

**'COMMON CRIMINALS, SIMPLE JUSTICE':  
THE SOCIAL CONSTRUCTION OF CRIME IN  
NINETEENTH-CENTURY ONTARIO, 1840-81**

**Lorna R. McLean**

**Thesis submitted to the School of Graduate Studies and  
Research in partial fulfilment of the requirements  
for the Ph.D. degree in History**

**May 1996**



**University of Ottawa**



National Library  
of Canada

Acquisitions and  
Bibliographic Services Branch

395 Wellington Street  
Ottawa, Ontario  
K1A 0N4

Bibliothèque nationale  
du Canada

Direction des acquisitions et  
des services bibliographiques

395, rue Wellington  
Ottawa (Ontario)  
K1A 0N4

*Your file    Votre référence*

*Our file    Notre référence*

**The author has granted an irrevocable non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of his/her thesis by any means and in any form or format, making this thesis available to interested persons.**

**L'auteur a accordé une licence irrévocable et non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de sa thèse de quelque manière et sous quelque forme que ce soit pour mettre des exemplaires de cette thèse à la disposition des personnes intéressées.**

**The author retains ownership of the copyright in his/her thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without his/her permission.**

**L'auteur conserve la propriété du droit d'auteur qui protège sa thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.**

ISBN 0-612-16426-8

**Canada**



UNIVERSITÉ D'OTTAWA  
UNIVERSITY OF OTTAWA

To Gord, Heather and Andrea

either we're all ordinary, or none of us are.

Carol Shields, interview The Globe and Mail,  
19 April 1995, A6.

## ABSTRACT

During the course of the nineteenth century as recently settled communities solidified, expanded and developed the nature of crime and criminal law altered in substantial ways. The thesis analyzes this process by selecting four communities at different stages of development to explore the basis for such diversity through an examination of gaol registers and case files. Investigating other sources confirmed that these differences were not only economically based but reflected a fundamental shift in ideological thinking.

Overall, the evolving process of social development from a frontier/agricultural community to an urban/industrial society affected the nature and social functioning of criminal justice in surprisingly different ways. For example, if we consider vagrancy, the major public peace offence in rural areas, we observe that it served as a surrogate for social welfare until the end of the nineteenth century. In contrast, in urban areas patterns of prosecution and punishment for the most common crime, drunkenness, reflected the combined influences of reform movements, expansion of local municipal by-laws and police enforcement that accompanied urbanization. Together the combined impact of regulatory policies with gendered ideologies resulted in more women than men committed for public peace offences in Toronto/York between 1855 and 1865 than at any other time in the later nineteenth century.

In addition, one constant that united all communities was how masculine culture contributed to both the violent disputes which erupted in public between men and the private assaults that husbands inflicted on wives. A further exploration of violence in rural areas revealed how networks of economic interdependence among family, friends and neighbours alongside practices of traditional frontier culture could, on occasion, lead to violent conflicts. Overall, the evidence indicates that frontier and rural areas fostered a greater degree of violence than in the cities. However, across all communities, the law reflected a certain ambivalence towards wife-beating in the home, with the courts reluctant, at times, to convict or pass severe penalties to limit domestic patriarchal controls.

Local variations also existed among property offences. In rural areas theft often served to resolve personal disputes over ownership as neighbours and business acquaintances resorted to stealing capital goods to resolve private financial disputes. In urban areas theft generally involved individuals who stole personal goods from employers, underscoring the widening economic divisions between classes. In their occupational roles as prostitutes and servants, women comprised a large cross section of the individuals charged with theft. Overall in rural areas instances of grand larceny were charged as “petty” and under differing circumstances in urban areas petty larceny was treated as “grand.” Overwhelmingly in both urban and rural communities it seems that those who laid the charges were from a higher position in the social hierarchy and in urban areas those charged were largely working class.

A comparative study of criminals and crime informs us not only of the evolving nature of criminal justice, it also delineates how the particular social and economic stage of a community influences other broad social factors including the development and social meaning of crime and the criminal law. Exploring this interactive process among individuals, communities and the state assists in identifying some of the fundamental principles governing society.

## TABLE OF CONTENTS

|                                                                                                            |       |
|------------------------------------------------------------------------------------------------------------|-------|
| ABSTRACT .....                                                                                             | iv    |
| TABLE OF CONTENTS .....                                                                                    | vii   |
| LIST OF TABLES .....                                                                                       | viii  |
| LIST OF FIGURES and LIST OF MAPS .....                                                                     | ix    |
| PREFACE .....                                                                                              | x     |
| <br>CHAPTER 1: SHIFTING BOUNDARIES: COMMUNITY SETTLEMENT AND<br>CRIMINAL JUSTICE IN ONTARIO, 1840-81 ..... | <br>1 |
| CHAPTER 2: THE ANATOMY OF CRIME, CRIMINALS AND<br>COMMUNITIES IN VICTORIAN ONTARIO .....                   | 54    |
| CHAPTER 3: SOCIAL WELFARE AND STREET SWEEPING .....                                                        | 97    |
| CHAPTER 4: VIOLENCE, CULTURE AND COMMUNITY .....                                                           | 137   |
| CHAPTER 5: LARCENY, PROPERTY AND SECURITY .....                                                            | 171   |
| CONCLUSION: RURAL JUSTICE AND URBAN CRIMINALS .....                                                        | 208   |
| APPENDIX A: CRIMINAL CATEGORIES .....                                                                      | 214   |
| BIBLIOGRAPHY .....                                                                                         | 232   |
| 1. Primary Sources .....                                                                                   | 232   |
| 2. Secondary Sources .....                                                                                 | 237   |

## LIST OF TABLES

|                                                                                                                                  |     |
|----------------------------------------------------------------------------------------------------------------------------------|-----|
| Table 1: Socio-Economic Status of Women and Men in Gaol in Four Communities, 1840-81 . . . . .                                   | 62  |
| Table 2: All Property Committals For Men and Women in Four Communities in Ontario, 1840-81 . . . . .                             | 69  |
| Table 3: Committals of Men and Women for Offences Against the Person in Four Ontario Communities, 1840-81 . . . . .              | 72  |
| Table 4: Incidence of All Committals of Men and Women in Four Communities in Ontario, 1840-81 . . . . .                          | 76  |
| Table 5: Per Capita Distribution of All Offences in Four Communities in Ontario, 1840-81 (per 10,000 population) . . . . .       | 77  |
| Table 6: Committals of Men and Women for All Offences Against the Public Peace in Four Communities in Ontario, 1840-81 . . . . . | 79  |
| Table 7: Committals of Men and Women for Offences Against the Public Peace in Four Communities in Ontario, 1840-81 . . . . .     | 98  |
| Table 8: Marital Status of All Females and Males Charged with Vagrancy in Four Communities, 1840-81 . . . . .                    | 106 |

## LIST OF FIGURES

|                                                                                                        |     |
|--------------------------------------------------------------------------------------------------------|-----|
| Figure 1: Committals in York/Toronto Gaol, 1850-80 Women and Men<br>Charged with Drunkenness . . . . . | 114 |
|--------------------------------------------------------------------------------------------------------|-----|

## LIST OF MAPS

|                                      |   |
|--------------------------------------|---|
| Map 1: Ontario by Counties . . . . . | 2 |
|--------------------------------------|---|

## PREFACE

Between 1840 and 1880 Ontarians witnessed broadly based, dramatic transformations in society. The critical role played by the state in orchestrating and responding to these changes has been elucidated in a variety of studies on the economy, on political structures and on social institutions. Together these studies demonstrate that the state was at the forefront of key developments during these formative years. Equally clear is the role which criminal law played in structuring society. Less known, however, is how enforcement of laws affected the day-to-day lives of those who encountered the criminal justice system directly on streets and in homes, in court and in gaol. A study of common criminals and simple justice offers an opportunity to examine precisely the consequences and conditions of these routinized interactions.

This thesis explores how, when and why a set of behavioural norms gradually became criminalized during these years. The study explores those critical moments in the life of a society when new social constructions of crime emerged and, further, contemplates how the "official legal system began to penetrate deeper into society."<sup>1</sup> This process helped to institutionalize "a particular value system . . . upheld through the law."<sup>2</sup> It promoted as well the ordering of values through legal structures.<sup>3</sup>

This thesis examines four communities<sup>4</sup> representing various stages along the continuum from frontier/agricultural to urban/industrial societies. The study takes its lead from legal historian Paul Craven, who reminds us that a social history of the law, or in this case the criminal justice system, begins "with the reconstruction of the

experience of being brought to law."<sup>5</sup> For our purposes, contact points were Ontario's courts and gaols. Analysis of data on crime and criminals gathered from each of four communities focuses attention on fundamental social processes to uncover the interplay between individuals and legal agencies and explore how it changed over time.<sup>6</sup>

An initial examination of the aggregate data highlights several patterns among committals. In urban areas, more Irish immigrants and Roman Catholics were incarcerated, whereas in frontier regions more African Americans appeared in gaol registers. Illiteracy was a common factor for most inmates and, overall women appeared on registers more than might be expected. While these trends remain statistically significant, an examination of individual cases makes it clear that precise social meanings of crime had more to do with structural differences among the four communities than individual variables suggest. Moreover, within the evolving construction of crime class relations and gender ideologies further explained such distinctions.

This thesis builds on earlier community research projects and adopts a methodology informed by micro-regional studies based on routinely generated sources which include council minutes, gaol registers, criminal indictment case files and judges' benchbooks. These sources are supplemented by analyses of newspapers, law journals and contemporary interpretations to provide further insights into nineteenth-century perceptions.

The results of this approach re-interpret earlier analyses about the nature and function of crime during the transformative years of the nineteenth-century in several important ways. Stage of settlement was critical. Fundamental differences existed in the practice of criminal justice between frontier/rural communities and urban centres. This is most clearly seen, for example, in Grey county where in lower courts criminal justice often had more to do with social welfare than with typical notions of crime. In contrast, in Toronto urban justice fused notions of reform with general concerns of public disorder that ultimately led to a more punitive system.

In addition, this study reinforces earlier works which identified the significance of gender in the rendering of criminal justice. Increased enforcement capabilities concomitant with a plethora of municipal by-laws resulted in the highest level of female committals in urban centres between 1855 and 1865 until the end of the century. Not unique to Toronto, this pattern was also observed in studies of other major cities in North America. Within the ideological construction of public crime the scourge of the fallen women emerged as paramount.

If as many legal historians claim, a study of crime provides a window on social change and institutions<sup>7</sup> then what does this study tell us about nineteenth-century society? The nature and organization of the economy affected crime in significantly different ways. This is best seen in examining committals for violence and theft. Here we observe how networks of economic interdependence among family, friends and neighbours alongside practices of traditional frontier culture could at times lead to violent conflicts.

In rural areas theft of capital goods often served to resolve personal disputes. In contrast in urban communities the distinct character and circumstance of thefts underscore the widening economic disparity and class divisions between workers and employers. Although class relationships remain central for both women and men, the concentration of women within two main occupations, prostitution and domestic service, provides the clearest opportunity to identify the role of class within the gendered social construction of crime.

Yet as important as these configurations are in locating significant differences between rural and urban societies a regional/economic analysis fails to explain important similarities. The masculine culture that lay behind the predominately public violent disputes between men and the private assaults on wives remained a constant among all four communities.

With time some significant differences in the form and function of crimes between rural and urban societies began to narrow. Just as the demographic forces associated with urbanization and industrialization extended into the hinterland so too did the regulatory powers of the state. Increased government control is evident in enforcement of municipal by-laws by local police forces, in institutional reform, and in expansion of provincial gaols and prisons alongside a plethora of provincial and later federal criminal legislation with the power to criminalize and to punish.

Taken together these findings suggest that there was not one legal system in the past; in fact there were several. The social construction of law, crime and criminals differed by region and by sex. Yet despite significant variations, political,

ideological, social and economic influences over time coalesced creating greater homogeneity in Ontario's legal traditions and culture. An analysis of this unfolding process demonstrates how "law has been imbricated in and has helped to structure the most routine practices of social life."<sup>8</sup> A study of common criminals and simple justice aids our understanding of this process.

1. Lawrence M. Friedman, A History of American Law (New York, 1973), 99.
2. Hindus makes the point in reference to arrests for vagrancy and sex related crimes in nineteenth-century Massachusetts. M. Hindus, Prison and Plantation: Crime, Justice and Authority in Massachusetts and South Carolina, 1767-1878 (Chapel Hill, 1978), 251.
3. Hurtz is referring specifically to the interplay for primacy between a market economy and the government. See William Hurst, Book Review of Morton Horwitz, The Transformation of American Law, 1780-1860 (Cambridge, 1977), The American Journal of Legal History, XXI (1977), 177.
4. A "community" according to anthropologist Raymond Firth, "involves a recognition, derived from experience or observation, that there must be minimum conditions of agreement on common aims, and inevitably some common ways of behaving, thinking, and feeling." Raymond Firth, Elements of Social Organization (London, 1961), 27.
5. Here, Craven is referring to employment law. Paul Craven, "The Law of Master and Servant in Mid-Nineteenth-Century Ontario," in Essays in the History of Canadian Law, Vol. 1, ed. by David H. Flaherty, (Toronto, 1981), 205.
6. Douglas Hay, "War, Dearth and Theft in the Eighteenth Century: the Record of the English Courts," Past and Present, 95 (1981), 117-18.
7. Eric Monkkonen, The Dangerous Class: Crime and Poverty in Columbus, Ohio, 1860-1885 (Cambridge, 1975), 7.
8. Robert W. Gordon, "Critical Legal Histories," Stanford Law Review, 36 (1984), 125.

## ACKNOWLEDGEMENTS

The journey of a thousand miles begins with the first step.

Confucius

The lengthy journey to complete my thesis was both arduous and rewarding. Many people accompanied and guided me along the way. I take great pleasure in acknowledging and thanking them.

I appreciated the professional assistance from staff at the University of Ottawa, Arts and Law Libraries, the National Library of Canada, Perth County Archives, Stratford City Hall, Owen Sound City Hall, Municipal Offices of the County of Leeds/Grenville, City of Toronto Archives, National Archives of Canada and the Archives of Ontario. In particular, archivist Jack Choules gave valuable instructions on sorting out the vast quantity of unprocessed legal material housed at the Ontario Archives.

Financial support from the School of Graduate Studies and Research at the University of Ottawa, The Osgoode Society, The Canadian Federation of University Women, the Ontario Graduate Scholarship Fund and the Social Sciences and Humanities Research Council of Canada are gratefully acknowledged.

Colleagues Colin Coates, Megan Davies, Anne Drummond, Lorne Hammond, John Lutz, Peter MacLeod, Lindsay Neilson, Charlene Porsild, Fran Thompson and members of the Ottawa Legal History Group, Patrica Kennedy, Danielle Lacasse, Antonio Lachasseur and Barry Wright offered advice and friendship. As well, Monica

Prince's assistance with SPSS was invaluable. Legal-technical and theoretical counsel was generously provided by professors Constance Backhouse, Tina Loo, Jim Phillips, Wes Pue, Paul Romney and Liz Sheehy.

During research sojourns to Toronto I enjoyed the hospitality of friends and family. Janice and Clare, Cathy, Mary and John, and Ross and Walter all provided welcome respite at the end of a long day.

Throughout my graduate studies my thesis supervisor, Michael J. Piva provided encouragement and guided earlier drafts of chapters to completion. His enthusiasm for writing and teaching history remains a source of inspiration for me. In addition, professors Marilyn Barber, Chad Gaffield, Ruby Heap and Wes Pue endorsed my research and offered scholarly support along the way.

Close friends Chris, Diane, Karen and Wendy walked, skied, skated and biked along the route with me. My mother and sisters, Hazel, Jan and Joan, as always, picked up the slack when research demands distracted my attention from other familial responsibilities. I am indebted to them for their support and endurance.

Finally, I want to thank my husband Gord, and daughters, Heather and Andrea. They sustained me throughout this journey with humour, encouragement and love. I dedicate this thesis to them.

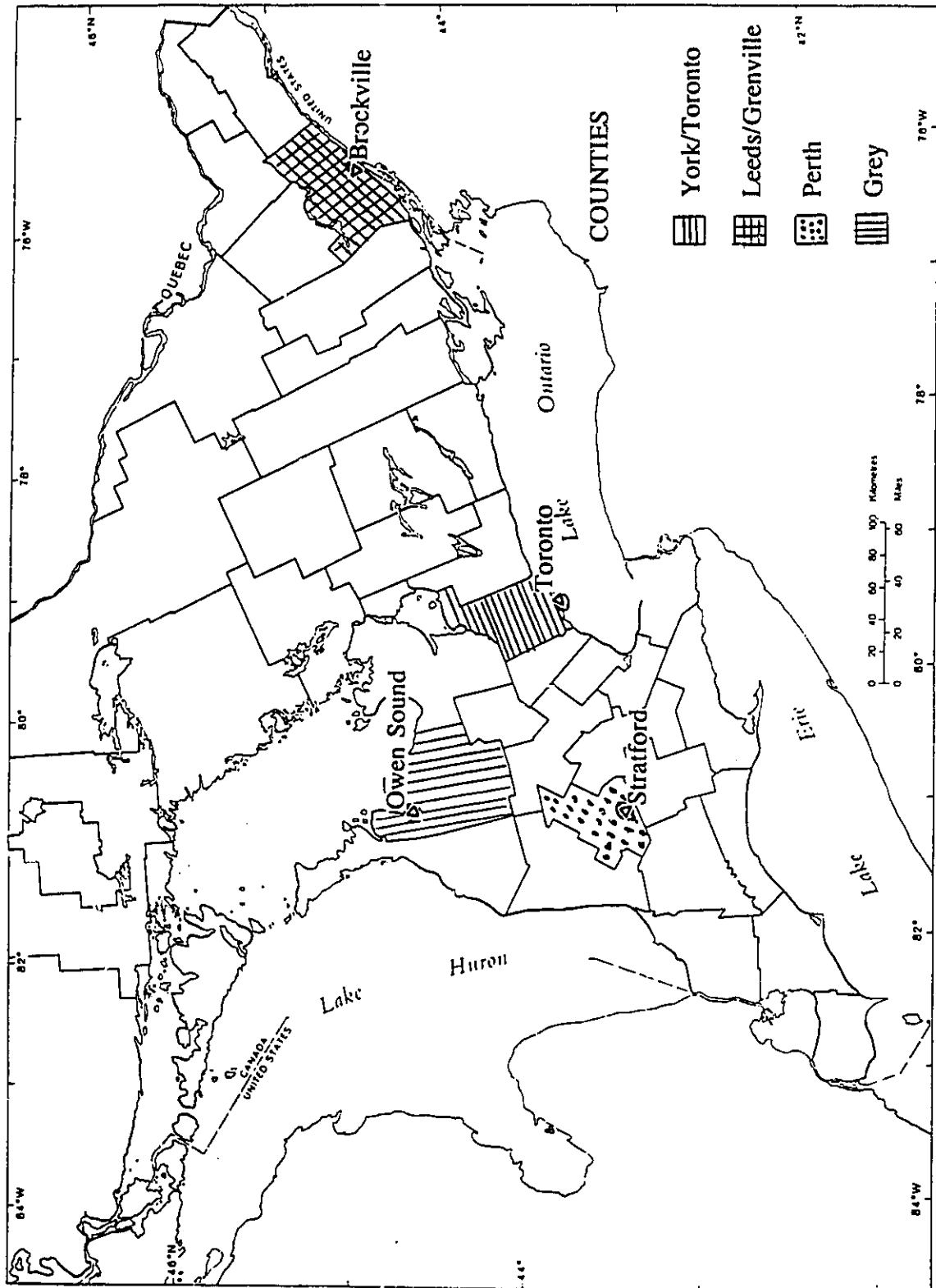
## CHAPTER 1

### SHIFTING BOUNDARIES: COMMUNITY SETTLEMENT AND CRIMINAL JUSTICE IN ONTARIO, 1840-81.

Between 1840 and 1881, British North America underwent a period of intense social, economic and political change. Earlier immigration from both the United States and the United Kingdom gradually transformed the frontier into a settled rural community. Some regions within the province were well established communities by mid-century while others had only recently been opened to settlement. As late as 1881, over two thirds of the population continued to reside in rural areas. This essentially rural community, however, became increasingly urbanized as its economy gradually industrialized. By mid-century Ontario had become a diverse province with sometimes marked social contrast between urban and rural, older and more settled communities. Within each of these communities social divisions based upon sex, ethnicity, race and class had also emerged.

This study relies upon a set of case studies chosen in such a way as to accommodate the social diversity of the province. The case samples include the largest and most economically advanced urban community, Toronto/York, a frontier community, Grey, and two rural communities, one in eastern Ontario, Leeds/Grenville, one in western Ontario, Perth (see Map). Both of these rural counties contain small to medium size towns.

By mid-nineteenth century Toronto had established its position as a major urban centre within the colony. Over the years it emerged as a dominant commercial centre and later proclaimed as the provincial capital. This largely Protestant, Anglo-



Permission granted by the Cartographic Section, Department of Geography,  
University of Western Ontario, London, Ontario, 1995.  
Identification of counties and towns/city is my own.

Celtic community expanded in part as a consequence of immigration from the United Kingdom, particularly Ireland. The city's rapidly expanding population grew from roughly 13,000 in 1840 to 86,000 in 1881. In the latter year Toronto's population outdistanced the rural population of York county.<sup>1</sup>

Along the St. Lawrence River to the east a population of Loyalists first settled what became the united counties of Leeds/Grenville in 1784. As with York county, extensive migration in the late 1840s led to a rapid increase in population. Large numbers of Irish immigrants settled these primarily rural townships during the 1840s.<sup>2</sup> The county doubled in size over the forty years between 1840-1881. The largest town, Brockville, rose slowly from 2,449 residents in 1848 to 12,514 by 1881.<sup>3</sup> As with most agricultural areas land productivity determined the rate of settlement. Unlike those who farmed the fertile lands of York county,<sup>4</sup> settlers in Leeds/Grenville faced less favourable farming conditions on land that proved more suitable for dairy pastures than field crops.<sup>5</sup>

Settlement in the south-western county of Perth began later than in Leeds/Grenville or York. A planned recruitment drive by the Canada Company, began in the 1830s. Settlers were culled from heavily populated areas of Great Britain and Germany.<sup>6</sup> Throughout the century the proportional distribution of Irish, German, Scots and English remained stable at a ratio of 4:3:2:1. Clustered in ethnic neighbourhood enclaves the combination of fertile lands and secure transportation routes guaranteed prosperity and rapidly expanding markets.<sup>7</sup> By 1881, a largely rural

population evolved surrounded by a growing network of towns. The county population reached 54,985 inhabitants, well over three times that of 1851.

Further north in Grey county early pioneers survived hostile frontier conditions. Between 1833 and 1850 surveyors traversed this expansive terrain of dense forests, rocky hills and rivers passing over lands considered by many to be a "howling wilderness".<sup>8</sup> Varied circumstances attracted a diverse population of mainly Scots, Irish, German and American settlers, including African Americans.<sup>9</sup> Most inhabitants practiced a general form of farming utilizing all available resources. They frequently combined hunting and fishing with agriculture in what remained a largely subsistence economy.<sup>10</sup>

Taken together these four counties represent varied aspects of the social and economic diversity of Ontario during the Victorian era. Between 1840 and 1881 varying governments responding to equally varied political pressures formed and reformed constitutional arrangements and political institutions. In 1841, in the wake of a recent economic depression, political rebellion and increasing immigration, the colonial office fundamentally reorganized all levels of government. Within this process judicial power became reordered in sometimes seemingly contradictory ways. Some reforms consolidated the authority of the state to more directly supervise the activities of the courts, yet within the state a clear jurisdictional division between the central government and local communities led to a devolution of power to the local level. During the union period the province created local semi-autonomous governing councils alongside a planned and co-ordinated network of provincially directed

bureaucratic administration and institutions. These evolving structures and systems formed an interactive link between local and provincial authority. While, on the one hand, municipal jurisdiction granted democratic rule to cities, towns, counties, townships and villages, the province, on the other hand, retained central control through an emerging bureaucratic system.

Local government was altered chiefly through a series of provincial statutes between 1841 and 1859. Following the legislative union in 1841, elected District Councils replaced appointed magistrates as the local governing power. In addition to elective powers, District Councils were granted limited rights of taxation, bylaw regulation and police enforcement. At the same time centrally appointed wardens accountable directly to the Governor General controlled the executive functions of local councils. Up until 1846, the province reserved its right to appoint clerks and treasurers. The province could dissolve council at any time, while the government could prohibit any local by-law by order in council.<sup>11</sup>

The LaFontaine-Baldwin reform government eliminated the more authoritarian element's of Sydenham's system and in 1849 established "home rule" at all levels of government. Responsible government at the provincial level made the government accountable to the elected legislature while local autonomy granted decision-making to municipalities. Passage of the Municipal Incorporation Act of 1849 reflected Baldwin's more general aim for people to "manage their own affairs".<sup>12</sup> At the local level it offered elective representative institutions, with few strings attached, "to function without hampering statutory restrictions or central administrative control."<sup>13</sup>

County councils superseded district councils as the primary unit of rural local government. They now performed a variety of duties including administering the courts and gaols.<sup>14</sup>

Municipal authority expanded again in 1859 when the provincial government empowered county councils, like the towns, police villages and cities authority to pass by-laws regulating specific moral and public behaviours.<sup>15</sup> This act signalled the provincial government's intention to extend regulatory powers among a wider body of municipal jurisdictions.

Despite creating local semi-autonomous governments, the province also assumed greater powers with each successive decade by constructing a network of bureaucratic controls and institutions.<sup>16</sup> In particular the state as an "instrument of modernity"<sup>17</sup> adopted a more direct responsibility for aspects of social and reform organizations through widening institutional arrangements. In 1851, for example, the government passed legislation to administer hospitals, gaols, prisons, and charities under a salaried inspectorate. Six years later, it expanded this jurisdiction to include a wider provincial inspectorate with far reaching powers. Then in 1859 the government founded the landmark Board of Inspectors of Prisons, Asylums and Public Charities. "For the first time in Canada," as Richard Splane observes, the Ontario government formed "an administrative body charged with the general direction of Public Institutions."<sup>18</sup> This amalgam of government officials with local agencies ensured greater supervision and control of social welfare agencies that in the future enabled

the state to effectively shape the institutions it now only supervised and partially funded.<sup>19</sup>

Over time, as provincial supervision of municipal councils waned, new links were established. Centralized state departments reorganized local government bodies as management agencies to enforce provincial social policies.<sup>20</sup> Within this chain of command provincially appointed inspectors were directly responsible to government departments. As Bruce Curtis emphasizes in his research on educational inspectors, the significance of these appointments represented more than simply improved lines of communication. These men "were placed to promote and, at times, to enforce their cultural conceptions, their moral standards, their sense of justice, and their aesthetic sense as models for the rest of society."<sup>21</sup>

Notably during this stage of reform initiative the government passed the civil service act of 1857 which represented a "first attempt to define uniform personnel policies for the emerging bureaucracy."<sup>22</sup> Creating a provincial service facilitated communication and policy implementation between state and institutions. Significantly, the number of civil servants tripled during this critical reform period from 880 in 1852 to 2,660 in 1867.<sup>23</sup>

Although these reforms were implemented *de jure* across the province, *de facto* variations occurred among regions. Judicial rearrangements were not limited to the major changes in 1841 when Upper and Lower Canada united as the province of Canada nor in 1867 when Ontario achieved provincial status under confederation. Differing outcomes resulted largely from community-based influences such as the

unequal increase in the number of police which differentially affected enforcement practices from community to community. Variabilities in the experience of criminal justice become clear once the data is disaggregated according to urban, rural and frontier communities as well as disaggregated by sex, class, race, ethnicity and religion. Before embarking on these issues, we begin with an analysis of the structure of the criminal justice system.

The evolution of the central government and its institutions together with the related jurisdictional shift in power between the political centre and the local communities encompassed all aspects of government including the structure of the criminal justice system. Legal reform evolved primarily through three structural changes. First, the creation of differential levels of courts hardened jurisdictional boundaries within the system. Second, the evolution of a police force with greater interventionist powers gradually enhanced enforcement practices across the province. Third, precise sentencing penalties constrained discretionary practices of local judges within narrowly defined provincial and federal parameters.

Central to any discussion of criminal law is an examination of the administration of justice. Over time the jurisdictional structure of the courts gradually shifted from a two-tier to a three-tier system. The division of the lower components of the court reflected the steady volume of business assigned there. What appears on the surface as simply a rejigging of a system to a more elaborate judicial structure, however, masks the underlying shift in the locus of power to the province concomitant with a diminished local jurisdiction. As cases were increasingly relegated

to summary trials, juries were eliminated from local judicial processes. Instead, decisions lay in the hands of provincially-appointed, legally-trained magistrates or judges. The simultaneous rise in the number of professionally accredited jurists provided the personnel to assume these singular positions of authority.

Magistrates in the court of Quarter Sessions occupied the lower tier of the court system in 1840. Alongside township officials with quasi-judicial powers, government-appointed magistrates/justices of the peace presided over districts. More serious crimes were sent to the upper tier, the superior or High Courts of Oyer and Terminer and Gaol Delivery. Such courts were created by commissions issued by the Governor. A judge of the Court of Queen/King's Bench adjudicated at the High Court.<sup>24</sup> Often referred to as the assize, these central courts were retained in the provincial capital and travelled for hearings to each district/county. Adjudicating the highest colonial courts, this elite coterie of distinguished jurists retained extensive jurisprudential powers.<sup>25</sup>

Appearing before a magistrate was the entry level to the criminal justice system.<sup>26</sup> Over the years a series of statutes determined under what legal circumstances justices of the peace could sit alone or in pairs.<sup>27</sup> Generally minor criminal misdemeanours were tried summarily (without juries) before two justices of the peace. Within these courts verdicts and sentences were rendered swiftly by presiding magistrates. More serious cases such as simple larceny or injurious assault were sent to Quarter Sessions. If the grand jury found a true bill (sufficient *prima facie* evidence) against the accused, the defendant either awaited trial in gaol, or

remained free on bail. In the more serious cases including capital offences the Quarter Sessions bound over prisoners to the next assize.<sup>28</sup>

There were important exceptions to this rule. After lengthy agitation for greater local autonomy, legislation in 1832 granted the town of Brockville authority to establish an elected Board of Police owing to the "great increase in population." Two men were elected annually to each of the two wards. At the first meeting they appointed a fifth member to be president.<sup>29</sup> These elected officials could raise funds through assessments and pass ordinances and by-laws "for the improvement, good order and government of the town." Many of the ordinances included regulating the use of public spaces by restricting riding through town to a trot, firing a gun on the streets, or fighting. Morality was covered under such rules as the "no fishing on the Sabbath" ordinance. The Board also regulated the sale of goods including what later became a financial boom for council coffers, licensing businesses to sell liquor.<sup>30</sup> Local residents countenanced these duties. One month after the board's appointment it ordered the police office to be kept open to deal with the public daily from nine o'clock to one o'clock, except Sunday, to handle its diverse responsibilities.<sup>31</sup>

J.M.S. Careless rightly notes the precedent setting nature of this enactment which "partly broke through the old control of the appointed magistrates"<sup>32</sup> and led to a rudimentary form of municipal government with greater financial autonomy. Following Brockville's initiative four towns -- Hamilton in 1833, Cornwall and Port Hope in 1834, and Cobourg in 1837 --obtained similar rights.<sup>33</sup>

Rapid population growth and expanding municipal by-law duties also increased the volume of business in York County, the busiest of the Sessions' Courts. In 1826 it organized a police office to handle the day to day business of the court. This was followed in 1834 with a Police Court which provided regulatory policing in Toronto under the supervision of the mayor and alderman. As *ex-officio* city justices of the peace they sat singly or in pairs on a daily basis to try minor criminal offences and by-law infractions summarily. This court exercised the jurisdiction of justices out of Sessions pronouncing penalties frequently on local offenders found guilty of liquor license infractions, drunkenness and disorderliness, prostitution, minor trespass or common assault. The police court was the busiest court in the criminal justice system as everyone charged with an offence made an appearance in front of the presiding magistrate(s).<sup>34</sup>

More serious cases arising in incorporated cities and towns were sent to the Mayor's court. This court of record complete with grand and petit juries superseded the Quarter Sessions in the city and was sometimes referred to as the "City Quarter Sessions." Although similar in criminal jurisdiction to the Quarter Sessions, it lacked the legislative powers of the quarter sessions and later councils to enact by-laws. The mayor and at least one alderman presided over week long sessions held four times annually. The "City Quarter Sessions" dealt most often with the indictable offences of petty larceny and common assault.<sup>35</sup>

In both circumstances -- the Police Court and the Mayor's Court -- justice was administered by locally appointed or elected officials, frequently the same civic

officials whose immediate authority and accountability lay at least in part with the community. In addition, in the mayor's court, cases were sent to trial by a grand jury of "peers" and verdicts were rendered by a petit jury also comprised of peers. Peers in these courts refer only to male property owners; women, the poor and natives were systematically excluded. Nonetheless, within the broader context of a legal/lay discourse these judicial bodies, served to temper official court practice with broader aspects of community culture.

In 1845 we see the first in a series of legislative reforms aimed at restructuring the judicial system. The overall effect of these changes re-allocated the division of powers at the lower courts while gradually strengthening ties to the central core. In 1845, the Assembly considered legislation to amend the incorporation act of Toronto, effectively reducing its administrative jurisdiction and, at the same time, providing for the appointment of a salaried Recorder to replace the Mayor in court.<sup>36</sup> Council immediately protested provincial interference in municipal jurisdiction. It struggled to maintain autonomy over judicial and financial prerogatives and resist the loss of civic and Police Court appointments. Fearful, as well, of forfeiting control over reliable sources of income and constituent support, city aldermen fought to maintain their rights to allocate tavern licences. Despite objections, the government passed the legislation the following year. Under this amendment, a provincially-appointed Recorder, with at least five years experience as a barrister was to be paid a salary from city funds. The Recorder also won the right to licence taverns. As a concession to council's protests, however, no Recorder was to be appointed by the provincial

government until council "passed a resolution declaring such an appointment to be necessary." The city succeeded in delaying his appointment for five years.<sup>37</sup>

After establishing a Recorder's Court, in the city, the province moved to invest similar powers in police magistrates in incorporated towns. The reconstitution of a formal and regulated judicial structure was confirmed in the 1849 Upper Canada Municipal Corporations Act which provided that at the request of any incorporated town or city, the provincial government would appoint a stipendiary police magistrate. Commonly these local courts were referred to as Magistrate's Courts and their costs were borne by the municipality.<sup>38</sup> Undoubtedly the appointment of a lawyer/magistrate served to eliminate some of the arbitrariness and inconsistencies in decisions.

As well, the appointment of a lawyer to a lower court signalled the beginning of a significant shift in the professionalization of a traditionally lay bench that, despite some delays, distanced local jurisdictional power from the community it served.<sup>39</sup> At the judicial helm sat a jurist whose professional allegiance and authority bound him to a legal constituency, whose deference to the authoritative demands of due process, rather than those of the social, economic and political base of the community, at times, evinced tensions that led to conflict.<sup>40</sup>

In this sense, gradual implementations of changes in the judicial structure may also have contributed to further contradictions. Legal historian, Carolyn Conley concludes in her study of rulings in rural communities in England, that an important requirement of a magistrate was "to respect the laws, both written and unwritten, of the local community" along with those of the state.<sup>41</sup> Evidence in Ontario

frontier/rural counties suggests that the uneven transformation from an informal, community-based authority to a more formal structure created certain ambiguities regarding court proceedings between magistrates and the communities they served. Among the four communities sampled, for example, contempt of court rulings appear only in the countryside and not the more established urban centre. Moreover, discontinuity in magisterial authority is articulated in a publicized case in Owen Sound in 1853. The paper reported on the volume of contempts brought forth recently by a magistrate. One observer rebuked the magistrate for failing to earn his respect among the community, rather than trying to legislate it.<sup>42</sup>

Irregularities were brought to the attention of the higher courts through appeals where magistrate's convictions were frequently quashed.<sup>43</sup> These problems were exacerbated when new legislation in 1857 extended the mandate of Police Magistrates over a wider range of offences. With the agreement of the defendant, a city Recorder or Police Magistrate could reduce simple larceny charges and other larceny felonies under five shillings to a summary conviction (not to be sent to a higher juried trial) and if guilty to sentence accordingly. If theft of goods exceeded five shillings a Police Magistrate after hearing all the evidence could reduce the charge and sentence summarily if the prisoner plead guilty.<sup>44</sup> Based on the success of this act, the following year the province granted summary trials for certain assault and prostitution related offences.<sup>45</sup> Despite follow-up publications of several Magistrates' Manuals in 1858 and 1860,<sup>46</sup> confusion persisted. The editors of The Upper Canadian Law Journal responded with a list of remedies which included suggestions for

additional publications or treatises' on magistrates' duties, a compilation of a uniform mode of procedure for all summary convictions and, more importantly a "better educated and more experienced magistracy."<sup>47</sup>

Creation of a separate yet parallel jurisdiction evolved in the reordering of jurisdictional boundaries between the central government and the community. Moreover, a growing separation evinced between the judiciary and the executive and legislative branches of government. This separation was never complete but nonetheless promoted the centralizing thrust of the provincial government. Over the next twenty years the criminal justice system was fundamentally altered by a series of legal reforms intended to foster the creation of a uniform structure under the direction of the Attorney General, John A. Macdonald, beginning with the provincial government's Upper Canada Attorney's Act in 1857.

In 1857 the provincial government passed the Upper Canada County Attorney's Act to expedite and formalize criminal procedure within counties.<sup>48</sup> As the local representative of the Attorney General, the County Attorney held extensive powers in administration of criminal justice across the province. His specific duties included prosecuting felonies at the court of Quarter Sessions, assisting the crown officer at the Courts of Assize and upon request, instructing magistrates.<sup>49</sup> In addition, he was "to watch over the conduct" of private prosecutors. Candidates had to be a local Clerk of the Peace chosen from among barristers with at least three years standing as a resident in the county. All appointees worked on a fee for service basis

including a four per cent payment from all fees they received in their capacity as "Receiver of fees" -- a duty previously held by County Treasurers.<sup>50</sup>

In the main, opposition to the bill in the legislature focused on three objections: 1) the assignment of lawyers to traditionally lay positions as in the case of the clerks of peace, 2) interference by executive council in selecting and appointing candidates and 3) the reallocation of traditional council jurisdiction -- the collection of fees -- to an official whose chief responsibility was the administration of law.

Attorney-General John A. Macdonald, however, was not easily deterred from his ambitious plan "to introduce a complete local system for the efficient administration of criminal justice." County Attorneys were a vital component in his plan.<sup>51</sup>

Fundamentally the rise of public prosecutorial power was concomitant with a diminished private prosecutorial privilege. Although hailed by some, these reforms effectively limited private power and increased state sanctions in criminal law. This trend, as Phillip Stenning notes, has continued to the present day:

what was once historically regarded as a cherished right of private individuals to launch and conduct criminal prosecutions has now been substantially eroded, and perhaps even entirely eliminated in Canada. . . . to the point at which the only 'right' that can be positively claimed by a private citizen in the criminal process here is the right to lay an information alleging a criminal offence.<sup>52</sup>

The creation of the Crown Attorney under the office of the Attorney General, meanwhile provided the opportunity for defence counsel to pursue plea bargaining thus introducing a major long-term change in procedure.

Customarily "a plea bargain is a deal between a Crown attorney and a defence lawyer in which a person accused of a crime agrees to plead guilty to a less serious offence or fewer charges in exchange for a lighter sentence."<sup>53</sup> In so doing, prosecutors frequently redefined the crime by reducing the number or extent of the charges.<sup>54</sup> There is evidence in criminal indictments in Ontario to indicate that plea bargaining expanded rapidly after 1857.<sup>55</sup> This trend was particularly noticeable in cases involving offences against the person where charges were reduced to common assault.<sup>56</sup>

The Upper Canada Attorney's Act, then, was an essential component of a series of statutes, designed to rationalize the process and prosecution at all levels of court.<sup>57</sup> Unlike other acts which often followed English precedent, this statute was a Canadian initiative.<sup>58</sup> As Attorney General of Canada West from 1854 to 1863<sup>59</sup> John A. Macdonald had a profound effect on institutionalizing the central government's role in criminal jurisdiction.<sup>60</sup>

After Confederation substantive criminal law and procedure fell within federal jurisdiction and the administration of justice remained within the domain of the provincial government. The new federal government moved quickly to further reform the system. In 1869 the Canadian Parliament established a County Judges' Criminal Court similar to Quarter Sessions with jurisdiction over all summary and most indictable offences. The exceptions were capital and state charges. Defendants who waived their right to a jury trial appeared in Criminal Court before a judge out of Sessions.<sup>61</sup> The Canada Law Journal enthusiastically endorsed this "radical" change in

the constitution of the criminal courts. Praising the actions of Prime Minister John A. Macdonald, a legal observer declared it to be "one of those gigantic strides in legislation . . . and when brought into use . . . we all are apt to wonder why it was not long before placed on the statute book."<sup>62</sup> The immediate impact on the system is apparent in the renaming and timing of subsequent court sittings. The new Court of General Sessions of the Peace met semi-annually instead of four times a year as the older Quarter Sessions.

