	Kanaka
			51	Halfbreed Kanaka
			60	French
			65	Russian
			66	Norwegian
			67	A Russian-Finn

Variable	Field	Recodes	Code	Value Name
Charge[†]	53-55	1000	101	Murder
		1000	102	Attempts to Murder
		1000	103	Accessory to Murder after the fact
		1000	104	Infanticide
		1000	105	Manslaughter
		1000	106	Shooting at, Stabbing Wounding &c.
		1000	107	Administering nox's and pois's drugs
		1000	108	Attempts to commit Abortion
		1000	109	Rape
		1000	110	Sodomy and Bestiality
		1000	111	Carnally knowing a girl of tender years
		1000	112	Concealing the birth of an infant
		1000	113	Bigamy
		1000	114	Abduction
		1000	115	Presenting Fire-Arms
		1000	116	Neglecting to support Family
		1000	117	Assault occasioning actual bodily harm
		1000	118	Felonious Assault
		1000	119	Aggravated Assault
		1000	120	Indecent Ass'lt and attempts to commit rape
		1000	121	Ass'lt and obstructing Peace Officer
		1000	122	Assault and Assault and Battery
		1000	123	Assault with intent to commit a Felony
		1000	124	Assault on a Peace Officer
		1000	125	Assault with intent
		1000	126	Endangering Life of Pass'rs on R'y
		2000	201	Highway Robbery
		2000	202	Robbery
		2000	203	Burglary and Robbery
		2000	204	Burglary
		2000	205	Having Burglars tools in possession
		2000	206	House and Shop Breaking and Larceny
		2000	207	Demanding money with menaces
		2000	208	Felonious Entry
		2000	209	Assault with intent to rob
		2000	210	House-breaking and Larceny
		2000	211	House-breaking
		2000	212	Attempt at shop-braking
		2000	213	Stealing from a dwelling house w'h men
		2000	214	Forcible entry

[†] Offences from 000 to 699 are taken from the national reports and are already given class designations primarily as follows: Person(1000), 101—126; Property(2000), 201—406. Recoding of the national offences was not necessary in cases such as 501—505 as these did not appear in any of the data. Offences from 700 are from the manuscript sources. The other recoded charge designations used were: Drunkenness/Breach of Peace/Loitering(3000), Indian Liquor Supply/Possession(4000), City Bylaws(5000), Gambling/Vagrancy(6000), Naval/Work(7000), Others(8000).

Variable	Field	Recodes	Code	Value Name
Charge	53-55	2000	301	Horse Stealing
		2000	302	Accessory to Horse Stealing
		2000	303	Larceny from the Person
		2000	304	Larceny
		2000	305	Accesory to Larceny
		2000	306	Stealing Timber
		2000	307	Receiving Stolen Goods
		2000	308	Embezzlement
		2000	309	Fraud and False Pretences
		2000	310	Cattle Stealing
		2000	311	Larceny from Person
		2000	312	Attempt to Steal from Person
		2000	313	Larceny in a dwellling house
		2000	314	Larceny
		2000	315	Attempt to commit Larceny
		2000	316	Appropriating Timber
		2000	317	Stealing a Post Letter
		2000	401	Arson
		2000	402	Attempts at Arson
		2000	403	Wounding a Horse
		2000	404	Malicious injury to Property
		2000	405	Killing a cow
		2000	406	Cutting and maiming a horse
			501	Forgery and uttering
			502	Making, having, and utt'g count't mon'y
			503	Having coining tools in possesion
			504	Uttering Conterfeit Coin
			505	Selling spurious gold dust
			601	Perjury and Subornat'n of Perjury
			602	Conspiracy
			603	Escape from Prison
		3000	604	Riot and Breach of the Peace
			605	Breach of Inland Revenue Laws
			606	Removing Surveyor's posts
			607	Contravetion of R'lw'y Regulat'
			608	Taking and detaining a letter
			609	Obstructing the Highway
			610	Selling Liquor on Polling day
		5000	611	Nuisance/ upon his premises
			612	Felonies not otherwise demonin'ed
			613	Misdemeanors not incl'd'd in above
		8000	614	Lunacy/Unsound Mind/Insane
			615	Tampering with a Ballot Box