It is important to consider the broader implications of this legislation beyond the daily operations of the court. Summary trial in County Court Judges' Criminal Courts effectively removed any local or community involvement during the trial process. Control lay in the hands of a professional bench. Under this new "speedy" procedure the local Sheriff first reported to the crown attorney that the prisoner was committed for trial. The crown attorney then prepared the "Act of Accusation," or indictment. On appearing before the judge, the prisoner elected to be tried by judge alone, or by jury. If the accused chose jury, she/he was remanded for trial until the next sittings of the court and was either held on bail or waited in gaol. If she/he selected trial by judge a plea was taken. A guilty plea resulted in immediate sentencing; a not guilty plea resulted in a trial shortly after. Regardless of choice of trial process sentencing was to be the same,<sup>63</sup> although eliminating the jury also removed the possibility of a jury's recommendation for mercy in sentencing.

The impact of this legislation was immediate. Of the 937 people committed for trial in 1871, eighty per cent chose trial by judge. Notably, the response split between

rural and urban counties. Eighty five per cent of those in rural communities chose judge alone. Counties with a large urban component were less enthusiastic; on average, only sixty per cent of cases were tried by judges. Among the three cities cited in the report, Toronto was the lowest, at only 57 per cent.<sup>64</sup>

Initial responses to the legislation raise a number of intriguing issues. Principally, why did prisoners so readily grasp opportunities to appear before judge alone? According to one judge these results simply refuted any claims about the popularity of jury trials. Alternatively, the most likely reason, as the editor of the Upper Canada Law Journal admitted, was to avoid the long wait in gaol before trial,<sup>65</sup> particularly now that Sessions met only twice a year. In Judges' Court a prisoner could appear within a week rather than wait up to three months or longer for a trial by judge and jury. While bail may have been an option for some, in reality, high costs restricted it to a few. Among poor often cashless rural dwellers, bail was not an option. Given the choice between awaiting trial in gaol and an immediate summary ruling, the majority chose a judge alone. Trial outcomes suggest that either summary trials by judge increased the likelihood of conviction or guilty parties were more likely to chose a shorter route, or both. Among the 936 prisoners tried at the County Judge's Criminal Courts in 1871, 77 per cent were convicted compared with 50 per cent for those who appeared before a jury.<sup>66</sup>

Procedural reform in the Lower Courts underwent one final important change during these years. In 1875, the federal government enlarged the legal jurisdiction of stipendiary magistrates by empowering them, with the consent of the accused, to try

summarily any offence within the jurisdiction of the Quarter Sessions.<sup>67</sup> In essence, this legislation eliminated the primary role of the grand jury from the majority of criminal cases, although its legislated abolition occurred almost two decades later.<sup>68</sup>

This technical reworking of the province's administrative jurisdiction had a number of practical repercussions. With the introduction of this speedy trial act, Toronto Police Court became the busiest court in the province<sup>69</sup> hearing about 5,000 cases annually by 1877.<sup>70</sup> Similarly, case loads increased in other police courts across the province.

Both the legal and lay communities supported these measures. Recommendations submitted to courts in semi-annual reports by county and city assize grand jury members suggest many welcomed these changes. In 1860, for example, the Grand Jury of the Leeds/Grenville assize noted with "regret" that "there is not a law to deal with parties accused of petty thefts in a more summary manner than the long round expensive manner in which they have now to deal with them."<sup>71</sup> Two years before passage of this act, the Grand Jury of Toronto rebuked judicial administrators - - once again -- because assize courts were "needlessly occupied by cases which might have been decided by the Police Magistrate and if he can't then laws should be amended so he can".<sup>72</sup>

Other economic pressures, particularly in busier urban courts, may also have influenced parliamentarians. In 1873 The Canada Law Journal reported on delays in hearing a large number of civil cases during a month-long Assize in York county. During sittings in which criminal and civil matters were heard together forty criminal

indictments and twenty-eight civil cases went to trial. Eighty-two records remained remanets. The concern, as expressed by Journal editors, was not about delays for gaoled defendants. The more worrisome problem was the "annoyance, inconvenience, loss of time, loss of money and possible loss of property which is represented by this delay in business" and which, they concluded, "must necessarily be very great."<sup>73</sup>

The melding of a more rationalized, formal framework of control was in keeping with other trends in Ontario society that favoured a professional, scientific basis for legal authority. The "rationalizing spirit of the age," as Paul Romney observes, emphasized "establishing law as a science administered by trained professionals whose skilled operations would achieve predictable results."<sup>74</sup> The process involved more than the expansion of the powers of judges and county attorneys. It extended to all legal officials within the system.

Lawyers, not surprisingly were key to implementing legal reforms. Although appointment of jurists as magistrates was essential to the evolving legal culture which emphasized legal technicalities, an expanding Canadian common law required more and more highly trained lawyers to write, interpret and practice within the system. The provincial government in 1850 passed an act "to facilitate and encourage the study of the Law in this Province"<sup>75</sup> which promoted the emergence of a coterie of lawyers who proved pivotal in building a formal Canadian criminal law structure.

By 1857, lawyers achieved legislated professional status<sup>76</sup> and, as Blaine Baker demonstrates, the Law Society of Upper Canada assumed a central role in this

development. Established by legislation in 1797, the Law Society "conceived of itself as, and tried to act like, an educational institution with the training of aspiring lawyers and their admission to practice as its main responsibilities."<sup>77</sup> The Law Society pursued its mandate with vigour.<sup>78</sup> In the first decades it constructed Osgoode Hall complete with a residence and classroom facility. Strict regulations governed admissions, class attendance, course selection, apprenticeship, and convocation. As an institute of learning, however, it advanced more than simply education: in the words of Archdeacon John Strachan, it also promoted:

a profession which must, in a country like this be the repository of the highest talents. Lawyers must, from the very nature of our political institutions -- from there being no great landed proprietors -- no privileged orders -- become the most powerful profession, and must in time possess more influence and authority than any other.<sup>79</sup>

By the mid-1850s when the provincial government initiated a succession of legal reforms the profession attracted what some believe was an over supply of candidates. Alarmed by the rapid increase, one Law Society examiner expressed concern when twenty students applied for entrance in a single term. This examiner later remarked that the country was "going mad" when forty candidates applied for the following session.<sup>80</sup> Further afield, a local historian from northern Ontario observed in 1859 that

if [lawyers] go on increasing and multiplying as they are now doing, they will in the end, ruin themselves and the country too! Our young gentlemen should begin to turn their attention to some other occupation.<sup>81</sup>

Province-wide statistics verify these impressions. Between 1857 and 1870 the number of lawyers almost doubled from 460 to 875. Not surprisingly, the greatest concentration of lawyers could be found in Toronto. Here the ratio of lawyers to population stood at 1:350 in 1857 compared 1:513 in other county towns or 1:8345 in more remote regions such as Perth county.<sup>82</sup>

Lawyers also increasingly gained control of accreditations through a professional organization. By 1857, the Law Society of Upper Canada, an autonomous, self-governing body, controlled the admissions, training, disciplining and licensing of lawyers.<sup>83</sup> In 1855, Ontario lawyers launched their professional journal, The Upper Canada Law Journal which printed articles, reports on cases and points of law intended for a wide judicial audience including "[O]fficers of the Local Courts, Sheriffs, Magistrates, Coroners, Municipal Bodies."<sup>84</sup> Ten years later the same journal proudly announced a new "professional" trend. "[U]nder new arrangements" the Journal was

now divested of all matter that cannot be called strictly professional or of professional interest, and appeals for support solely *to the profession*. The legal fraternity in Upper Canada are now of such numbers and influence, that they may well expect to have a publication peculiarly devoted to their interests. . . . The *Law Journal* will be wholly and solely devoted to the assistance, information and advancing the interests of the profession generally.<sup>85</sup>

As organs of a professional organization, the Journal and the Law Society strove to eliminate other non-legal adherents, and establish complete authority over a specified area of knowledge. This facilitated what one sociologist has defined as the central principle for professional legitimacy "founded on the achievement of socially

recognized expertise, or more simply, on a system of education and credentialing."<sup>86</sup>

The importance of lawyers in the process of legal reform should not be overlooked. Lawyers were to the criminal justice system what inspectors became for the government bureaucracy. One of the most visible signs of the transformation to legal prominence was the act of 1857 which authorized appeals for new trials to superior courts by any person tried before a Court of Oyer and Terminer, or Gaol Delivery, or Quarter Sessions "upon any point of law or question of fact."<sup>87</sup> The regularized training and consistency in standardized practice by a fraternity of lawyers constrained discretionary practices. Moreover, the evolution of a professional legal system combined with enhanced enforcement practices served to reinforce uniformity across the criminal justice system.

Policing was central to the function and symbolism of nineteenth-century law and order. In Upper Canada, constables discharged their duties as officers of the Court of Quarter Sessions acting on orders of magistrates, apprehending miscreants on streets and in homes, gathering evidence, serving warrants and summonses and overseeing behaviour in the courts. They served, like the magistrates who appointed them, within local jurisdictional boundaries. The service like that of the early magistrates was non-salaried and part-time.

Between 1834 and 1837 several communities, meanwhile moved towards the adoption of a regular police. For towns with Police Boards, local police officers were appointed to wards rules and apprehend by-law offenders.<sup>88</sup> The appointment of a police force to "walk the beat" apprehending miscreants represents an important

departure from the traditional role of the constable with duties restricted to court authorized service. The creation of the Board, represents an early phase in the evolution of the police force in establishing interventionist powers to detain and arrest public offenders.

These two systems of community regulation remained largely in place in Upper Canada until 1835 when Toronto city council approved the appointment of a High Bailiff to supervise a full-time, paid police force.<sup>89</sup> Council followed this initiative with a series of by-laws to regulate the conduct of the citizenry. The real significance of the "tiny inaugural force of five" as Carolyn Strange argues, "was not so much an effective weapon against disorder as a symbol of law and order under tighter municipal control."<sup>90</sup> The symbolism of the police is significant. By donning the official uniform of the municipality, the police made visible their authority to detain, question, remove, arrest and otherwise assume substantial procedural responsibilities in collecting evidence and apprehending suspects.

Over time, replication of this somewhat irregular and frequently inadequate system of policing evolved in other urban areas until 1849 when the government formalized municipal/policing regulations in the Municipal Act. Under this act, a Police Office was established in each town. The office would be overseen by a stipendiary police magistrate appointed by the crown whose annual salary of not less than one hundred pounds came from municipal funds. A Chief Constable and one or more constables received payment from the municipality and retained their position at the pleasure of the town council. Although the provincial government retained a

measure of control over policing through its appointments, constables were answerable to the magistrate. Along with council, both the police magistrate and the recorder, had power to suspend or recommend dismissal of the chief constable or in the case of the city, the high bailiff.

Legitimation, as Greg Marquis points out, was integral to law enforcement. Legal order and local government depended on a constituency of consent within the community to assist in apprehending and convicting criminals. Moreover, there was a direct reliance on the public to report, swear depositions, testify as witnesses and serve on juries that forged the delicate balance of community control with community support. "[T]he process of policing was a two-way, if uneven street: the police had an impact upon the city, and neighbourhood feeling in turn shaped the police institution."<sup>91</sup> The more regularized enforcement policies which contributed to standardization of practice, may just as easily have restricted community involvement.

Meanwhile, the problem of policing frontier and rural communities continued to occupy the legislature. In an effort to restrict the unruly antics of transient labourers on public works' projects the government organized a mounted police force of 100 men to travel to various sites to supervise workers. This "temporary arrangement" established in 1845 soon became fixed and was extended to private construction sites to settle labour disputes along railway work sites.<sup>92</sup> Then in 1855, following two riots in Toronto where city constables failed to intercede,<sup>93</sup> it became clear to both civic and provincial officials that alternative policing arrangements were now a necessity. The following year a commission, which included the premier Sir

Allan MacNab, was established to investigate two diverse policing options. The first, based on London's metropolitan force, was made up of permanently appointed officers under a locally appointed local board of commissioners. The second option based on the Irish constabulary consisted of a quasi-military force under central government control. While the mayor of Toronto preferred the former, the commission and, not surprisingly, the provincial government recommended the latter. In 1856, the MacNabb ministry introduced a bill to establish a paramilitary police force across the province.<sup>94</sup>

Municipal councils' protests and political opposition ensured that MacNabb's choice never reached second reading.<sup>95</sup> In opposing the bill the former Solicitor General, John S. Macdonald, declared that he would

regard with deep regret and alarm the introduction of any measure to divest the local authorities of these duties, and to create a National Police Force under the control of the Provincial government.<sup>96</sup>

The provincial government lost its bid for a constabulary option which would have "cut the police force off from all local influences."<sup>97</sup>

With passage of the revised municipal act of 1858 the government gave final approval for the English model of a municipal police.<sup>98</sup> Within cities and towns, police administration, appointments and discipline fell within the authority of a Board of Commissioners comprised of a mayor, police magistrate and/or recorder. In an apparent effort to link the commission with the municipality, councillors determined the number of personnel and controlled the financing.<sup>99</sup> As the case of Toronto shows, commissioners frequently appealed to council to hire additional constables. Cost

increases were justified by a rise in crime as demonstrated in the annual statistical accountings submitted to council. Fittingly, these reports were supplemented by comparisons with other cities -- comparisons which placed the ratio of population to police considerably higher in Toronto than in other urban centres.<sup>100</sup> While the police board was not held accountable to council for the daily management of the force, "it could not afford to ignore it."<sup>101</sup>

The eventual formation of a salaried, uniformed police force in towns and cities with expanded regulatory powers gradually enhanced enforcement practices.<sup>102</sup> Policing in more sparsely populated agricultural areas proceeded more slowly. In the main, magistrates in Sessions appointed constables in rural municipalities. Although each township had a constable, services were restricted. Unlike their policing brothers, rural constables acted on a fee for service basis fulfilling the functions of the court, attending assize or sessions, serving warrants, summons, subpoenas and arresting suspects.<sup>103</sup> Although the number of constables was relatively high<sup>104</sup> these were not full-time police. They acted only when instructed by a magistrate.

In addition to court functions, constables received remuneration from fines paid by convicted parties. Following the English common law precedent, they, like other free persons, were called upon as private citizens to inform or prosecute law breakers.<sup>105</sup> The 1841 District Municipal Council Act provided that all citizens as informers or prosecutors were to be rewarded for their "policing" by receiving half of the imposed fine. The other half went to the district.<sup>106</sup> This method of payment could create problems when defendants sometimes failed to pay their debts. In 1866,

Leeds/Grenville petitioned the legislature to ensure constables received some form of remuneration in cases of summary punishments where fines were not paid because of a lack of money, goods or chattels. In these circumstances, the constable did not receive any compensation for his services. Council requested an amendment to allow all costs accruing in such cases to be paid out of county funds.<sup>107</sup>

Over time various provincial and local authorities pursued a number of initiatives to obtain wider policing services in frontier regions. In 1864, a small provincial detective force was established for surveillance of alien American agents during the civil war and later of activists enjoined with the Fenian Brotherhood. Recurring threats of invasion combined with repeated problems policing the vast and underpopulated frontier/rural communities prompted the government of John Sandfield MacDonald to reconsider an Irish-style constabulary. As with MacNabb's bill, public opinion remained opposed to the plan, and the bill was defeated.<sup>108</sup>

Local efforts were more successful. Under the administration of a magistrate and Police Chief a small force known variously as the "Niagara River Frontier Police", the "Ontario Police" and the "Provincial Police" provided policing on the "frontier" area around Clifton and Fort Erie in 1870. By 1874, the province funded the salaries and uniforms of these men.<sup>109</sup> This group of officers, Ontario police historian Dahn Higley asserts, were the forerunner of the later Ontario Provincial Police Force founded in 1909.<sup>110</sup>

"[L]oosely knit and only marginally effective rural constabularies" continued until the 1875 appointment of the first "temporary" salaried "Provincial Constable" to

act as "Detective for the Province of Ontario." Two years later the Constable's Act created a permanent appointment under the direct charge of the provincial Attorney General.<sup>111</sup>

By 1880, then, two types of policing existed in Ontario. Cities supported a regularized trained police force of salaried officers commanded by a chief constable or bailiff.<sup>112</sup> In towns and incorporated police villages, a chief constable and a coterie of local constables patrolled the streets and apprehended criminals providing limited yet regularized policing of the locale. In the countryside and frontier, individual constables performed court duties which, at times, were supplemented by the *ad hoc* appointment of a detective.<sup>113</sup> Despite periodic proposals to establish a central provincial constabulary, policing remained within local municipal jurisdiction.

Expansion of policing and courts brought an expansion in gaols and prisons as well. Treatment of offenders and allocation of administrative and jurisdictional control over gaols and prisons were the subject of an intense debate between 1830 and 1880.

The decision to adopt the English criminal law as it stood in September 1792 introduced a harsh penal system to colonial Upper Canada. Some two hundred crimes, mostly against property, were deemed capital offences.<sup>114</sup> It was not until the early nineteenth century that the moderating influences of European and English reformers such as Cesara Beccaria, John Howard and Elizabeth Fry began to influence Upper Canadian penal practice. In 1833, Chief Justice John Beverley Robinson introduced legislation to reduce the number of capital offences to fewer than twenty.<sup>115</sup> This change, Robinson argued, signalled the beginning of a new system of criminal law

which was not only more lenient and "congenial to the feelings of those whose duty is to enforce it," it would also, act as a deterrent because of the greater certainty of punishment for crimes where previously there had been a reluctance to convict.<sup>116</sup>

These and other fundamental challenges to the structure and administration of punishment policy created flux and a degree of uncertainty within the criminal justice system. For a time courts juggled traditional and reform penal practices with a patchwork of penalties. With certainty, some of the earlier punitive efforts had failed. Banishment, the Upper Canadian substitute for transportation, proved ineffective without government commitment to monitor and enforce such penalties.<sup>117</sup> Ever more out of step with reform principles of personal rehabilitation during incarceration, both public flogging and humiliation on the pillory were abolished.<sup>118</sup> This left judicial officials with essentially two options, confining convicts in poorly constructed, overcrowded, sparsely maintained gaols alongside debtors and lunatics or imposing fines.

For the majority of convicts time was served in county gaols. From earliest days, jurisdiction of correctional facilities remained with local administrators. Under the 1792 statute each Upper Canadian district was obliged to construct a local gaol and court house.<sup>119</sup> Responsibility for building, financing and maintaining the facility fell to magistrates in quarter sessions. Despite the appointment of a Board of Commissioners in 1838 to investigate and make recommendations for the construction and regulation of district gaols, few improvements were initiated by district magistrates. Many gaols suffered over crowding and poorly maintained conditions.

Such gaols failed to meet state directives of criminal segregation by offence or to provide resources for hard labour. The jeremiad of circuit judges and grand juries routinely requested improvements in food, lodging and discipline.<sup>120</sup>

By the 1830s little doubt remained in the minds of the members of the penal committee of the legislature that the system was ripe for reform. As they concluded in their report, "[t]he necessity for a penitentiary must be obvious to everyone who has ever attended a court of justice in this province."<sup>121</sup> If Upper Canadians were to achieve reform objectives through detention and discipline, they needed the right corrective edifice. Two legislative commissioners, John Macaulay and H.C. Thompson, both influential representatives from Kingston, visited several penal institutions in New York and Connecticut. In the end, they chose a prison structure similar to the one in nearby Auburn, New York.<sup>122</sup>

Construction of a large penal facility involved more than simply architectural plans: the functional objectives of the penitentiary were critical to the nature of the design.<sup>123</sup> Key features of the Auburn system were solitary confinement for prisoners when not at work, restricted communication and strict discipline. Regulated and productive hard labour not only taught habits of industry, it sustained the institution financially. By combining lengthy incarceration with regular religious training the government hoped to achieve the twin goals of criminal rehabilitation and deterrence. In 1835 Kingston Penitentiary opened its doors ready to receive felons facing sentences of two or more years.<sup>124</sup>

The penitentiary succeeded in removing only a small portion of the prisoner population from the local gaols. Enhanced policing services and a wider scope of municipal by-laws ensured not only greater surveillance but also increased gaol committals. Overcrowding, particularly in the united counties of York, Peel and Ontario was an ongoing problem. In 1852 the York gaoler complained that wards built to accommodate 23 inmates now housed 53. The problem, he noted, was particularly acute for female prisoners who occupied the chapel as a dormitory.<sup>125</sup> Four years later, despite the departure of Ontario county inmates, women were still sleeping in the chapel.<sup>126</sup> Requests for classification of prisoners and facilities for labour for the most part went unheeded.

The most dramatic alteration in gaol regulations came in 1859 with the appointment of provincial gaol inspectors. These men had the authority to oversee all matters in relation to the gaol. Despite local opposition<sup>127</sup> the provincial government, through its network of inspectors and agencies, supervised and regulated local structures. This rationalization of administration as Bruce Curtis asserts, through

[N]ewly created central state departments undertook systematic social policies, often using local government bodies as management agencies. The success of centralization came to depend, in part, upon the appointment of inspectors to examine and report on the fate of central policy initiatives at the local level.<sup>128</sup>

Fate of policy initiatives, as well, depended partially on the bank of knowledge created by the bulk of administrative reports. In 1865 the government issued standardized forms to all gaols. Gaolers were to provide information following specific categorization under designated headings. By identifying personal

characteristics of inmates, (sex, age, place of birth, religion, occupation, residence, etc.,) the inspector was able to compile a detailed analysis on types of crime and criminals in the gaols.

Standardized forms, uniformly circulated across the province ensured that the government received up to date information on the state of the gaols. This in turn enhanced the ability of the inspectorate to initiate correctional changes during John W. Langmuir's lengthy tenure as Inspector of provincial correctional institutions between 1868 and 1882. Armed with a plethora of statistical reports Langmuir became the chief advocate of state sponsored institutional reform. He utilized data collected in reports to strengthen arguments for establishing more gaols, reformatories and prisons. An obvious case in point involves women, or more precisely "fallen women". In 1877, no doubt inspired by recent visits to female reformatories in the United States, Langmuir proposed a similar Industrial Reformatory for women in Ontario. Notably, he framed his appeal in both gendered and moralistic terms.

The large and increasing number of this class, as well as those who have offended against public morals, order, and peace, point to the necessity for establishing such an institution at an early day.<sup>129</sup>

To underscore this "enormous" increase he listed all committals by category between 1869 and 1877. All told crimes against public morals and decency rose by 240 per cent, the largest proportion of which were keeping and frequenting houses of ill-fame. Offences against public order and peace climbed 200 per cent, a result of an increase in charges for drunkenness and vagrancy.<sup>130</sup> Langmuir's recommendations held sway.

The following year he received final approval for a provincial reformatory for women.<sup>131</sup>

Under his tutelage the government opened institutions for disciplining three specific classifications of offenders: male recidivists, immoral females and young offenders.<sup>132</sup> Between 1868 and 1874, public institutions increased from 49 to 77;<sup>133</sup> by 1878, in addition to the fifty one medical and special educational facilities, he inspected two prisons, a provincial reformatory, thirty seven gaols, five district lock-ups, five magdalene asylums for reforming women for a total of 101 institutions in all.<sup>134</sup>

As Langmuir augmented his institutional arsenal he grew increasingly critical of judicial judgements. He was especially incensed with the "ridiculous farce of police court sentences".<sup>135</sup> In his reports he rebuked judicial practice of granting sureties to keep the peace for men repeatedly convicted of wife-beating and demanded sentences with hard labour to curb their behaviour.<sup>136</sup> In another investigation into the 30 per cent acquittal rate he attempted to identify through his records what crimes, or more specifically what courts, were acting "leniently." Unable at the time to pin point offending officials he predicted that pending legislative approval of altered gaol reporting in 1876, he would soon know.<sup>137</sup> Based on observations, however, he suspected local police magistrates were letting drunkards, vagrants and disorderly persons off without laying charges.<sup>138</sup>

Throughout his tenure, Langmuir fluctuated between reform models of punishment and rehabilitation. In 1874, he seized upon an alternative approach to

punishment. Remission, a pre-cursor to parole, addressed Langmuir's pressing concerns over prison discipline. Moreover, it promoted his authority within the prison and the government bureaucracy. His proposal favoured reduced sentences "[W]hen a prisoner, by his good conduct, industry, and attention to the rules of the Prison, shows a marked disposition to reform in character and conduct" and "is thoroughly repentant and desirous of leading a better life." Notably in his submission to the Lieutenant Governor, Langmuir outlined how the primary criteria for early release would be based on a prison official's evaluation of a prisoner's rehabilitation. Following the "good mark" principle, he recommended that certain prisoners in the provincial Central Prison in Toronto be eligible for early release.<sup>139</sup> Overseeing prisoner release not only increased his authority over prison discipline, it also expanded the mandate of the inspectorate beyond prison walls. The reform model of remission altered federal judicial prerogative by reducing sentence duration at the provincial prison level,<sup>140</sup> thus increasing provincial bureaucratic powers in what was traditionally federal domain.

Despite his swing towards a rehabilitation model, Langmuir like many others never completely abandoned his enthusiasm for the earlier public, punitive approach. In presenting his recommendations to the legislature he argued that "the shame and disgrace attached to the public use of these offenders would act as a deterrent."<sup>141</sup> He persisted in lobbying for wide scale changes in gaol labour in response to what he reported as the

unprecedented increase in the commitment of the vicious,  
depraved and vagabond classes, generally known as vagrants and

tramps, calls for prompt action. . . . it is clear that enforced labour and tasks of the hardest and most menial kind . . . are the only way of stamping out this evil, and . . . the sooner municipal authorities take the matter in hand, the better.<sup>142</sup>

Hard labour, was central to his plan. With the failure of facilities to provide labour inside gaols, he remained convinced now that the federal government had passed legislation authorizing prison labour to clean public streets and clear country roads that hard labour should be imposed outside prison walls.<sup>143</sup> Unlike earlier proposals for prison labour involving production of goods in Kingston Penitentiary and later Central Prison<sup>144</sup> labour organizations did not oppose this new federal initiative.<sup>145</sup>

Municipal councils generally viewed these projects favourably.

Leeds/Grenville, for example, was so eager to implement the scheme that before legislation was even approved, council suggested forming a committee to plan for putting "such labour outside the gaol walls they think best in the interest of these Counties."<sup>146</sup> Stratford reiterated a common concern of many councils that without hard labour some would choose to remain in gaol. Labour, they asserted, must be imposed as a deterrent.<sup>147</sup> Toronto councillors remained the strongest advocates of punitive measures. As early as 1864 when the city built the new gaol council recommended that vagrants, habitual drunkards and disorderly persons be required to clean and service public roads.<sup>148</sup> After lobbying the provincial government unsuccessfully to obtain authorization for male criminals to improve and clean the streets, the mayor in 1873 declared it an "increasing evil" that there were 108 men in gaol, many "drunken and worthless" who were "maintained at the expense of the industrious citizens [*sic*"].<sup>149</sup>

Langmuir, meanwhile, grew impatient with the host of abuses regarding regulations for prison labour, clothing, food and incarceration. In particular, it was among the rural gaols that he reported the greatest indifference. Abuses were particularly common in the rural gaols where Langmuir found that those responsible for following administrative rules and regulations laid down by his department failed to comply. Some local officials like the Sheriff in Owen Sound failed to report inmates eligible to be sent to Central Prison.<sup>150</sup> Under the existing system county councils and county appointed sheriffs managed the gaols. It soon became clear to Langmuir that county sheriffs were at the core of the problem.

Frustrated by the divided authority between local councils and the provincial government Langmuir in 1876 demanded full authority over administration and management of provincial gaols. Frequent infractions, he asserted, simply reinforced the need for more "direct control over these institutions by the Government." Moreover, he deduced, it was impossible for the county to procure suitable officers when appointments and payments -- allegedly at a low a rate -- resided with county councils. Langmuir concluded that a uniform system of administration in common gaols with "the strict enforcement of wholesome regulations by one controlling authority" provided the only viable solution.<sup>151</sup> He recommended greater executive authority through direct association with a cabinet minister.<sup>152</sup> In the end, Langmuir was forced to accept the status quo. He continued enforcing only rules and regulations for the gaols, listing diets, punishments, classification, clothing and extra mural

labour.<sup>153</sup> For the time being, day to day management of gaols remained under county jurisdiction.

Not far from the hustle and bustle of Toronto, elsewhere in Ontario, settlers banded together clearing land, building homes and planting crops. During this period of intense social and economic change varying governments bowed to public pressure to form and reform constitutional arrangements and political institutions. Throughout this process judicial power was reorganized in seemingly contradictory ways. While some reforms consolidated state powers to more directly oversee the courts, others in turn dispensed authority to local semi-autonomous governing councils. In spite of official efforts to impose a uniform judicial system across the province discrepancies belied government regulations.

While we often speak of "the law", it is clear that changes in the system affected urban and rural regions in diverse and significant ways. Policing, for example, remained diffuse and enforcement uneven. While cities maintained a salaried force, county constables struggled on a somewhat ad hoc, fee for service basis responding to individual case needs. Once gaoled prisoners faced wide variations in accommodation and punishment. Despite the best efforts of Langmuir and staff institutional irregularities, particularly among rural gaols, abounded.

An analysis of the evolution of the criminal justice system tells us more about the formation of structures than about the level of functioning. How these systems

operated within different communities and affected individual experiences is the subject of the next chapter.

1. Canada, Census of Canada 1870-71 Vol. IV, Census of 1840, Upper Canada "Table I -- Population, Sexes, Ages"; Canada, Census of Canada, 1880-81 "Table I. -- Areas, Dwellings, Population, Sexes, Conjugal Condition."
2. The settlement of the Irish in this district is chronicled in Donald Akenson, The Irish In Ontario: A Study of Rural History (Kingston and Montreal, 1984).
3. Canada, Census of Canada 1870-71 Vol. IV, Census of 1840, Upper Canada "Table I -- Population, Sexes, Ages." Canada, Census of Canada, 1880-81 "Table I -- Areas, Dwellings, Population, Sexes, Conjugal Condition".
4. Prior to the 1860s Peel county was joined with York. On patterns of settlement in mid-nineteenth century Peel county see David Gagan, Hopeful Travellers: Families, Land and Social Change in Mid-Victorian Peel County, Canada West (Toronto, 1981).
5. Ruth McKenzie, Leeds and Grenville: Their First Hundred Years (Toronto, 1984), 205-6.
6. W. Stafford Johnston and Hugh J.M. Johnston, History of Perth County to 1967 (Stratford, 1967), 133.
7. Ibid, 11-17.
8. T. Arthur Davidson, A New History of the County of Grey (Owen Sound, Grey County, 1972), 29.
9. Canada, Census Report of the Canadas, 1861 Vol. I, "General Abstract of Religions -- Upper Canada, 1861." Canada, First Report of the Census of the Canadas 1851-52 Vol. I. "General Abstract of Origins. -- Upper Canada. Canada, Census Report of the Canadas 1861-62 Vol. I. "General Abstract of Origins. --Upper Canada, 1861."
10. Davidson, A New History of the County of Grey, 36.
11. J. H. Aitchison, "The Municipal Corporations Act of 1849," The Canadian Historical Review, XXX (1949), 118.
12. Ibid, 107.
13. Ibid.
14. Until 1850, the term county described a small land division which functioned primarily as riding units, militia division organizations and services for land registration. Fred Armstrong, A Handbook of Upper Canadian Chronology and Territorial Legislation (London, Ont., 1967), 149.
15. "An Act Respecting the Municipal Institutions of Upper Canada." Consolidated Statutes of Upper Canada (CSUC), 22 Vic., cap. 54, sec. 282, 1859.

16. In Ontario see Bruce Curtis, True Government by Choice Men? Inspection, Education, and State Formation in Canada West (Toronto, 1992) and Michael J. Piva, The Borrowing Process: Public Finance in the Province of Canada, 1840-1867 (Ottawa, 1992). See also the collection of articles in Colonial Leviathan, ed. by Allan Greer and Ian Radforth (Toronto, 1992). For England, Philip Corrigan and Derek Sayer, The Great Arch, English State Formation as Cultural Revolution (Oxford and Cambridge, 1985).
17. Paul Rutherford, A Victorian Authority, The Daily Press in Late Nineteenth-Century Canada (Toronto, 1982), 170.
18. R.B. Splane, Social Welfare in Ontario (Toronto, 1965), 35.
19. J.M.S. Careless The Union of the Canadas, The Growth of the Canadian Institutions, 1841-1857 (Toronto, 1967), 221.
20. Curtis, True Government by Choice Men?, 5.
21. Ibid, 7.
22. Michael J. Piva, "Getting Hired: The Civil Service Act of 1857", Journal of the Canadian Historical Association/Revue de la Société historique du Canada, 3 (1992), 95.
23. J.E. Hodgetts, Pioneer Public Service (Toronto, 1955), 36.
24. After 1849, the High Court included a judge of the Common Pleas.
25. The Supreme Court of Canada with appellate jurisdiction across Canada was not established until 1875..
26. "Any person found committing an offence punishable either upon indictment, or upon summary conviction, may be immediately apprehended by any Peace Officer, without a warrant, or by the owner of the property on or with respect to which the offence is committing or by his servant or any other person authorized by such owner, and shall be forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to law." Provincial Statutes of Canada, (PSC), 4 & 5 Vic., cap 25, sec., 55, 1841.
27. Legislation on the criminal jurisdiction of magistrates is hidden in sections of numerous statutes. Paul Craven, "Law and Ideology: The Toronto Police Court 1850-80," in Essays in the History of Canadian Law, Vol. II, ed. by, David H. Flaherty (Toronto, 1983), 252.
28. "Grand Juries and the Pleas of Criminals," The Upper Canada Law Journal, XII (February, 1876), 42-46.
29. Local male freeholders, or house-holders who paid two pounds or more for one year's rent qualified as candidates for the Board. Voting privileges were slightly more liberal. Tenants who paid three months rent for premises in the ward at the time of election also

qualified. "An Act to Establish a Police in the Town of Brockville, in the District of Johnstown." Statutes of Upper Canada (SUC), 2nd Wm. IV, cap. 17, 1832. Earlier acts granted a Police in other Ontario towns beginning with Kingston in 1916 but Brockville was the first incorporated Police town with limited governing powers. Aitchison, "The Municipal Incorporations Act of 1849," 121.

30. Provincial Archives of Ontario, (PAO), MS-610, Brockville Minutes and By-laws, 9 April 1832, 24 May 1832.

31. *Ibid*, 9 May 1832.

32. J.M.S. Careless, "Some Aspects of Urbanization in Nineteenth-Century Ontario," in Aspects of Nineteenth-Century Ontario: Essays Presented to James J. Talman, ed. by F.H. Armstrong, H.A. Stevenson and J.D. Wilson (Toronto, 1974), 73.

33. *Ibid*, 73-74.

34. Craven, "The Police Court," 253-54.

35. *Ibid*, 254-58.

36. *Ibid*, 258-59.

37. *Ibid*. As a concession to council the government granted city fathers final approval of the selected candidate. George Gurnett was the first stipendiary magistrate appointed in 1851, and he was not a lawyer. *Ibid*, 259-60, 310 fn. 20.

38. "An Act to Provide, by One General Law, for the Erection of Municipal Corporations, and the Establishment of Regulations." PSC, 12 Vic., cap. 81, sec. 71, 1849. See also Craven, "Police Court," 261-62.

39. For a more detailed discussion on the political context behind these reforms see Paul Romney, Mr. Attorney, The Attorney General for Ontario in Court, Cabinet, and Legislature 1791-1899 (Toronto, 1986), 282-311.

40. On the importance of the alliance between magistrates and the community see Carolyn Conley, The Unwritten Law, Criminal Justice in Victorian Kent (New York and Oxford, 1991), 35.

41. *Ibid*, 43.

42. The Comet (Owen Sound), 10 June 1853.

43. "Summary Procedure Before Magistrates," The Upper Canada Law Journal, IX (December, 1863), 309.

44. "An Act for Diminishing Expense and Delay in the Administration of Criminal Justice in Certain Cases." PSC, 20 Vic., cap. 27, 1857. This act followed similar legislation in England. The Criminal Justice Act of 1855, provided summary trials for a wider range of indictable larcenies under similar conditions as the Canadian legislation. V.A. Gatrell and T.B. Hadden, "Nineteenth Century Criminal Statistics and Their Interpretation," in Nineteenth-Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data, ed. by E.A. Wrigley (Cambridge, 1972), 356.

45. The consent of the accused was required in all instances except prostitution related offences. "An Act to Amend and Extend the Act of 1857, for Diminishing the Expense and Delay in the Administration of Criminal Justice in Certain Areas." PSC, 22 Vic., cap. 27, 1858.

46. See for example W.C. Keele, The Provincial Justice or Magistrate's Manual (Toronto, 1858) and W.C. Keele, Magistrate's Hand-book (Toronto, 1860).

47. "Summary Procedure Before Magistrates," The Upper Canada Law Journal, IX (December, 1863), 309.

48. "An Act for the Appointment of County Attorneys, and for Other Purposes, in Relation to the Local Administration of Justice in Upper Canada." PSC, 20 Vic., cap. 59, 1857. For a more complete discussion on the historical context for this act see Romney, Mr. Attorney, 201-39.

49. Criminal prosecution continued under the management of two government offices, the attorney and solicitor generals. Philip Stenning, Appearing for the Crown: A Legal and Historical Review of Criminal Prosecutorial Authority in Canada (Cowansville, 1986) 63, 75. According to Barry Wright, the "office of Solicitor General had fallen into disuse by the time of Confederation. The decline had been contributed to by the establishment of deputy ministerial support and a civil service as well as the appointment of Crown prosecutors at the local level. . . . The office has been recently revived federally and in Ontario and Alberta to deal with police and corrections." Barry Wright, Book Review of Stenning, Appearing for the Crown, in The Canadian Bar Review/La revue du barreau canadien, 67 (1988), 185 fn 10.

50. "An Act for the Appointment of County Attorneys, and for Other Purposes, in Relation to the Local Administration of Justice in Upper Canada." PSC, 20 Vic., cap. 59, 1857.

51. The Daily Globe (Toronto), 11 March 1857.

52. Stenning, Appearing for the Crown, 263. For insight into differences in patterns of prosecution between private and public systems in an American city see Allen Steinberg, The Transformation of Criminal Justice (Chapel Hill and London, 1989), 76-77.

53. "Plea Bargaining keeps justice system afloat, experts say." The Ottawa Citizen, 3 July 1995. It is difficult to determine the precise number of cases where this occurs because "most are verbal agreements taken to a judge for approval." Ibid.

54. Steinberg, The Transformation of Criminal Justice, 76-77.

55. Currently in Canada, "plea bargaining has become so common . . . that legal experts say the justice system would collapse without it." "Plea Bargaining keeps justice system afloat, experts say," The Ottawa Citizen, 3 July 1995. First indications of plea bargaining also occurs in the 1850s in northern United States. Hindus, Prisons and Plantations, 209 and Steinberg, The Transformation of Criminal Justice, 76-77.

56. Evidence of a similar pattern is described in Steinberg, The Transformation of Criminal Justice, 76-77.

57. In 1858 a commission recommended a complete classification consolidation which led to the Consolidated Statutes of 1859. Graham Parker, "The Origins of the Canadian Criminal Code," in Essays in the History of Canadian Law, Vol. I, ed. by Flaherty, 251.

58. Ireland, Scotland and France all had similar machinery for public prosecution. "County Crown Attorneys," The Upper Canada Law Journal, (March, 1859), 49. On English prosecution see Douglas Hay, "Controlling the English Prosecutor," Osgoode Hall Law Journal, 21 (1983), 165-86.

59. Macdonald briefly stepped down between 2 to 6 August 1858 when Sandfield Macdonald held the position. Romney, Mr. Attorney, 334.

60. Parker, "The Origins of the Canadian Criminal Code," 252.

61. "An Act for the More Speedy Trial, in Certain Cases, of Persons Charged with Felonies and Misdemeanours, in the Provinces of Ontario and Quebec," Statutes of Canada, (SC), 32-33 Vic., cap. 35, 1869.

62. "Criminal Trials Without Juries," The Canada Law Journal, VI (April, 1870), 93.

63. Ibid, 140.

64. Ibid, 141.

65. Ibid.

66. Ibid.

67. "An Act for the More Speedy Trial Before Police and Stipendiary Magistrates in the Province of Ontario of Persons Charged with Felonies or Misdemeanours." SC, 38 Vic., cap. 47, 1875.

68. The validity of the grand jury was continually debated among jurists and grand juries during the early seventies. See, for example, Justice Hagarty speech of support to the York Grand Jury. PAO, RG 22, 391 Superior Court of Ontario (SCO), Criminal Assize Indictment Clerk's Reports (CAICR), York County, Autumn, 1877. For a dissenting opinion see "Grand Juries and the Pleas of Criminals," The Upper Canada Law Journal, XII (February, 1876), 42. Desmond Brown reports that James R. Gowan, an influential legal scholar and County Court Judge whose opinions held considerable weight, was also critical of the grand jury. The issue declined in the eighties only to be raised in the Senate by Senator James Gowan. Finally, in 1891 it was put to a Parliamentary vote and by a narrow margin grand juries were abolished. Desmond Brown, The Genesis of the Criminal Code of 1892 (Toronto, 1989), 62-65.
69. Craven, "The Police Court," 260-62.
70. Gene Howard Homel, "Denison's Law: Criminal Justice and The Police Court in Toronto, 1877-1921," Ontario History, LXXIII (1981), 180.
71. PAO, SCO, RG 22, Series 391, CAICR, Leeds/Grenville, November, 1860.
72. PAO, SCO, RG 22, Series 391, CAICR, York County, November 1873. See also Ibid, May 1871, November 1871, January 1872, May 1874 and January 1875.
73. "Administration of Justice in Toronto," The Canada Law Journal, IX (December, 1873), 338-39.
74. Romney, Mr. Attorney, 291. Romney concludes that "lawyers were no more unanimous in wanting to rationalize this part of the process than in wanting to rationalize the court system. Those who were skilled in the art of swaying juries had no wish to see their art made obsolete." Ibid.
75. "An Act to Facilitate and Encourage the Study of the Law in This Province." PSC, 13 & 14 Vic., cap. 26, 1850.
76. "An Act to Amend the Law for the Admission of Attornies." PSC, 20 Vic., cap. 63, 1857.
77. G. Blaine Baker, "Legal Education in Upper Canada 1785-1889: The Law Society as Educator" in Essays in the History of Canadian Law Vol. II, ed. by Flaherty, 52.
78. Ibid, 50. Baker reports that throughout the first half of the century, approximately ninety-five per cent of the business of convocation dealt with legal education. Ibid.
79. Letter from Archdeacon John Strachan to Lieutenant Governor Sir Peregrine Maitland, 1826, regarding the construction of Osgoode Hall and the choice of legal training reproduced in J.R.W. Gwynne-Timothy, Western's First Century (London, Ont., 1978), 428, cited in Baker, "Legal Education," 55.

80. Baker, "Legal Education," 115.
81. J.C. Hamilton, Osgoode Hall: Reminiscences of the Bar and Bench (Toronto, 1904), 147, cited in Baker, "Legal Education," 115.
82. Elizabeth Bloomfield, "Lawyers as Members of Urban Business Elites in Southern Ontario, 1860-1920," in Essays in the History of Canadian Law Vol. IV, ed. by Carol Wilton (Toronto: 1990), 116, Table 4-3, 117.
83. As Curtis Cole points out the profession's monopoly over the supply of legal services was limited in two ways. First, the legislature had authority to admit lawyers to the bar by statute. By 1870, there were 25 lawyers licensed to practise by special statute. Second, "although lawyers were consistently recognized as the only legitimate providers of legal services, the term 'legal services' was not always fixed or universally defined. . . . [A] definitional overlap limited the profession's monopoly over the supply of legal services." Overall, neither of these issues appears to have been a significant threat to the apparent professional monopoly as neither were consistently pursued throughout most of the nineteenth century. Curtis Cole "A Learned and Honourable Body: The Professionalization of the Ontario Bar, 1867-1929," (Unpublished Ph.D. thesis, University of Western Ontario, London, Ontario, 1987), 85-88.
84. "Our Prospectus," The Upper Canada Law Journal, (1855), 1.
85. "To Our Readers," The Upper Canada Law Journal, I (January, 1865), 2.
86. Magali Sarfatti Larson, The Rise of Professionalism: A Sociological Analysis (Berkeley and London, 1977), xvii.
87. "An Act to Extend the Right of Appeal in Criminal Cases in Upper Canada." PSC, 20 Vic., cap. 61, 1857.
88. PAO, MS-610, Brockville Minutes and By-laws, 2 May 1832.
89. Carolyn Strange, Imposing Goodness: Crime and Justice in 'Toronto the Good' 1793-1953 (Toronto, 1991), 17.
90. Ibid, 18.
91. Greg Marquis, "'A Machine of Oppression Under the Guise of the Law': The Saint John Police Establishment, 1860-1890," in Historical Perspectives on Law and Society in Canada ed. by Tina Loo and Lorna R. McLean (Toronto, 1994), 214. See also Helen Boritch, "Conflict, Compromise and Administrative Convenience: The Police Organization in Nineteenth-Century Toronto," Canadian Journal of Law and Society/Revue canadienne droit et société, 3 (1988), 141-74. For a comparison see the earlier work on policing in American cities which emphasized a social control model. Roger Lane, Policing the City, Boston 1822-1885 (Cambridge, 1967) and Eric Monkkenen, Police in Urban America, 1860-1920

(Cambridge, 1981).

92. Paul Romney, "The Administration of Justice in Ontario 1784-1900," (University of Manitoba, Winnipeg, 1991), 21 and Romney, Mr. Attorney, 234-37.

93. According to Nicholas Rogers' assessment of police reform, incidents involving sectarian tensions were "never far from the surface and formed an important subtext" to the discussion. However, the events that ultimately triggered the campaign for police reform occurred in 1855, "when the [Toronto] force proved unwilling to deal with two riots and showed the utmost reluctance to bring the perpetrators to justice." The first involved a dispute between rival fire brigades, the second, the demolition of a tent from a visiting American circus. Nicholas Rogers, "Serving Toronto the Good," in Forging the Consensus, ed. by Victor Russell (Toronto, 1984), 120.

94. Romney, "The Administration of Justice in Ontario 1784-1900," 21-23 and Romney, Mr. Attorney, 234-37.

95. Romney, Mr. Attorney, 237.

96. This quote is taken from his resolution to withdraw the motion for a Provincial Police Force. Province of Canada, Debates of the Legislative Assembly of United Canada, Vol. XIII, Pt. II, 14 March 1856.

97. Romney, The Administration of Justice, 23.

98. "An Act Respecting the Municipal Institutions of Upper Canada." PSC, 22 Vic., cap. 99, sec. 339-92, 1858.

99. Rogers, "Serving Toronto the Good," 123, 125. In an attempt to standardize duties The Constable's Guide was published the following year. Adam Wilson, The Constable's Guide, a Sketch of the Office of Constable (Toronto, 1859).

100. In Toronto the ratio of police to population in 1865 was about 1:4,166; in England the ratio for 1864 was 1:904. Toronto City Archives, (TCA), Toronto City Council Minutes, Appendix, "Report of the Board of Commissioners of Police," 10 December 1866.

101. Rogers, "Serving Toronto the Good," 123.

102. Allan Greer elaborates on this point in his study of early policing in Canada. Allan Greer, "The Birth of the Police in Canada," in Colonial Leviathan, ed. by Greer and Radforth, 17.

103. "Criminal Justice Expenses Act" PSC, 8 Vic., cap. 38, 1841.

104. In Grey County, for example, Normanby and St. Vincent townships each had 16 constables. The Comet (Owen Sound), 17 May 1860.

105. Ontario Provincial Police (OPP), Ontario Provincial Police 60th Anniversary 1909-1969 (Toronto, 1969? [sic]), 1.
106. If the informer appeared as a witness then the entire sum went to the district. "An Act to Provide for the Better Internal Government of That Part of This Province Which Formerly Constituted the Province of Upper Canada, by the Establishment of Local or Municipal Authorities Therein." PSC, 4 & 5 Vic., cap. 10, sec. 55, 1841.
107. MOCLG, Minutes of the Municipal Council of the United Counties of Leeds and Grenville, 23 June 1866.
108. Romney, The Administration of Justice, 23.
109. Dahn D. Higley, O.P.P. The History of the Ontario Provincial Police Force (Toronto, 1984), 33-34.
110. Ibid, 73.
111. OPP, Ontario Provincial Police 60th Anniversary 1909-1969, 2.
112. On policing techniques for a slightly later period see Bill Rawling, "Technology and Innovation in the Toronto Police Force, 1875-1925," Ontario History, 80 (1976), 187-244.
113. For example, in 1866 the Stratford newspaper reported that court and town officials had asked the magistrate to recommend to county council "the appropriation of a sum not exceeding \$600.00 per annum for payment of a detective constable to be appointed by the court of Quarter Sessions in this county." The Stratford Beacon, 16 March 1866.
114. See "An Act for the Further Introduction of the Criminal Law of England in This Province, and for the More Effectual Punishment of Certain Offenders." SUC, 40 Geo. III, cap. 1, 1800. According to Douglas Hay, the proliferation of punitive acts of terror in England tempered with judgements of mercy maintained the interests of the ruling class throughout the eighteenth century. Douglas Hay, "Property, Authority and the Criminal Law," in Albion's Fatal Tree, ed. by Douglas Hay et al. (London, 1975), 17-63. His interpretation has not gone unchallenged. See the response by John H. Langbein, "Albion's Fatal Flaws," Past and Present, 98 (1983), 96-98. For a rejoinder see Peter Linebaugh, "(Marxist) Social History and (Conservative) Legal History: A Reply to Professor Langbein," New York University Law Review, 60 (1985), 212-43.
115. See "An Act to Reduce the Number of Cases in Which Capital Punishment May be Inflicted" SUC, 3 Wm. IV, cap. 3, 1833.
116. Donald J. McMahon, "Law and Public Authority: Sir John Beverley Robinson and the Purposes of the Criminal Law," University of Toronto Faculty Law Review, 46 (1988), 404-5.

117. "An Act for Better Proportioning the Punishment to the Offence, in Certain Cases, and for Other Purposes Therein Mentioned." PSC, 6 Vic., cap. 5, sec. 4, 1842.

118. Pillory was abolished in 1841. "An Act for improving the administration of Criminal Justice in this Province," PSC, 4 & 5 Vic., cap. 24, sec. 31, 1841.

119. "An Act for Building a Gaol and Court House in Every District Within this Province, and for Altering the Names of the Said Districts." SUC, 32 George III, cap. 8, 1792.

120. Splane, Social Welfare, 124-28.

121. Upper Canada, Journals 1831, Appendix, 211-12 cited in Richard Splane, Social Welfare in Ontario, 129, fn 43.

122. Splane, Social Welfare, 128-33. On the penitentiary see also Rainer Baehre, "Origins of the Penitentiary System in Upper Canada," Ontario History, 69 (1977), 185-207; John Beattie, Attitudes Towards Crime and Punishment in Upper Canada (Toronto, 1977); and Jerald J. Bellamo, "Upper Canadian Attitudes Towards Crime and Punishment," Ontario History, 64 (1972), 11-26. For the revisionist view of penal reform see Michel Foucault, Discipline and Punish: The Birth of the Prison (New York, 1977), Michael Ignatieff, A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850 (New York, 1978), and David Rothman, The Discovery of the Asylum: Social Order and Disorder in the New Republic (Boston, 1971). For the neo-revisionists see John Beattie, Crime and the Courts in England (Princeton, 1986), Jennifer Davis, "A Poor Man's System of Justice: The London Police Courts in the Second Half of the Nineteenth Century," The Historical Journal, 27 (1984), 309-35, Margaret DeLacy, Prison Reform in Lancashire, 1700-1850: A Study in Local Administration (Stanford, 1986), and David Garland, Punishment and Welfare: A History of Penal Strategies (Hants, England, 1985). In Canada, see the recent work of Russell Smandych, "Beware of the 'Evil American Monster': Upper Canadian Views on the Need for a Penitentiary, 1830-1834," Canadian Journal of Criminology/Revue canadienne de criminology, 33 (1991), 130 and Peter Oliver, "From Jails to Penitentiary: The Demise of Community Corrections in Early Ontario," Correctional Options, 4 (1984), 1-10, cited in Ibid.

123. On prisons as moral architecture see, John Taylor, "The Kingston Ontario Penitentiary and Moral Architecture," Histoire sociale/Social History, 12 (1979), 385-408.

124. Splane, Social Welfare, 128-36. The provincial legislative committee investigating penal reform went beyond its mandate and recommended that if the legislature accepted the proposal for a penitentiary it would "become requisite to make great and corresponding alterations in the criminal law of this Province." Furthermore, Splane reports "noting that the provincial law continued to be limited to that of England, the commissioners extended their exhortations on the matters of legal and penal reform to the mother country, remarking that 'it is indeed full time that England should act truly in the spirit of the statute passed in the year 1779, . . . and adopt a proper system of prison discipline.'" Upper Canada, Journals

- 1833, Appendix, 29-30, cited in Splane, Social Welfare in Ontario, 130-131, and fn 49.
125. PAO, Minutes of the Municipal Council of the County of York, Ontario and Peel, 27 January 1852.
126. Ibid, 14 June 1856.
127. MOCLG, Leeds/Grenville County Council Minutes, 29 January 1863, 30 January 1863.
128. Curtis, True Government, 5.
129. Ontario, Sessional Papers, "Tenth Annual Report of the Inspector of Asylums and Prisons and Public Charities," [hereafter cited as "Annual Inspector's Report"], 1877, 4.
130. Ibid, 55.
131. Ontario, Sessional Papers, "Eleventh Annual Inspector's Report," 1878, 4. The Mercer Reformatory for young women and refuge for girls opened in 1880. On Langmuir's lobbying efforts and the first decade of operation see Carolyn Strange, "'The Criminal and Fallen of Their Sex': The Establishment of Canada's First Women's Prison," Canadian Journal of Women and the Law/Revue journal des femmes et droit, 1 (1985), 79-92. For an analysis of the prison population and reforming trends in the institution see Carolyn Strange, "The Velvet Glove: Maternalistic Reform at the Andrew Mercer Ontario Reformatory for Females, 1874-1927," (Unpublished M.A. Thesis, University of Ottawa, 1983). For a revisionist view on the operation of the reformatory see Peter Oliver, "'To Govern by Kindness': The First Two Decades of the Mercer Reformatory for Women," in Essays in the History of Criminal Law Vol. V, Crime and Criminal Justice, ed. by Jim Phillips, Tina Loo, and Susan Lewthwaite (Toronto, 1994), 516-71. The female industrial home in Halifax opened the same year as the Mercer Reformatory. See Judith Fingard, The Dark Side of Life in Victorian Halifax, (Porter's Lake, NS, 1989), 140-44. For pioneering work on women's prisons in the United States see Estelle B. Freedman, Their Sister's Keepers: Women's Prison Reform in America, 1830-1930 (Ann Arbor, 1981).
132. The first provincial reformatory in Ontario for young male offenders opened in 1867. Langmuir was openly critical of it. In 1880, the reformatory prison became the reformatory for boys. In addition, Toronto had other local, private, partially provincially-funded institutions like the Boy's Home for those considered more neglected than delinquent. Splane, Social Welfare 148-51. On the reformatory for women see above note number 139. The Central Prison for men opened in Toronto in 1874. On the disciplinary harshness of Central Prison see Peter Oliver, "'A Terror To Evil Doers': The Central Prison and The 'Criminal Class' in Late Nineteenth-Century Ontario," in Patterns of the Past: Interpreting Ontario's History, ed. by Roger Hall, William Westfall and Laurel Sefton MacDowell (Toronto, 1988), 206-37, and Joseph Gondor Berkovits, "Convict Labour in the Ontario Central Prison," in Essays in the History of Criminal Law, Vol. V, Crime and Criminal Justice, ed. by Phillips, Loo, and Lewthwaite, 478-515.

133. Ontario, Sessional Papers, "Seventh Annual Inspector's Report," 1874, 4.
134. Ontario, Sessional Papers, "Eleventh Annual Inspector's Report," 1878, 1-2.
135. Ontario, Sessional Papers, "Eighth Annual Inspector's Report," 1875, 3.
136. Langmuir reported that of the 176 individuals committed for want of sureties to keep the peace, the largest portion were for wife beating. He recommended changing the law, as it was obviously ineffective as a deterrent since some had been detained 5 or 6 times. Ontario, Sessional Papers, "Ninth Annual Inspector's Report," 1876, 69.
137. Ibid. He is referring to an act that included a penalty for non-compliance. See "An Act to Make Provision for the Collection and Registration of the Criminal Statistics of Canada." SC, 39 Vic., cap. 13, 1876. Under this act schedules of criminal statistics were to be filled in and transmitted annually to the ministry with penalty if not completed or not completed accurately.
138. Ontario, Sessional Papers, "Ninth Annual Inspector's Report," 1876, 69.
139. Ontario, Sessional Papers, "Seventh Annual Inspector's Report," 1874, 45. The 1871 statute which approved construction of the facility proposed remission for good behaviour. Ambiguity over jurisdiction may have restrained its use. According to Peter Oliver, a 1877 federal statute "clarified the province's authority in this sphere" and granted implementation in the Central Prison. Oliver, "'A Terror to Evil-doers,'" 218-19.
140. The 1877 act offered a complex arrangement for remission. Prison inmates were permitted remission of up to a sixth of their sentence. To compensate for shortened sentences judges could add another four months to the previous maximum of two years less a day. "An Act to Make Provision for Improvement in Prison Discipline." SC, 40 Vic., cap. 39, 1877.
141. Ontario, Sessional Papers, "Ninth Annual Inspector's Report," 1876, 68.
142. Ontario, Sessional Papers, "Tenth Annual Inspector's Report," 1877, 4.
143. Ibid. See "An Act to Provide for the Employment Without the Walls of Common Gaols, of Prisoners Sentenced to Imprisonment Therein." SC, 40 Vic., cap. 37, 1877.
144. On the internal problems involving convict labour in Central Prison see Berkovits, "Convict Labour in the Ontario Central Prison," 487-515, and Oliver, "'A Terror to Evil-doers,'" 206-37.
145. Eugene Forsey, Trade Unions in Canada 1812-1902 (Toronto, 1982), 129, 137.
146. MOCLG, Leeds/Grenville County Council Minutes, 26 January 1878.

147. PAO, RG 20, f-40, Reel 121, Stratford Jail Registers, "Perth County Council Minutes Pertaining to the Jail," 29 January 1869.
148. TCA, Toronto City Council Minutes, 7 March 1864.
149. Ibid, "Mayor's Report," 30 September 1873.
150. Ontario, Sessional Papers, "Eighth Annual Inspector's Report," 1875, 124.
151. Ontario, Sessional Papers, "Ninth Annual Inspector's Report," 1876, 4.
152. Ontario, Sessional Papers, "Thirteenth Annual Inspector's Report," 1880, 13.
153. Ontario, Sessional Papers, "Fourteenth Annual Inspector's Report," 1881, 2.

## CHAPTER 2

THE ANATOMY OF CRIMES, CRIMINALS  
AND COMMUNITIES IN VICTORIAN ONTARIO

The 1830s ended with the collapse of the old regime in Upper and Lower Canada. Although rebellions had been defeated, and the old elite remained in power, it was clear that few, if anyone, believed the older structure of society could last. Lord Durham's mission clearly signalled a commitment to reconstruct the basic institutions of civil government. Thus the 1840s opened with a new "Act of Union" introducing a period which witnessed the creation of new state structures. The judicial system would be at the centre of this process. Doubly so because many observers saw more than rebellions: they believed they saw the making of a new crime wave, the birth of a large criminal class. Egerton Ryerson, Chief Superintendent of Education warned in 1848 that a rising tide of recent immigrants inflicted with "physical disease and death . . . may be the precursor of the worse pestilence of social insubordination and disorder."<sup>1</sup> Although Ryerson played on such fears to further his interests in educational reform, others looked to correctional facilities to regulate behaviour.

The necessity of curbing disorderly tendencies often referred to as a rampant disease -- a contagion<sup>2</sup> -- was a powerful metaphor used to underscore the imminent threat of moral decline spreading among the majority population. We see this clearly in 1849 when the gaol management committee of York/Peel county reported on a class of prisoners pending release. If, "unreclaimed from their vicious course," the committee cautioned, "these offenders will return to communities, and "like a moral

pestilence [they] spread their contaminating influence throughout the community."<sup>3</sup>

Almost thirty years later, The Inspector of Ontario gaols, William Langmuir, demanded "prompt action" by the provincial legislature "to take such steps to stamp out this evil" as the Province was "infested" with an "unprecedented increase in the commitment of the vicious, depraved and vagabond classes, generally known as vagrants and tramps."<sup>4</sup>

Use of this metaphor, with all the imagery and terror of a plague, partly explains the sardonic tone used to characterize all criminals as evil, vicious or depraved. Indeed, as Michael Katz, Michael Doucet and Mark Stern point out in their study of the criminal class in Hamilton, little difference existed in descriptions of offenders be they murderers, drunks, thieves or prostitutes. They "were all more or less interchangeable."<sup>5</sup> As such, the "social antagonisms of the society, no matter what their origin, revealed themselves in the prosecution of crime."<sup>6</sup>

By mid-nineteenth century crime had become visible in a way that had not occurred previously. With wider distribution newspapers became more readily available in homes and a variety of public places such as taverns, stores, libraries, street corners and railway stations.<sup>7</sup> As well we know from contemporary accounts that settlers were avid readers of print media. Upper Canadian social commentator, Susannah Moodie, remarked how "the Canadian cannot get on without his [*sic*] newspaper any more than an American without his tobacco."<sup>8</sup> Further expansion of common schools after 1841 extended the potential reading public. Moreover, provincial legislation of the same year required the local clerk of peace in each

district to publish, in one local newspaper, the returns of proceedings for each Court of Quarter Sessions.<sup>9</sup> Newspapers frequently enlarged this legislated requisite to cover court proceedings, judicial commentary and grand jury reports in addition to carrying stories of particularly heinous or bizarre crimes from other counties or countries.

In 1865, for example, Stratford residents could pick up their local newspaper, The Stratford Beacon, and scan a single page for the following news items. "A Great Social Evil" reported on the "alarming state of things" in London, England because of an increase in murder and other "horrible crimes". Another article recounted details of an American priest riding in a railcar, "The Maniac in the Cars," who slit his throat. In addition, the paper announced the upcoming trial of an Ottawa woman charged with murdering her child. Closer to home, a man nearly had been beaten to death in Toronto after being accosted on the street. The final, local story relayed the dreary tale of a woman who had "fallen" on hard times and ended up in gaol for drunkenness.<sup>10</sup>

In the midst of this apparent moral crisis judicial institutions offered a forum to order values by legal processes. The process of criminalizing behaviours such as drunkenness and vagrancy reveal how "a particular value system [was] being upheld through the law."<sup>11</sup> In this case, violations against Victorian morality -- principally intemperance and indigence -- dominated committals. Moral order, concluded John Beattie in his study of attitudes towards crime and punishment in Upper Canada, "was the indispensable foundation and guarantor of a stable society."<sup>12</sup> By moving beyond

the rhetoric of disease and decay we can begin to explore the social meaning of crime as it evolved over time and space.

To analyze patterns of crime and examine the demographics of a criminal population a random sample of men and women was selected from county gaol registers.<sup>13</sup> The only exceptions to this rule were Perth and Grey counties where the female population was not large enough for sampling. In these two cases only, the entire population was included in the data file. Based on a population of 1,000 women and 5,150 men in the Brockville gaol, 287 women and 395 men were selected starting with the first available register in 1848 and continuing to 1881. In York/Toronto a total of 21,000 female and 39,000 male inmates resided in gaol between 1840 and 1881.<sup>14</sup> The sample population comprised 403 women and 401 men. York/Toronto and Perth records require further clarification. First, in York/Toronto there is a gap in the data as no records exist between January 1874 and October 1876. Second, there are missing archival records between 1854 and 1859; in this case a duplicate list of the York/Toronto jail registers classified in the archival collection as Brampton Jail Registers was used. Last, between 1860 and 1863, the only available records are "summary". These records include information on judicial charges and only limited evidence on offenders. In Perth County gaol records do not exist prior to 1865. In lieu of registers the Stratford Calendar of Prisoners, which contains detailed information on each of the prisoners was consulted for the period 1853 to 1864. In all, 490 women and 2,990 men passed through the Stratford gaol; the sample for Perth County includes 490 women and 355 men. Finally, in Grey County, a total of 301

women and 2,046 men spent time in the Owen Sound gaol. The sample for Grey comprises 301 women and 344 men. The total sample, then, includes 2,976 committals: 1,481 women and 1,495 men.

Use of gaol registers as an historical source for analyzing criminal behaviour requires further comment. The first is technical, the second analytic. Despite administrative efforts in 1865 to standardize register books, discrepancies in recorded information persisted. Moreover, no extant instruction manuals exist for the period, nor is there any evidence of instruction being provided to the gaoler for completing forms. As a consequence variations in data-recording abound. In the case of Leeds/Grenville and York counties, for example, the records begin in 1849 and 1840 respectively. Several categories are not included in these hand written registers. As well in Leeds/Grenville, categories of occupation, residence and religion do not appear on forms until 1864, whereas in Toronto religion is added as early as 1853 and occupation and residence appear a year later.

Sometimes categories were systematically left blank. In Grey County "conduct in jail," for example, was never completed. In York/Toronto "place of residence" was rarely indicated. Other columns were intentionally left blank; this frequently occurred under the category "race". The heading on the register was "colour" male/female, but often the gaoler only filled it in when the person was non-white. Similarly marital status was frequently left blank and completed only if the person was married.

Perth's jail registers were the exception to this rule. Between 1853 and 1881 registers were meticulous. Information was completed for every column with great

precision and detail -- sometimes in a manner very different from others. Female occupation, for example, consistently remained blank except when a woman reported "paid employment." In Perth, by comparison, the gaoler listed the "occupation" of all women either by paid employment, marital or familial occupational status as in "farmer's wife", "cabinet maker's widow" or "labourer's daughter". Although other gaolers periodically used the terms "spinster", "married woman/wife", "widow", or "daughter" for occupation, in the main the gaoler left occupation blank or wrote "none".

Other subjective factors relating to the nature of crime could affect the completeness of data in books. In cases of drunkenness, vagrancy and prostitution, for example, data on literacy and marital status were occasionally omitted, suggesting that the person charged was incapable or unwilling to provide information or that the gaoler simply tired of repeating these oft recorded crimes and the personal details of such criminals and chose not to comply. Despite the lacunae, however, the plethora of details supplied by these registers offers the opportunity to map the typography of criminals and the nature of their crimes.

Those in gaol were at every stage of life from young children to centenarians. Women from agricultural areas were generally younger (21-40 years) than their urban sisters (30-60 years). Most men in rural areas were between 21 and 60 years. In cities they were far younger, between 16-20 years. Although urban prisoners tended to be younger than rural ones, urban males were also younger than urban women. The higher proportion of male youths in the city affirms contemporary reports on the

incidence of youth crime. This concern found legislative expression in 1857 in the Juvenile Offenders' Act which specified age and treatment of young offenders.<sup>15</sup>

The majority of the gaoled population were single adults; in all over half were either spinsters or bachelors. As well a small population of urban widows/ers and a much larger group of rural widow/ers added to the singleness of those gaoled.<sup>16</sup>

Broken down by communities, the pattern becomes more complex. Frontier rural communities had a higher percentage of married prisoners. Greater involvement by older, rural married women in the business of running farms partly explains this over-representation. Contemporary case evidence also supports this view. In a larceny case for theft of money the complainant noted, "[M]y wife always has the charge of the money".<sup>17</sup> Again in another case in Grey county a witness referring to a previous land deal testified that the wife "does all the business most trading and bargaining, she generally makes the bargains and the husband signs."<sup>18</sup> The large percentage of property crime among rural women suggests more generally a greater involvement by married women in the frontier/rural economy.<sup>19</sup>

Single men and women in urban areas dominated except in the case of widows and widowers. They appear more frequently in rural gaols than urban facilities. Further investigation by occupation, in part, elaborates on these and other differing committal patterns.

One of the more striking statistical findings is the clear pattern of a narrowing in the distribution of crimes across socio-economic class in the more urbanized communities (see Table 1).<sup>20</sup> Rural communities, particularly, recently settled frontier

areas, had a more heterogeneous population of incarceration drawn from all classes. Urban communities in contrast incarcerated a more homogeneous, working-class population.

Not surprisingly, among a gaol population of predominately single, urban women many listed paid employment.<sup>21</sup> The largest group appears in the most urban area, York/Toronto. This high percentage of paid workers resembles patterns of employment identified in studies of single women in other urban communities.<sup>22</sup> Notably, paid employment frequently brought women into the public sphere.

Of the "employed" women the majority came from the lowest socio-economic strata employed in semi-skilled, service or labouring occupations. Most worked as prostitutes, domestic servants or labourers: only a few women reported a trade or came from the middle status strata of petite bourgeoisie/white collar occupations. Only one woman from the high status category faced charges.

The contrast between male and female occupational structures reflects gendered employment patterns in the nineteenth-century. The range of male employment was far more diverse as would be expected. Among employed men over half worked at the bottom of the wage scale and approximately a quarter listed a trade. A much wider range existed between men in urban Toronto/York (5.7 per cent) and newly settled Grey (29.0 per cent) reporting employment as petite bourgeoisie/white collar employees. Professional/white collar salaried men, on the other hand, were no more likely to be arrested for crimes than their female class cohorts.

Table 1: Socio-economic Status of Women and Men in Gaol in Four Communities, 1840-81

| Socio-economic status | York /Toronto |       | Leeds /Grenville |       | Perth |       | Grey  |       |
|-----------------------|---------------|-------|------------------|-------|-------|-------|-------|-------|
|                       | Freq.         | %     | Freq.            | %     | Freq. | %     | Freq. | %     |
| <b>WOMEN</b>          |               |       |                  |       |       |       |       |       |
| Professional          | 0             | 0.0   | 0                | 0.0   | 0     | 0.0   | 1     | 0.3   |
| Pet. bourg.           | 1             | 0.1   | 0                | 0.0   | 6     | 1.2   | 17    | 6.1   |
| Trades                | 1             | 0.1   | 5                | 3.0   | 18    | 3.7   | 5     | 1.8   |
| Semi-skilled/lab.     | 164           | 70.7  | 109              | 66.5  | 119   | 24.3  | 138   | 49.6  |
| Total jobs            | 166           | 71.6  | 114              | 69.5  | 143   | 29.2  | 161   | 58.0  |
| No job listed*        | 66            | 28.5  | 26               | 15.9  | 345   | 70.4  | 112   | 40.3  |
| Unclassified          | 0             | 0.0   | 24               | 14.6  | 2     | 0.1   | 5     | 1.8   |
| Total cases           | 232           | 100.0 | 164              | 100.0 | 490   | 100.0 | 278   | 100.0 |
| Missing cases         | 171           |       | 123              |       | 0     |       | 23    |       |
| <b>MEN</b>            |               |       |                  |       |       |       |       |       |
| Professional          | 5             | 1.7   | 5                | 2.0   | 8     | 2.3   | 0     | 0.0   |
| Pet. bourg.           | 17            | 5.7   | 19               | 7.8   | 69    | 19.4  | 92    | 29.0  |
| Trades                | 80            | 26.8  | 62               | 25.4  | 80    | 22.5  | 61    | 19.2  |
| Semi-skilled/lab.     | 185           | 61.9  | 144              | 59.0  | 184   | 51.8  | 163   | 51.4  |
| Total jobs            | 287           | 96.0  | 230              | 94.3  | 341   | 96.0  | 316   | 99.7  |
| No job listed*        | 11            | 3.7   | 0                | 0.0   | 11    | 3.1   | 0     | 0.0   |
| Unclassified          | 1             | 0.1   | 14               | 5.7   | 3     | 0.1   | 1     | 0.1   |
| Total cases           | 299           | 100.0 | 244              | 100.0 | 355   | 100.0 | 317   | 100.0 |
| Missing cases         | 102           |       | 151              |       | 0     |       | 27    |       |

\*No job listed includes "none" and other marital status designations included on the register under "occupation".

Source: PAO, RG 20, F-6, Brockville Jail Registers, 1848-81; RG 20, F-28, Owen Sound Jail Registers 1857-81; RG 20, F-40, Stratford Calendar of Prisoners, 1853-64 and Stratford Jail Registers 1865-81; RG 22, F-43, Toronto Jail Registers 1841-53, 1860-73, October 1876 to December 1881 and RG 20, F-4, Brampton Jail Registers 1854-59.

If we examine the occupational distribution in each community by gender, we see how frontier/rural counties demonstrate a wider distribution of charges, in particular, for women, across all socio-economic groupings than in urban areas. This distribution resembles more closely the widespread pattern of employment of male inmates. The more general pattern of employment among gaolied women suggests a trend of wider employment opportunities for women in a rural/frontier society than was available for their urban cohorts. Overall, however, the most outstanding feature of the occupational analysis for both women and men was class. The majority stood on the lowest rungs of the socio-economic ladder.

Although the over representation of working-class men and women within the gaol population is statistically significant, class set the gaol population off from society in general less strikingly than literacy. Despite living in a province with a very high literacy rate,<sup>23</sup> literate prisoners formed the minority. Of those in gaol, the majority were semi-literate. In most communities roughly twenty to twenty five per cent of males were illiterate with a slightly lower grouping in Perth. Among females one in three were illiterate except in Leeds/Grenville where one half could "neither read nor write."<sup>24</sup> At no time during the forty-one year time span could the bulk of the inmates ever be listed as literate.

Statistical compilations of literacy among criminals served other educative purposes of contemporary public and legislative reformers. Using Toronto gaol statistics as reference, school promoter Egerton Ryerson argued emphatically that with

"a good common school education, the number of prisoners [1,967] committed to the Toronto Gaol would scarcely have exceeded one hundred". With proper educational training "their crimes" he asserted, "would have been prevented."<sup>25</sup>

Not only were those gaoled far more likely to be illiterate than the overall Ontario population, they were also more likely to be Roman Catholic, and immigrant than other "non-gaoled" Ontarians.<sup>26</sup> Proportionally more Roman Catholics were in gaol than lived in any of the cities, towns or counties where they dwelt. Among the immigrant population in gaol by far the largest number were from the United Kingdom ranging from roughly half the gaol population in Leeds/Grenville and Grey up to two thirds of the men and over three quarters of the women in York/Toronto.<sup>27</sup> With few exceptions by far the largest group was from Ireland.<sup>28</sup> Overall patterns of detention differed from widespread patterns of settlement in Ontario by place of birth and religion.

Among this former group Gaol Inspector William Langmuir, found a rationale to explain, in part, a province-wide increase in crime in the early seventies. He concluded that the recent arrival of "a portion of the criminal and vicious of other countries" combined with a "defective *surveillance* over emigrants arriving in the province" contributed to crime. Along with the "depression in trade and the labour market in the United States" Langmuir believed that "a few of their sharpers and criminals" have been transferred "to our soil."<sup>29</sup> In so doing, Langmuir simply shifted the blame for crime onto a group composed of immigrants or "others," inferring that this was a problem imported into Canada and not a local phenomenon.<sup>30</sup>

Editors of The Canada Law Journal reached similar conclusions after examining the data from County Court Judges' Criminal Court records in 1877. More serious crimes of violence and force, they claimed, were partially explained by the "mixed population" and by the "moving portion of it, transitory persons, using the great highway through the country; . . . they are deplorably large."<sup>31</sup> In essence, these editors merely echoed what Inspector Langmuir had repeated over the years. Taken together we see how statistics served not only to report on crime but as a measure of cause.

Based on evidence collected for this study, transient persons were in fact least often charged; local residents most frequently spent time in gaol. In the nineteenth century a majority of Ontario residents lived in the countryside, rather than urban towns and cities.<sup>32</sup> Yet, among the "gaoled" population women living in the administrative capitals of the county near the court house, gaol and police appeared frequently on gaol registers.<sup>33</sup> Between one third to one half of the rural women committed to gaol listed their residence as either Owen Sound (37.8 per cent), Brockville (44.5 per cent) or Stratford (50.4 per cent). Taken as a whole, there appears to be either a bias towards arresting women in more urbanized places over those in the countryside or increased criminal activities in towns, or both.

With one exception the majority of gaoled married and single men, on the other hand, lived in places other than the town; of those between two thirds to three quarters resided in rural townships in the county where they were charged.<sup>34</sup> Only in Perth county do we find more married men living in Stratford than the surrounding

townships or counties. Not surprisingly single men more frequently came from places beyond county boundaries reflecting the transient or "travelling" nature of a single male population. It may also, as Katz, Doucet and Stern note in their study of Hamilton, demonstrate a propensity on the part of city officials to more readily arrest transients for public peace offences such as vagrancy.<sup>35</sup> Loitering among non-residents was considered a potential threat that deemed some wandering men as suspect. This pattern contrasts with examples in rural communities of vagrants and drunkards being sent back to places of residence rather than being incarcerated.<sup>36</sup>

Patterns of distribution of residency by widows and widowers is more complex and requires further comment. Among counties with a widowed gaoled population most lived in the main county town.<sup>37</sup> The exception is Grey county where for both men and women roughly one in five came from the town and much larger three in four resided in either the surrounding townships or particularly for the men, elsewhere in other counties. Overwhelmingly though, the majority of the gaoled population resided in the county where they were charged. They were not in the main sojourners passing through.<sup>38</sup>

Among the four communities selected for the study, only Grey had a significant population of African-Canadians living in the county. African-Canadians comprised just under ten per cent (9.8) of the total gaoled population. This figure represents a higher proportion of committals -- more so for women than men -- than would be expected given the number of residents.<sup>39</sup> Aboriginal committals were much lower -- only 1.7 per cent with a higher proportion of men than women. Distinctions

in these minority communities illustrate differences in the nature of their culture and relationship to the dominant Anglo-Protestant society.

In spite of marginal living arrangements on the geographical fringe of towns or in isolated villages, it is apparent from case files and gaol reports that African-Canadians integrated more into mainstream Grey county society than Aboriginals and, as a consequence, they experienced ongoing contact with others in the community including the police. Interaction between whites and Aboriginals differed. After 1857 when the provincial government established reserves at Cape Crocker and Saugeen the Aboriginal community was physically removed from the county. Despite earlier influences on pioneer settlement,<sup>40</sup> physical and cultural boundaries reinforced separate societies between whites and natives. Within Aboriginal cultures, it appears that women tended to remain closer to home and men travelled. During these travels men sometimes ran into conflict with the law.

If differences clearly existed between gaoled and non-gaoled populations in Ontario, it is not self-evident that such differences defined a criminal class in any meaningful sense. Arguably committal statistics tell us little about how people behaved towards one another. They do, however, tell us something about the way in which the criminal justice system functioned<sup>41</sup> and, in turn, inform us about a "criminal class."

The most striking feature of these statistics is the low percentage of what newspapers and officials claimed was a major problem, offences against property and person.<sup>42</sup> For our purposes committals were divided into five categories: state, which

includes crimes against government, business regulations and judicial procedure, public peace covers a wide range of offences contrary to public order, property and person are self-evident, and other reasons includes persons committed to gaol for protection or confinement rather than as criminals and, as such, remain outside the bounds of the study.