Variable	Field	Recodes	Code	Value Name
Charge	53-55		616	Unlawful Assembly
			617	Prison breaking and Escape
			618	Contempt of Court
			619	Opening a Post letter
			620	Carrying a Post letter
		8000	621	Carrying Unlawful Weapon
			622	Destroying a Writ
			623	Riot
			624	Compounding a Felony
			625	Attempt to commit a Felony
			626	Accessory to Felony
			627	Abett'g the commis'n of a misdem'r
			628	Unlawful Combination
			629	Rejecting Nomination Papers
			630	Illicit Distilling
		3000	631	Drunk/ Drunk and Disorderly
			632	Breach of Liquor Laws
		7000	633	Breach of Militia Act
			634	Breach of Indian Act
		1000	635	Threatening and abusive Language
		8000	636	Indecent exposure of person
		8000	637	Refusing to pay wages
		6000	638	Vagrancy
			639	Trespass
			640	Minor Offences
		5000	641	Municipal By-laws, Infractions of
		8000	701	Safekeeping
		2000	702	Stealing
		1000	703	Assault and Escape
		2000	704	CattleWounding
		1000	705	Assault
		1000	706	Assault and Biting
		1000	707	Assault on a Woman
		4000	708	Supplying Liquor to Indian(s)
		8000	709	Necessary Witness
		2000	710	Attempt to Rob
		6000	711	Gambling (Includes being in house)
		8000	712	Resisting Collector
		3000	713	Delerium Tremens
		1000	714	Resisting Officer
		7000	715	Disobeying Orders
		7000	716	Breech of Naval Act
		7000	717	Breech of Discipline
		7000	718	Breech of Naval Discipline
		8000	719	Insane

Variable	Field	Recodes	Code	Value Name
Charge	53-55	7000	720	Desertion
		1000	721	Buggery
		2000	722	Breaking Windows
		1000	723	Assaulting Officer
		2000	724	Attempt at Burglary
		8000	725	Debtor
		2000	726	Destroying Property
		7000	727	Neglect of Duty
		8000	728	Bad Boy
		5000	729	Refusing to Leave Town
		1000	730	Assaulting Mary, an Indian
		2000	740	Stealing a Felt Hat
		8000	741	Brought/Came for Lodgings
		2000	742	Stealing a Waistcoat Value of $2.50
		2000	743	Attempting to Rob Till in Fountain Saloon, Yates St.
		2000	744	Did unlawfully and feloniously steal from the pocket of R.M. at the Pheonix Saloon. . .the sum of one twenty dollar Gold piece and one dollar and twenty-five cents in silver coin, contrary to the form and Statute in such case made and provided.
		1000	745	Charged with obstructing Constable. . .in the execution of his duty as Constable and Throwing a pair of handcuffs into the harbour and thereby destroying the same.
		2000	746	Charged with stealing a Gold watch and chain. . .of the value of $100 and upwards.
		5000	747	Summon'd for allowing his horse to Stand untied in the Street
		1000	748	Assaulting a Chinaman with a snowball
		7000	749	Charged by the Captain of the Signet Charged with Refusing to work
		4000	750	Having an intoxicant in his/her possession
		2000	751	Stealing a Blanket

Variable	Field	Recodes	Code	Value Name
Charge	53-55	3000	752	Disturbing the Peace
		3000	753	Fighting in the public streets
		2000	754	Unlawfully and feloniously stealing one pipe and one gold ring. . . .
		2000	755	Stealing a gold watch and chain
		2000	756	Stealing two ducks
		8000	757	Endeavoring to prevent N. Shakespeare from distraining goods and chattels for school tax
		7000	758	Summon'd by Captain Dupont for Disobedience of orders in not attending Drill Parade Victoria Garrison Artillery, when duty Summoned to Attend.
		5000	759	Did carry on and exercise the trade or calling of Hawker or Pedler and did sell certain fish (to whit) herrings, without having taken out and had granted to him a licence to do so.
		5000	760	Driving across bridge at a Pace faster than a walk
		2000	761	Obtaining a Quantity of clothing under false pretenses from the residence of Capt. Clark
		2000	762	Possession of contraband goods
		3000	763	Drunk and disorderly and breaking a door, the property of David Leneveue.
		2000	764	Stealing the sum of sixty dollars from W. MacLellan.
		2000	765	On warrant issued by David Leneveue, Esq. J.P. charged. . .with stealing a monkey wrench from the premises of Joseph Spratt.
		2000	766	Unlawfully and feloneously stealing "1 Pair of Opera Glasses the property of Capt. Frequart."

Variable	Field	Recodes	Code	Value Name
Charge	53-55	1000	767	Summon'd by Jennie a Fort Rupert Indian woman, and charged with assaulting her. . . .in Suwke Alley off Johnson Street by striking her in the face with her fist and by scratching her face.
		2000	768	Stealing a pair of shoes
		1000	769	Given in charge by Dr. Matthews for assaulting the stewart of the club
		2000	770	Fraudulently take and convert to his own use $250.00 in Canadian Currency. . . .
		6000	771	Being an idle and disorderly person who not having visible means of maintaining himself unlawfully lived without employment in the said City (Warrant of A. N. Richerds P.M.)
		5000	772	Infraction of Revenue By-law
		1000	773	Assaulting a chinaman
		6000	774	Keeping a house of illfame
		2000	775	Stealing two opium pipes and one china water pipe and rug and blankets (given in charge by AhChine and AhTuck)
		5000	776	Infraction of Street Bylaws
		8000	777	Cruelty to animals
		6000	778	Begging on the streets
		5000	779	Infraction of the health Bylaw
		5000	780	Infraction of Fire Regulations Bylaw
		6000	781	Inmate of a house of illfame
		6000	782	Playing the unlawful game of FanTan
		7000	783	Being absent without leave
		6000	784	Having no peaceful calling or profession to maintain himself but does for the most part support himself by the avails of prostitution

Variable	Field	Recodes	Code	Value Name
Charge	53-55	6000	785	Frequenting a house of illfame
		8000	786	Refusing to give a list of his employees or to pay their provincial taxes: (note case #2970 questions city right to collect these taxes and is sent to supreme court)
		5000	787	Furious Driving (and thereby endangering the lives of the public)
		8000	788	Refusing to pay provincial taxes
		5000	789	Infraction of Park By-law
		3000	790	Obstructing passengers by standing across sidewalk/ and loitering and etc.
		5000	791	Infraction of Building By-law
		8000	792	Charged that he did without lawful excuse refuse to answer a certain question requisite for taking the Census
		1000	793	A.N. (a Chinaman) given in charge to Sergeant Walker by Mr. Robert Carter (Provincial Tax Collector) Charge with assaulting him by striking the said Robert Carter with an axe.
		5000	794	Infraction of Hack By-law
		8000	795	Selling lottery tickets
		4000	796	Being drunk on the Indian Reserve—Victoria West
		3000	797	Drunk and Disorderly Conduct on Board the Ship. . . . lying at the outer wart.
		2000	798	Fraudulently taking the sum of one hundred dollars the property of the British Columbia Longshore and Steamship Man's Protection and Benevolent Association
		2000	799	Stealing Whiskey the property of the C.P.R Co.

Variable	Field	Recodes	Code	Value Name
Charge	53-55	5000	800	Allowing thistles to grow and/or come to flower
		3000	801	Disturbing religious meeting in Salvation Army Barracks
		5000	802	Wantonly firing a gun in Beacon Hill Park
		5000	803	Unlawfully carrying on business of Retail trade on Simcoe Street without a licence
		2000	804	Refusing to pay his fare or exhibit ticket or receipt for fare to proper officers on board Steamer
		6000	805	Unlawfully looking on while others were unlawfully playing a common game called Fan Tan
		6000	806	Unlawfully looking on. . . . in a common gaming house in the City of Victoria
		5000	807	Riding a horse on turf in Beacon Hill Park
		5000	808	Unlawfully firing a gun in Beacon Hill Park
		5000	809	Pasturing a horse in Beacon Hill Park
		5000	810	Firing a gun within City limits
		1000	811	Using threatening language to his wife
		5000	812	Molesting animals in Beacon Hill Park
		2000	813	Using grossly insulting language to informant