In almost all cases public peace crimes were considerably more frequent than either person and property crimes in virtually every year, but particularly during the 1860s and 1870s. In the case of women from 1860 to 1880 in most communities the percentage of public peace offences was greater than occurrences of the combined offences of person and property.<sup>43</sup>

Surprisingly given the rhetoric, more serious crimes of burglary, house breaking and arson are remarkably low among the four communities (see Table 2). Few homes or businesses reported thefts. In 1879, for example, among a population of 80,000 Torontonians the police chief acknowledged in his report that only eight "important" burglaries were committed in the proceeding year.<sup>44</sup> The personally threatening crime of robbery remained equally low in aggregate, although incidents were considerably higher in York/Toronto and Grey counties. These two communities represent opposite poles in the frontier/urban spectrum which suggests that the nature of such robberies differed substantially. Anecdotal evidence indicates that robbing financial institutions and shops occurred most often in the city. "Highway robberies" occurred along deserted roads in the country.

Table 2: All Property Committals for Men and Women in Four Communities in Ontario, 1840-81

| Crime             | York/<br>Toronto |       | Leeds/<br>Grenville |       | Perth |       | Grey  |       |
|-------------------|------------------|-------|---------------------|-------|-------|-------|-------|-------|
|                   | M(%)             | F(%)  | M(%)                | F(%)  | M(%)  | F(%)  | M(%)  | F(%)  |
| Trespass          | 4.0              | 5.9   | 4.5                 | 4.7   | 2.3   | 0     | 5.9   | 12.3  |
| Damage property   | 2.0              | 0     | 6.3                 | 7.0   | 1.23  | 3.4   | 0     | 0     |
| Destroy animals   | 2.0              | 0     | 1.8                 | 0     | 3.5   | 0     | 5.9   | 3.5   |
| Steal horse       | 0                | 0     | 4.5                 | 0     | 1.2   | 0     | 5.9   | 0     |
| Larceny           | 71.0             | 86.3  | 61.6                | 69.8  | 66.3  | 79.3  | 50.6  | 66.7  |
| Burglary          | 4.0              | 0     | 3.6                 | 0     | 2.3   | 0     | 3.5   | 0     |
| House breaking    | 2.0              | 0     | 1.8                 | 0     | 3.5   | 1.1   | 2.4   | 1.8   |
| Robbery           | 9.0              | 0     | 4.5                 | 0     | 2.3   | 1.1   | 9.4   | 3.5   |
| Arson             | 3.0              | 0     | .9                  | 11.6  | 4.7   | 4.6   | 4.7   | 1.8   |
| Rec. stolen gds.  | 1.0              | 5.9   | .9                  | 4.7   | 3.5   | 5.7   | 1.2   | 3.5   |
| Embezzlement      | 2.0              | 0     | 0                   | 0     | 1.2   | 0     | 0     | 0     |
| Fraud             | 0                | 0     | 7.1                 | 2.3   | 7.0   | 2.3   | 9.4   | 1.8   |
| Forgery           | 0                | 2.0   | 2.7                 | 0     | 1.2   | 2.3   | 1.2   | 3.5   |
| Forgery and fraud | 0                | 0     | 0                   | 0     | 0     | 0     | 1.8   | 1.8   |
| Total cases       | 100.0            | 100.0 | 100.0               | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Number of cases   | 100              | 51    | 112                 | 43    | 86    | 87    | 85    | 57    |

Source: See Table 1.

Stealing moveable items -- larceny -- clearly constituted the majority of criminal property offences. Such crimes occurred most frequently in settled urban and prosperous rural areas. This should surprise no one as the greater consumption of material goods in the city than in the more exiguous economy of Grey county and parts of Leeds/Grenville provided significantly greater opportunities for larceny. As we shall see,<sup>45</sup> the change in the nature of this offence over time differed between rural and urban communities.

Not surprisingly, certain crimes against property such as theft of animals occurred most frequently in rural communities. While disagreements over ownership, payments, trade or sale of livestock landed people in court, it is clear that some residents took advantage of poorly fenced or remote fields containing unmarked animals to steal and butcher livestock.<sup>46</sup> In other more surreptitious situations residents sometimes tried to claim ownership based on possession: the cow or pig or horse or fowl fortuitously "wandered" onto their fields.<sup>47</sup>

Cases of trespass, a relatively high percentage of property offences in Grey county, often resulted from altercations between squatters and residents claiming either legal or proprietary ownership of land. Despite government surveys of land tracts across most of Grey county some residents continued to dispute land claims. Alongside attempts to distribute land within the bounds of a formal legal structure there existed other more traditional, quasi-legal attempts by settlers to obtain land rights by squatting.<sup>48</sup> Still others expanded their domain by bullying neighbours through acts of intimidation and, in more extreme instances, acts of terrorizing. In Proton township, Grey county, for example, a renegade band of outlaws known as the "swamp angels" repeatedly attacked local homesteaders stealing food, threatening families, and burning farm dwellings.<sup>49</sup>

Despite commonly held perceptions that "white/pink collar" crime was a phenomenon of the city, committals for embezzlement, fraud and forgery occurred more often in rural areas than in urban. In fact, the highest percentages are recorded for the least settled area of Grey; the lowest percentages occurred in York/Toronto.

The assumed anonymity necessary to carry out fraudulent offences is generally considered more in keeping with large urban centres than in less densely populated areas where personal financial accountings were commonly known among residing officials. This contrast may reflect the more sophisticated nature of urban commercial policies that rendered them less susceptible to instances of fraud than the more informal practice of merchants, bankers and private investors in the countryside. Historian David Burley argues that by mid-century Ontario town merchants entered a period of change from traditional and informal business practices based on personal trust and knowledge of local financial affairs to an increased reliance on property assets for credit ratings.<sup>50</sup> During this flux, when neither tradition was firmly in place, some no doubt, exploited the greater opportunities for fraud provided by the continuation of informal business practices.

Overall, then, two main conclusions can be asserted about mid-to-late nineteenth-century property crime. First, serious property crime occurred less frequently than official and contemporary reports have led us to expect. Second, except for burglary serious property crime was more common in a frontier community than in a city. Perhaps claims that augmented police forces lead to a greater number of charges applied more in instances of public offences than in cases of property crime where fewer police meant more serious crime.

Amongst all committals for major categories of offences in each community, crimes against the person were the least common of the felonies. Among these, arrests for minor assaults dominated the judicial docket (see Table 3). Overall,

judicial categorization of crimes covered a wide range of offences that are best examined by studying individual cases to determine the social and economic context of the crime. Violence, as we shall see,<sup>51</sup> was integrally linked to mutual economic arrangements involving family, kin and neighbours.

Table 3: Committals of Men and Women for Offences Against the Person in Four Ontario Communities, 1840-81

| Crime               | York/<br>Toronto |       | Leeds/<br>Grenville |       | Perth |       | Grey  |       |
|---------------------|------------------|-------|---------------------|-------|-------|-------|-------|-------|
|                     | M(%)             | F(%)  | M(%)                | F(%)  | M(%)  | F(%)  | M(%)  | F(%)  |
| Assault             | 72.7             | 75.0  | 32.7                | 27.8  | 35.8  | 43.4  | 55.4  | 56.8  |
| Assault & battery   | 6.8              | 0     | 34.6                | 44.0  | 18.9  | 11.3  | 10.7  | 2.7   |
| Aggravated assault  | 9.1              | 8.3   | 3.8                 | 0     | 24.5  | 3.8   | 12.5  | 0     |
| Assault law agent   | 6.8              | 4.2   | 5.8                 | 0     | 1.9   | 0     | 3.6   | 2.7   |
| Domestic assault    | 2.3              | 0     | 0                   | 0     | 7.5   | 0     | 0     | 0     |
| Sexual assault-rape | 3.3              | 0     | 7.7                 | 0     | 0     | 0     | 8.9   | 0     |
| Murder              | 0                | 4.2   | 9.6                 | 16.7  | 9.4   | 7.5   | 3.6   | 16.2  |
| Attempt murder      | 0                | 0     | 3.8                 | 0     | 1.9   | 3.8   | 0     | 5.4   |
| Suicide             | 0                | 0     | 0                   | 0     | 0     | 0     | 1.8   | 2.7   |
| Manslaughter        | 0                | 4.2   | 1.9                 | 0     | 0     | 5.7   | 3.6   | 0     |
| Abortion            | 0                | 0     | 0                   | 0     | 0     | 0     | 0     | 0     |
| Concealing birth    | 0                | 0     | 0                   | 0     | 0     | 7.5   | 0     | 5.4   |
| Infanticide         | 0                | 0     | 0                   | 5.6   | 0     | 0     | 0     | 2.7   |
| Neglect child       | 0                | 0     | 0                   | 0     | 0     | 5.7   | 0     | 0     |
| Abandoning child    | 0                | 4.2   | 0                   | 5.6   | 0     | 7.5   | 0     | 5.4   |
| Stealing child      | 0                | 0     | 0                   | 0     | 0     | 3.8   | 0     | 0     |
| Total cases         | 100.0            | 100.0 | 100.0               | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Number of cases     | 44               | 24    | 52                  | 18    | 53    | 53    | 56    | 37    |

Source: See Table 1.

The high percentage of arrests for assaulting a legal official and other minor assaults in urban areas suggests more than mere coincidence. The threat or intervention by police in assaults may have contributed to fewer major crimes. The reverse holds true for rural areas where a greater degree of violent offences occurred in areas with limited policing.

An unusually high trend of murders by women in Leeds/Grenville and Grey requires further comment. According to one criminologist, murder is the best indicator of violence because it is the most frequently reported crime.<sup>52</sup> While this may hold true under certain conditions, evidence in Leeds/Grenville, for example, suggests other factors at work. In some situations women and occasionally men would initially be charged with murder and, following investigation, the charge would be reduced to infanticide.<sup>53</sup>

A higher incidence of crimes related to concealing birth and infanticide in agricultural areas underscores several distinctions in societies and institutional structures among communities.<sup>54</sup> Greater familiarity among neighbours in rural areas meant that pregnancies in small towns and villages were frequently known. Births and deaths were harder to conceal among nearby relatives and neighbours even in cases where the woman delivered the baby alone. Moreover, women in the countryside would have found it difficult to travel undetected while attempting to dispose of the baby. As a consequence, these women most likely abandoned or buried infants close to home at a location where they could be found and, based on inquiries, the mother identified. The case against Eleanor S. of Brockville, charged with murdering her

baby corroborates these hypotheses. At trial Eleanor's neighbour testified that, "for the last month or two that she [Eleanor] was with [a] child [and] heard her on friday [sic] and Saturday nights moaning but did not know what was the matter." In her own statement, as well, Eleanor who was alone during the delivery recalled asking her sister to take the dead baby to a specified location.<sup>55</sup> Concerned about detection, her sister recommended an alternative plan of concealing the body in a carpet before sinking it in the river. The criminal investigation began shortly after when another neighbour discovered the body floating in the water.<sup>56</sup>

Lack of opportunities for abortion and child care facilities in agricultural regions left some women in desperate circumstances. High cost and limited access to abortions<sup>57</sup> disadvantaged women who were either poor, resided in isolated communities or both. Women in rural areas without support of nearby kin, moreover, had fewer resources for alternative infant care.

It was in cities that women and men could access albeit limited services for babies and other children provided by religious and secular philanthropic agencies.<sup>58</sup> As Bettina Bradbury notes in her study of working-class families in Montreal, parents often used orphanages as a temporary or permanent placement for children when overcome by crises of poverty, sickness or death.<sup>59</sup> County villages and towns generally did not offer such formal services. In the case of the Queen vs William D., a father living in the village of Keppel, Grey county, was charged in 1877 with both assault and "neglect to provide his child with food". One witness, a neighbour, recalled that the defendant's six-year-old son had appeared at his home on one

occasion asking for food. Under sworn testimony he recounted how the boy's father had gone away -- it appears temporarily -- and left the boy alone in the house with nothing to eat. Under cross examination it became clear that father and son were living on their own under dire, but not uncommon, circumstances struggling to survive in a subsistence economy. In this case the neighbour reported seeing them at meals of only "potatoes and salt and some porridge".<sup>60</sup>

There are too few cases in the sampling of domestic and sexual assault committals<sup>61</sup> to draw any firm conclusions about the range of incidences in each community. Furthermore, infrequent reporting of wife assault on gaol registers in all counties except Perth contributes to its unreliability as an indicator of frequency. Despite limited evidence, however, the data supports the general pattern already observed of greater violence in the countryside.

While official statistics may be unreliable indicators of precise criminal behaviour, they are, as criminologists Helen Boritch and John Hagan point out, "fully accurate indicators of police responses to crime."<sup>62</sup> Between 1857 and 1859, each town appointed a constable(s), while Toronto, in 1859, established a police commission with a force of 60 officers.<sup>63</sup>

To maintain public order, police constables adopted what sociologists term a proactive "social welfare model of law" that "not merely make[s] law available, it imposes law"<sup>64</sup> by apprehending criminals along with those whose deportment suggests profligacy -- vagrants, drunkards and prostitutes. Fundamentally, "[C]ity police through their daily activities, helped shape and control much of urban life in

public places."<sup>65</sup> Regulating public space represents a shift from the individual interests of a frontier society, to the more collective ideals of public authority as the community matured.<sup>66</sup>

General trends suggest patterns which remain true when disaggregated by county and gender. On closer examination, however, clear distinctions between rural and urban communities and men and women become evident (see Table 4).

Table 4: Incidence of All Committals of Men and Women in Four Communities in Ontario, 1840-81

| Crime         | York/<br>Toronto |       | Leeds/<br>Grenville |       | Perth |       | Grey  |       |
|---------------|------------------|-------|---------------------|-------|-------|-------|-------|-------|
|               | M(%)             | F(%)  | M(%)                | F(%)  | M(%)  | F(%)  | M(%)  | F(%)  |
| State         | 2.0              | .3    | 6.1                 | 3.1   | 10.1  | 1.2   | 8.7   | 5.3   |
| Public peace  | 60.3             | 80.1  | 47.3                | 67.5  | 40.0  | 57.3  | 43.0  | 46.5  |
| Property      | 25.0             | 12.7  | 28.4                | 14.9  | 24.2  | 17.8  | 24.7  | 18.9  |
| Person        | 11.0             | 6.0   | 13.2                | 6.1   | 15.0  | 10.8  | 16.3  | 12.3  |
| Other reasons | 1.7              | 1.0   | 5.1                 | 8.0   | 10.7  | 12.9  | 7.3   | 16.9  |
| Total cases   | 100.0            | 100.0 | 100.0               | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| No. of cases  | 401              | 403   | 395                 | 287   | 355   | 490   | 344   | 301   |

Source: See Table 1.

The more urban a society, the more likely a person was to be charged with a public offence; this appears particularly so for women.<sup>67</sup> In the case of York/Toronto, two in five men and a marked four out of five women fall into this category, compared to Grey county where the percentage is under half for both men and women. On increasingly regulated city streets, policing public offences became a major pre-occupation. Among these communities, the number of committals per capita increased dramatically with urbanization (see Table 5).

Table 5: Per Capita Distribution of All Offences in Four Communities in Ontario, 1840-81 (per 10,000 population)\*

| Year | York/Toronto | Leeds/Grenville | Perth | Grey |
|------|--------------|-----------------|-------|------|
| 1840 | 80.7         | --              | --    | --   |
| 1848 | 53.1         | 14.4            | --    | --   |
| 1851 | 53.4         | 8.3             | --    | --   |
| 1861 | 137.8        | 21.9            | 17.9  | 13.1 |
| 1871 | 152.1        | 26.7            | 18.5  | 13.8 |
| 1881 | 165.0        | 39.4            | 38.4  | 27.3 |

\* Unlike the other tables this one is based on the total number of offences and not a sample.

Source: See Table 1 and census data, chapter 2, fn 32.

Between 1851 and 1861 committals in York/Toronto almost tripled and in Leeds/Grenville more than doubled. The leap in committals during the seventies among other communities reflects the growth of towns in rural regions between 1871 and 1881.

The history of public peace offences is closely linked to the evolution of municipal powers. Under by-laws local authorities apprehended and punished miscreants.<sup>68</sup> In 1849 in a sweeping allocation of public and moral control the provincial government granted by-law authority to town councils. Then in 1858 the Municipal Act consolidated municipal power as it confirmed powers to townships,

villages, and counties.<sup>69</sup> The entire province now lay under a blanket of restrictions. Wide discretionary powers supplied councils with legislation and judicial tools which enabled them to assume the role of "moral educator".<sup>70</sup>

Further urbanization brought demands for wider use of municipal public protection mechanisms as we see in the case of Owen Sound. In 1875, town council passed a public morals by-law restricting public language and behaviour. As a visible reminder council ordered one hundred copies to be posted in "different public places in the Town."<sup>71</sup> Shortly after council voted approval of a local police commission to provide enforcement and more intense surveillance of constituents.<sup>72</sup>

While some took comfort in the ongoing efforts of philanthropic, religious and civic leaders to penalize and reform the wayward, others looked to the courts to assuage fears of a rising criminal class and the concomitant threat to public peace, property and person. If we look at criminal sub-categories, the precise nature of the ordering can be seen (see Table 6). The largest number of committals were for drunkenness and vagrancy, although the ratio between the two varies considerably from place to place by rural or urban locale and by gender. The relationship between the two is strikingly inverse depending on the level of urbanization. Drunkenness accounts for 3 out of every 4 committals in Toronto/York but only 1 in 5 committals for women and a lesser one in three for men in Grey. Conversely vagrancy accounts for 3 out of 4 committals for women and over 1 in 2 for men in Grey but only 1 in 10 committals in Toronto/York.

Table 6: Committals of Men and Women for All Offences Against the Public Peace in Four Communities in Ontario, 1840-81

| Crime              | York/<br>Toronto** |       | Leeds/<br>Grenville |       | Perth |       | Grey  |       |
|--------------------|--------------------|-------|---------------------|-------|-------|-------|-------|-------|
|                    | M(%)               | F(%)  | M(%)                | F(%)  | M(%)  | F(%)  | M(%)  | F(%)  |
| Indecency          | 0.4                | 0.3   | 0                   | 0     | 0     | 0.4   | 0     | 0     |
| Prostitution       | 1.2                | 3.4   | 2.7                 | 6.2   | 0     | 15.7  | 0.7   | 5.7   |
| Brothel keepers    | 0.8                | 1.5   | 1.1                 | 3.1   | 2.1   | 10.0  | 0     | 4.3   |
| Blasphemy          | 0                  | 0     | 0.5                 | 0.5   | 0.7   | 0.4   | 0.7   | 0     |
| Abusive language   | 0                  | 0.3   | 0.5                 | 2.6   | 2.8   | 1.4   | 2.7   | 0.7   |
| Disorderly         | 7.0                | 5.3   | 5.3                 | 10.3  | 2.1   | 5.3   | 2.7   | 2.1   |
| Drunkenness        | 77.7               | 75.9  | 58.8                | 43.8  | 60.6  | 27.8  | 31.1  | 12.9  |
| Vagrancy           | 7.9                | 13.0  | 22.5                | 28.9  | 28.9  | 37.0  | 56.8  | 73.6  |
| Public ordinances* | 2.1                | 0     | 3.2                 | 0     | 1.4   | 1.1   | 1.4   | 0     |
| Neglecting family  | 0.8                | 0     | 0                   | 0     | 0     | 0     | 0.7   | 0     |
| Bylaw/licences*    | 0                  | 0     | 4.3                 | 1.0   | 0.7   | 0     | 0     | 0     |
| Liquor offences*   | 2.1                | 0.3   | 1.1                 | 1.0   | 0.7   | 1.1   | 3.4   | 0.7   |
| Total cases        | 100.0              | 100.0 | 100.0               | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| No. of cases       | 242                | 323   | 187                 | 194   | 142   | 281   | 148   | 140   |

\* Recorded numbers for public ordinances, bylaw and liquor offences are misleading. Many people charged with infractions against public ordinances paid fines instead of going to gaol. Infractions included such 'crimes' as not shovelling snow. The same applies to other bylaw and liquor licence violations and should not be taken as an indication of either incidence or income derived from these violations.

\*\* By 1860 Brockville was one of several communities in Ontario that built a lock-up house. Drunks were often housed in the lock-up over night and released without charges the next day. Notwithstanding this, the pattern of committals for drunkenness remains high in this county.

Source: See Table 1.

Dramatic differences are apparent in charges for drunkenness and vagrancy between rural and urban communities. Such trends in committals have three possible explanations: one, that small communities were better able to maintain stricter controls on aberrant public behaviour thus preventing crimes before they recurred; two, standards of tolerance for drunkenness and idleness were more flexible among country dwellers and therefore fewer drunks were likely to be arrested; three, perceptions of public (im)moral behaviour as a threat to society were more common in the city than in the rural/frontier. Later-settled communities may, as Hindus has argued, have agreed that

despite the caricature offered by reformers, the choice was not between civilization and anarchy, but between the use of local customary norms to enforce behaviour and to punish violations of local standards and norms or the use of the formal legal sanction to accomplish the same end.<sup>73</sup>

A closer examination of distribution of other offences suggests how local courts and community attitudes may have affected this trend. Women working in the sex trade, for example, were rarely charged with "prostitution" during the first half of the nineteenth century.<sup>74</sup> Instead, offenders, were often charged under a series of other public behaviours deemed "disorderly" including, on occasion, drunkenness and vagrancy. Differing views of prostitution, as Constance Backhouse demonstrates in her study of nineteenth-century prostitution, led to divergent patterns of legislation and enforcement. "Nineteenth-century Canadians seemed divided over whether to treat prostitution as a 'necessary evil' or as the leading example of male sexual coercion."<sup>75</sup>

While the former tolerated a society with a separate sexual standard for men and women, the latter favoured restrictions.

Numerous committals for prostitution and other unruly offences in Perth county reflect either an unusually high incidence or a more general intolerance of moral improprieties. Local evidence supports the latter view. In 1857 The Stratford Beacon, for example, recounted the indecorous actions of a woman and man -- presumably a prostitute and her client -- arriving in the village of Tavistock. Instead of spending the night in a hotel as planned, the couple were chased down the road by an "enthusiastic" crowd which only retreated when offered a payment. The newspaper issued a warning of future tar and feathering should these miscreants return.<sup>76</sup> Again in 1859, in the nearby village of St. Marys, several residents used the community fire engine to break windows, drench beds and flood the local brothel.<sup>77</sup> Stratford and area appear intolerant of certain behaviours, by both the high number of arrests and public press coverage of indiscretions. Taken together, statistical and anecdotal evidence suggest a parallel system of regulation imposed by both courts and residents.

In contrast, the more urbanized town of Brockville utilized the widest range of municipal by-laws to suppress sexual misconduct and other public nuisances. Under the municipality's 1867 public morals by-law council not only prohibited "keeping" a disorderly house, it threatened to prosecute anyone for "appearing" or "acting" as if he/she ran a bawdy house "notwithstanding he or she shall not in fact be the real owner or keeper thereof." Town council eagerly sought enforcement of this by-law

granting constables warrants "to enter the house, and if necessary use force, whether breaking doors or otherwise."<sup>78</sup>

Similarly, in 1872 council approved a general by-law to regulate the use of streets and public routes for the "preservation of order".<sup>79</sup> Increasingly, as Brockville assumed characteristics of an urban community, it imposed legal regulations to control public behaviours. In so doing, non-criminalized, previously tolerated behaviours became criminalized.

Sharp differences in public-peace-arrest patterns between York/Toronto and Grey counties reflect as well dissimilar "policing" of order between large urbanized areas and less-populated newly settled areas. Commonly, small communities, particularly frontier settlements relied on informal traditions to regulate behaviour. Such forms of regulation relied on a blend of social and economic relationships not sustained in larger communities.

No doubt, municipal by-laws served to diminish discretionary, social mechanisms imposed by local groups to curtail behaviour. Some, such as charivaris could be nefarious in their intent and outcome,<sup>80</sup> and local evidence suggests opposition to these traditional forms of sanctions. When Owen Sound passed a by-law in 1857 for the "Good government of the town" it listed restrictions on charivaris alongside other unruly behaviours such as disorderly conduct.<sup>81</sup> Again in 1870, when reporting on a recent charivari, the newspaper called for an end to this illegal practice.<sup>82</sup> Indeed, as suggested by these regulations and editorial comment, vigilante

style practices fell out of favour in lieu of rules determined by consent of an elected council.

Informal community sanctions competed with other institutional forms to affect community order. Religious historian John Grant notes how churches "set the moral tone of their communities." Although never entirely successful in determining "actual behaviour, they were increasingly able to determine acceptable behaviour."<sup>83</sup> In the small towns and villages in Grey county, for example, churches dominated the social landscape. In one sparsely populated village, in 1865, preachers and parishioners of three churches monitored the actions of residents.<sup>84</sup>

The earlier link between religion and law should not be underestimated. Weekly sermons preached appropriate Victorian behaviour of "hard work, sobriety, thrift. . . . [and] responsibility for the public good."<sup>85</sup> Similar sentiments echoed in judicial presentments or "secular sermons"<sup>86</sup> delivered to grand juries at regular sittings of county assize and sessions' courts. These reports often gained a wider audience through reportings of such in local newspapers. In his charge to the grand jury assembled in London in 1840, Chief Justice of Ontario, John Beverley Robinson stated rhetorically

[what] can laws avail without morals and without religion? A conviction of sacred truths of Christian revelation supplies at once the highest sanction to human laws . . . and the strongest motivation for obeying them.<sup>87</sup>

When necessary, a "conviction of sacred truths" would be achieved through enforcement of hard labour in punitive sentences handed down from a judicial "pulpit."<sup>88</sup>

According to Grant's study of nineteenth-century religion in Ontario, industrialization and urbanization weakened religious structures.<sup>89</sup> More generally by mid-nineteenth century ecclesiastical interests had been "pushed aside" by other economic and political forces as "the basis for social organization."<sup>90</sup> In recognizing the temptations of a secular society the provincial legislature in 1845 restricted activities on Sunday, to "Prevent the Profanation of the Lord's Day."<sup>91</sup> To survive, Protestant churches had to abandon other-worldly pursuits in favour of contemporary social issues.<sup>92</sup> The process of realignment redefined the relationship between church and state blending public morality and religious values.<sup>93</sup> Moreover, during a time of declining church influence in disciplining members<sup>94</sup> legal penalties escalated.<sup>95</sup> It is in this sense that the Macdonald government's decision in 1854 to shelve the clergy reserves and transfer funds to municipalities represents a symbolic as well as a jurisdictional shift from a sectarian to a secular stage.

Widespread legal sanctions created a vast network of laws to criminalize and regulate particular public behaviours. State formation was critical for this process. It provided the policing needed for enforcement, institutional facilities for detention and incarceration and the bureaucratic management to oversee the application of pre-determined regularized rules of conduct.

Rhetoric about widespread crimes then, appears to have been fuelled more by media and official government reports than the reality of daily life. Ultimately, however, this hyperbole translated into an increase in laws, incarceration and legislation that resulted in a more legalized culture. The culture of law provided a

consensus for normative behaviour built around dominant middle-class values that forged complimentary relationships between law and morality.

There may not have been a "criminal class", yet clearly patterns for arrests confirm many nineteenth-century notions about crimes and the people who committed them. Given an increase in gaol population among "habitual" and "professional" criminals, some were considered part of a rising criminal class.<sup>96</sup> Elevated instances of social deviancy were attributable to a composition of "other" criminals.

These stereotypes reinforced in regular publishing of data and anecdotes in local newspapers depicted criminal archetypes of the fallen woman and the drunken man. In a sense, this evidence contributed to a self-fulfilling prophecy. Defining a criminal class through criminalization of behaviour, confirmed that, on the one hand, people stole because they were deprived, and, on the other, they were deprived because they were inherently sinful.<sup>97</sup> As with many aspects of Victorian society, morality evinced through "the equation of conduct and character."<sup>98</sup>

While arguably not a dangerous class committing heinous crimes, there existed none-the-less a population of people who were criminalized, namely, the unemployed poor. To appear idle, or be rowdy and drunk on the streets, and be unemployed and poor, sharply increased the risk of gaol in nineteenth-century Ontario. As Eric Monkkenkon asserts in his study of the "dangerous class" in nineteenth-century urban America, "urbanization did not cause a social disruption which filled the poorhouse and criminal courts with formerly respectable people; rather, it affected the kind and

quality of social deviance."<sup>99</sup> If not a dangerous class, by the end of the 1870s, there indeed was a criminalized sub-class.

Fairness and justice were to be determined more by the courts than by religious institutions and community customs with the result that stark distinctions existed between urban communities where the transfer was more rapid and rural communities where the transformation was often delayed. Laws, courts and police forces formed the basis for exercising state regulations. As such, they provided the government with the means to maintain public order and authority. The general topography of gaol and prison committals tells us much about state efforts to impose a rigid structure of law and order among communities in Canada West. A more detailed discussion of specific "crimes" and "criminals" shows how, despite this rigidity, local social mechanisms remained in force.

1. Egerton Ryerson, "The Importance of education to a manufacturing and a free people," Journal of Education of Upper Canada, 1 (October, 1848), 300, cited in Susan E. Houston, "Victorian Origins of Juvenile Delinquency: A Canadian Experience," in Education and Social Change, Themes from Ontario's Past ed., Michael D. Katz and Paul H. Mattingly, (New York, 1975), 85.
2. On the contagion theory of criminality see Hindus, Prison and Plantation, 235.
3. PAO, United Counties of York and Peel, Minutes of Council, "Report of the Standing Committee on County Property and Gaol Management on the want of suitable Accommodation for a certain class of Criminals etc.," 11 June 1859.
4. Ontario, Sessional Papers, "Tenth Annual Report Inspector's Report," 1877, 56. See also, James M. Pitsula, "The Treatment of Tramps in Late Nineteenth-Century Toronto," Historical Papers, (1980), 116-32.
5. Michael Katz, Michael Doucet and Mark Stern, The Social Organization of Early Industrial Capitalism (Cambridge, 1982), 204.
6. Douglas Greenberg, "Patterns of Criminal Prosecution in Eighteenth-Century New York," New York History, LVI (1975), 153.
7. Rutherford, A Victorian Authority, 3.
8. S. Moodie, Mark Hurdlestone, The Gold Worshipper (London, 1853), I, xx-xxii as cited in J.J. Talman, "Three Scottish-Canadian Newspaper Editor Poets," Canadian Historical Review, 28 (1947), 166, cited in Ibid.
9. See "An Act to require Justices of the Peace to make returns of Convictions and Fines, and for other purposes therein mentioned." SC, 4 & 5 Vic., cap. 12, sec. 4, 1841.
10. The Stratford Beacon, 22 September 1865.
11. Hindus, Prison and Plantation, 251.
12. Beattie, Attitudes Towards Crime and Punishment in Upper Canada, 2.
13. Each separate sample size has a reliability of plus or minus five percent based on the statistical table provided in Herbert Arkin and Raymond R. Colton, Tables for Statisticians (New York, 1963), 145.
14. Throughout this period York county and the city of Toronto remained within the same judicial district. Note that the early periods also include Ontario and Peel counties.
15. See "An Act for the more speedy Trial and Punishment of Juvenile Offenders." PSC, 20 Vic., cap. 29, 1857. On juvenile delinquency in Toronto during a slightly later period see

Susan E. Houston, "The 'Waifs and Strays' of a Late Victorian City: Juvenile Delinquents in Toronto," ed., Joy Parr, Childhood and Family in Canadian History (Toronto, 1982), 129-42 and Houston, "Victorian Origins of Juvenile Delinquency: A Canadian Experience," 83-109.

16. The number of widows and widowers is underestimated as the designation "widow/er" only became a category on some registers in the 1860s.

17. PAO, RG, 390-9, Judge Burns, Perth County, 1856, The Queen vs John M., 287-93.

18. PAO, RG 22, 390-12, Judge Richards, Grey County, 1861, The Queen vs Ann M., 202-6.

19. On the importance of married women's work in frontier American societies see Sandra Myers, Westering Women and the Frontier Experience, 1800-1915 (New Mexico, 1982), Joan Jensen, Loosening the Bonds (Westford, Mass., 1986) and Laurel Ulrich, Good Wives, Image and Reality in the Lives of Women in Northern New England 1650-1750 (New York, 1982). Recognition of women's work in rural/pioneer societies is the subject of considerable debate in American historiography. Some see a strict division of labour between women and men where women were merely "helpmates" for men who failed to reciprocate doing women's chores, others argue that these roles were more blurred claiming that men did "women's chores" and, moreover, respected women's work. For an overview of the debate see Myers, Westering Women and the Frontier Experience, chapter 1, "The Madonna of the Prairies and Calamity Jane, Images of Westering Women," 1-11. Although more directly interested in women's economic contribution and production in nineteenth-century Ontario rural society, Marjorie Cohen comments on the "apparently strict division of labour" between men and women on farms and the failure of men to assist or appreciate women's efforts. Marjorie Cohen, Women's Work, Markets, and Economic Development in Nineteenth-Century Ontario (Toronto, 1988), 68, 67-71. On the related life cycle patterns of work by rural daughters and wives more generally in nineteenth-century Ontario farms see, Rosemary Ball, "'A Perfect Farmer's Wife' Women in 19th Century Rural Ontario," Canada, An Historical Magazine, 3 (December 1975), 2-23.

20. Categories followed the model outlined in Lorna R. McLean, "Home, Yard and Neighbourhood: Women's Work and the Urban Working-Class Family Economy, Ottawa, 1871," (Unpublished MA thesis, University of Ottawa, 1990), 112-14.

21. Evaluating the paid and unpaid work of women is fraught with difficulties. Recent studies have identified the under-reporting of women's paid labour in other nineteenth-century "institutional" records. See for example Bettina Bradbury, "Women and Wage Labour in a Period of Transition: Montreal, 1861-1881", Histoire sociale/Social History, 17 (1984), 124-5 and Elizabeth Roberts, "Women's Strategies, 1890-1940," in Labour and Love, Women's Experience of Home and Family, ed. by Jane Lewis (Oxford, 1986), 227. These terms are used here to provide further evidence about the women and their general public and private space in society. This is not to deny that many of the women not listing employment were, in fact, employed seasonally or part-time.

22. See for example my study of women in an urban Ontario community in 1871. Seventy per cent of the widows listed a source of income on the census return. When widows of "independent means" were excluded from the sample, it was reduced to 43 per cent. Lorna R. McLean, "Single Again: Widow's Work in the Urban Family Economy, Ottawa, 1871", Ontario History, LXXXIII, (1991), 132. The figures for employed widows in nineteenth-century Montreal are lower at around 20 per cent. See Bettina Bradbury, "Surviving as a Widow in Nineteenth Century Montreal", Urban History Review/Revue d'histoire urbaine, 17 (1989), 153.
23. Harvey Graff, The Legacies of Literacy (Indianapolis, 1987), 347.
24. For this study headings on gaol registers were categorized as follows: illiterate includes "neither read nor write" or "none"; semi-literate includes "elementary instruction", "read or write imperfectly", "read only" or "write only"; literate and/or instruction includes "read or write well", "read or write very well" and/or "superior instruction". The intention here is not to engage in the ongoing debate on the causal relationship between literacy and criminality. Rather the purpose here is to identify the high degree of illiteracy and semi-literacy among the arrested population. The literature on literacy and crime is voluminous. For a good, though somewhat dated overview of the debate, see Harvey J. Graff, The Literacy Myth (New York and San Francisco, 1979), 235-67.
25. Journal of Education, 10, (1857) cited in Harvey J. Graff, "'Pauperism, Misery, and Vice': Illiteracy and Criminality in the Nineteenth Century," Journal of Social History, 11 (1977), 250.
26. Adjustments were made for children. Canada, Census of Canada, 1870-71, Vol. I, "Table II -- Population by Religions" and "Table IV. -- Birth Places of the People."
27. The exception is Grey where only a third of the women in gaol were from the United Kingdom.
28. Only among the women in Grey and the men in Perth was the representation of Irish inmates slightly under half the total United Kingdom grouping.
29. Ontario, Sessional Papers, "Seventh Annual Inspector's Report," 1874, 67.
30. Notwithstanding, as Langmuir noted, an over-abundance of liquor also caused a rise in crime. Ibid.
31. "Criminal Statistics," The Canada Law Journal, XIII (December 1877), 266.
32. The exception was Toronto. The population of women in York county exceeded that of Toronto in 1881. NAC, Canada, Census of Canada 1870-71, Vol. IV, Census of 1840, Upper Canada "Population, Sexes, Ages"; Canada, Census of Canada 1870-71, Vol. IV, Census of 1848, Upper Canada "Dwellings, Families, Population, Sexes, Conjugal

Condition; Canada, Census of Canada 1870-71, Vol. IV, First Report on the Census of the Canadas, "The Electoral Divisions of Upper Canada . . . 1848"; Canadas, Census of the Canadas, 1851-52, Vol. I, General Abstract of Ages Etc.--Upper Canada and "First Report of the Census of the Canadas"; Canadas, Census of the Canadas, 1861, Vol. I, "General Abstract of Ages, Etc.--Upper Canada, 1861"; Canadas, Census of Canada, 1870-71, Vol. I "Table 1.--Areas, Dwellings, Population, Sexes, Conjugal Condition"; Canada, Census of Canada, 1880-81, "Areas, Dwellings, Population, Sexes, Conjugal Condition."

33. The bulk of the women in Toronto/York were from the city.

34. As above, most of the men in Toronto/York resided in the city.

35. Katz, Doucet and Stern, The Social Organization of Early Industrial Capitalism, 224.

36. There is a long history to this practice of sending selected offenders packing. See, for example, Rothman, The Discovery of the Asylum, 20-25.

37. There were no widowers listed for Leeds/Grenville.

38. For towns/cities Leeds/Grenville refers to Brockville, Grey is Owen Sound, Perth is Stratford and the city in York is Toronto. Gaolers in Toronto/York and Brampton rarely completed the column on residency in the registers. Generally they filled in the space when residency occurred somewhere other than Toronto. Based on this irregularity in recording there is no numeric value for this city/county. Other sources, however, confirm that overwhelmingly the majority resided in the city. Of the total gaol population of 755, in 1851, 681 (86 per cent) were Torontonians. PAO, Minutes of the Municipal Council of the United Counties of York, Ontario, and Peel, "Report of the Standing Committee on the State of the Jail," 27 January 1852.

39. On the mixed reception of African-Canadians in Ontario see, Shirley J. Lee, "Gender Ideology and Black Women as Community in Ontario, 1850-70," Canadian Historical Review, LXXV (1994), 53-73.

40. Schmalz discusses the early settlement of the Ojibwa in this area. Peter Schmalz, The Ojibwa of Southern Ontario (Toronto, 1991). See also Harrison, A New History of Grey County.

41. Hindus, Prisons and Plantations, 90.

42. On categorization of crimes see Appendix A: Criminal Categories.

43. The exceptions are for males only in both Grey, 1840-1849 and Leeds/Grenville, 1850-1869.

44. "Important" cases involved theft over \$80.00. The police chief reported that the aggregate value of stolen property reached \$1,615.00 and proudly boasted that fully sixty

percent had been recovered by the police. TCA, Toronto City Council Minutes, "Annual Report of the Chief Constable," 29 January 1879.

45. See below, chapter 5, 171-207.

46. PAO, RG 22, 390-1, Judge James Macaulay, Home District (Etobicoke), 1845, The Queen vs John H., 6-9.

47. PAO, RG 22, 390-13, Judge Hagarty, Owen Sound, 1869, The Queen vs Andrew A. and Sarah W., 395-97.

48. The township of Gleneg, for example, recorded its first settler in 1841 yet the township was not surveyed until 1850. Harrison, A New History of Grey County, 143, 207. See also Doris Pennington, Agnes Macphail Reformer (Toronto, 1989), 12.

49. Agnes Macphail details one such event occurring on her grandparents' farm. Pennington, Agnes Macphail, Reformer, 12. For similar accounts see also Davidson, A New History of Grey County, 231.

50. David Burley, "'Good for all he would ask': Credit and debt in the Transition to Industrial Capitalism--The Case of Mid-nineteenth Century Brantford, Ontario," Histoire sociale/Social History, XX (1987), 79-99.

51. See below, chapter 4, 137-170.

52. Ted Robert Gurr, "Historical Trends in Violent Crime: A Critical Review of the Evidence," Crime and Justice: An Annual Review of Research, 3 (1981), 298.

53. PAO, RG 22, Series 392, No. 3157, Leeds/Grenville, The Queen vs Eliza T. (also known as Eliza H.), 1859.

54. On legislation pertaining to infanticide across Canada see Constance B. Backhouse, "Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada," University of Toronto Law Journal, XXXIV (1984), 447-87.

55. The location was illegible on the transcript.

56. PAO, RG 22, Series 392, No. 3195, Leeds/Grenville, 1861, The Queen vs Eleanor S. In another case in Grey county, a farmer discovered a baby's body after several pigs dragged it into the clearing. PAO, RG 22, Series 392, No. 1865, Grey County, The Queen vs Jane R., 1862.

57. Constance Backhouse, Petticoats and Prejudice. Women and Law in Nineteenth Century Canada (Toronto, 1991), 162. No committals for abortion appear in the aggregate data. On legislation and judicial practice governing abortion in nineteenth-century Canada see, Constance Backhouse, "Involuntary Motherhood: Abortion, Birth Control and the Law in

Nineteenth Century Canada," Windsor Yearbook of Access to Justice, 3 (1983), 61-130.

58. Constance Backhouse reported a similar incident in her study of nineteenth-century abortion laws and practices. After an unsuccessful abortion attempt the mother was later charged with infanticide. Backhouse, "Involuntary Motherhood," 80.

59. Bettina Bradbury, "The Fragmented Family: Family, Strategies in the Face of Death, Illness, and Poverty, Montreal, 1860-1885," in Childhood and Family in Canadian History, ed. by, Joy Parr (Toronto, 1982), 109-128.

60. PAO, RG 22, Series 452, Judge Galt, Owen Sound, 1877, The Queen vs William D., 12-15.

61. On the legislative and judicial practice regarding rape cases in the nineteenth-century see, Constance Backhouse, "Nineteenth-Century Canadian Rape Law 1800-92," in Essays in the History of Canadian Law, Vol. II, ed. by Flaherty, 200-47. On Upper Canada see Ruth Olsen, "Rape -- an 'un-Victorian' aspect of life in Upper Canada," Ontario History, LXVIII (1976), 75-92 and for the turn of the twentieth century in York see Carolyn Strange, "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario, 1880-1930," in Essays in the History of Criminal Law Vol. V, Crime and Criminal Justice, ed. by Phillips, Loo, and Lewthwaite, 207-51 and for Ontario see Karen Dubinsky, Improper Advances. Rape and Heterosexual Conflict in Ontario, 1880-1929 (Chicago, 1993).

62. Helen Boritch and John Hagan, "A Century of Crime in Toronto: Gender, Class, and Patterns of Social Control, 1859 to 1955," Criminology, 28 (1990), 571.

63. Stratford City Hall, (SCH) Stratford Town Council Minutes, 19 January 1857, followed by a second appointment in 19 January 1858; Owen Sound City Hall, (OSCH) Owen Sound Council Minutes, 15 March 1858; Brockville, appointed a chief constable, and four constables, divided among the wards. MOCLG, Leeds/Grenville County Council Minutes, 17 January 1859. TCA, Minutes of the City Council of Toronto, Appendix, No. 7, 1 February 1859.

64. Donald Black, "Production of Crime Rates," American Sociological Review, 35 (1970), 733-48 cited in Helen Boritch and John Hagan, "Crime and the Changing Forms of Class Control: Policing Public Order in 'Toronto the Good,' 1859-1955," Social Forces, 66 (1987), 314.

65. Eric Monkkonen, Police in Urban America, 11. On policing in several Canadian cities see Michael McCulloch, "Most Assuredly Perpetual Motion: Police and Policing in Quebec City, 1838-58," Urban History Review/Revue d'histoire urbaine, XIX (1990), 100-12; Greg Marquis, "The History of Policing in the Maritime Provinces: Themes and Prospects," Urban History Review/Revue d'histoire urbaine, XIX (1990), 84-99; and John Weaver, "Social Control, Martial Conformity and Community Entanglement: the Varied Beat of the Hamilton Police, 1895-1920," Urban History Review/Revue d'histoire urbaine, XIX (1990),

113-27.

66. As noted by Donald Akenson "in the earliest stages, in an 'empty' township such as Leeds and Lansdowne [was] until 1815, individual effort was characteristic." Akenson, The Irish in Ontario, 106.

67. See below, chapter 3, 97-136.

68. John Weaver notes a similar increase in public peace committals in the Gore district (Hamilton) between 1843 and 1851 following a series of by-laws passed in the 1830s and early 1840s. As well, he reports on the more "active and vigilante system" of policing during this time in response to public concerns. John Weaver, "Crime, Public Order, and Repression: The Gore District in Upheaval, 1832-1851," Ontario History, LXXVIII (1986), 182, 186-87.

69. This legislation was not limited to public moral infractions but included other forms of public entertainment and business regulation such as circuses and auctions.

70. David Sugarman uses this term in reference to the ideological dimensions of law in his review of M.J. Horwitz, The Transformation of American Law (London, 1977) in British Journal of Law and Society, 7 (1980), 304.

71. See by-law number 211, Owen Sound regarding protection of public morals. OSCH, Owen Sound Council Minutes, 23 August 1875. During the seventies many communities created public spaces through local beautification projects. In 1873, for example, Owen Sound spent \$1,000.00 to purchase shade trees. OSCH, Owen Sound Council Minutes, 6 July 1874.

72. In 1878, Owen Sound town council recommended the appointment of a police commission "in view of securing a better and more satisfactory working of the department." OSCH Owen Sound Council Minutes, "Report of Commission on Police," No. 3, 7 October 1878. In 1879, Owen Sound town council passed a by-law establishing a police force under the authority of a commission. OSCH, Owen Sound Council Minutes, By-law No. 267, 2 June 1879.

73. Hindus, Prison and Plantation, 251.

74. Identifying prostitution as a crime also reflects the growing concern over health concerns, specifically venereal disease. See Jay Cassel, The Secret Plague: Venereal Disease in Canada 1838-1939 (Toronto: 1987). For an overview on aspects of surveillance and regulation of reproduction and sexuality in the nineteenth century see Carol Smart, "Disruptive bodies and unruly sex: The regulation of reproduction and sexuality in the nineteenth century," in Regulating womanhood: historical essays on marriage, motherhood, and sexuality, ed. by Carol Smart (New York, 1992), 7-32. The literature on prostitution is extensive. For a recent overview see John McLaren's review of Alain Corbin, Women for Hire: Prostitution and

Sexuality in France after 1850 (translated by Alan Sheridan) (Cambridge, Mass., 1990) in Canadian Journal of Women and the Law/Revue femmes et droit, 7 (1994), 213-22.

75. Constance Backhouse, "Nineteenth-Century Canadian Prostitution Law, Reflection of a Discriminatory Society," Histoire sociale/Social History, XVIII (1985), 387-88. On reforming efforts in the United States during the progressive era see, Ruth Rosen, The Lost Sisterhood (Baltimore, 1982) and in Britain, J. Walkowitz Prostitutes in Victorian Society: Women, Class and the State. New York, 1980.

76. The Stratford Beacon, 2 April 1869.

77. Local conditions facilitated the plan. The house in question spanned a mill. This story which appeared originally in the local St. Marys newspaper, The Argus was carried in the Stratford paper under the heading "AN EXAMPLE FOR STRATFORD TO FOLLOW." The Stratford Beacon, 9 December 1859.

78. PAO, MS 610, Brockville Town Minutes and By-laws, 6 May 1867.

79. Ibid, 1 April 1872.

80. Michael Cross, "'The Laws Are Like Cobwebs': Popular Resistance to Authority in Mid-Nineteenth Century British North America," in Law in a Colonial Society: The Nova Scotia Experience, ed. by Peter Waite, Sandra Oxner and Thomas Barnes (Toronto, 1984), 103-23; Bryan Palmer, "Discordant Music: Charivaris and Whitecapping in Nineteenth-Century North America," Labour/Le Travailleur 3 (1978), 5-62; and Allan Greer, "From Folklore to Revolution: Charivaris and The Lower Canadian Rebellion of 1837," in Historical Perspectives on Law and Society in Canada, ed. by Tina Loo and Lorna McLean, (Toronto, 1994), 35-55.

81. OSCH, Owen Sound Council Minutes, By-law No. 12, 27 February 1857.

82. The Owen Sound Advertiser, 12 August 1875.

83. John W. Grant, A Profusion of Spires (Toronto, 1988), 154. For insights into how church discipline functioned in one religious community see, Cecilia Morgan, "Gender, Religion, and Rural Society: Quaker Women in Norwich, Ontario, 1820-1880," Ontario History, LXXXII (1990), 273-87.

84. Davidson, History of Grey County, 269.

85. Grant, A Profusion of Spires, 221-23

86. Hay, "Property, Authority and the Criminal Law," 28.

87. McMahon, Donald J. "Law and Public Authority," 411. John B. Robinson was Chief Justice of Ontario from 1829 to 1863.

88. For Robinson's view on the benefits of prison labour see, David Dowes, "Property, God and Nature in the Thought of Sir John Beverley Robinson," McGill Law Journal/Revue de droit de McGill, 30 (1985), 394.
89. Grant, A Profusion of Spires, 229.
90. S.D. Clark, Church and Sect in Canada (Toronto, 1948), 272.
91. In an effort to maintain religious decorum on Sunday the provincial government moved to restrict drinking, sports and other disruptive activities see "An Act to Prevent the Profanation of the Lord's Day." PSC, 8 Vic., cap. 45, 1845.
92. Clark, Church and Sect in Canada, 272. On the general shift in society from sectarian values of otherworldliness and spirituality to problems in the wider secular society see Ibid, Chapter 5, "Conflict of Church and Sect, 1832-1860," 234-72.
93. For a discussion on the alliance between church and state, in particular the reclaiming of the sacred through the secular see, William Westfall, Two Worlds, The Protestant Culture of Nineteenth-Century Ontario (Kingston and Montreal, 1989), chapter 4, "The Alliance of Church and State: Dissolving the Religion of Order," 82-125.
94. Historian Lynne Marks places the decline in church discipline in Ontario in the mid 1850s. Personal conversation, January 1995. See also Grant, A Profusion of Spires, 167-68.
95. Many legal sanctions resembled earlier religious ones. Some combined both roles. According to René Hardy, in one part of Québec, certain Curé's assumed the role of police officers, while others reported crimes against the church to the local justice of the peace. René Hardy, "Le greffier" unpublished paper cited in J.I. Little, Crofters and Habitants, Settler Society, Economy, and Culture in a Quebec Township, 1848-1881 (Montreal and Kingston, 1991), 212.
96. The apparent rise of the criminal class among nineteenth-century industrializing cities has been studied in depth in France and United States. Despite widespread perceptions of rampant crime there exists no causal relationship between urbanization, poverty and crime. Nor does the evidence support the existence of a criminal class. See Louis Chevalier, Laboring Classes and Dangerous Classes in Paris During the First Half of the Nineteenth Century trans. Frank Jellinek (New York, 1973) originally published as Classes Laborieuses et Classes Dangereuses à Paris pendant la première moitié du XIX Siècle, (1958); Monkkonen, The Dangerous Class. In Canada, Katz, Doucet and Stern conclude in their study of criminals in Hamilton that despite important influences of sex, age, place of residence and occupation, "[T]hose arrested for the major types of crimes did not constitute a unified criminal class." Katz et al, The Social Organization of Industrial Capitalism, 227. Similarly, in his study of an earlier period in the Gore district, an area that includes Hamilton, John Weaver argues that among those charged with offences over the years "the virtual absence of any pattern of truly vicious criminality upsets simple descriptions about a

criminal type." Weaver, "Crime, Public Order, and Repression," 194.

97. Greenberg, "Patterns of Criminal Prosecution in Eighteenth-Century New York," 146.

98. Houston, "Victorian Origins of Juvenile Delinquency," 88.

99. Monkkonen, The Dangerous Class, 164-65.

### CHAPTER 3

#### SOCIAL WELFARE AND "STREET SWEEPING"

Public peace offences formed the majority of committals in Ontario gaols. Although not considered "serious" crimes, rising incidences troubled Upper Canadians. As John Beattie noted in his documentary study on attitudes towards crime and punishment, crime which proceeded from morality posed, in the minds of many, a more serious threat than personal or property crime.<sup>1</sup> An alliance between morality and social order underlay the discourse on public order offences. Further uncertainty about the rapidly expanding immigrant and urban populations increased speculation of social deterioration and instability. The legal system offered one response to social anxiety.

In its effect, the state, over time, redefined a series of traditional behaviours as criminal by virtue of public space. We can see this operating in frontier/rural societies where vagrancy retained its earlier social welfare function. Further along the social developmental process urban communities confronted other ideological forces that altered the social meaning of this and other public behaviours such as drunkenness.

Use of space and by whom was determined by interactions between the municipal and judicial directors who regulated public places and the citizens who laid claim to these venues. Courts were instrumental in promoting and maintaining a social, legal construction of space as public -- as opposed to private -- by defining and redefining selected behaviours as prosecutorial. Construction of social space concomitant with the changing construction of crime, in its broadest form, evokes

Table 7: Committals of Men and Women for Offences Against the Public Peace in Four Communities in Ontario, 1840-81

| Offence         | York/<br>Toronto |       | Leeds/<br>Grenville |       | Perth |       | Grey  |       |
|-----------------|------------------|-------|---------------------|-------|-------|-------|-------|-------|
|                 | M(%)             | F(%)  | M(%)                | F(%)  | M(%)  | F(%)  | M(%)  | F(%)  |
| Vagrancy        | 7.9              | 13.0  | 22.5                | 28.9  | 28.9  | 37.0  | 56.8  | 73.6  |
| Drunkenness     | 77.7             | 75.9  | 58.8                | 43.8  | 60.6  | 27.8  | 31.1  | 12.9  |
| Other offences* | 14.4             | 11.1  | 18.7                | 27.3  | 10.5  | 35.2  | 12.1  | 13.5  |
| Total cases     | 100.0            | 100.0 | 100.0               | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| No. of cases    | 242              | 323   | 187                 | 194   | 142   | 281   | 148   | 140   |

\* See chapter two, Table 6.

Source: See Table 1.

what Philip Corrigan and Derek Sayer have described in a different context as an attempt "to moralize . . . to socialize society."<sup>2</sup>

For our purposes, attempts to "socialize society" are best seen by looking at the men and women charged with the majority of public peace crimes: vagrancy and drunkenness. Examining aggregate numbers provides an overview of some of the distinguishing characteristics of these inmates. As we have seen, wide variations existed between rural and urban communities; York/Toronto and Grey frequently appeared at opposite ends of the spectrum. Statistical differences among communities which are so apparent fail to reveal functional differences between rural and urban societies. When ranked according to the relative degree of urbanization the direct correlation in the decline in vagrancy and the increase in drunkenness among the four communities is striking (see Table 7). In Grey County, over half the men and almost

three quarters of the women charged with public peace offences were committed for vagrancy followed by a much lower percentage of roughly a third in Perth, around a quarter in Leeds/Grenville, and a surprisingly low one tenth in Toronto/York. If, as John Beattie observes, crime is one of the distinguishing characteristics of a society,<sup>3</sup> it is important to identify precisely distinctions among crimes related to differing societies.

In sparsely populated newly settled communities publicly funded gaols provided a surrogate for local social/medical welfare services. Nowhere is this more conspicuous than in Grey county. Among the 187 vagrancy charges some were pregnant women. Others came with families. Most were poor and without alternatives. Commonly they were very young, very old, sick, poor, injured, disabled or insane. Such people also stayed in gaol longer than the more able-bodied. Joseph L., for example, arrived in January 1871 with a severe case of frostbite. After having one foot amputated, he remained in gaol three more years. Others stayed only the season. Thirty-two year old Ann M., for example, ended up in gaol with her six year old daughter. On three separate occasions during the winter of 1865 she appeared with her daughter in court before Justice George Spencer charged with vagrancy. On January 5th "they" were sentenced to 21 days in gaol. After being released, they returned on 26 January for another 47 days. Their release time once again would be brief; mother and daughter served 21 days in gaol until the end of March when final release time coincided with the onset of spring.

As was often noted in inspection reports, conditions in the gaol were clean if spartan. Food was often adequate but rationed.<sup>4</sup> For some this crude form of hospitality was better than the alternative: living on the streets.<sup>5</sup> Such was the case of Clara C., one of four African-Canadian women charged with vagrancy. She was young, only 15, illiterate and living in Owen Sound. She first appeared in gaol December 1866. Justice Spencer handed down an open-ended sentence which allowed her to stay in gaol "[A]s long as she likes to". Clara celebrated Christmas behind bars and remained in gaol until May when she left of "her own will." She does not appear on the register until eight years later again charged with vagrancy. During three sentences, she served between one and two months. Another absence preceded her return in 1878. This time she appeared in court along with a four year old girl, Adeline C., probably her daughter; they both received a sentence of six months hard labour during which time Ms. C. "Delivered of a female Illigitmate [*sic*] child". Clara appeared in gaol with her children on two other occasions. In each case the sentence release time coincided with the end of winter.

Use of the gaol for maternity and other medical services was known in the community and reported in news stories. In 1874 the local paper described the plight of a woman found by a constable and taken to a hotel. She stayed there until "she was removed to the gaol where she gave birth to a child."<sup>6</sup> That same year The Owen Sound Advertiser reported a tragic story where medical services came too late. One seriously ill 15-year-old girl committed to gaol as a vagrant later died from illness and malnutrition. According to the gaol surgeon, "if we'd had her 10 days earlier we

could have saved her."<sup>7</sup> Gaol also provided medical services for non-residents. A man who arrived in Owen Sound in search of his relatives "was ill due to his weakness and exposure to cold in travelling." He went to gaol "to be taken care of till he got better."<sup>8</sup>

None of these press reports regretted local benevolent efforts in aid of the homeless, aged or infirmed nor did they fret about the added burden on local rate payers. One local mayor even issued an order to the gaoler that if it was "dangerous to be allowed to remain out" at night any vagrant or party without a home asking permission to enter the gaol was to be admitted and dismissed in the morning without a charge being laid.<sup>9</sup>

Inspector Langmuir, however, strongly opposed these institutional irregularities; he supported the actions of the attorney general's office issuing instructions overriding the mayor's orders.<sup>10</sup> Langmuir disapproved of gaols as medical and charitable resources. He attempted without apparent success to eliminate such procedures. In 1876 he observed that in Owen Sound "[T]he commitment of Hospital and Poor-house cases is still a prominent feature in this Gaol's population."<sup>11</sup> Again in 1879, he noted that over two-thirds of the 52 prisoners confined to the 32 cells were vagrants, many of whom were sick or "lying in."<sup>12</sup> Likewise, the same year, he concluded that "[N]ot one criminal was in custody," in the Stratford gaol, "so far as the character of the inmates are concerned, [it] was to all intents and purposes a poor-house and lying-in-hospital." Most were ill, elderly, young or pregnant.<sup>13</sup>

As Langmuir correctly observed, vagrants in gaol were often physically unable to care for themselves.<sup>14</sup> When reporting on the gaol sentence of 60 days for one 88 year-old woman convicted of vagrancy, the editor of The Owen Sound Advertiser lamented that despite having devoted her life to raising a family no one in town cared for her.<sup>15</sup> Some "offenders" spent their last few months in the care of a gaoler, as in the case of another man who died in his cell three months after being admitted.<sup>16</sup> Clearly, this gaol served the double function of a detention centre, as well as, medical and social services' centre.

Conversely low arrest percentages for vagrancy in York/Toronto are partially explained by the availability of privately funded medical and welfare services that provided care for sick, homeless and unemployed urbanites. By 1841 Toronto had both a House of Industry and a General Hospital. Other charitable organizations with a specific mandate for the care of children and women opened in the mid to late 1850s.<sup>17</sup> Nineteenth-century welfare assistance was sparse, poorly funded and often restricted to those considered deserving among the poor. The fact that it was often "sober" individuals accommodated by charitable institutions suggests one reason why so few appeared in the Toronto gaol charged with vagrancy compared to the high representation of men and women in gaol charged with drunkenness.

Although many inmates returned to Grey county gaol, the number of recommittals per person was considerably lower than those in the Toronto gaol. Of the 42 women, for example, arrested for vagrancy in York/Toronto, twelve listed ten or more previous committals. Perhaps some of the prisoners in Toronto/York also

saw the gaol as a temporary retreat. In one case, three "girls of the town" were brought up on charges of disorderliness. They had been in custody frequently that year for "offences against public morality." On this occasion, they arrived at City Hall station late one January night requesting lodging. When refused, they began smashing windows until the constable took them in.<sup>18</sup>

Although some Torontonians may have seen the gaol as a refuge, it is apparent that certain magistrates did not.<sup>19</sup> The three women cited above each received gaol sentences of one month, including the unusual punishment of two weeks solitary confinement.<sup>20</sup> In another case magistrate George Gurnett inadvertently revealed, when admitting a "dissipated" elderly man with frost-bitten feet to gaol as a vagrant, that he was "unwilling to have the cells, which are properly the receptacle of criminals, made a lodging house for vagrants." He sentenced the prisoner to gaol for the month of February. In this case Gurnett made an exception committing the man to gaol rather than sending him to the house of industry. No doubt Gurnett was influenced by the offender being "a little tipsy."<sup>21</sup>

In York/Toronto the majority of committals occurred between 1847 and 1867. During those years vagrants received a sentence of one month hard labour in all but one case.<sup>22</sup> Among the men, only one had an extensive record of recommittals; for the majority it was their first offence. Surprisingly, in 1873 men were given a choice of punishment or fine; most men, however, like most women, served their time. In spite of dire circumstances or harsh winter conditions Toronto gaol meted out standard punishments; gaol was not to be a place of refuge.

Analyses of gaol registers reveal a clear trend in the life course of inmates which suggests they entered facilities not only when caught but perhaps by plan. Anecdotal evidence suggests that for a later period when industrial farms were more readily available gaol was preferred over other refuge alternatives. Stormi Stewart reports one 1890 case where an older woman living in a rural community pleaded with the magistrate to send her to gaol rather than the industrial home.<sup>23</sup> Similarly Stephen Speisman argues that the gaol was a better choice of emergency housing than the House of Industry.<sup>24</sup>

Preferences for gaol may reflect differences in daily routines among institutions. According to Stewart, the schedule for the House of Industry governed the inmates' activities from morning till night.<sup>25</sup> We know from gaol reports that crowding among inmates and a dearth of labour often left prisoners idle. Young women and men may also have preferred gaol to avoid the possibility of being sent out by the Toronto House of Industry to service or apprenticeship among trades or businesses under "the protection of the Institution."<sup>26</sup>

Statistical evidence supports this interpretation. Across the board, women and men charged with vagrancy were younger and older than the total population of women and men in gaol including those charged with drunkenness. The age spread of vagrants reaches the outer extremes of the spectrum and includes those in the potentially most vulnerable positions.

The trend towards a high number of incarcerations for young women with children and older women and men also applies to other rural communities. In Perth,

for example, over two-thirds of the women, and almost three-quarters of the men in the 21-40 age group were charged with drunkenness. Age distribution for vagrancy illustrates a dramatically different trend. Almost one quarter of all women and men were over 61 years and 42 per cent of the women were under 20 years. Conversely, in York/Toronto, committals for vagrants clustered around the mid-age range and declined at the outer age limits.

Not only were those charged with vagrancy both older and younger, they were also more often single than those charged with drunkenness. In Perth County, over 80 per cent of the women, and almost two-thirds of the men were single (see Table 8). Of particular significance is the high percentage of widows and a slightly lower percentage of widowers incarcerated in gaols. Local correctional facilities supplied welfare needs for the homeless who lacked spousal/family support. Such was the case of one elderly widower, Mr. George K. who died in the Stratford gaol. According to the Coroner's Inquest Report Mr. K. had no friends and his two daughters lived in the United States. He resided in the gaol for the four years proceeding his death.<sup>27</sup> Even when families lived close by, illness forced some to seek the medical care of the gaol surgeon and the daily services provided by the matron and gaoler. Mrs. Amy J. left behind four children and a husband when she became sick and went to gaol.<sup>28</sup>

Without doubt many inmates were either too young or too old to readily find employment. Among those with occupations most worked in the lower socio-economic group which for women meant domestic service or prostitution, although some held positions as labourers or textile workers. As economies fluctuated

Table 8: Marital Status of All Women and Men Charged with Vagrancy in Four Communities, 1840-81

| Marital status | York/<br>Toronto |       | Leeds/<br>Grenville |       | Perth |       | Grey  |       |
|----------------|------------------|-------|---------------------|-------|-------|-------|-------|-------|
|                | Freq.            | %     | Freq.               | %     | Freq. | %     | Freq. | %     |
| <b>WOMEN:</b>  |                  |       |                     |       |       |       |       |       |
| Married        | 8                | 19.1  | 21                  | 38.2  | 19    | 18.3  | 47    | 45.6  |
| Single         | 32               | 76.2  | 34                  | 61.8  | 55    | 52.9  | 53    | 51.5  |
| Widowed        | 2                | 4.8   | 0                   | 0.0   | 30    | 28.8  | 3     | 2.9   |
| Total          | 42               | 100.0 | 55                  | 100.0 | 104   | 100.0 | 103   | 100.0 |
| Missing cases  | 0                |       | 0                   |       | 0     |       | 0     |       |
| <b>MEN:</b>    |                  |       |                     |       |       |       |       |       |
| Married        | 3                | 15.8  | 8                   | 19.0  | 10    | 24.4  | 3     | 15.8  |
| Single         | 15               | 78.9  | 34                  | 81.0  | 25    | 61.0  | 15    | 78.9  |
| Widowed        | 1                | 5.3   | 0                   | 0.0   | 6     | 14.6  | 1     | 5.3   |
| Total          | 19               | 100.0 | 42                  | 100.0 | 41    | 100.0 | 19    | 100.0 |
| Missing cases  | 0                |       | 0                   |       | 0     |       | 0     |       |

Source: See Table 1.

recessions and depressions threatened jobs and those who held them. Links between economic cycles and vagrancy committals is aptly demonstrated in Leeds/Grenville. Incarcerations for men peaked between 1875 and 1878 when the full impact of the depression hit many industries the hardest. For women, the effects of unemployment occurred at the onset of the economic collapse between 1872 and 1873 and gradually declined over the next three years.

The prolonged effect of the 1873 depression on working-class men and the benefits of welfare services in gaol are further underlined in Inspector Langmuir's

1879 report on Grey county. On the day of his inspection in March, 52 prisoners were incarcerated, 43 males, and 9 females. "The enormous increase in the number of vagrants" in the Owen Sound gaol, he stated "was chiefly caused by work being stopped on the construction of the Hamilton and North-Western Railway, whereby three hundred men were thrown out of employment".<sup>29</sup> Without doubt local gaols provided both temporary and long term welfare and medical services for the poor, unemployed, elderly, young, sick and/or pregnant residents of frontier/rural Ontario well beyond early stages of settlement, it continued towards the end of the nineteenth century.

If vagrancy proved the dominant "public order" crime in rural areas, particularly frontier communities, drunkenness proved equally dominant in urban communities. The life course of those charged with drunkenness differed from the pattern established for all committals in each county. Drunken offenders were generally older and more likely to be married than the local gaol population. The shift in age was particularly evident in frontier/rural areas and occurred more often for women than men. In Perth and Grey counties, for example, the increase for women between 21 and 40 is almost 20 per cent higher than female cohorts within each county sample population. Similarly women over 41 and under 60 were almost ten per cent greater than all gaoled women in the same age group. The rise in the incidence of committals of married women in the recently settled communities of Perth and Grey far exceeded the overall county committal population by 27 per cent and 36 per cent, respectively. Conversely in York/Toronto trends in marital status

between the drunken women and the overall county population remained the same and in Leeds/Grenville the percentage of married women committed for drunkenness actually declined relative to the overall gaoled group. Taken together, it appears, that rural, married women either indulged in home brew or frequented local taverns significantly more often than their urban cohorts.

Across the spectrum of communities the percentage of Irish and Roman Catholics charged with drunkenness exceeded that of almost all those in gaol in each county.<sup>30</sup> The increase in gaoled Irish immigrants is particularly notable in Perth, Leeds/Grenville, and York/Toronto counties. Among rural areas it is most pronounced among women who were Irish and Roman Catholic. In contrast, York/Toronto records the widest dissimilarity between gaoled Irish males and the overall Irish population.

While studies of nineteenth-century Ontario temperance societies identified a persistent anti-drink lobby in Ontario<sup>31</sup> few have studied the public and private drinking habits and attitudes. Fewer still have examined drinking among women and men in rural and urban societies beyond descriptions in contemporary journals.<sup>32</sup>

Contemporary writings suggest that excessive use of spirituous liquors in Upper Canada, while not "universal," pervaded

social life in all parts of the country, and was as prominent in the backwoods as in the towns. . . . At almost every gathering liquor was served in abundance, and it was considered in the thirties that he was 'a moderate man who does not exceed four glasses in a day.'<sup>33</sup>

Although, consuming large quantities of "strong drink" was an acknowledged part of a rough masculine culture in frontier rural societies, little is known of the drinking habits of women. What we do know is that for urban women, the penalty was severe; public drunkenness identified the fallen.<sup>34</sup>

Temperance supporters frequently singled out for derision men and women working on the streets.<sup>35</sup> The 1850s heralded a revival of the movement in Ontario<sup>36</sup> inspired, it would appear, by efforts south of the border. In 1851 the "Maine Law" prohibited the sale or manufacture of liquor throughout the state;<sup>37</sup> in Canada West, 10,000 copies of the Maine Liquor Law, showing its workings and applicability in Canada were printed for distribution across the province.<sup>38</sup> As well sympathetic press reports focussed on the "triumph of humanity" in Maine where "the law has greatly diminished drunkenness". Among many accounts one visitor recalled seeing only three drunkards on the streets during a recent visit while another reported seeing none.<sup>39</sup> Local supporters waged battles against vice in rural and urban communities culminating with "the temperance act" in 1864. This reworking of earlier legislation not only restricted the sale of intoxicating liquors and licenses "for repression of abuses resulting from such sale", but provided municipal councils with authority to pass a by-law prohibiting the sale of liquor within their own community.<sup>40</sup>

Most councils allowed their new powers to lay unused. As temperance supporters campaigned at church meetings and petitioned the state to reduce the population of drinkers, municipal governments continued to issue liquor licences to local drinking establishments. No doubt reluctance to restrict sales resulted from

substantial annual revenues provided by fees charged for liquor licences. In 1864 the town of Brockville, for example, collected \$1,198.20 in Liquor License fees, a sum more than ten times the total amount collected for fines and fees in the Mayor's Court that year.<sup>41</sup> Similarly Toronto councillors filled municipal coffers through licence funds. In 1871 alone, the city amassed revenue of \$26,000.00 from tavern, shop and saloon licence payments.<sup>42</sup>

Alcohol was available from licensed and, according to one local inspector's report, unlicensed sources at almost any hour of the day or night. In 1850, the same year the provincial government passed a law certifying tavern licenses to suppress intemperance<sup>43</sup> a population of 30,000 Torontonians supported 152 Taverns and 206 beer shops. The evidence suggests a wide availability of liquor in both towns and cities. In 1859, in the midst of the depression, the ratio of taverns/saloons to population in Toronto was 157 to 1, and in Stratford, an even lower 70 to 1.<sup>44</sup>

In spite of provincial regulation, bars remained a dominant feature of rural landscapes.<sup>45</sup> In 1857 the small community of Owen Sound, licensed the maximum number of public houses (eleven) allowed by provincial statute for a population just under 3,000. Two years later council announced a limit of 15 taverns and 10 shops selling spirits.<sup>46</sup> Although women ran some liquor businesses, men owned and operated most.<sup>47</sup> Serving hours were lengthy. During week-days bars closed by eleven o'clock, and were "not to be opened again before the hour of six of the clock on the mornings". Not surprisingly, bars were closed on the Sabbath.<sup>48</sup>

It is difficult to determine distribution of licensed or unlicensed vendors in rural townships. The evidence suggests at least as many vendors if not more in rural than in urban areas. For example, in 1873, the county license inspector for Leeds/Grenville reported on 67 taverns spread across the countryside beyond the boundaries of Brockville. Most, but not all, were licensed.<sup>49</sup> Even more difficult to access, however, is the extent of home brew which we know was made, sold, consumed and exchanged among friends and relatives beyond the purview of local officials.

Although, it may have been legal to drink, public drunkenness violated Ontario law.<sup>50</sup> Drunkenness not only threatened public order, it led as many firmly believed, to profanity, immorality and further lawlessness. Local press reports throughout this period stressed the unsavoury consequences of excessive drinking and crime. As was often asserted in news' accounts, "after getting a little liquor" affrays, robberies, and family negligence resulted.<sup>51</sup> As further corroboration, statistical evidence linked gaol committals to alcohol abuse. In 1859, Stratford's gaol warden reported that 18 out of 21 cases involved intoxication.<sup>52</sup>

Other events illustrate the inter-relationship between legal and social/religious discourse which informed the ongoing temperance debate. Ecclesiastical leaders endorsed a legislated solution to reduce alcohol related crimes in a series of petitions. In 1851, a bishop in Toronto petitioned city council for a law to suppress intemperance.<sup>53</sup> Years later a petition signed by pastors of various denominations from Prescott reiterated the belief "[T]hat the legal sale of intoxicating liquors in any

community is the fruitful source of intemperance, poverty and crime in society."<sup>54</sup>

Similarly, follow-up accounts on the effects of the Maine law confirmed the profound impact of a prohibition law on reducing vice in the United States. Reporting on its influence, observers noted how "pauperism, vice and crime are diminished" and equally important, "morality and religion . . . [given] new revelations."<sup>55</sup>

The "fall" of respectable men and decent women through drinking formed another theme underlying media coverage often presented as personal testimonials or life narratives. One convicted murderer, speaking to an assembled crowd of prisoners, warned "against whiskey and bad company. Keep away from the liquor shops, these brought me to ruin."<sup>56</sup> Under differing circumstances a woman, formerly employed as a servant, was sentenced to gaol for drunkenness after succumbing to the temptation of the "bottle."<sup>57</sup> The sermonic tone of these stories, as reported in the press, served to alert the general public of further moral decline lest the liquor trade cease.

Support of temperance legislation among lay and judicial adherents can be summed up in a report issued by the grand jury of Perth county in 1857 which declared "unhesitatingly" that widespread sale of intoxicating drinks led to increased crime.

If fewer places existed for the retail sale of such Drinks, there would be, by all human reasoning and power of observation, *less cause* for the committing of the various crimes which occur in society from a common breach of the peace up to murder.<sup>58</sup>

Honourable Justice Hagarty concurred. Commenting on the provincial legislature's decision in 1860 to restrict the number of tippling houses by population, he responded favourably to eliminating these "hot-beds of crime in its worse phases".<sup>59</sup> In the minds

of a particularly influential and vocal constituency, drink, morality and crime were deeply imbricated; law played a central role in policing and punishing offenders.

Two exceptional provincial statutes, both related to alcohol, illustrate the lengths to which the provincial government extended its authority to protect the economic and moral interests of the community while limiting individual rights. In 1853, the province outlawed liquor sales "within three miles of the line of any Railway, Canal or other Public Work." These far reaching restrictions covered not only government construction but also projects undertaken by "any incorporated Company, or by private enterprise."<sup>60</sup> In an apparent effort to eliminate any potentially disruptive influences that might impede costly transportation projects, the government enforced prohibition to restrict workers' indulgences.

Later under the act of 1873, the provincial legislature sanctioned the committal of "habitual drunkards" to a provincial medical facility for treatment.<sup>61</sup> Recalling the rhetoric of temperance supporters, press and government officials the statute addressed the dual problem of drunkenness and habituation. Since,

it is clearly shown that drunkenness, directly and indirectly, is the cause of much of the disease, insanity and idiocy, as well as the crime and pauperism in the Province, and which evils it is most desirable to remedy or ameliorate.

Either voluntarily or by magisterial decree an "habitual drunkard" could be admitted to the hospital and detained for a period "not exceeding one year." As state guardians, government inspectors could seize a "drunkards'" property for maintenance or expenses during periods of treatment.

Alongside persistent efforts of temperance workers to restrict public drunkenness, men and women across Ontario, continued to be arrested and re-arrested for alcohol related offences. Surprisingly, given anecdotal reports of success in Maine, at no time in Ontario, did patterns of committals decline following temperance legislation. Instead, we see a different pattern emerging.

### Committals in York/Toronto Gaol, 1850-80 Women and Men Charged with Drunkenness

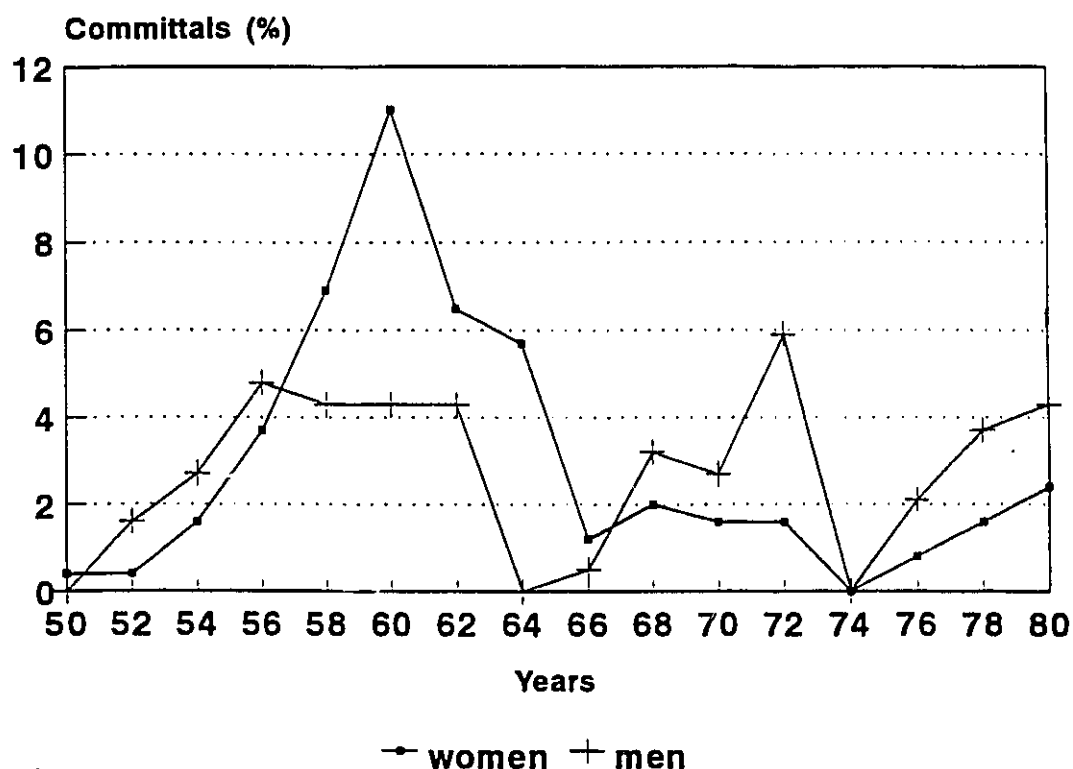


Figure 1.

Source: See Table 1.

Charges for drunkenness among Toronto women rose dramatically between 1856-65, peaking in 1860 (see Figure 1).<sup>62</sup> Despite annual population increases, at no other time do the figures for York/Toronto rise above the number of arrests in 1860. It was within this same nine year period that the Toronto gaol recorded a higher

female population than male. The high number of committals for women highlights the gendered nature of public peace and prosecution charges in large urban centres in the mid-to-late 1850s.

This trend resembles a national/international pattern of female incarceration. Studies in other parts of British North America report the highest level of committals for women between 1851 and 1861 (Hamilton) and 1865 and 1866 (Halifax).<sup>63</sup> American historian, Estelle Freedman notes a similar rise in women's convictions and imprisonments during the 1860s in several American cities. Between 1863 and 1867, female crime rates soared in New York City, Buffalo, Boston and Detroit. While a decline in crimes by men during the civil war partly accounts for the wide differentiation between male and female prisoners, nonetheless, in northern American cities, "the 1860s witnesses an independent rise in criminal convictions of women."<sup>64</sup>

Convictions for drunkenness as with other public peace offences carried a specific stigma for women.<sup>65</sup> The "ideology of femininity, so important in defining women's ideal conduct," in Victorian society, concludes English historian Lucia Zedner, "was no less important in responding to their worst."<sup>66</sup> Moreover, gendered perceptions towards drinking meant that while "intemperance could be a manly flaw . . . a woman's drunkenness was an almost unspeakable corruption of the purity essential" to motherly and societal responsibilities.<sup>67</sup>

The rhetoric of domesticity that relegated the moral and domestic sphere to women meant harsher penalties for those who abandoned their true womanhood for the streets, bars and bawdy houses of Toronto.<sup>68</sup> "[T]he very "'independence' of this

group, let alone their criminality," legal historian, Jim Phillips' asserts in his study of women and crime in Halifax, "was an affront to respectable society."<sup>69</sup> Convicted women entered the moral pit of "fallen women." Unlike in the past, Freedman argues, where even women convicted of a sexual offence more readily reintegrated into the community after suffering punishment, new moral standards of Victorian society condemned her to a lifetime categorization as a "fallen woman." Outcast, "the first offender often entered a vicious cycle which led her directly into the criminal class."<sup>70</sup> Already limited female employment opportunities were reduced further often leading to prostitution.<sup>71</sup> Notably among Toronto women many of those arrested and re-arrested for drunkenness listed their occupation as prostitute.