Variable	Field	Recodes	Code	Value Name
Sentence	58-59	30	01	Acquited by Court
		98	02	Held for SafeKeeping
		98	03	Witness
		04	04	Fined
		30	05	Commit for Trial: Acquit
		10	06	Imprisoned to Departure of Ship
		04	07	Bail Estreated
		04	08	Fine: half fine pd. to Inf'm't
		10	09	Penitentiary
		10	10	Imprisonned
		10	11	Imprisonned with Hard Labour
		30	12	Not Tried
		04	13	Held 6 Hrs/Five Shillings
		30	14	Allowed Out
		30	15	Com't'd/Acquit
		98	16	Remain in Gaol ~6months
		04	17	13 & 07
		98	18	By Consent
		04	19	Ordered to Fund Sureties
		04	20	Fined/Default—Imprisonned
		30	21	Discharge after Remand
		04	22	Fined/Default—Hard Labor
		98	23	Remand—Unknown Term
		30	24	Discharged Flwnc Day
		30	25	Discharged From CRT
		30	26	Summons Withdrawn/Pay Costs
		88	27	Accused Returned to N.West/rsvd.
		30	28	Sentence Suspended
		30	29	Discharged by order of Dr. Milne
		30	30	Dismissed
		30	31	Rel. on own recog./ result unknown
		30	32	Charge Withdrawn
		88	33	Insane Asylum
		30	34	Dismissed with Costs
		30	35	Withdrawn by paying costs
		98	36	Summoned—Not Served
		04	37	Given Caution and Costs
		30	38	"Allowed out to leave country"
		88	39	"Sent to the Sound"
		30	40	"Dischg. Sent to join ship"

† Recoding of Sentence: Fine(04), Discharged/Dismissed(30), Imprisoned(10), Other/N.A.(98), Other Authorities(88).

Variable	Field	Recodes	Code	Value Name
Sentence	75-77	30	41	"Discharged: State Royal Hospital
		88	42	Delivered to Capt. Irvine
		88	43	Handed over to Naval authorities
		04	44	Bound to keep peace on Surity/ Default imprisonment
		88	45	Sent on board Ship
		30	46	"Cancelled"
		10	47	Imprison w. Hard Labour
		88	48	"Handed over to "C" Battery"
		98	49	Committed to Trial: Insuring
		88	50	"Handed over to the Provincial Police"
		10	51	Hard Labour/Prov. Gaol/ Common Gaol
		04	52	Fine Default/Hard Labour Provincial gaol
		04	53	Fine Default/Hard Labour City Lockup
		10	54	Imprisoned: City Lockup
		98	55	Committed for Trial: Prov. Gaol (Unknown Verdict)
		98	56	Committed for Trial: Bail
		98	57	Adjourned/Result Unknown
		30	58	Discharge on Condition of Hard Labour
		98	59	Warrant to be Issued for Arrest
		98	60	Case 2296 transcript
		98	61	"Committed"
		98	98	Unknown Term
			99	Not Applicable

Variable	Field	Recodes	Code	Value Name
Officer	75-77		000	Missing
		1	001	Constable O'Connor
		1	002	Constable Kirkop
		1	003	Constable Ogilvy
		2	004	Kirkop and Ogilvy
		1	005	Constable Lindsay
		1	006	Constable Hough
		1	007	Constable Sheppard
		2	008	Sheppard and Ogilvy
		1	009	Sergeant Bloomfield
		1	010	Constable Flewin
		2	011	Sheppard and Flewin
		2	012	Hough and Flewin
		2	013	Kirkop and Hough
		1	014	Constable Lewis
		2	015	Sheppard and Hough
		2	016	Lindsay and Hart
		1	017	Constable Lindsay
		2	018	O'Connor and Flewin
		1	019	Constable Hart
		2	020	Ogilvy and Lindsay
		1	021	Constable Mills
		2	022	Lindsay and Hough
		2	023	Hough and Mills
		1	024	Constable Walsh
		2	025	Walsh and Speed
		2	026	Kirkop and Miles
		2	027	Hough and Bloomfield
		1	028	Constable Campbell
		2	029	Sheppard and Walsh
		1	030	Constable Lewis
		2	031	Hough and Speed
		1	032	Constable McCleod
		2	033	Walsh and McCleod
		2	034	Const. Sheppard and S.Off. Black
		1	035	Constable Healy
		2	036	Sheppard and Speed
		1	037	Constable Campbell
		1	038	Constable Speed
		2	039	McCloud and Speed
		2	040	Bloomfield and Flewin
		2	041	Hough and McCleod
		2	042	McCleod and Sheppard
		1	045	S.C. Thompson
		1	046	Constable Redgrave
		2	047	Redgrave and S.C. Thompson