Other local structural and economic factors, meanwhile, also contributed to increased incarcerations for both women and men in mid-century Toronto/York. An increase in incarcerations coincided with the particularly zealous efforts of Toronto officials to define and regulate this prosperous, industrializing provincial capital.<sup>72</sup> In the early fifties, council discussed augmenting the size of the police force as well as the number of police stations "to make more ample provision for keeping the public peace" and "for the general protection of the Citizens."<sup>73</sup> In a letter to council in 1856 the Chief of Police documented the need to appoint detectives to the force, "for the safety and perfect order" of Toronto which like any other large city dependant on a commercial economy needed to be guarded against the "great many suspicious persons [who] frequent our city."<sup>74</sup>

Creation of the Toronto Board of Commissioners of Police, in 1859, followed a gradual increase in the number of police stations and officers between 1852 and 1859.<sup>75</sup> With the appointment of the Commission, sixty constables patrolled the streets ready to arrest disruptive drunkards.<sup>76</sup> The degree to which size of police units influenced the number of committals is further supported by the rapid decline in arrests in the early sixties when the number of policemen was reduced to 38 men.<sup>77</sup>

Given the desperate economic circumstances after the 1857 depression there might also have been a greater population on the street to arrest. High unemployment and despair may have driven some to downtown bars to drink. Moreover, periods of high unemployment probably forced some women to seek alternate, temporary employment as prostitutes.<sup>78</sup>

As compelling as these factors are, they alone do not adequately explain the intense rise in public peace committals particularly since, as we saw in the previous chapter, neither a dangerous nor a violent class of criminals seemed to have resided in the city. A study of the garotting panic in London in 1862 by historian Jennifer Davis provides a possible explanation for the pattern of committals in Toronto. According to her analysis, the moral panic that followed a series of highly publicized robberies or "garotts" in London had more to do with

the actions and reactions of the press, public, and various government agencies involved in control which created the 1862 'crime wave' rather than any significant increase in criminal activity in the streets. Thus, the garotting panic was clearly a 'moral panic': one of those episodes in which public anxieties, especially expressed and orchestrated by the press and by government actions, serve to 'amplify deviance' and to promote new measures for its control.<sup>79</sup>

Moreover, mobilizing public opinion during this time, Davis argues, contributed to dismantling the reformatory penal system and replacing it with a punitive model of convict treatment.<sup>80</sup>

While there is evidence of a public debate over the use of punishment as a deterrent in Ontario, more pressing demands in Toronto focussed attention on local policing and municipal control. Expanded coverage of Police Court cases in Toronto newspapers in the fifties amplified the rhetoric of widespread disorder promoting demands for greater police action.<sup>81</sup> Council policing reports, in anticipation of a police commission, also stressed the need for greater policing to maintain public peace. No doubt, the ensuing public debate or 'moral panic' in Toronto during the 1850s helped promote those objectives.

Over time York/Toronto not only arrested large numbers of individuals, it also convicted most of them. In all 88 per cent of women and 77.7 per cent of men pleaded or were found guilty.<sup>82</sup> Most women were repeat offenders, frequently convicted more than once and, in one extreme case, more than 46 times. In contrast, men had both a lower rate of recidivism collectively and for each individual man. Rarely, were the number of incarcerations higher than 10 committals for each man. This gendered difference in recidivism reflects not only ideological and economic differences it also underscores greater mobility by men, over women to avoid incarceration through relocation.

The case of Isabella C. illustrates sentencing trends in the city. In 1854 Ms. C., a 22-year-old woman born in Ireland, worked as a prostitute when arrested in

Toronto for public drunkenness and disorderliness. This was her seventh committal. She appeared in the Police Court in front of George Gurnett Esq., was found guilty and sentenced to one month in gaol with hard labour.<sup>83</sup> As was often the case, she was one of several women arrested in a group. One month later Isabella was released from gaol -- her time had expired. Sentences of one month hard labour, regardless of number of committals, were common in Toronto courts for women charged with drunkenness and was given much more frequently than the second most common sentence of 14 days hard labour. Up until 1868, few women in Toronto had the option of choosing between gaol and payment of fine and costs, and, as we shall see, few women availed themselves of this option.<sup>84</sup>

This case also illustrates an overall tendency on the part of Toronto mayors and magistrates to apply the letter of the law with no regard for differing social or economic circumstances. Observations of American historian Michael Hindus about the treatment of criminals in two American states appears appropriate in Toronto courts as well. As he discovered, "[T]o the extent that defendants were seen as members of a deviant or dangerous class, they lost their individuality. . . . Defendants seemed almost interchangeable."<sup>85</sup>

For those appearing in Toronto Police Court, magistrates frequently applied punitive penalties sending guilty parties "to break stones."<sup>86</sup> The 1850 statute provided a range in sentences for "drunkards":

not less than Five Shillings nor more than Twenty-Five shillings for his [*sic*] said offence, together with the costs of suit, the expenses of arresting the person so found intoxicated, and in keeping him in safe custody; and in default of payment shall be

imprisoned in the house of correction or other place of confinement for a space of time not exceeding one month.<sup>87</sup>

Presiding justices invariably imposed the lengthiest sentence -- one month -- with the harshest penalties -- hard labour.

Over time variations in sentencing occurred for convicted women and men in Toronto/York. From the mid-1860s two changes altered sentencing patterns for women. When George Boomer, Esq. replaced George Gurnet in the Police Court, gaol time increased from one month to upwards of two to three months.<sup>88</sup> With the arrival of Alexander McNabb as Police Magistrate in 1867 sentences altered; women were more frequently given the option of gaol sentence or payment. Payment of fines, however, became an option few women took.<sup>89</sup>

Although a sentence of one month hard labour remained common for both sexes, the provision of an option between fine and gaol differed. For men, the choice of gaol or fine offered occasionally in the 1850s, occurred more frequently in the 1860s and became standard sentencing practice by the 1870s. The fact that many men paid their fines, ranging from a few dollars in the 1860s to just under five dollars in the 1870s doubled the city's financial benefit. It also exempted men of means from penalties beyond a minor financial loss.

Taken together alterations in sentencing in Toronto Police Court appear to be more a result of changes in presiding magistrates than a consequence of broader reforming trends. In fact, changes in sentencing practice in York/Toronto were more in degree than in kind. The prevailing tendency among all justices was to administer harsh penalties for all convicted women and men in cases of drunkenness.

The percentage of convictions in Leeds/Grenville, meanwhile, was higher than in York/Toronto:<sup>90</sup> 93 per cent of the women and 91.8 per cent of the men charged in the Brockville courts received a guilty verdict. Along with high convictions, this county had an even higher recidivist population than Toronto. In Leeds/Grenville, almost half the population had previous committals.<sup>91</sup> Such was the case of David C., a 24-year-old bachelor found guilty of public drunkenness in 1859. On his fourth committal, he spent ten days in the county gaol. As with others, duration of punishment increased with the number of committals listed on the gaol register.

The case against David C. followed on the heels of a public morals by-law identifying public drunkenness as an offence. Under the new municipal legislation, punishment was a fine of not more than \$50.00, with costs of conviction. If unable to pay the alternative was gaol for not more than twenty days with or without hard labour. As in other counties, fines could be divided in half between the informer or prosecutor and the county unless the county brought the charge in which case the whole amount went to the municipality.<sup>92</sup>

Surprisingly, the type of punishment meted out to men and women over the 31 years in Leeds/Grenville varied only marginally.<sup>93</sup> On only a few occasions, mostly between 1854 and 1858, sentences offered a choice between gaol and payment of fines and costs. As in the case of other counties, women and men generally served their time.<sup>94</sup> The high number of women, and to a lesser extent men, who failed when given the option to take advantage of non-gaol alternative suggests they were poor. It also suggests that at times, married women may have served sentence time if

husbands failed to pay. Until the 1870s wives faced legal restrictions on ownership of "goods" or "chattels" that could be sold to pay debts. Either way, paying a fine was not an option to consider.

Once one looks beyond Toronto and Brockville it becomes clear that this pattern contrasts with committal/convictions in more recently settled communities. Perth county had a low rate of recidivism; among the 78 committals only 10 women (13 per cent) and 10 men (11.6 per cent) listed previous charges. Perth also had high convictions among those charged with drunkenness with more females (87 per cent) than males (70.9 per cent) found guilty.

Sentencing in Perth was complex. Although clear patterns exist on the surface, it is sometimes difficult to draw any firm conclusions from the data. The following observations, however, can be made.

In the main, two trends of punishment were meted out in the lower courts in Stratford. Gaol sentences were usually imposed with hard labour;<sup>95</sup> sentences offering time or payment also included hard labour. The first limited option occurred most frequently in the early years between 1856 and 1870 and was imposed more often on women than men. The second more favourable "choice" was awarded with increased frequency to men after 1860 and to women ten years later. This "choice" of punishments, however, was always more apparent than real. Few men and even fewer women ever paid fines. Overwhelmingly they served their time in gaol.

Such was the experience of Mary H. In the fall of 1875 Mary, a 34-year-old labourer's wife from England living in the small town of Ingersol, was charged with

drunkenness. Justice J.A. Scott of the Stratford Police Court found her guilty as charged and sentenced her to a "fine [of] \$1 Costs \$4 or 10 days in Gaol Labour". Like most others she served her sentence in the Stratford gaol. Like so many others in the community, she did not have the "extra" \$5.00 to pay a fine. Although fines, rarely exceeded \$5.00, little revenue flowed to county coffers, no doubt, disappointing parsimonious council members who refused to spend money, despite the pleas of gaol inspectors, to improve conditions in their "oft-condemned" judicial edifice.<sup>96</sup>

In Perth county range of sentencing varied by gender. Prior to 1860 women were rarely charged; if convicted their short sentence time resembled that of men. After 1860, the pattern altered. For men, sentences ranged between 1 to 45 days, with most falling between 10 to 20 days. Women, on the other hand, remained in gaol longer. In a range of 4 to 60 days, most fell between 10 to 30 days. After 1873 sixty day sentences became common. Shifts in punishment in the 1860s coincided with a period of expansion and development in Perth county. Again, as counties became more urbanized, severity of punishment for women increased.

The ambitious efforts of one man, Mr. Linton, are evident in the vigorous campaign against spirits in Perth county. His widespread influence may also explain the harsh punishments meted out after 1860. Campaigns against drunkenness were aided and abetted by his moral crusade.

By the early 1850s, Mr. Linton, a lawyer from Scotland, began his lengthy tenure as county clerk of the peace. In 1855, with the aid of two local clergymen, he

organized a petition later presented to both houses of the legislature by Perth MPP, Jacob DeWitt, in favour of a "Prohibitory Liquor Law".<sup>97</sup> Other reform efforts included publishing a free temperance periodical, The Challenge, which, among other ambitious endeavours, promoted a twenty-four point prohibitory By-law for the "Preservation of the Public Morals."<sup>98</sup>

In contrast with all other communities patterns of arrest, conviction and punishment differed significantly in Grey county. This area had the lowest arrests for drunkenness: 12.9 per cent for women and 31.1 per cent for men. The apparent inequality between women and men is reduced by the higher number of acquittals for men than for women -- less than one third of the men and two thirds of the women charged with drunkenness were found guilty. Sentences ranging from 24 hours to 2 months were overwhelmingly for gaol only.<sup>99</sup> Sentences were generally not punitive and for the most part those apprehended for drunkenness were held overnight and released when sober.

As we have seen, charges in the Owen Sound court house were widely distributed by sex, class, ethnicity and religion for public peace offences, notably drunkenness. Grey county, however, was also home to a community of African-Canadians and Aborigines. Members of both these minorities were no more likely to appear on the register than others.

Overall then, Grey county demonstrated a general tendency to arrest all miscreants regardless of status in the community. Anecdotal evidence corroborates this interpretation. In 1851, the local newspaper reported that for some time it had

been known within the community that certain, previously unidentified individuals, were selling alcohol illegally to Natives. According to the report, those charged were now found to be among the "respected" in the community. The editor praised the magistrates for bringing suspected parties to court and fining heavily -- nearly twenty pounds -- "regardless of personal respect, which they doubtless had for some of the party concerned." Unlike other areas where guilt resided only with those accused of drunkenness, the editor stated how in this instance, the guilt clearly rested with those furnishing the liquor.<sup>100</sup>

In sum, Grey county committals for drunkenness demonstrate a tendency towards leniency in judicial decisions for those charged with drunkenness which takes into account the financial exigencies and hardships of a rugged pioneer settlement. It also suggests that in a frontier culture where public events and social gatherings combined both drinking and reciprocal work arrangements drunkenness, while not desirable, was within the context of community social relations an acknowledged outcome. In Grey county, "drunkards" were part of a community and remained so even when appearing before the magistrate.

We are reminded, however, of more general assumptions about class, criminals and drunkenness in urban areas in remarks published in an 1865 edition of The Canadian Law Journal following passage of the temperance act. Unlike previous years, the editorialist observed,

drunkenness was not considered either criminal or disgraceful even amongst the more intelligent and educated classes of the community. By degrees . . . the drunkard has at length come to be generally considered as despicable and a disgrace to humanity.

This feeling is, . . . stronger as we ascend in the social scale; but it has not yet descended to those who compose the class most strongly imbued with the vice of intemperance. The public opinion which operates so beneficially upon the higher classes has but little effect upon those for whom a cure is principally required.<sup>101</sup>

Amongst urban communities, categorizations of vice were identified predominately among the working-class. Penalties remained uniformly harsh.

S.D. Clark, long ago, noted that settlers in Ontario built gaols partly in response to the social welfare needs of the provincial population.<sup>102</sup> As we have seen, the welfare function served well beyond early years of Upper Canadian settlement; the practice persisted, in frontier, rural communities at least until the late nineteenth century.

Meanwhile in nearby urban centres, vagrancy committals abated. A reduction in arrests in Toronto/York represents a transition along the developmental social process whereby older traditional functions took on new meanings within municipal urban structures. The same could be applied, even more so, to drunkenness, where increased incarcerations and punishments signalled immorality or illness most frequently among the "lower" class.

Regulating urban public space then,<sup>103</sup> drew on a set of rules, "to structure, to give shape to," a form of social practice.<sup>104</sup> Some justices and mayors acted with increasing alacrity in enforcing these rules. "Wandering" or drunk men and women became a source of annoyance and suspicion on public streets in rapidly growing towns and cities in Ontario. Urban by-laws enforced by municipal police and local

courts provided a solution. As such, mounting costs for "street sweeping," became less of a concern for municipal financiers than issues of public propriety.<sup>105</sup>

1. Beattie, Attitudes Towards Crime and Punishment in Upper Canada, 2-3.
2. Corrigan and Sayer, The Great Arch, 123.
3. John Beattie, "Women and Crime in England." Paper presented at the Graduate Seminar, University of Toronto, Toronto, January 1992.
4. In Stratford gaol, for instance, beds were without frames and mattresses rested on the floor. PAO, RG 20, F-40, Copies of Council Minutes Pertaining to the Jail, "Report of the Committee on County property and gaol management," 7 June 1870. In Leeds/Grenville, the "Standing Committee on County Property in Leeds/Grenville" visited the gaol and "found it in perfect order, clean and neat". MOCLG, Minutes of the Municipal Council of the United Counties of Leeds and Grenville, "Standing Committee on County Property in Leeds/Grenville," 26 February 1868.
5. Certainly some councillors felt this way. Despite sparse conditions, Perth County Council was "persuaded that many persons confined, consider it a boon to have the privilege of being so confined." They reported on one inmate who stated that "he was committed for ten days, and felt sorry that it was not for a month." PAO, RG 20, F-40, Copies of Council Minutes Pertaining to the Jail, "Report of Jail Committee," 29 January 1869.
6. The Owen Sound Advertiser, 28 May 1874. The gaol employed a matron. Ibid, 3 December 1874.
7. Ibid, 28 May 1874.
8. Ibid, 24 February 1876.
9. Ontario, Sessional Papers, "Twelfth Annual Inspector's Report," 1879, 76.
10. Ibid.
11. Ontario, Sessional Papers, "Ninth Annual Inspector's Report," 1876, 119.
12. Ontario, Sessional Papers, "Twelfth Annual Inspector's Report," 1879, 104.
13. Ibid, 113.
14. Ibid.
15. The Owen Sound Advertiser, 10 June 1875.
16. Ibid.
17. The following services (among other more general charities) were also available at a later date in Toronto: Protestant Orphans' Home, 1855; Roman Catholic Orphan Asylum, 1854;

- House of Providence, 1859; and Magdalene Asylum, 1860. Splane, Social Welfare in Ontario, 40. See also Stephen A. Speisman, "Munificent Parsons and Municipal Parsimony: Voluntary v. Public Poor Relief in Nineteenth-Century Toronto," in A History of Ontario, Selected Readings, ed. by Michael J. Piva (Toronto, 1988), 55-70.
18. The Daily Globe (Toronto), 31 January 1856.
  19. See the following discussions on the use of urban gaols as a refuge. Fingard, The Dark Side of Life, 50-57 and McCulloch, "Most Assuredly Perpetual Motion," 100-12.
  20. The Daily Globe (Toronto), 31 January 1856.
  21. Ibid, 1 February 1856.
  22. Legislation for vagrants recommended both time and labour not exceeding one month. Keele, The Provincial Justice, 844. In 1869 the federal government passed a Vagrancy Act. Punishment for vagrancy was extended to two months (with or without hard labour) or a maximum fine of fifty dollars or a combined penalty of time and fine. "An Act Respecting Vagrants", SC, 32-33 Vic., cap. 28, 1869. Five years later it was amended; sentence time was increased to six months. See, "An Act to Amend 'An Act Respecting Vagrants.'" SC, 37 Vic., cap. 43, 1874. See the discussion by Jim Phillips regarding further amendments to legislation in 1881. Jim Phillips, "Poverty, Unemployment, and the Criminal Law", in Essays in the History of Canadian Law, Vol. III, ed. by Philip Girard and Jim Phillips (Toronto, 1990), 153-4, fn 7.
  23. Stormi Stewart, "The Elderly Poor in Rural Ontario: Inmates of the Wellington County House of Industry, 1877-1907," Journal of the Canadian Historical Association/ Revue de la Société historique du Canada, 3 (1992), 231.
  24. Speisman, "Munificent Parsons and Municipal Parsimony," 59.
  25. Stewart, "The Elderly Poor in Ontario," 232-33.
  26. See Sec. 4, "An Act to Incorporate *The House of Industry of Toronto*." PSC, 14 & 15 Vic., cap. 35, 1851.
  27. PAO, RG 22, Series 4295, Perth County Coroners' Inquest Files, Stratford Goal, Mr. George K., 28 March 1879.
  28. PAO, RG 22, Series 4295, Perth County Coroners' Inquest Files, Stratford Goal, Mrs. Amy J., 28 March 1879.
  29. Ontario, Sessional Papers, "Twelfth Annual Inspector's Report," 1879, 104.
  30. Only among Roman Catholic men in Leeds/Grenville and Irish men in Grey did the percentage of gaoled drunk men decline when compared to the overall county gaol

population.

31. For the earlier period see, M.A. Garland and J.J. Talman, "Pioneer Drinking Habits and the Rise of the Temperance Agitation in Upper Canada Prior To 1840," in Aspects of Nineteenth-Century Ontario, ed. by F. Armstrong, H.A. Stevenson and J.D. Wilson, (Toronto, 1974), 171-93. On Leeds/Grenville and Lanark counties see, Glenn J. Lockwood, "Temperance in Upper Canada as Ethnic Subterfuge," in Drink in Canada. Historical Essays, ed. by Cheryl Krasnick Warsh (Montreal and Kingston, 1993), 43-69. On the temperance movement in Canada prior to confederation see, Janet Noel, Canada Dry: Temperance Crusades before Confederation (Toronto, 1995). On the later women's temperance movement see, Sharon Cook, "Through Sunshine and Shadow," The Women's Christian Temperance Union, Evangelism, and Reform in Ontario, 1874-1930 (Montreal and Kingston, 1995).
32. For an exception to this see Cheryl Krasnick Warsh, "'Oh, Lord, pour a cordial in her wounded heart': The Drinking Woman in Victorian and Edwardian Canada," in Drink in Canada, ed. by Warsh, 70-91.
33. Edwin Guillet, Pioneer Days in Upper Canada (Toronto, 1933), 143-44, see also Susannah Moodie, Life in the Clearings (Toronto, 1959), xxxi, 44-49. 118-19, 256 and Anna Jameson, Winter Studies and Summer Rambles in Canada, Vol. 1, (Toronto, 1838), 292.
34. Strange, "'The Criminal and Fallen of their Sex,'" 79-92.
35. On women and temperance in the United States see Christine Stansell, City of Women, Sex and Class in New York, 1789-1860 (Chicago, 1987).
36. See, for example, the article on the "Sons of Temperance Meeting in Owen Sound, The Comet (Owen Sound), 25 June 1852 and the announcement of the upcoming lectures by the Toronto "Prohibitory Liquor Law League." TCA, Toronto City Council Minutes, 11 December 1854.
37. See, for example, the discussion reported in the Owen Sound newspaper, "Maine Law is the weapon to fight alcohol abuse." The Comet (Owen Sound), 19 August 1853.
38. The Comet (Owen Sound), 28 Maine 1852.
39. "Temperance, The Triumphs of Humanity," The Comet (Owen Sound), 2 December 1853.
40. The 1864 Act was intended to put more teeth into earlier legislation passed in 1850 and in 1860. See "An Act for the More Effectual Suppression of Intemperance." PSC, 13 & 14 Vic., cap. 27, 1850. "An Act to Diminish the Number of Licenses Issued for the Sale of Intoxicating Liquors by Retail." PSC, 23 Vic., cap. 53, 1860. "An Act to Amend the Laws in Force Respecting the Sale of Intoxicating Liquors and the Issue of Licenses Therefor, and Otherwise for Repression of Abuses Resulting from Such Sale." PSC, 27-28 Vic., cap. 18,

1864. These acts were part of a trend to utilize state licensing powers to address social ills.
41. The British Central Canadian (Brockville), 17 May 1865.
  42. TCA, Toronto City Council Minutes, 31 December 1872.
  43. See "An Act for the More Effectual Suppression of Intemperance," PSC, 13 & 14 Vic., cap. 27, 1850.
  44. The Stratford Beacon, 23 September 1859.
  45. The 1860 Act restrained municipal authorities from issuing licenses beyond one for every 250 inhabitants in any city, town, village or other municipality. Contravention of the law by any officer of the corporation could lead to criminal charges. "An Act to Diminish the Number of Licenses Issued for the Sale of Intoxicating Liquors by Retail." PSC, 23 Vic., cap. 53, 1860.
  46. OSCH, Minutes of the Council of Owen Sound, 11 February 1867, 13 February 1869.
  47. OSCH, Minutes of the Council of Owen Sound, 19 February 1872.
  48. OSCH, Minutes of the Council of Owen Sound, By Law No. 203, "Respecting Tavern and Shop Licences", 8 February 1875.
  49. MOCLG, Minutes of the Municipal Council of the United Counties of Leeds and Grenville, 11 November 1873.
  50. See "An Act for the More Effectual Suppression of Intemperance." PSC, 13 & 14 Vic., cap. 27, 1850.
  51. "Drunkenness and Crime", The Comet (Owen Sound), 25 June 1852; The Queen vs B., The Stratford Beacon, 7 November 1856; A Leaf from Real Life," The Stratford Beacon, 22 September 1865.
  52. The Stratford Beacon, 29 July 1859.
  53. TCA, Toronto City Council Minutes, 17 February 1851.
  54. The Prescott Telegraph, 25 February 1880.
  55. The Maine Law was passed in June 1851. The Comet (Owen Sound), 2 December 1853.
  56. The Comet (Owen Sound), 2 July 1852.
  57. The Stratford Beacon, 22 September 1865.

58. "Presentment of Grand Jury," The Stratford Beacon, 7 November 1856.
59. The Stratford Beacon, 2 November 1860.
60. "An Act to Prohibit the Sale of Intoxicating Liquors on or Near the Line of Public Works in this Province." PSC, 16 Vic., cap. 164, 1853.
61. See "An Act to Provide for the Establishment of an Hospital for the Reclamation and Cure of Habitual Drunkards." Statutes of the Province of Ontario (SPO), 36 Vic., cap. 33, 1873. Use of the term "habitual" first appeared in the legal lexicon in the 1850s. Its usage reflects a trend towards pathologizing moral behaviour. See the reference to a "habitual frequenter of any disorderly house" in "An Act to Amend and Extend the Act of 1857, for Diminishing the Expense and Delay in the Administration of Criminal Justice in Certain Cases." PSC, 22 Vic., cap. 27, 1858. Timing in Canada coincided with a similar trend in Britain. While the term may have originated in Britain its usage in these circumstances suggests a changing perception about the character of deviance and its treatment. On the act in England see, Michael W. Melling, "Cleaning House in a Suddenly Closed Society: The Genesis, Brief Life and Untimely Death of the *Habitual Criminals Act*, 1969, Osgoode Hall Law Journal, 21 (1983), 315-62. On the evolution of institutional treatment for drunkenness see, Jim Baumohl, "Inebriate Institutions in North America, 1840-1920," in Drink in Canada, ed. by Warsh, 92-114.
62. Under the authority of the 1859 Municipal Act every county, city and town could pass By-laws "[F]or preventing the sale or gift of intoxicating drink to a child, apprentice or servant without the consent of a parent, master or legal protector." See sec. 282, "An Act Respecting the Municipal Institutions of Upper Canada," PSC, 22 Vic. cap. 54, 1859.
63. Michael Katz et al, The Social Organization of Early Industrial Capitalism, 240; Fingard, The Dark Side of Life in Victorian Halifax, 23, Table 2 and Jane B. Price, "'Raised in Rockhead. Died in the Poor House': Female Petty Criminals in Halifax, 1864-1890" in Essays in the History of Canadian Law, Vol. III, ed. by Girard and Phillips, 205, Table 1.
64. Freedman, Their Sisters' Keepers, 13.
65. Baumohl, "Inebriate Institutions," 99.
66. Lucia Zedner, Women, Crime, and Custody in Victorian England (Oxford, 1991), 27.
67. Baumohl, "Inebriate Institutions," 99.
68. On the public role of women in another large city see Stansell, City of Women. For the classic study on Victorian ideology of spacial and psychological separation, the creation of the public world of men and the private world of women, see Barbara Welter, "The Cult of True Womanhood, 1820-1860," American Quarterly, 18 (1966), 150-74.

69. Jim Phillips, "Women, Crime, and Criminal Justice in Early Halifax," in Essays in the History of Canadian Law, Vol. V, Crime and Criminal Justice, ed. by Jim Phillips, Tina Loo, and Susan Lewthwaite (Toronto, 1994), 185.
70. Freedman, Their Sister's Keepers, 14. On the way in which medical and legal practice in England combined to create an outcast group among prostitutes see in England see Judith Walkowitz, "The Making of an Outcast Group," in A Widening Sphere, ed. by Martha Vicinus (Bloomington, Ind., 1977), 72-93.
71. Freedman, Their Sisters' Keepers, 14.
72. See Toronto By-law No. 322, "By-law to Provide for the Maintenance and Care of Public Parks, Squares and Grounds." Sec. 2, "It shall be lawful for any police officer, constable, care-taker of other person duly authorized by the Mayor or any Alderman of the said City, to exclude from the said public squares, parks and grounds all drunken or filthy persons, vagrants and notoriously bad characters, and to remove therefrom any person who is violating any By-law of the City Council, or is committing any nuisance, or is guilty of any disorderly conduct therein." TCA, By-Laws of the City of Toronto, 30 July 1860. Again in 1868 council extended its powers over public spaces in the "By-law for the Regulation of the Streets, Sidewalks and Thoroughfares of the City of Toronto, and for the Preservation of Order, and Suppression of Nuisances Therein." This by-law was intended to protect city trees, limit use of fireworks and restrict bathing areas. More importantly, it included an interpretative clause that defined the word "street" to include all access routes throughout the city as part of "public passage". TCA, By-Laws of the City of Toronto, 26 October 1868.
73. TCA, Toronto City Council Minutes, 13 December 1852.
74. The Daily Globe (Toronto), 30 January 1856.
75. TCA, Toronto City Council Minutes, 10 April 1855 and 4 May 1857 and Report No. 7 "The Board of Commissioners of Police for the City of Toronto", 1 February 1859.
76. In 1859 the Police Force had one Chief, ten senior officers and sixty men. TCA, Toronto City Council Minutes, Report No. 7 "The Board of Commissioners of Police for the City of Toronto", 1 February 1859. On policing in Toronto in the nineteenth century see Boritch, "Conflict, Compromise and Administrative Convenience," 141-74; Boritch and Hagan, "Crime and the Changing Forms of Class Control in 'Toronto the Good,'" 307-35; Rogers, "Serving Toronto the Good," 116-40.
77. TCA, Toronto City Council Minutes, Appendix, 6 March 1863.
78. Freedman, Their Sisters' Keepers, 14.

79. Jennifer Davis, "The London Garotting Panic of 1862: A Moral Panic and the Creation of a Criminal Class in mid-Victorian England," in Crime and the Law, The Social History of Crime in Western Europe since 1500, eds. by V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker (London, 1980), 191.

80. Ibid.

81. Craven notes the increase in Police Court coverage in his study of the courts. Craven, "Law and Ideology," 248.

82. Convictions in all counties are probably higher than indicated. These figures include only those cases listing a sentence on the register. While the number of convictions is high a small percentage of cases where the judge issued a remand order, bail or request for further examination generally remain unknown. In these situations offenders appear on the non-conviction side of the equation. If in fact the unknown outcomes are proportionally similar to that of other women and men charged with drunkenness, convictions listed in the text would be between 2 to 15 per cent higher.

83. Hard labour for women usually meant sewing, washing clothes, picking oakum or scrubbing the gaol. See TCA, Toronto City Council Minutes, 23 February 1865 and Backhouse, Petticoats and Prejudice, 230. For men, the penalty was often breaking stones or chopping wood. See TCA, Toronto City Council Minutes, 26 April 1843 and Ontario, Sessional Papers, "Twelfth Annual Inspector's Report," 1979, 104.

84. Conditions in the Toronto gaol were dismal. Constance Backhouse reports on one woman who suffered a serious enough case of frostbite during her incarceration to require the services of the gaol surgeon. Backhouse, Petticoats and Prejudice, 230.

85. Hindus, Plantations and Prisons, 124.

86. George Gurnett frequently used this description in sentencing prisoners. See, for example, the Toronto Police Court reports in The Daily Globe (Toronto) during the 1850s.

87. "An Act for the More Effectual Suppression of Intemperance." PSC, 13 & 14 Vic., cap. 27, sec. 13, 1850.

88. Under Toronto By-law Number 322, "By-law to Provide for the Maintenance and Care of Public Parks, Squares and Grounds" drunkards were excluded from parks, violators could be fined up to \$50.00 together with costs. Failure to pay could result in a sentence with or without hard labour of up to six months. TCA, By-Laws of the City of Toronto, 30 July 1860. Eight years later council passed another by-law which included provisions for arresting drunkards and vagrants; punishment was as above. By-law No. 478, "A By-law to Restrain and Punish Vagrants and Other Disorderly Persons." TCA, By-Laws of the City of Toronto, 26 October 1868. Under federal statute in 1869 punishment for vagrancy was considerably less than that of the Toronto by-law. It included a "term not exceeding two months and with

or without labour, or by a fine not exceeding fifty dollars, or by both, such fine and imprisonment being in the discretion of the convicting Magistrate or Justices." See, "An Act Respecting Vagrants," SC, 32 & 33 Vic., cap. 28, 1869. Four years later the federal government increased sentence time to six months. See, "An Act to Amend 'An Act Respecting Vagrants.'" SC, 37 Vic., cap. 43, 1874.

89. According to Constance Backhouse, McNabb was rebuked by the Toronto newspaper The Globe for his leniency in sentencing drunks. Backhouse, Petticoats and Prejudice, 239-41.

90. Leeds/Grenville also underwent changes in their police force in 1859. County council passed a by-law to establish a police office in Brockville. MOCLG, Minutes of the Municipal Council of the United Counties of Leeds and Grenville, 28 March 1859. In 1859 the county had a local police force of one police chief and 4 constables spread across 3 wards. MOCLG, Minutes of the Municipal Council of the United Counties of Leeds and Grenville, 17 January 1859.

91. By the late 1870s the Young Women's Temperance Home opened in Ottawa and women from Leeds/Grenville were sent there. MOCLG, Minutes of the Municipal Council of Leeds and Grenville, 21 June 1877.

92. MOCLG, Minutes of the Municipal Council of the United Counties of Leeds/Grenville, By-Law No. CXIV, "To Provide for the Preservation of the Public Morals of the United Counties of Leeds and Grenville," 9 November 1860.

93. Among three exceptional cases in Leeds/Grenville men received a six month sentence and were sent to Central Prison in Toronto. Surprisingly, none of the men in the Toronto/York sample were sent to the prison after it opened in 1874.

94. On occasion, offenders were given the option of leaving town as in the case of Margaret M. In 1856 she was charged with drunkenness and disorderly conduct. Her fine of 5 shillings was remitted on condition she "leaves town immediately." The Recorder (Brockville), 30 October 1856.

95. The benefits of prison "labour" according to some county councillors were two fold: it made the punishment more effective and contributed to defraying expenses of Criminal Justice. PAO, RG 20, F-40, Copies of Council Minutes Pertaining to the Jail, "Report of the Special Committee on Central Prisons," 18 December 1868.

96. See the reports by the Inspector of Prisons for Ontario and the Perth County Grand Jury on the deplorable and insecure conditions in the gaol, particularly, Ibid, "Report on the Condition of the Stratford Gaol," 16 December 1868. Council continually debated dwindling gaol finances. See, for example, the discussion in council on the necessity of recording costs for housing "lunatics" in gaol in order to collect expenses from local municipal governments for detainees. Ibid, By-Law Chap. 152, 30 December 1869. See also the written request by

councillors to the Attorney General of Ontario for a delay in construction of the new gaol in light of other "expensive improvements". Ibid, "Report of the Deputation by the County Council to confer with the Members of the Government, and Inspector of Prisons, on the subject of Deferring the Erection of a new Jail," 1 February 1870.

97. The Stratford Beacon, 30 March 1855.

98. A copy of the morals By-Law is available at the Stratford and Perth County Archives, in Stratford.

99. The local "morals" by-law passed in 1875 listed a punishment for drunkenness of "not less than One dollar or more than fifty dollars exclusive of costs, and of imprisonment for any period not exceeding twenty one days, in default of payment." OSCH, Minutes of the Council of Owen Sound, 23 August 1875. The municipality obtained almost no revenue from incarcerating those charged with drunkenness.

100. The Comet (Owen Sound), 26 July 1851.

101. "Dunkin's Act," The Canadian Law Journal, 11 (October 1865), 255.

102. S.D. Clark, The Developing Canadian Community (Toronto, 1962), 68.

103. On the structuring of power relations by time and space see Allan Pred, Making Histories and Constructing Human Geographies, The Local Transformation of Practice, Power Relations, and Consciousness (Boulder, Colorado, 1990), particularly, 3-40. For a legal interpretation see Nickolas K. Blomley, Law, Space and the Geographies of Power (New York, 1994).

104. This insight is from the work of Anthony Giddens cited in the introduction written by Phillip Cassell, in The Giddens Reader, ed. by Phillip Cassell (Stanford, 1993), 10.

105. On the campaign for moral purity in English Canada, see Marianne Valverde, The Age of Light, Soap and Water (Toronto, 1991), in particular, Chapter six, "The City as Moral Problem," 129-54.

## CHAPTER 4

### VIOLENCE, CULTURE AND COMMUNITY

In 1860, Mr. William W. of Holland township appeared in court. He was charged with several counts of shooting a bailiff and a school tax collector, "in the execution of their duty." At the time of the assault the bailiff was serving a warrant filed by local school trustees for non-payment of taxes. Carrying sticks and whips, this alliance of neighbours and relatives accompanying William W. refused to allow the officials onto the property for fear they were going "to seize his cattle for taxes." Following a scuffle, shots were fired in the direction of the two men. In the end, Mr. W. was found guilty of "shooting with intent" and sentenced to six months in gaol.<sup>1</sup>

In 1874 in the city of Toronto, Mr. James F., struck his wife, Mrs. Margaret F. with a mallet. He had, according to her statement, been abusing her in the night calling her names and accusing her of being "worse than a prostitute". Next morning after breakfast, he followed her into the shed and asked if she was "going to the magistrate." She said yes. He punched her in the face. Pursuing his attack, Mr. F. picked up an axe which a daughter wrestled away. Not to be deterred, he took a mallet and struck his wife repeatedly. Searching for another weapon he grabbed a chisel, knocked her down, and stabbed her. It was not until several neighbours rushed over and pulled him away that the beating ceased. At trial, the jury found Mr. James guilty with a recommendation for mercy.<sup>2</sup>

The juxtaposition of these two cases illustrates the wide range of diversity in assaults. As with many assault and assault related cases they appear to have little in common. Systematic analysis, however, offers a way to see patterns where traditionally only erratic, singular, chaotic acts have been observed.<sup>3</sup> Violence did not occur randomly. As often as not aggressors and aggrieved shared personal/familial relationships, business dealings or neighbourly acquaintanceships. Family members, neighbours, friends, employers and employees faced each other in courts where, although precise circumstances of violent acts remain multi-faceted, patterns of litigation centred on two themes: individual and personal/family conflicts. These patterns are best understood when viewed in the context of specific communities. As social anthropologist Emmanuel Marx observes in his study of an Israeli town, the "essential characteristic of [the] violent acts . . . is their social nature. . . . they flow out of the town's social structure. . . . [and] are fully integrated in the social process."<sup>4</sup>

Frontier/rural communities were generally cashless societies where economic survival was tenuous. Insecurity engendered a dependency among neighbours for aid. Less known, however, are how tensions between frontier independence and a forced reciprocal reliance resulted in violent individual confrontations that at their core centred on land ownership, taxes, livestock, crops and resources. What becomes equally apparent in these and other personal assaults in frontier and more settled communities is the gendered nature of these confrontations. Some men fought other men as part of a masculine culture where the ritual of confrontation retained its hold

on true manhood. While not excluded from this violence, women reacted with force far less frequently than men, and were more often retaliators than aggressors.

Alongside this predominately public display of machismo existed a darker, private abuse in the home. Wife assault formed part of a wider pattern of patriarchal control. Pursuing legal mechanisms to restrict aggression, meanwhile, could serve to reinforce traditional social notions of male dominance in the home. Taken together, these acts of violence demonstrate the range of aggression utilized by ordinary individuals to achieve specific economic, political and/or social objectives.<sup>5</sup>

Research for this chapter relied on two main sources from the superior courts: criminal indictment files and judges' benchbooks. Criminal indictment case records from the Courts of Oyer and Terminer and General Gaol Delivery and of Assize and Nisi Prius are incomplete for all counties. Files are complete for Perth, Leeds/Grenville and Grey counties for a single period between 1859 and 1865; no records exist in these counties from 1866 to 1879. York/Toronto records begin in 1870 and run until 1889. All files for women and men from Perth, Leeds/Grenville and Grey have been examined. As well, all women's files and a sampling of men's files in York/Toronto were analyzed. These records are accessible through computer indexing by an assigned number, name, crime, year or sex, etc. Files vary in completeness providing a range of information for the prosecution listing the charge, pleading, witnesses, witness' statements, medical reports, formal indictment, verdict and/or certificates of prior offences.

Judges' benchbooks have also been consulted to supplement information from criminal indictment files. Benchbooks cover the duration of the study and record complete trial testimony. Attempts have been made whenever possible, to link cases in both criminal indictments and judges' benchbooks. Each benchbook contains notations during trial, defendant's name and charge. Each judge transcribed by hand court testimony which included witnesses for the prosecution and defence, cross-examination and the verdict. Occasionally judges recorded their instructions to the jury and sentencing along with any jury recommendations of mercy. Overall completeness and utility varied with the judge; some, such as those of Chief Justice John Beverley Robinson were not used because they were illegible. By contrast Justice Galt's benchbooks were meticulously scripted. In all, over 300 cases involving charges for violence from the superior courts have been examined. As in other chapters, newspaper reports supplied additional coverage of cases and opinions.

The incident involving William W. provides important evidence of how multifaceted and confrontational the process of community settlement and dispute resolution could be. Among frontier/agricultural societies scarce cash resources were rerouted back to the farm. Mr. and Mrs. W., as they claimed, probably did not have the money to pay their taxes. As one Upper Canadian settler exclaimed: "Money! . . . Where should I get money? . . . people in this country have no money."<sup>6</sup> Town merchants certainly were aware of this. Several Owen Sound store owners, tired of distributing merchandise on accounts that were never paid, temporarily abandoned the

idea of credit. They concluded it was better to "have merchandise on the shelf than spread around."<sup>7</sup> Other shops routinely advertised discounts to anyone wealthy enough to pay cash.<sup>8</sup> One desperate salesperson even offered to "take bailed hay in payment" for his nearly new, first class hay press.<sup>9</sup>

Even the relatively prosperous Upper Canadian Moodie family suffered deprivations in the early years. After earning a small sum of money selling paintings Susannah Moodie bought shoes for her children whom, she exclaims, "during our bad times, had been forced to dispense with these necessary coverings."<sup>10</sup>

Indeed many families faced dire circumstances based on the precarious nature of frontier family economies. A lengthy account of one settler depicts just how critical this exchange of goods and service was during early stages of settlement.

I landed in Quebec with my wife and family [in 1845] and with seven sovereigns in my pocket -- found my way to Glengarry where my brother-in-law resided, from whom I took a farm to work upon shares. He found me in seed, stock, and implements. I laid in a stock of provisions for the summer, and went to work with a good will and with a cash capital of five shillings currency in my pocket. I had an excellent crop. I returned him first the seed, and then gave him one half of the remaining produce.<sup>11</sup>

Contemporary and historical accounts document how individuals and families relied on kin, neighbours and community to exchange goods, food and services.<sup>12</sup> They exchanged, as well community values.<sup>13</sup> As with the family in Glengarry, farmers in Grey County formed a network of mutual exchange. This exchange of goods and services extended beyond family ties to other individuals. Within this process of exchange and mutual dependency alliances were forged among seemingly disparate parties against the competing interests of others. We gain further insight into

how this process bonded families to neighbours by examining in greater detail the links between the farm family and the other four non-family participants in the affray. As we shall see, the other disputants, like the farmers, had an economic self interest in protecting property and opposing losses.

Two shoemakers from Owen Sound participated in the melee; in part, their livelihood also depended on saving the farm and livestock. As noted by another settler in eastern Glengarry county, cow hides returned from the tanner were kept until the shoemaker made his annual trek to sew boots and shoes for the family. Then, in the fall when the first cow was killed the shoemaker received one quarter of the meat as payment.<sup>14</sup>

Reasons why the other two neighbours or kin remained on the Grey county farm are unknown. Possibly they, like the tradesmen anticipated payment in kind by the farmers. As was the custom, a farmer in Dundas recounted, when a cow was slaughtered the meat was distributed among debtors: the "blacksmith takes a quarter, the shoemaker another, the tailor or the carpenter a third and ourselves the remaining one."<sup>15</sup> Mutual reliance based on economic dependency linked the assailants to the tax evaders. They in turn sided with the farmers, not the bailiff.

Not only did farmers need cattle to pay workers, they also relied on livestock to exchange for goods and specialty items from town stores. We know from advertisements in local newspapers that shops offered "Farm Produce taken in exchange for Goods."<sup>16</sup> As well, to acquire specialty items other wholesale grocers accepted "all kinds of Dairy Produce . . . on account of purchases, or sold on

commission."<sup>17</sup> To survive families alongside a coterie of neighbours in Holland township united in their defense of the farm. Their assault on the officials represented the desperate act of a "community" of individuals where mutual economic survival depended on preventing "anyone to take anything away from" the property.

The above incident highlights three significant features common to other rural assaults. First, assaults predominately involved men where typically the level of violence escalated from quarrels to fists then weapons and ultimately guns. After Mr. W. warned the bailiff and the tax collector to stay off the farm several men approached carrying whips. The fight quickly intensified from whips to more lethal weapons and threats to "kill" the government representatives. Both the bailiff and the farmer's supporters then drew their guns. As they attempted to flee several more punches, and finally shots were fired barely missing them.

It is equally important to note that in this case, as in others, prosecuting charges and verdicts do not accurately represent the full extent of the assault. Based on evidence presented at trial it appears that each of the seven protestors in the Holland township case either shot, punched or threatened the officials, yet only two were charged. The charge against the second man was then dropped. Furthermore, despite threats to kill both officials, Mr. W. was found guilty of the lesser charge of "shooting with intent". Charges at trial were often downgraded after the initial indictment and juries returned what John Beattie has termed a "partial verdict."<sup>18</sup> In another case in Perth county three men were charged with assault with intent to do grievous bodily harm. They were found guilty of common assault.<sup>19</sup> Again, in the

1861 trial against Henry P. he was charged with three counts: assault (stabbing) with intent to kill, aggravated assault and common assault; the verdict was guilty on the third count.<sup>20</sup>

Still other cases suggest a form of plea bargaining between prosecutors and defence council which, in effect downgraded charges. William L., for example, was originally charged and plead not guilty to aggravated assault; at trial he reversed his plea and pled guilty to assault.<sup>21</sup> Additional evidence suggests that plea bargaining occurred in other cases where defendants charged with serious offense of rape plead guilty to a lesser charge of assault, with a considerably reduced punishment.<sup>22</sup> Evidence of plea bargaining is particularly evident in the late 1850s following the introduction of county crown attorneys.<sup>23</sup>

Overall the violent verbal exchange between farmers and tax collectors was consistent with many other assaults; the actual harm, however, could be considered less injurious than that of other cases. In lately settled areas few assault cases reached the higher courts; those which did were invariably the most serious and involved considerable physical injuries.<sup>24</sup> At a meeting held in Owen Sound in 1852, a long standing dispute between two neighbouring families erupted in a row when three members of one family were set upon by a group of men. When the dust finally settled five combatants were arrested. All were found guilty. Among the injured family members, the father was "in so precarious a state that . . . he made his last will." A son was "also thought to be dangerously ill." The third "notwithstanding the loss of several of his teeth" was not in "immediate danger."<sup>25</sup> Similarly, in nearby

Glenelg township, Edward F. gathered together his neighbours to help thrash grain. While setting up the thrashing machine Edward began arguing with David K. Tempers flared and Edward F., who had been using an axe to drive stakes into the ground, struck David K. on the head with his tool, knocking him to the ground. He then hit him again.<sup>26</sup>

Gaol statistics reinforce our earlier observation that in frontier/rural areas violence proved more frequent than in cities.<sup>27</sup> Although availability of weapons and inaccessibility to courts provide some reasons for increased severity of social violence, frontier culture -- particularly communal events serving liquor -- provide a better explanation for the trend.

Within communities, upwards of forty neighbours often joined together in reciprocal work arrangements or "bees" for barn raisings, harvesting or logging and other activities. At such gatherings excessive drinking often resulted in violence. As Upper Canadian social commentator and critic Susannah Moodie observes, "[P]eople in the woods have a craze for giving and going to bees, . . . plenty of strong drink and excitement making the chief attraction of the bee."<sup>28</sup> Moodie did not share the enthusiasm of fellow Upper Canadians. She considered these events "necessary evils. . . . They present the most disgusting picture of a bush life. They are noisy, riotous, drunken meetings, often terminating in violent quarrels, sometimes even bloodshed".<sup>29</sup> Moodie's brother, Samuel Strickland, regretted particularly the necessity of communal labour practices because of the degenerate nature of the "continual round of dissipation" which seemed always to accompany these gatherings. Crimes as serious

as manslaughter occurred.<sup>30</sup> These events illustrate how relationships of mutual reliance in one context could just as easily become occasions for violent confrontations. Similarly, ties within ethnic groups maintained support networks among adherents<sup>31</sup> while rivalries between competing and differing factions within an ethnic community could lead to abuse.

Violence originating from disputes among differing ethnic groups frequently took the form of personal attacks. Over the years, neighbourhood enclaves in Perth County, for example, remained ethnically and religiously structured. Religious antagonisms between Irish Protestant and Irish Catholics could end in scuffles especially during the annual Orange parade.<sup>32</sup> Other instances of violence attest to tensions between German Lutheran farmers and Irish Catholic labourers. In 1855, for example, a group of Irish railway labourers disrupted a bar in the predominately German town of Petersburg. The subsequent affray concluded with serious injuries to both parties. Although group allegiances could curb some forms of troublesome behaviour, it could just as easily exacerbate conflict.<sup>33</sup>

Such confrontations could be politically motivated as can be seen in Wallace, Perth county. Wallace was a town noted for systematic, politically-inspired assaults. In 1872, several men approached James L. "violently and by physical force" while he tried to vote reform. They dragged him from the polling platform "striking and kicking him severely on the back, hips, and thighs, and also on the head and face, and did throw stones."<sup>34</sup> That same day another reform supporter, David C. alleged that he had been brutally assaulted by William M. on his way home from voting.

William M. was heard to have exclaimed, "I am surprised that you went against us to-day" before striking David C. in the eye with a stick.<sup>35</sup>

Even livestock suffered from acts of vengeful political violence. The same day the reform voters were attacked in Wallace, Michael B.'s horse was "maliciously cut and stabbed with a scythe or some sharp instrument" in nearby St. Marys. Mr. B., was described as "a harmless individual unlikely to have personal enemies." The newspaper went on to speculate that this action was in retaliation for the farmer's political choice in the recent election.<sup>36</sup>

Unintended or intended assaults occurred as well during popular demonstrations such as charivaris. Charivaris involved vigilante-type sanctions imposed against those who transgressed "community" norms. One contemporary observer recounted "tales of tragedy" during charivaris. In one instance a black man who had recently married a white woman was dragged from his house into the cold night air where his assailants "rode him along the rails". He died as a result of their "sanctions." In another case the charivari leader ended up dead and several revellers injured after guns were fired. To retaliate the mob threatened to burn the bridegroom's house down and withdrew only after hearing him reload his gun.<sup>37</sup>

That violence was a component of pioneer society is clear. Personal relationships centring on mutual economic dependency formed the basis for many of these disputes. As well, traditional rituals and celebrations became the backdrops for conflict and violence. Not surprisingly, the vast majority of disputants were men;

women, however, were sufficiently represented in altercations to reveal several important patterns.

Women, more specifically, wives and mothers, protected property and, when necessary, defended it using violence and threats.<sup>38</sup> In the altercation between the farm family and the government officials in Grey county, the defendant's mother, the trial notes suggest, was among the parties firing shots from the cabin. Furthermore, as these officials retreated from the farm, she continued hitting the bailiff -- ensuring his departure -- ceasing only when solicited by other assailants to "let them alone so they could go their way".<sup>39</sup>

Women relied, as well, on skills other than physical force to deal with aggressors. Depending on circumstances they may have attempted to mediate between the disputing parties. At other times they resisted or tried to escape by fleeing. In one case, the prosecutor's wife intervened initially to mediate the dispute between her husband and a neighbour. She approached the aggrieved Henry T. and urged him to go home as "nobody wanted to quarrel with him". Apparently, her husband, John C., had previously cautioned Henry T. "not to come that way any more." When the defendant failed to withdraw from the property, the plaintiff threw water in his face before escaping into the house. In response, the neighbour threatened to kill "every body that was in the house." Surprisingly, Mrs. C.'s husband did not appear in the kitchen when Henry broke open the door; she offered the only resistance to the intruder. With weapon in hand, she threatened to "put the broom down his throat" if he did not leave.<sup>40</sup> In this case as in others, women resorted to domestic "tools" as

weapons. In another instance, Mrs. M. threw a pot of scalding water at one of several armed men attempting to arrest her husband in their home.<sup>41</sup>

Failing other alternatives women fled violent situations. Mrs. R., for example, was confronted by angry neighbours after she and her husband had moved into an empty shanty. A group of armed men arrived at the shack and threatened her. When a chance for escape arose, she grabbed the baby and fled to the bush where her husband was logging.<sup>42</sup>

Women, like Mrs. R., Mrs. C. and Mrs. W. stood against a group of men -- some armed -- to defend property, husbands and children. They, like other women, managed farms and finances, performing chores alongside men and, if widowed or abandoned attempted to run it alone. This mix of female frontier aggressiveness and overlapping sex roles is evident in the character of some of the leaders in later feminist and political movements. Nellie McClung and Agnes Macphail were both born in Grey County. Although McClung's family headed to the new west when she was a child, Agnes Macphail grew up in the rugged terrain of a late-nineteenth century Ontario settlement. In her political career she fought for social justice among the disenfranchised: women, the poor, farmers and prisoners. She was, as she later wrote, inspired by the "indomitable spirit" and "fearless" nature of her pioneering grandmother who

several times drove off bears that were threatening the stock, and never shed a tear when a gang of "swamp angels" took all her food, turned her and her . . . [family] out of their painstakingly built log homes, and burned the little dwellings.

Macphail summed up her grandmother's accomplishments in comparative gendered terms noting that she could "do most things a man is supposed to do and do them as well as most men." As Macphail added, this is "not unusual in a farm woman."<sup>43</sup> "True womanhood" was defined more in frontier communities, it would seem, by industry and fortitude than by passivity and purity.

"Manful assertions,"<sup>44</sup> meanwhile, continued to find expression often through public rituals of confrontation. Masculinity and patriarchy underlay patterns of social violence. Much has been written about the emergence of a "cult of true womanhood," but only recently have historians such as British scholar, David Newsome, suggested that the concept of manliness underwent a "metamorphosis,"<sup>45</sup> as well, during the second half of the nineteenth century. While American legal historian, David Griswold, concludes that "[A] war of sort was waged over male identity in the nineteenth century, a war that took a host of forms ranging from temperance . . . [to] male authority within the family."<sup>46</sup>

Violence was but one aspect of a wider view of nineteenth-century male culture. Men defended and defined their manliness in public places with other men. Threats, challenges and other forms of bullying were employed to prove their manliness. Boys had frequently experienced violence first hand. Taunting led to scuffles "taken out on the spot" to settle "a personal grievance at once even if the explanation is made with fists".<sup>47</sup> Such struggles crossed boundaries defined by class, ethnicity, religion and race. Boyhood scuffles were, like adult duels, a form of dispute resolution with its own set of rules between combatants.<sup>48</sup>

While many fights took place in bars after drinks, it is apparent that fights could just as easily erupt from ongoing as well as spontaneous disputes between men. Taverns, the common urban male meeting ground, functioned much like socials and working bees in rural areas. They combined drinking, socializing and fighting.<sup>49</sup> In one case in Toronto in 1874, John M. chose the bar as the appropriate place to resolve his dispute. He provoked a fight with another tavern client, James G., by threatening him. Clearly, these men had earlier dealings as John approached James in the bar, placed his fist under his nose and uttered "I have got you now where I want you." The altercation was quickly broken up by the bar owner. In most instances a bartender's interventions would have ended the rift, but not in this case. Although John M. left, the conflict escalated when he returned with five others. John then took a pitcher and hurled it at James. His aim was poor; the pitcher hit the tavern owner on the head.<sup>50</sup>

The public nature of such assaults was often integral to the nature of the response. In another bar-room in Leeds/Grenville a wrangle occurred between two neighbours. James B. greeted his neighbour Joseph G. at a tavern with a slap. Friends stepped in, and the two men were forcibly separated. Joseph G., however, would not have a public slap go unpunished. He challenged James B. to fight only to have him decline. According to some witnesses, he appeared fearful and continually tried to back away from his challenger. There was confusion as to the purpose of the slap as some witnesses suggested it was more a greeting than a challenge. Joseph G., however, saw only the latter; he wanted revenge and was "anxious to fight." He

pursued James uttering taunts, calling him a "coward" and a "son of a bitch." Pushing and shoving soon ensued, and then Joseph G. was stabbed with a knife.<sup>51</sup>

Although altercations were personal and usually precipitated by an insult, they were played out publicly. Invariably drinking played a part. Taunting frequently preceded assaults as when Joseph G. called his opponent a "coward." An exception to this pattern, meanwhile, proves equally illustrative.

Fights could erupt when one combatant tried to defend the public honour of a spouse. Such was the case of Robert B. who seems to have used "indecent language" in front of Joseph G.'s wife and another group of men. When Joseph G. took offense words and eventually blows were exchanged. Robert B. lost an eye in the confrontation and sued for damages in civil court. Justifying his attack, Joseph G. declared that his opponent, "deserved the beating for what he had been [illegible?] to his wife." Other testimony reported that Robert had also called him a "liar". The jury sided with the plaintiff, Mr. B., and awarded him \$200.00 in damages.<sup>52</sup>

There is further evidence of the ongoing nature of this dispute. Under cross-examination it was suggested that Robert B. had earlier laid a complaint of disorderly conduct against Joseph G. Similarly, in the case against Michael L., a cook, convicted of stabbing foreman, William S., a dispute had festered while the men worked together. In an angry exchange the cook threatened to "have satisfaction" from the foreman for restraining him from leaving the work site. Use of the term "satisfaction" had its origin in the "gentlemanly" arena of the duel<sup>53</sup> to settle a score, avenge an insult, resolve an imbalance in a relationship or defend one's individual or

family honour. In this case it proved to be the imbalance of power between cook and supervisor in an ongoing dispute over working conditions. In the end, the court awarded "satisfaction" to the "boss." The defendant was convicted of common assault.<sup>54</sup>

Notions of "satisfaction" or vengeance related to manliness rather than race, ethnicity or religion. In Toronto in 1853, a black man and woman were charged with manslaughter. They had thrown a stone at another black man who arrived at their house "to have satisfaction" for a previous transgression. Each witness reported hearing the defendant's declaration for revenge. According to one, when he was sober he was a "very quiet man, but when drunk" as on this occasion he "was noisy but not vicious unless he considered himself insulted then he was very determined and desirous of having satisfaction."<sup>55</sup>

Competition also played a role in sparking disputes. While logging together one man challenged another's skill, to "bring on the spades" to see who was the best "ditcher". A jug was thrown and the "ditching" contest deteriorated into a fight. One person in the crowd, obviously enjoying the altercation tried to get them to fight again when they broke up. In the end, the crowd intervened and pulled the assailant off the victim.<sup>56</sup>

Clearly opposition to fighting motivated many to intercept or elude violent confrontations. Within the evolving middle-class culture, for example, Lenore Davidoff and Catherine Hall suggest that manhood lay in peaceful interactions through social and business associations, not through aggressive assaults among peers.<sup>57</sup>

Among individuals in Ontario there is ample evidence of attempts to resist or avoid fighting. At times a third party stepped in to stop a fight to avert more serious injuries. One such example would be the case of two men arguing at a council meeting. One man leapt across the table and grabbed another man by the collar. The aggressor landed only one blow (and even that was debated) before several others stepped in and stopped the fight.<sup>58</sup> Sometimes stepping in could back fire as in the earlier case where the tavern owner was hit on the head while attempting to end a dispute. Neighbours intervened as well in cases of child abuse and/or wife abuse. Children too tried to end confrontations particularly in wife abuse cases.

Among acts of violence documented in superior courts there exists a pattern common to all perpetrators. With few exceptions, violent actions were calculated to disadvantage victims and advantage aggressors. What may appear at first glance as spontaneous acts of passion or rage were as often as not planned acts of aggression designed to achieve specific objectives. Actors in these dramas were invariably bigger, stronger, more numerous or better armed than their victims. If some observers saw assault as a means of settling disputes "by a little physical violence or persuasive eloquence, on the part of those involved, or by their friend,"<sup>59</sup> they erred. Such aggression frequently had more to do with maintaining a hierarchy of dominance in social relations than it did resolving disputes. This can best be seen by examining the single issue of wife assault within the unfolding interaction of community, justice and ideology.

It is more by circumstance than coincidence that wife beating entered the lexicon of the seventies.<sup>60</sup> Historically, concerns about family violence have been a "weathervane identifying the prevailing winds of anxiety about family life in general,"<sup>61</sup> and the role of women, in particular. According to some observers, society was embarking on a "revolution"; women, were central to the debate. The "object" of the Woman's Rights Movement as Goldwin Smith warned Canadians in an article published in The Canadian Monthly and National Review, in 1872, "is to affect sweeping change in all the relations of the sexes -- conjugal, political, legal, educational and industrial." The ominous outcome of

such a revolution, if it actually takes place, will be at once unparalleled in importance. . . . because female character and domestic morality lie so completely at the root of civilization.<sup>62</sup>

More specifically, the changing nature of social relations between men and women was raised in the Canadian Parliament. The "tendency of legislation" according to one member, "at the present seemed to be to place females [*sic*] on the same footing as men." Furthermore, he continued, citing the observations of an unnamed Parliamentary source, "the tendency of modern legislation was to reverse the condition of things -- to make the man the woman and the woman the man."<sup>63</sup>

It was in this context that the debate over wife-beating emerged onto the public stage in the 1870s. No longer only whispered among neighbours, we see the gradual shift from a private household "family broil" to a public discourse on punishment for wife beaters. Not surprisingly, the rhetorical tone reflected socially based assumptions. For the most part the debate emerged from the temperance movement

which, together with other women's groups, fought for greater marital economic independence. The first legislation in 1859 granting married women access to courts for limited property rights, for example, had been introduced by Malcolm Cameron, a noted temperance advocate.<sup>64</sup> When the statute was first presented in 1857, 1,300 women in Canada West signed petitions supporting the bill. Fittingly, given this wide endorsement the act focused on the economic disadvantage among all women including

the poorer classes, . . . [where] every one in large cities must have felt the misery resulting from the conduct of one (husband) who has passed from careful industry and sobriety, into dissipation and wretchedness -- reducing the unfortunate partner of his affections, as well as her children to misery.<sup>65</sup>

Regulation of morality received its greatest endorsement from the temperance movement. "As innocent victims of an invasion of alcohol into their homes, . . . [women] suffered most from the liquor trade." Its effect turned "'men into demons'"<sup>66</sup> and promoted violence often directed towards women. The competing interests of women's temperance groups alongside a vigorous public debate concerning the private social relations between the sexes helped raise the spectre of wife abuse to public debate.

More broadly, establishing an appropriate punishment to fit the crime was discussed among state administrators, the legal community and the media. By the late sixties, notably in Stratford, gaol registers consistently listed charges for wife assault or wife beating. Previously most were listed as assaults. This change resulted from either an increase in charges or a directive from correctional officials to record such

offences. We know from his reports that Chief Inspector, William Langmuir favoured harsher punishments for repeat offenders. Dating back as far as 1869 Langmuir recommended sentences with hard labour over the existing practice of granting sureties for wife beaters.<sup>67</sup> Many of these men, Langmuir argued, remained idle in gaol awaiting trial. Some jurists, meanwhile, favoured corporal punishment. When The Canada Law Journal reprinted an editorial from an English law journal opposing the lash, Canadian editors responded announcing their approval for lashing "wife beaters" or other bullies.<sup>68</sup>

The press, as well, began to question the courts' apportionment of punishment for such crimes. An article in The Prescott Telegraph, in 1879 reported on the "Curiosities of English Justice." It questioned why a woman of 64 years was sentenced to 12 months with hard labour for stealing an apron, a youth of 10, five years imprisonment with hard labour for stealing half a crown from his father, but with wife-beaters "we find mercy supremely ascendant." Such was the case of William P., a 31 year old man convicted of assaulting his wife with a poker during an "angry altercation." The poker was swung with such force that it stuck into her head, fracturing her skull. Calling it a "very serious offence" the judge sentenced the husband to three months imprisonment with hard labour. This sentence, as the article notes, was one fourth the sentence of the larcenous woman and one twentieth the punishment for the thieving son.<sup>69</sup>

Overall public representations of wife-beaters linked brutality with class. Displacing the problem of male violence on to a "lower" class<sup>70</sup> ensured silence on broader issues of masculinity, patriarchy and gender inequality.

Historically official legal doctrine offered tacit approval for physically controlling women. Since a husband was legally responsible for his wife's behaviour it was reasonable, as William Blackstone argued in his treatise on common law, "to entrust him with the power of restraint in domestic chastisement."<sup>71</sup> A case in Toronto, in 1874, illustrates how violence was instrumental in maintaining "restraint" in some spousal relationships.

The indictment for felonious wounding listed only three witness, Margaret F., her daughter and the attending physician.<sup>72</sup> The daughter witnessed the beating first hand. She saw her father hit her mother "in the face." Then in the shed, "he struck her several times". Despite her terror, she "took the axe" from her father. When her mother finally got up, she was "covered with blood from the effects of the blows." The doctor's report confirmed the extent of the injuries. When Mrs. F. arrived at his office, the doctor reported, she was

covered from head to foot, with blood from wounds. . . . One on the forehead near to the roots of the hair, deep and badly lacerated; One above and to the front of the right ear, long, incised and penetrating the scalp so as to require to be stitched; a third below the right-eye, deep and also requiring a suture: and contusions of a some-what serious nature almost all over the scalp, the effect, I should say, of serious pounding from something.<sup>73</sup>

The beating was apparently "provoked" by Mrs. F.'s intention to take her husband to court. Reporting his abusive behaviour to the magistrate challenged his

authority in the home. He responded with increased violence that ended only when others alerted by her pleas "took him off" her. His unceasing abuse suggest that without the intervention of others he might have killed her. Mrs. F. certainly feared death: "I called out God help me I am gone."

One is left wondering about the jury's recommendation of mercy given the eye witness' testimony and medical report. There was no mention of alcohol; drunkenness was probably not a factor to "explain" his actions. Our only clue to this verdict comes from Mrs. F.'s remarks about the first assault. She stated that he called her names and accused her of being "worse than a prostitute." In his mind Margaret's actions did not live up to the standards of a "good wife." The jury's recommendation suggests that they agreed. Notwithstanding the fact that Mr. F. used tools to brutally beat an unarmed woman, dereliction in wifely duties may have, in the opinion of the jurors, partly "justified" the abuse.<sup>74</sup> Here, as in the wider community, a jury of "peers" failed to address the contested terrain of family politics by examining the internal relationships between wives and husbands.

Juries appear to have supported claims that a man's house is his castle. In defending a husband and wife accused of stabbing another man suspected of "improper" actions, the lawyer argued that a man's household right extends to evicting an intruder with "what ever force he deemed necessary." Moreover, defense counsel argued, if a man enters the house of another to insult or annoy, the owner has the right to put him out. If injured while being ejected from the house, intruders had

only themselves to blame. Although the prosecutor in this case argued there was enough evidence to support a conviction, the verdict was not guilty.<sup>75</sup>

While legal systems may have succeeded in providing limited protection for some women, the underlying message of courtroom dramas could at other times reinforce traditional notions about marital roles. One of the most striking examples of this occurred in a wife beating case in Leeds/Grenville in 1878.<sup>76</sup> Testifying in Sessions Court, Mrs. Jane H. claimed that her husband Thomas struck her several times on the head with a piece of firewood and only stopped when she escaped to the yard and called for help. A daughter, who had just left the house for school, ran home to assist her mother to a neighbour's house. According to Mrs. H.'s testimony, she and her husband had not been on good terms for several years. They rarely spoke. A disagreement over her decision to file a bill in Chancery for a property deed appears to have prompted the alleged assault.

Other than a fourteen year old daughter, Margaret H. and the physician who reported on the wounds, no one spoke for Mrs. H. "Mother is a quiet woman," Margaret observed. "[S]ometimes things were happy at home and sometimes they were not." Overall, she concluded, "mother and father have been on bad terms lately and for some years." She confirmed hearing her mother scream "murder" while walking to school, running home and finding her covered with blood over her head and face and "running down to her waist". Unable to stand, Margaret and her brother assisted in walking her, without the aid of their father, to a neighbour's house to get medical treatment.

The attending doctor reported that her wound was produced by a blunt weapon. "It would have to be used with considerable force to produce such a wound. . . . The wound appeared to be right down to the bone." Under cross examination he failed to confirm, despite defence council's suggestion, that the injury could have been caused by falling on a piece of wood.

The defence lawyer pursued two main tactics during his interrogation of Mrs. H. and her son, Albert. In his initial argument he posited several reasons to explain events surrounding the alleged assault. He questioned her sanity. Despite repeated denials, nonetheless he had succeeded in laying the ground work for the next stage in the trial. He began by listing various omissions in her duties as wife and mother<sup>77</sup> focusing on a lack of industry.<sup>78</sup> Instead of working, as the exigences of a family economy demanded, Mrs. H. had exchanged/sold household goods for provisions even after Mr. H. told her "not to do so." The defence accused Jane of refusing to work as a good wife should. Indeed, to underscore this point he called a former servant to testify to her nine week employment at the house. Worse still, Jane admitted to leaving the family on occasion and remaining absent for a week. If, as historian Laurel Ulrich observes for the colonial period in northern New England, "having the 'character' of a good wife was as valuable as having a good lawyer might be today" then Mrs. H's case was lost long before it reached court.<sup>79</sup>

The final assault by defence came during questions to establish credibility and assess blame. Despite the abuse, Jane's character not Thomas' actions was at issue.<sup>80</sup> Although, Mrs. H. had on at least two other occasions convinced a justice of the

peace that her husband was a sufficient threat to be bound over to keep the peace, a few neighbours concluded Mr. H. was the victim. They lamented how he "has been badly used" and "ill treated." One witness concluded that "she is to blame in the difficulties between them." Not surprisingly, witnesses who "did not believe her husband was treating her as badly as she contended" and believed Thomas "rather than her" did not offer any support.

In addition to a son and former servant, eight other male neighbours were called for the defence. The solidarity of the male community remained steadfast. All but one testified to the good character of the defendant and the bad character of the prosecutrix. However, under questioning by the crown attorney not one neighbour recounted a single occurrence to support claims of either Mr. H.s' honesty or Mrs. H.'s dishonesty. Instead, they based their "opinions" on tales provided by other neighbours and according to one neighbour, two sons who "take the father's part". The final witness summed up the dearth of proof when he remarked, "I could not find any good reasons for not believing her but her character for truth [is] not good. Still I could not show any reason for not believing her." In fact, the entire character defamation of Mrs. H., rested on no more than hearsay.

The significance of the defence's approach cannot be overstated. As Blackstone asserted a century before, the "excellence" of a juried trial "is that the jury are triers of the credit of the witnesses, as well as of the truth of the facts."<sup>81</sup> In the absence of eye-witnesses this case hinged largely on circumstantial evidence where credibility -- unfortunately for Mrs. H. -- counted for everything.

We have no way of knowing what instructions the judge delivered in his address to the jury as he did not record these details in his book. Nor do we know how long the jury of twelve men deliberated before returning to the courtroom and announcing their verdict -- not guilty. If, as one legal historian has suggested, "the local court functioned as a community forum or theatre for the clarification and reaffirmation of community morality,"<sup>82</sup> then, the status quo in this community remained intact. Such verdicts reinforced the patriarchal authority of the husband within the framework of the "protective" bounds of the law. In the end, wife beating would only be addressed within contexts of masculinity, patriarchy and the wider realm of social, political and economic inequality.

The experience of the Holland township family and neighbours represents but one key component of frontier, rural culture. Relationships among family, neighbours and kin were inextricably linked to an economy based on mutual dependency. This vital network of exchange extended beyond farms and encompassed the interests of trade workers and town dwellers alike. Within a spectrum of frontier traditions, violence and threats resonated amidst other customary forms of resistance, regulation and control. While arguably not the primary mechanism of dispute resolution, fists and weapons, nonetheless, served to promote the economic, social or political clout of some settlers.

Just as violence found expression among recent residents it is equally clear that it remained a part of male culture beyond early settlement stages. Public

confrontations among men and private assaults against wives knew no temporal or geographic bounds. State influence so clearly evinced in the discharge of duties defending public peace, maintained a certain ambivalence towards private family abuses in the home. In the case against Mr. F., for example, he was found guilty of brutally assaulting his wife with a recommendation of mercy by the jury. As an agent of social change the state found greater expression as public morals' advocate than it did as arbiter of discordant marital relations.

1. PAO, RG 22, Series 392, No. 1859, Grey County, The Queen vs William W., 1860 and PAO, RG 20, Owen Sound Jail Register.
2. PAO, RG 22, Series 392, No. 7221, York County, The Queen vs James W. F., 1874.
3. This insight comes from James Gleick, Chaos, Making a New Science (New York, 1987).
4. Emmanuel Marx, The Social Context of Violent Behaviour, A Social Anthropological Study in an Israel Immigrant Town (London, 1976), 96.
5. Ulrich, Good Wives, 186-87 and Marx, The Social Context of Violent Behaviour, 109.
6. Susanna Moodie, Roughing it in the Bush or Life in Canada (Ottawa, 1988), 94.
7. The Comet (Owen Sound), 20 May 1858.
8. The British Central Canadian (Brockville), 1 July 1863.
9. The Owen Sound Advertiser, 10 June 1875.
10. Moodie, Roughing it in the Bush, 443-44.
11. J. Croil, Dundas: or a sketch of Canadian History (Montreal, 1861), 197-200 cited in P.B. Waite, Pre-Confederation, Vol. II (Scarborough, 1965), 160-61.
12. See, for example, Chad Gaffield, Language, Schooling, and Cultural Conflict (Kingston and Montreal, 1987), 118-20.
13. This insight comes mainly from Simon Roberts, Order and Dispute, An Introduction to Legal Anthropology (Oxford, 1979), 31.
14. Croil, Dundas: or a Sketch of Canadian History, 200 cited in Pre-Confederation Vol. II, ed. by Waite, 161.
15. Croil, Dundas: or a Sketch of Canadian History, 197-200 cited in Pre-Confederation Vol. II, ed., Waite, 160-161.
16. The Comet (Owen Sound), 20 August 1869.
17. Ibid.
18. Beattie, Crime and the Courts, 427-28.
19. The Stratford Beacon, 2 April 1869.

20. The grand jury presented a true bill on only the second and third charge. PAO, RG 22, Series 392, No. 5015, Perth County, The Queen vs Henry P., 1861.

21. PAO, RG 22, Series 392, No. 5024, Perth County, The Queen vs William L., 1862.

22. PAO, RG 22, Series 392, No. 5030, The Queen vs John P., Perth County, 1863. Mr. P. was charged with rape and common assault; he pled guilty to common assault. In 1858, George C. of Grey County was charged with intent to commit rape and pled guilty to common assault as did Mr. L., also of Grey County. Rape charges could yield a sentence of several years in the penitentiary, whereas common assault sentences were substantially lighter. Mr. G. spent one month in gaol and Mr. L. was fined \$20.00. "The Queen vs George C., The Comet (Owen Sound), 16 December 1858, "The Queen vs Mr. L., " The Comet (Owen Sound), 3 October 1862. Bernadine Dodge reports that among the 56 rape charges she studied 11 defendants were guilty of common assault. She does not, however, specify whether or not assailants pled guilty or were found guilty at trial. Bernadine Dodge, "Women and the Law in Ontario, 1850-1900," (EdD thesis, Graduate Department of Education, University of Toronto, 1993), 146.

23. This occurred at a similar time in parts of the United States. Hindus, Prison and Plantation, 209.

24. Recent research has only begun to explore this aspect of early Ontario history. Susan Lewthwaite's research on an Upper Canadian district uncovered similar instances of brutality. Susan Lewthwaite, "Violence, Law and Community in Rural Upper Canada," in Essays in the History of Canadian Law, Vol. V, Crime and Criminal Justice, ed. by Phillips, Loo, and Lewthwaite, 353-76. See also W.T. Matthews, "The Myth of the Peaceable Kingdom: Upper Canadian Society in the Early Victorian Period," Queen's Quarterly, 94 (1987), 384-401. Tina Loo makes an argument about violence in society in frontier British Columbia, Loo, Making Law, Order, and Authority in British Columbia, 1821-1871 (Toronto, 1994).

25. The Comet (Owen Sound), 25 June 1852.

26. The Owen Sound Advertiser, 29 October 1874.

27. See above, chapter three, pp 95-133.

28. Moodie, Roughing it in the Bush, 334.

29. Ibid, 333-34.

30. Samuel Strickland, Twenty-Seven Years in Canada West or The Experience of an Early Settler (Edmonton, 1970), 37.

31. See for example Bruce S. Elliott, Irish Migrants in the Canadas, A New Approach, (Montreal and Kingston, 1988).

32. Johnston and Johnston, History of Perth County to 1967, 152 and P. E. Lewis, "The Stratford Riot of 1845" in Western Ontario Historical Notes, University of Western Ontario, XX (1964), 4, cited in Waite, Pre-Confederation, 161-62.
33. Johnston and Johnston, History of Perth County to 1967, 152, 210-11. In a highly publicized case in nearby Huron county, religious rivalries between feuding Irish families escalated over decades of retaliatory violence until in 1880 thirty drunken men descended on five members of the Donnellys' family and brutally slashed and burned the mother, father and five children. Orlo Miller, The Donnellys Must Die (Toronto, 1967).
34. The Stratford Beacon, 20 September 1872.
35. Ibid.
36. Ibid.
37. Moodie, Roughing it in the Bush, 224-25.
38. On wives as defenders of property in another colonial society see Ulrich, Good Wives, especially, Chapter 10, "Viragoes," 184-201.
39. PAO, RG 22, Series 392, No. 1859, Grey County, The Queen vs William W., 1860.
40. PAO, RG 22, Series 390-12, Judge Richards, Owen Sound, 1855, John C. vs Henry T., 141-53. Note, during this trial Judge Gordon was sitting in for Judge Richards.
41. PAO, RG 22, Series 390-3, Judge Hagerman, Leeds/Grenville, 1843, John M. and Wife vs Alex M. and others, 74-80.
42. PAO, RG 22, Series 390-12, Judge Richards, Perth County, 1856, The Queen vs William F. and John McNamara, 237-57.
43. Agnes Macphail, "My Ain Folk," unpublished autobiography cited in Pennington, Agnes Macphail, Reformer, 12.
44. Michael Roper and John Tosh, Introduction, "Historians and the politics of masculinity," in Manful Assertions Masculinities in Britain since 1800, ed. by Michael Roper and John Tosh (London, 1991), 1.
45. Cited in "Introduction," to Middle-Class Masculinity in Britain and America, 1800-1940, ed. by J.A. Mangan and James Walvin, (Manchester, 1987), 1.
46. Robert Griswold, "Divorce and the Legal Redefinition of Victorian Manhood," in Meanings for Manhood. Constructions of Masculinity in Victorian America, ed. by Mark C. Carnes and Clyde Griffen, (Chicago, 1990), 97.

47. Charles Dudley Warner, Being a Boy (Boston, 1897 [1877]), 50, cited in Anthony E. Rotundo, "Boy Culture: Middle Class Boyhood in Nineteenth-Century America" in Meanings for Manhood, 20.
48. In 1848, for example, John A. Macdonald challenged the Solicitor General, William Hume Blake to a duel. Cited in Risk, "The Law and the Economy in Mid-Nineteenth Century Ontario," 115.
49. On life in the tavern see, Peter DeLottinville "Joe Beef Of Montreal: Working-Class Culture and the Tavern, 1869-1889," Labour/Le Travailleur, 8/9 (1981/82), 9-40.
50. PAO, RG 22, Series 452, Judge Galt, Toronto, 1874, The Queen vs Peter S. and John M., 194-96. Peter S. was acquitted.
51. PAO, RG 22, Series 390-12, The Queen vs James B., Leeds/Grenville, Judge Richards, 1871.
52. PAO, RG 22, Series 390-19, Leeds/Grenville, Judge Gwynne, 1875, B. vs G., 370-77.
53. Hindus, Prison and Plantation, 96.
54. PAO, RG 22, Series 390-12, Leeds/Grenville, Judge Richards, 1855, The Queen vs Michael L., 298-309.
55. Mary T. was found not guilty and John B. guilty. PAO, RG 22, Series 390-12, York County, Judge Richards, 1853, The Queen vs John B., Mary T., 376-92.
56. PAO, RG 22, Series 392, No. 1898, Grey County, The Queen vs Andrew F., 1881.
57. L. Davidoff and C. Hall, Family Fortunes: Men and Women of the English Middle Class, 1780-1850 (London, 1987), 21.
58. The plaintiff was awarded 5 shillings for damages. He originally filed for £500. PAO, RG 22, Series 390-12, Judge Richards, Grey County, 1855, Richard C. vs Thomas B. H., 154-58. Judge James Gordon was sitting for Judge Richards.
59. This quote comes from an observation by an Owen Sound minister in 1845 regarding the increased number of assaults now settled in court by magistrates that had previously been settled by a "little physical violence." Davidson, A New History of the County of Grey, 354-55.
60. Likewise Kathryn Harvey observes that wife battering became an issue of "public conscience in Montreal in the 1870s." Harvey, "To Love, Honour and Obey: Wife-battering in Working-Class Montreal, 1869-79," Urban History Review/Revue d'histoire urbaine, XIX (1990), 129.