Variable	Field	Recodes	Code	Value Name
Officer	75-77	1	048	Sergeant Walker
		1	049	Constable Abel
		1	050	S.C. James
		1	051	S.C. Campbell
		1	052	Constable Irvine
		1	053	Captain Charley
		2	054	Irvine and Capt. Charley
		2	055	Irvine and S.C. Thompson
		1	056	Constable Smith
		1	057	Constable MacDonald
		1	058	Constable Walker
		1	059	Constable Levin
		2	060	Levin and Redgrave
		2	061	Walker and S.C. Campbell
		1	062	Constable Smith
		2	063	Sgt. Walker and MacDonald
		1	064	Constable Hawton
		3	065	Walker, Hawton, MacDonald
		1	066	Constable Levine
		2	067	Irvine and MacDonald
		4	068	Prov. C. Hunter
		4	069	Irvine and Prov. C. Hunter
		1	070	Constable McNeil
		1	071	Constable Carter
		4	072	Prov. C. McNeil
		2	073	MacDonald and James
		2	074	Smith and Walker
		2	075	Irvine and Levine
		2	076	Irvine and Hawton
		2	077	Hawton and S.C. Campbell
		2	078	Sgt. Walker and Walker
		2	079	MacDonald and Hawton
		5	080	Warrant of Court
		5	081	Summoned
		3	082	MacDonald, Abel, Carter
		3	083	Hawton, Irving, MacDonald
		2	084	Redgrave and Sgt. Walker
		1	085	Superintendent O'Connor
		2	086	Irvine and S.C. Campbell
		2	087	Redgrave and MacDonald
		1	088	Superintendent H. Sheppard
		2	089	Sgt. Hawton and Kenny
		1	090	J.W. Harris, Sherrif of V.I.
		5	094	Summoned by Supt. Shepperd
		5	095	Summoned by Irvine
		5	096	Summoned by Warrant/re J.P.

Variable	Field	Recodes	Code	Value Name
Officer	75-77	5	097	Summoned by MacDonald
		5	098	Summoned by Walker
		0	099	Not Available
		2	100	Irvine and Levin
		1	101	Constable Kenny
		4	102	P. Sgt. Langley and Redgrave
		4	103	Prov. C. McNeil and Charley
		4	104	Prov. C. James and Irvine
		4	105	Prov. C. James and Levin
		2	106	Irvine and James
		1	107	S.C. Thompson
		2	108	S.C. Thompson and Redgrave
		2	109	MacDonald and Walker
		3	110	Levine, Kenny, Hawton
		2	111	Abel and Irvine
		1	112	Constable Driscol
		4	113	Dom. C. Lewis and S.C. James
		1	114	Constable Cameron
		1	115	Sergeant Hawton
		2	116	Hawton and Cameron
		1	117	Constable Hildreth
		4	118	Prov. C. Robb
		2	119	Walker and Cameron
		1	120	Constable Hildreth
		2	121	Levin and McDonald
		1	122	Constable Conlin
		1	123	Constable James
		1	124	Constable Hendry
		2	125	Driscoll and Smith
		1	126	Sgt. Levin
		2	127	Redgrave and Smith
		2	128	Conlin and Hendry
		2	129	Driscoll and McDonald
		2	130	Levin and Walker
		2	131	Levin and Cameron
		2	132	Hawton and Redgrave
		2	133	S.P.C. James and Taylor
		2	134	Redgrave and Langley
		2	135	Kenney and P.C. Hunter
		1	136	Constable Taylor
		1	137	S.P.C. McKay
		1	138	P.C. McNeil
		2	139	Walker and Hildreth
		2	140	Sgt. Levin and S.C. Hoosan
		2	141	Smith and Conlin
		2	142	Hawton and Driscoll
		1	143	Constable Hooper

VITA

Surname: Parker | Given Names: Nancy Kay

Place of Birth: Mercoal, Alberta | Date of Birth: 17 October 1958

Educational Institutions Attended:

York University, Toronto	1987 to
University of Victoria, B.C.	1984 to 1987
University of Victoria, B.C.	1980 to 1983
College of New Caledonia, Prince George	1979
University of Lethbridge, Lethbridge	1979
College of New Caledonia, Prince George	1978
University of Victoria, B.C.	1976 to 1977

Degrees Awarded:

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