61. Linda Gordon, Heroes of Their Own Lives The Politics and History of Family Violence, Boston, 1880-1960 (New York, 1989), 2.
62. A Bystander [Goldwin Smith], "The Woman's Rights Movement", The Canadian Monthly and National Review, Vol. 1,3 (1872), 249-64, cited in The Proper Sphere, Women's Place in Canadian Society, ed. by Ramsay Cook and Wendy Mitchinson, (Toronto, 1976), 34.
63. Mr. Kerr addressed the House of Commons on the question of allowing a married woman as a compellable witness to testify when her husband is a defendant in a common assault case. Canada, Debates of the House of Commons, 13 March 1878, 1094-95.
64. See Constance Backhouse, "Married Women's Property Law in Nineteenth Century Canada," in Canadian Family History, ed. by Bettina Bradbury, (Toronto, 1992), 320-59.
65. NL, Canada West, Parliamentary Debates Scrapbook, 1857.
66. Wendy Mitchinson, "The WCTU: 'For God, Home and Native Land': A Study in Nineteenth-Century Feminism," in A Not Unreasonable Claim, Women and Reform in Canada, 1880s-1920s, ed. by Linda Kealey (Toronto, 1979), 154-55. The first WCTU formed in Ontario in 1874. Ibid, 154. See also Cook, "Through Sunshine and Shadow".
67. Ontario, Sessional Papers, "Second Annual Inspector's Report," 1865-70.
68. "Crimes of Violence," The Canadian Law Journal, XI (January 1875), 137-40.
69. The Prescott Telegraph, 29 October 1879. Cases cited in the article are from English courts.
70. Anna Clark, "Humanity or Justice? Wifebeating and the Law in the Eighteenth and Nineteenth Centuries" in Regulating Womanhood, Historical Essays on Marriage, Motherhood and Sexuality, ed. by Carol Smart (London, 1992), 201.
71. William Blackstone, The Common Law, 1, (7th Edition, 1775), 445, cited in Deborah Rhode, Justice and Gender (Cambridge and London, 1989), 238.
72. Mr. F. filed a report claiming to have a man as witness for his defense. Apparently he was out of town the day of the trial. PAO, RG 22, Series 392, No. 7221, York County, The Queen vs James W. F., 1874.
73. The doctor was quick to dismiss himself from further involvement in the case. He concluded his report to the police magistrate noting, "I know nothing of this case beyond what I have stated and would very much prefer to continue to. I have done my best to relieve this unfortunate woman; and I shall be more than thankful for relief from further trouble in the matter." Ibid.

74. Similarly, Dodge documents several cases where husbands allegedly committed serious assaults on wives and were found guilty of only common assault. Dodge, "Women and the Law in Ontario, 1850-1900," 234-36.

75. "The Hibbert Assault Case," The Stratford Beacon, 16 November 1866.

76. PAO, RG 22, Leeds Grenville, General Sessions and County Court Judges' Criminal Court, Judges' Notebook, 1877, *The Queen vs Thomas H.*, 144-57.

77. Ellen Ross noted a similar theme in cases of serious assaults among working-class families in London. Ross, "'Fierce Questions and Taunts': Married Life in Working-Class London, 1870-1914," Feminist Studies, 3 (1982), 580.

78. In her study of colonial society in Northern New England, historian Laurel Ulrich asserts that paramount to a wife's respect was living up to the "rule of industry." Ulrich, Good Wives, 61.

79. Ibid, 60-61.

80. Similar conclusions are reached by Annalee E. Golz in her study of wife abuse and murder in Ontario. Golz, "Abusive and Murdering Husbands: The Historical Relationship between Wife Battering and Wife Murder in Ontario, 1830-1920." Unpublished paper presented at The Second Carleton Conference on the History of the Family, Carleton University, Ottawa, May 1994.

81. Blackstone, Commentaries Vol. 4, 214, cited in John Beattie, Crime and the Courts in England, 1660-1800, 126.

82. Griswold, "Divorce and the Legal Redefinition of Victorian Manhood," 102.

## CHAPTER 5

### LARCENY, PROPERTY AND SECURITY

Larceny was the most common property offence in the Ontario courts. Legislation in 1841 outlined the conditions under which the monetary distinction between petty and grand larceny was abolished.<sup>1</sup> Although theft under 5 shillings remained a summary conviction, this statute law elevated all theft to a more serious felony charge of simple larceny.<sup>2</sup> This relatively simple change marked a critical moment in the evolution of the courts. Eliminating distinctions in the value of stolen goods granted courts wider discretionary powers to pursue charges and to authorize sentences based on the particular circumstance or place of the theft.<sup>3</sup>

As with other offences, larceny had a different social meaning in rural and urban communities.<sup>4</sup> Stage of social development and gender affected both the nature and function of the offence. Trial testimony in frontier/rural counties, more particularly Grey county, demonstrates that rural residents appeared before criminal courts to resolve personal and contentious wrangles over property while facing charges of larceny. In urban areas, property crimes routinely involved theft of personal goods from employers. While this relationship remained true for both women and men, for many women the central dynamic in the commission of the crime was their employment as either prostitutes or servants. Overall in rural areas grand larceny was charged as petty and in urban areas petty larceny was treated as grand.

Within recently settled communities disputes over property and ownership were resolved traditionally by a wide array of formal and informal mechanisms involving third party arbitration, mediation and individual or group acts of aggression. An expanding judicial system offered the alternative of litigation to pursue resolution of personal disputes and restitution of property wrongs. Addition of formal legal adjudications did not, however, immediately end earlier practices of dispute resolution. Evidence suggests that the introduction of formal legal dispute mechanisms added yet another layer to existing quasi-legal, informal procedures. In this sense communities melded formal legal structures to accommodate unique local needs as much as they accommodated those of the state.

This can be seen most clearly in frontier communities such as Grey county. Local historian, Rev. Smith reports a typical example of an informal "legal decision" in Grey county. In this case two neighbouring farmers submitted their dispute to two local notables, a land agent and a business man. Not versed in "modern law" the men cited a biblical authority in their choice of compromise over the loss of an animal. In the end, according to Rev. Smith, "[B]oth men were satisfied and remained close friends."<sup>5</sup>

Private individuals also pursued restitution for damages in civil courts. In property disputes involving trespassing, for example, plaintiffs could file depositions for "an action of trespass," as landholder Mr. G. did in 1855. In his writ the complainant, Hugh G., accused William W. and his family of illegally occupying his land and, without approval, removing trees from his property.<sup>6</sup> Pursing a civil suit,

however, involved greater costs than the alternatives. Given the exigences of frontier settlement it is not surprising then that this case appears to involve a prosperous land speculator rather than a settler. Based on his statements it appears Mr. G. was less interested in clearing his land for settlement than in maintaining it for future economic benefits.

In the above case a judge adjudicated the dispute under other circumstances, courts deferred complaints to a local "arbitrator." Precise reasons for selecting a more informal, less adversarial forum remain unclear; one case in Stratford suggests that arbitration may have been pursued in instances of a personal or private family nature among disputing family members.<sup>7</sup>

The above examples serve to highlight the wide range of options available to rural residents to resolve property disputes and suggests reasons as to why one may have been pursued over another. Analyses of case studies in the superior criminal courts suggest a fourth option. While we traditionally think of criminal courts as a tribunal for resolving public wrongs between individuals and the state, in fact, in lately settled communities theft of capital goods often occurred among neighbours and/or business acquaintances who resorted to stealing to resolve personal or private financial disputes.

In Grey County, one such incident occurred in 1861. The complainant, Mr. Rozel S., a farmer from Artemesia, swore that Mrs. M., a local business woman, robbed him of a "note of hand". Mr. Rozel S. testified to visiting the defendant's house to demand payment for a note held against her for ten dollars. Mrs. M.

responded by snatching the note from his hand and, with obvious satisfaction, told him he "could go to Hell, as she had the note now and would not pay it." The note in question related to an earlier exchange of property between the two disputants. In the course of the trial it became clear that this case had more to do with establishing the validity of the note than a theft.<sup>8</sup> Similarly, in another case in Perth county, James C., among others, was charged with stealing a \$100.00 note, the property of John V. Initial testimony simply alleged that one of the defendants grabbed the note. Further details, however, revealed that the theft occurred as a result of a disagreement over the financial arrangements of an apparently soured business deal.<sup>9</sup>

Disputes over employee/employer arrangements also came before frontier/rural criminal courts. Mr. George H., a widowed farmer from Normanby township, Grey county reported missing a few household items. He blamed his former housekeeper, Mrs. Lydia S. for filching the goods. She denied his charge and declared them hers. The grand jury found a true bill, and the case proceeded to superior court. At trial, the complainant revealed more of the ongoing dispute between the two parties. On the night of the alleged theft Mrs. S. accused her employer of taking some of her personal belongings: a satchel and a parasol. The intrigue, however, does not end here; it appears Mr. H. intended marrying Mrs. S. when he hired her as a housekeeper. Later he discovered, however, that Mrs. H. was a married woman. Sometime after Mrs. S. left his employ. Her departure, it appears, prompted the action of the complainant.<sup>10</sup>

The above case suggests that the defendant removed household items as an informal "wage payment" or held them as leverage to negotiate the return of items her employer allegedly stole from her. It is sometimes difficult to determine precise reasons for these actions because in higher courts the prisoner does not take the stand. It is only through prosecution and witness testimony, police statements and the occasional "statement of the accused" that we hear the offender's voice. Still, other instances demonstrate more conclusively that defendants took goods in a furtive attempt to redress disputes over wages or exchanges of goods.

Such was the 1861 case against Isidore B. and Orice P., of Edwardsburgh township in Leeds/Grenville. Both men reported removing a bag of flour from the mill either as payment for money they were owed or as part of an exchange for "what they were to pay for in chopping".<sup>11</sup> The following year a defendant, Alice W., of Elizabethtown Township in Leeds/Grenville recounted hoarding clothing to resolve a dispute with the complainant's wife, Mrs. Susannah H. According to Mrs. H., a seamstress, the prisoner hired her to make a dress. Sometime later the seamstress swore that the prisoner had stolen her petticoat. Under questioning by both the constable and the complainant, the prisoner never denied having taken the petticoat. It appears, instead, she intended using it to negotiate for the dress demanding that, "she would not give it up until she got the dress".<sup>12</sup>

Although the exact origin of this feud is unknown, what is clear is that this like other thefts involved more than simply "stealing". Trial proceedings are problematic in determining the extent of such practices; what can be gleaned from

these accounts, however, supports the claim that some thefts involved direct attempts by defendants to force a civil settlement by way of a criminal action. How often settlements at criminal courts favoured prosecutor or defendant is uncertain. Among the cases presented here over half the verdicts were not guilty. From this we might conclude that the items in question remained in the possession of the alleged "thief".

More typical than cases cited earlier, stolen property rarely included personal household items; most often stolen property comprised commodities essential for production, consumption and transportation in rural economies. Within these communities property crime primarily involved theft of major capital goods. Ofttimes horse drawn wagons hoisted away goods from remote and/or unattended locales. Such occurred in the case against Eliza H. and Mary J. who, according to the complainant, allegedly filled a wagon with fowl and fled from his farm one moonlit summer night in 1860.<sup>13</sup> In another 1859 case in Grey county Alexander H. allegedly stole a sleigh and some money, the property of a rural neighbour.<sup>14</sup> In 1879, the crown charged Richard N. of Grey County with taking 1,000 feet of pine from a local sawmill.<sup>15</sup>

A closer examination of case files reveals discrete but telling distinctions between the actual events of the thefts and the official indictments and verdicts which later categorized them. These dissimilarities evolved throughout the various stages of formal judicial proceedings. In Grey county charges of simple larceny sometimes involved threats of violence and housebreaking. Fundamental differences existed in the facts and circumstances of larceny cases in pioneer communities when compared with the discerning categorization of property offences identified in statute law.

Furthermore, when a prosecutor assigned serious charges against an accused, grand juries sometimes down-graded the offence to a lesser charge. Taken together, this evidence shows how perpetrators of serious property crimes in counties such as Grey arraigned on charges of larceny might also be linked to more serious offences. This contrasts with judicial practice in urban areas where charges of larceny more typically involved only theft.

We see evidence of reduced charges in a case in Sullivan, a village in Grey county. Mr. James B. reported to police that the door to his house, previously padlocked, had been "broken open" at night. Evidence of forced entry at night along with theft of commodities clearly fits the criteria for a more serious charge of burglary. The suspects, however, were charged with larceny.<sup>16</sup> Likewise, in the dispute over the promissory note discussed above between Mr. S. and Mrs. M., the defendant was charged with robbery and larceny. From the records it is clear that this incident also involved threats of violence against the complainant and other witnesses. During the dispute a scuffle erupted between Mrs. M. and Mr. S. Afterwards, Mrs. M. picked up a knife held it up to the faces of several witnesses, including those of her children, and threatened them. The grand jury filed a no bill for the robbery and a true bill for larceny.<sup>17</sup>

Specific socio-economic components of frontier communities explain this pattern of judicial practice. There were, as noted in grand jury reports, practical and financial barriers for witnesses attending court. Lack of funds and seasonal transportation obstacles made court attendance more difficult in large, sparsely

populated communities. As well, minimal policing services limited detection. Constables and detectives more readily available in urban centres were at a premium in rural communities. Judicial procedure, meanwhile, required critical corroborating evidence for convicting serious felonies. Reducing the nature of the charges also reduced evidential requirements. This conclusion is further supported by the lower percentage of convictions for larceny in the remotest of communities, Grey county. There, the courts convicted only 51.2 per cent of men and a low 34.2 per cent of women compared to overall convictions for the same crime in all communities of 62.5 per cent and 55.2 per cent respectively.<sup>18</sup> These patterns of prosecution suggest that local judicial officials adapted legal practice to accommodate regional requirements by downgrading charges to those requiring a narrower burden of proof.

Legislative reforms suggest that prior to 1855 legal impediments substantially reduced convictions for property crime. Procedural changes in 1855 attempted to eliminate these obstacles and clarify legal practice. Under the new law, "offenders [who] frequently escape conviction on their trials by reason of the technical strictness of criminal proceedings in matters not material to the merits of the case," will be less inclined as "such technical strictness shall be relaxed." As often as not, guidelines for implementing this act cited particular problems related to charges for property crimes.<sup>19</sup>

Beyond legal and procedural obstacles local residents balked at financing legal excesses on limited personal incomes. In particular, county jurors griped about the paltry sum provided for in town expenses. Worse still, crown witnesses paid travel

and accommodation costs out of their own pockets when testifying in court. This was a particularly burdensome hardship given the vast distances and limited transportation facilities in rural areas.<sup>20</sup>

More importantly, the socio-economic organization of the community influenced local decisions to try serious crimes as minor offences. Frontier communities were more prone to acts of violence for dispute resolution than other more settled societies.<sup>21</sup> Documentary evidence suggests that customary views on violence and ownership of property differed from other more settled communities. Although legal presentments sometimes downgraded the actual circumstances of the crime, still, within the aggregate sample committals for serious property crimes were higher in frontier communities than in urban centres.<sup>22</sup>

The evidence highlights the more strident actions of some men and women in pioneer/rural communities. The contrast for women is particularly striking. Among assize case files and benchbooks for York/Toronto few women were charged with either house breaking, robbery or burglary. None appeared in the aggregate gaol sample. Yet, in less populated frontier/rural areas, women appeared more frequently in case files charged with serious property offences. In the aggregate data in the 1860s two women in Grey county faced serious offences of robbery. Again in the 1870s one woman in Perth was charged with housebreaking and a second with robbery.

Another study of female serious crime in several Ontario communities demonstrates a similar trend. Laurie Fee found that among the women charged in

Ontario between 1880 and 1930 seventy five percent lived in a rural or a village environment. Among others residing in cities or towns, a third had recently moved from a rural area. As Fee concludes "[F]or women, serious crime was a rural problem -- not an urban one."<sup>23</sup>

Differences in the nature and severity of crime between rural and urban communities resulted, in part, from conflicting experiences of womanhood. Many Victorian women in frontier/rural Ontario knew no part of nineteenth-century notions of a private, domestic sphere. For them the daily struggle of providing for their families, trading or selling produce and generally doing any one of many farming chores drew them into the wider community. Within a network of reciprocal economic and social arrangements among neighbours and kin disputes could erupt over disagreements ranging from property to payments. Either singly or with partners, women acted; these actions landed some of them in court.

If rural property crime reflected the sometimes aggressive, often personal forms of dispute resolution in an agricultural economy, urban property crime reflected the gendered social and economic organization of nineteenth-century society. Increased employment in urban centres created a wide range of job options primarily for men. For women job opportunities expanded within a limited number of areas including domestic service, textile industry and possibly the sex trade. For the majority of women work remained in the home.<sup>24</sup>

Women and men charged with theft listed occupations that were overwhelmingly working-class. Thefts by men reflected the more diversified male public and private culture. Men stole from their employers within the wide distribution of working-class occupations. Women also stole from employers. For women, however, the nature of their occupation was central to the theft; the majority of women committed for stealing worked as prostitutes or servants. When looking at women we are dealing with two specific social groups where the role of larceny is fundamentally different. For prostitutes larceny was part of a wider auxiliary of criminal activities associated with the culture of prostitution. For domestic servants larceny was a private, solitary crime against a person of another class who was also their employer.

Prostitutes working in downtown Toronto, mingled with the criminal side of society appearing in lower courts charged with various offences which included frequenting a house of ill-fame, disruptive public behaviour, loitering and drunkenness. They became over the years, familiar faces on beats patrolled by local constables and among those attending nearby police stations. In one case a constable was sufficiently acquainted with suspicious characters on his beat that when a victim described the woman who robbed him the constable knew not only who it was but where she lived.<sup>25</sup> For some women prostitution also meant additional risks beyond repeated charges for minor summary offences; it also drew them into a wider culture of crime that included a social network of other women and men profiting from pilfering.

Depositions presented in the series of larceny case files support the claim that some women appeared as part of a "community" of women and men traversing streets and bars in a milieu of "madames, pimps, gamblers, petty thieves, boot-leggers, and drunkards."<sup>26</sup> Here alone do we find a small network of criminals. In the case against Mary Ann F., she and another woman approached a man on the street to accompany them and afterwards he noticed his watch was missing.<sup>27</sup> Similarly in another case two male friends spent time one evening in a brothel when one discovered that his pocket book had disappeared.<sup>28</sup> In yet another case a group of two women and a man were charged with stealing a gold watch by a man who had recently departed from a Toronto brothel.<sup>29</sup> Whether or not these thefts represented a settling of payments between prostitutes and clients remains unknown. Although women's voices remain silent in the documents another source indicates that in some transactions goods or money were "taken" as payment.<sup>30</sup>

Typically prostitution dominated the occupations of women charged with theft. Servants and housekeepers followed a close second. In Toronto/York, Grey and Perth counties, almost a third of the women charged with larceny were servants. Surprisingly, in Leeds/Grenville all women in custody worked as domestics. Servants were familiar with valuables and money stored in houses normally privy only to members of the immediate family. Without doubt servants had ample opportunities to steal. Often alone and unsupervised these women lived and worked surrounded by possessions and wealth they would never acquire. Working for and in homes of the

propertied middle class they confronted the reality of nineteenth-century economic disparity in its most transparent form. For some the temptation must have been great.

Despite the unbalanced nature of this relationship both parties shared, albeit unequally, a degree of dependency and vulnerability. Given the arduous chores of nineteenth-century domestic households, many families relied on a limited pool of servants for cooking and cleaning. Servants, on the other hand, relied on a contract of employment that was at best paternalistic and at worst exploitive.<sup>31</sup> Furthermore, within this private household arrangement employers were vulnerable to theft by servants, and arguably servants were vulnerable to accusations of theft by employers. According to some employers, servants availed themselves of such opportunities and stole. In a trial held in Brockville, for example, Mr. Rufus L. charged his servant, Ms. Amelia C., with stealing his pocket book. Mr. Rufus L. reported that:

She [Amelia] had charge of the house on the Sunday before and during an afternoon of the week previous. -She was alone in the house the greater part of the Sunday.-I left money in the house that day.<sup>32</sup>

His observations left little doubt as to her opportunity.

In addition, knowledge of household possessions in the minds of some prosecutors suggest it was servants rather than family members who stole. In the above case, for instance, Mr. L. recounted "leaving it [the pocketbook] on a ledge over the window in a bedroom to which every member of the house had access." He "suspected" only the servant, Amelia C.

Suspicious of theft by servants did not always end with employment. A former servant, Miss Annie L., was charged with returning to the house to steal a dress tucked away in a trunk. Her former employer, Mrs. Rebecca J. of Young township in Leeds/Grenville, reported that the defendant had attended a funeral at the house

to which all the family went, the prisoner came to the House a short time before the funeral and was in the yard when the funeral was [illegible?]. The dress, was in a chest not locked the prisoner had lived as a servant in the house but had left the service.<sup>33</sup>

Servants were employees, and they were working class. Beyond this identity, some nineteenth-century employers also saw their "immorality," their "criminal" proclivities.<sup>34</sup> As such, they could be dismissed, searched, arrested and charged in part because of their "place" in another's private home.

Only in the testimony of witnesses, oftentimes under cross examination by defence, do we get a glimpse into some of the more problematic aspects of domestic service.<sup>35</sup> In the earlier case against Amelia C. in Leeds/Grenville county, the male householder reported dismissing her "because she would not do things as my wife wished her to do. When she left she did not get the balance" of her wages. Instead, they gave her a pair of boots worth \$1.50.<sup>36</sup> Details of another case in Toronto township in 1860 suggest other forms of abuse in working relationships.

A servant, Mary Jane B., was charged with stealing a gold broach, locket and purse containing \$14.25. She worked in a household with five other adults, all related: grandmother, grandfather, uncle, son and daughter. Under cross-examination

by the defence attorney the daughter denied that her brother had abused the servant or that the servant had complained of ill usage. Furthermore, she insisted, the servant

was well treated whilst there, I never quarrelled with her. They quarrelled on some day, I never heard what it was about. It was not more than words that I know of.<sup>37</sup>

In yet another case of extreme servant abuse documented by legal historian, Susan Lewthwaite, a former servant was found stumbling on the road attempting to escape her employers.<sup>38</sup> No doubt others left taking along items as "wages." In the case involving Mary Jane B. the alleged stolen items belonged to the woman responsible for paying her wages. According to the employer, Mary Jane did not request back payment of wages when she left which suggests that she may have fled quickly for safety allegedly taking goods as payment.<sup>39</sup>

As we have seen, servants took money and household items. They may even, as hinted in case files, have selected from the personal possessions of their employer. Targeting a particular individual suggests that acts of aggression, indiscretion or non-compliance with contractual agreements were the catalyst for some thefts.<sup>40</sup>

More generally items stolen included pocket books, clothing or small personal items such as watches, hats or silk handkerchiefs that could be easily disposed of privately or sold at pawn shops and second hand stores. In order to ensure greater accountability among pawn brokers and by the by assist police in identifying stolen goods, the province passed legislation in 1851 regulating pawnbrokers and pawnbroking. The statute required each shop owner to "enter in a fair and regular manner in a Book, . . . a description of such goods so received to pawn."<sup>41</sup> The

gendered component of this legislation is noteworthy. By 1850, most, if not all provincial legislation, used the "gender neutral" identity "he".<sup>42</sup> This act did not. It named the person pawning as "he or she".

The relationship between urban theft and women as pawners underlines two of the central themes of this thesis: social development and gender. Evidence from other studies of working-class culture in London suggests why urban women may have been more frequently arrested and charged with petty theft than other thieves, and more specifically, their male accomplices. "Pawning, a crucial link between household and neighbourhood economy," as Ellen Ross asserts "was a woman's domain".<sup>43</sup> Moreover, as she observes, the "rings of thieves who used women to pawn their stolen goods paid homage to women's expertise in maneuvering within their neighbourhood economies."<sup>44</sup> Testimony of an alleged theft by a man and woman in Toronto recounted how the woman pawned the stolen watch and chain.<sup>45</sup> In another case involving a private sale of goods one woman was arrested after attempting to sell stolen cloth to another woman. She was found guilty.<sup>46</sup>

Given the greater value of men's clothing over women's or children's it became a more prized commodity to pawn.<sup>47</sup> Julia B. was convicted of larceny based partly on the pawn broker's identification of her pawning a man's coat and hat.<sup>48</sup> Although a pawn-broker's testimony may have contributed to charges, his testimony alone was not sufficient to secure a conviction. In a similar case a pawnbroker identified Caroline W. as the client who sold him a stolen watch. The jury, however, returned a verdict of not guilty.<sup>49</sup>

That said, the connection between women's pawning and the greater likelihood of arrest and conviction serves, partly, to explain the disparity in Toronto/York between male and female committals and convictions for theft. Notably more women (61.4 per cent) than men (53.5 per cent) were found guilty in Toronto/York despite the fact that a greater percentage of men (17.7) were committed than women (10.9). This difference becomes even more apparent when compared with the most non-urban community, Grey county; only 34.2 per cent of women and 51.2 per cent of men faced sentences for theft where overall committal patterns by gender were equal.

If an analysis of female property crime defines the structure of theft in urban centres, the pattern of male property crime confirms it. Distribution of thefts by male employees across a wider range of occupations reflects the gendered occupational distribution in society. In 1850 Andrew M., for example, was in his sixth week of working as a coachman. After being questioned about a missing silver fork he left the following week. A subsequent investigation pointed to Andrew as the thief. He was arrested and convicted.<sup>50</sup> In another instance several years earlier, a hotel employee was charged with stealing from the till. Over a period of time the owner had noticed money missing from the register; he suspected his employee Thomas C. Suspicions were later confirmed when the proprietor found the money, which he had marked, in his employee's pocket.<sup>51</sup> Similarly, Michael M. took advantage of his employment in a hotel in Stratford to filch a guest's coat.<sup>52</sup>

Overall offenders stole from and were subsequently charged by individuals occupying higher positions in the social hierarchy. Stealing from within the same class

was rare but did occur between men who shared temporary, private living accommodations. Such occurrences were contrary to the overall pattern of crime and may reflect aspects of an internal social organization among some criminals, perhaps part of a rough male culture that linked drinking, shared housing and theft. Some men, British historians, Bruce Lenman and Geoffrey Parker conclude, formed part of a roaming proletariat. Living in rooming houses they kept all their worldly goods with them day and night -- "a target for crime when their pockets were full, potential criminals themselves when their pockets were empty."<sup>53</sup> Within these common living spaces thefts occurred.

In the case of the Queen vs. Richard P., an itinerant sailor, he swore that the man sharing his room in an Inn, stole his wallet while he slept.<sup>54</sup> In another instance in a Toronto hotel, a cab driver was convicted of stealing ten bank notes from a fellow boarder in a hotel room. He stole the money after his drunken roommate had fallen asleep.<sup>55</sup> One man fortuitously took precautions. He marked all his bills. When they were stolen, he was able to identify each one found on another boarder who slept in a room above him.<sup>56</sup>

In contrast to thefts by acquaintances or employees, shoplifters relied on anonymity. As such, shoplifting was predominately a crime of large cities and occurred less frequently in small towns and villages. In cases appearing before courts of quarter session and assize, the list of "lifted" items ranged from selections of small personal or household goods, to food supplies and wearing apparel. In all but a few

cases where the store was actually broken into, most goods were taken from the premises during business hours. Thieves filched articles often of minor cost either for personal or family use, or possibly in cases of multiple items, for resale. Typically smaller items were hidden under clothing or carried out in shopping bags. Many thieves concealed the goods when the constable, frequently summoned by the shop clerk, arrived to arrest the thief and take her/him into custody.

Most often women stole from shops as in the case of Margaret and Mary R. Together they filched a total of eleven pairs of socks from a local dry goods shop in Toronto.<sup>57</sup> Similarly, Matilda H. was caught by the proprietor of a "fancy store" concealing a dress cap and silk scarf in her hand.<sup>58</sup> As household managers women purchased necessary household items; at times, some also pilfered.

Less frequently young boys<sup>59</sup> and some men stole from shops. For example, in 1855 two boys, George D. and John C., were found guilty of filching several glass items from Mr. J. Donnelly's store in Toronto.<sup>60</sup> Later in 1877 a beggar, Mr. J. Carey, was convicted of stealing umbrellas from a store on Yonge Street in Toronto.<sup>61</sup> Again in Owen Sound in 1869 a constable apprehended a youth charged with stealing a "silver cupped scent bottle" from a town store.<sup>62</sup>

As well, thieves seized upon inadequate surveillance to pilfer. In some instances they assumed false identities to avoid detection. In 1873 in downtown Toronto, three women arrived at Alexander and Reid Wholesale Drygoods Merchants' warehouse to purchase large quantities of silk, ribbons and lace claiming to be "in business in Chatham". The women lingered in the store examining the fine materials

and then left stating their intention to return the next day to make their purchase.

Sometime later the clerk missed a quantity of black silk; he immediately suspected the three business women. They were found nearby "shopping" in another store taken into custody and charged.<sup>63</sup>

Press headlines alerted readers to "The Silk Robbery Case." This incident sparked a great deal of publicity in Toronto and beyond recounting details of the \$800.00 heist and subsequent escape. This case, the press concluded, disclosed "the desperate audacity and thorough organization of the criminals who infest the city." Subsequent events revealed inadequacies in policing in the city. First, the evidence was stolen from the police station. Later, while awaiting trial in a court house jury room, one of the women climbed out of the window, down a ladder and escaped in a buggy.<sup>64</sup>

Rural shop-keepers, on the other hand, managed smaller stores and often knew their clientele. Such was the case in the Queen vs Mrs. M. The accused, a 35 year old married woman, lived with her three children in the village of St. Marys, Perth county. In June 1861, she appeared in Court of Quarter Sessions charged with stealing goods from a local store. It was, according to the manager, a store she visited frequently. Although the shopkeeper never actually detected Mrs. M. pilfering goods, he had noted several items missing from the store over time and suspected her.<sup>65</sup> His suspicions were well-founded; Mrs. M. was arrested and convicted.

Among the women and men appearing in court arrested for larceny, shoplifters were more likely to be found guilty than, those, for example, who stole money.

Possessing identifiable stolen goods provided decisive prosecutorial evidence and contributed to more convictions for these offenders. In fact, many offenders in Toronto often faced two charges, larceny and receiving stolen goods thereby increasing the likelihood of a conviction on one of two charges.

Some thieves fearing the consequences of their action tried to dispose of the evidence. One woman, perhaps after being alerted to a search warrant, attempted to burn a stolen garment. As the police removed the lid from the stove the prisoner quickly tried to "stir the pettycoat [*sic*] with her hand to make it burn." However, the petticoat retrieved from the stove "was not so much burned" and the complainant recognized it. For some defendants locating the evidence prompted a guilty plea. For others, like the woman above, the case proceeded to trial, and the jury convicted.<sup>66</sup>

Alarmed at the apparent increase in shoplifting in Toronto in the 1870s local judicial and city officials responded with a list of recommendations for reducing crime. Both the York grand jurors along with the Toronto Chief of Police concluded that theft of goods from shops resulted partly from a profusion of goods displayed unguarded by merchants outside stores. These influential spokesmen wanted the "injudicious practice of exhibiting goods, wares, and merchandise in front of shops" halted. They claimed it was too great a temptation to "persons of dishonest proclivities".<sup>67</sup> While shop displays lured customers, the practice, according to these men, also lured those with weak characters.

Larceny against the person, or pickpocketing as it was more commonly known, predominated in urban, public places when one or more criminals targeted a

single man or woman on the street. Offenders appearing in court were either caught with the stolen item in hand or it appeared later when located by the police. Along a main street in Toronto in 1848 James D. grabbed a man's watch and fled on foot. The victim pursued all the while calling for police assistance. In the end, he single-handedly escorted the offender to a nearby police station. A search of the offender yielded the victim's handkerchief; a search of the grounds yielded the watch and James was found guilty.<sup>68</sup>

While many suspects faced larceny charges, overall theft convictions were lower than those for public peace offences. In part, the lower percentage highlights legal obstacles obtaining convictions for stolen money. Without other corroborating evidence, establishing ownership of bills and coins was problematic. Individual identification of money was reported only in rural areas.<sup>69</sup> Here bills exchanged hands less frequently. For example, in 1861 a township resident visiting Brockville had her purse stolen. She could, she asserted identify all the missing contents.

I have Seen the Meny [*sic*] this Morning and can Swear to two of the one dollar bills the knife key & a Bland Bill on the Bank of Health, one of the Dollar bills has the Corner torn off & on the other bill is 43 in figures. I have had Some of the bills in My possession for some time. I am quite shur [*sic*] that the bill with the corner torn off is Mine, the Meny [*sic*] was in a Pocket Book and ther [*sic*] was 2/6 in Silver in the Pocket Book & 12 in bills a Pen Knife, key 8 one cent.<sup>70</sup>

Again in another case, the crown subpoenaed William W. S., a clerk in Owen Sound, to appear in court to identify a missing \$5.00 bill. He had previously cited the lost

note by bank, letters and numbers in his report.<sup>71</sup> Both cases resulted in guilty verdicts.

Where prosecutorial evidence was less conclusive a defendant's credibility based on assessments of character frequently assumed a more central role. In presenting alternative arguments defence counsel pleaded circumstances of alcohol abuse and/or good character to sway juries to acquit and judges to render lighter sentences.<sup>72</sup> More importantly for our purposes a study of trends in assessments of respectability and alcohol use identifies key components in the social development of communities as they shifted from an economy based on reciprocal relations to a more diverse and stratified industrial economy.

As far back as the 1850s if not before, drunkenness as a defence was used to justify extenuating circumstances in committing crimes. Indulgence, as the lawyer argued in the case against Alex H., partially explained his aberrant behaviour. In the small community of Invernay, Grey county one defence witness declared that the defendant when drunk "was noisy and boisterous [but] when sober he was a very quiet man." Another witness confirmed that on this occasion the defendant was "very drunk . . . he scarcely knew what he was doing staggering" around. The defendant was found guilty on the first count of stealing money and not guilty on the second count of stealing a sleigh.<sup>73</sup> Similarly, the jury acquitted Charles B. of Stratford, of stealing Rev. B.'s horse and buggy. Evidence supported his actions, but not his criminal intentions. The prisoner, as reported in the newspaper, "in a drunken fit

went to the stable . . . and evidently not knowing what he was about took the horse and rode him apiece, and then let him go."<sup>74</sup>

A defence of drunkenness could also be used to garner a lighter sentence. At the trial of Mary C. heard in Stratford court in 1861, Judge Burritt declared that "[T]he sentence was light owing to the prisoner acknowledging her guilt, and as she was aware that the theft was committed under the influence of liquor." She spent two days in gaol.<sup>75</sup>

Malleability of legal interpretations of drunkenness served multiple arguments. Its decline in use as a defence argument first in the cities and then later in the countryside undoubtedly reflected a growing intolerance towards alcohol abuse. It underscores as well the impact of temperance lobbying on legal jurisprudence especially among urban populations.

Defence arguments based on character were most frequently used in rural trials. For defendants, witnesses attested to their honesty and good character with specific reference to reputations among neighbours. Under cross examination by defence counsel, one defendant's employer admitted that he "never heard anything against" the defendant Arthur S. in his six months of employment. The only witness called by defence was a neighbour of six years who knew Arthur S. "intimately." He confirmed that Arthur "has always borne a very good character." The verdict was "not guilty."<sup>76</sup>

Other attestations certified an accused's respectability as a family man and property owner. In 1848 a lawyer defending a farmer from Whitby township against a

charge of horse theft called only three witnesses. The first established his credentials as a prosperous property owner, husband and father with a team of horses "of his own." By implication the accused had no need to steal. The second witness verified his good character and "long time" property ownership in the neighbourhood. The third witness had "known the prisoner from a child" and summed up the defendant's position when he concluded "his character is good, he had a family, and is of a respectable family." Again, the verdict was "not guilty."<sup>77</sup>

Lenman and Parker remark how in recently settled communities given the difficulties establishing guilt "the reputation of the suspect in the community was, at times, the only sure way to assess probable guilt."<sup>78</sup> As we have seen the defendant's relationship to the community and with his family was key to establishing his credibility. The degree to which this system worked within relatively small, stable frontier/agricultural societies where a host of traditions inextricably aligned social relations suggests that conversely among larger urban communities with fewer social/economic links it served less purposefully.

A second important, related trend emerged in the 1860s in urban cases and surfaced a decade later in rural counties. Arguments in court reflected the influence of contemporary public policy concerning distinctions between serious criminal behaviour and minor aberrant actions. Here, character assessment was crucial. Determining character established important distinctions in motives between first time offenders and those of the potentially dangerous or habitual criminal class: vagrants, drunkards and the professional criminal. In establishing self-worth witnesses were

now called upon to attest to an individual's work habits, "industry" and, notably, "sobriety." In the trial of Abraham R. and others charged with robbery in Albion, Peel county in 1865 defence called only two witnesses. Each reported on the industriousness, work capability and sobriety of the defendants.<sup>79</sup> Again in another case ten years later in Owen Sound a witness stated "I found him [the defendant] honest industrious and sober."<sup>80</sup> Both defendants were found not guilty.

Differences in character interpretation suggest a shift in cultural and social assessments from one based on community reputation to one based on individual industry. Overall, defence arguments centring on character declined in the city by the 1870s, but persisted in agricultural communities for at least another decade. Perhaps respectable character, as defined by family and to a lesser extent property ownership, became less a factor in city trials as individuals increasingly became identified by their occupation within the socio-economic hierarchy of modern industrial capitalism. As a result character evaluations based on employment and sex came to the fore.

Lack of character witnesses among unemployed, women, immigrants and the poor offered fewer options for defence. As American professor of law, George Fletcher acknowledges, in contemporary individual assessments of "projected dangerousness" by police and court officials "factors of reputations, ethnicity and class probably matter more than we should like to admit."<sup>81</sup> Conversely a weighting of merits such as class offered an implicit advantage to middle-class residents over working-class ones.

Although evidence of a defendant's good or bad character did not always overturn a guilty verdict, it could still influence a jury's sentencing recommendations for "mercy." Thomas C., for example, had been accused of stealing half a dollar from his employer, a shop keeper. The crown's case was solid. After noticing money missing Thomas C.'s employer arranged with the high constable to mark his spending money. When it came time to make his purchase, the constable paid the suspected employee. The marked money was later found in Thomas' trunk. Three witnesses appeared on his behalf. Each one offered the same defence, his good character. The jury brought in a verdict of guilty with a recommendation "to mercy on account [of] having good character."<sup>82</sup>

Women too relied on favourable assessments often provided by men usually of a higher class. Margaret M., a widow, sold used articles at the market. She was accused of taking Edward C.'s house keys. Evidence was vague. Although the keys were found in her box at the market stall, no one had actually witnessed the theft, nor could anyone place her in the house at the time of the theft. The crown called just two witnesses for her defence. The first recounted details that tarnished the credibility of her prosecutor. The character testimony of the second witness sealed her fate. George W. esq. proclaimed, "I know the prisoner for the last 16 or 17 years I always considered her an honest industrious woman". Despite having the keys among her possessions, Margaret was acquitted of both larceny and receiving stolen goods.<sup>83</sup> Again when announcing the outcome of another case in St. Marys, Perth county the

newspaper editor remarked that the evidence was "magnified by the fact that the prisoner did bear the best of characters."<sup>84</sup>

Just as favourable character assessments influenced the defendant's case, no character witnesses or unfavourable assessments disadvantaged a defendant. One is left wondering at the effect of silence on the defence of Sarah P. and her daughter Mary charged with housebreaking and larceny in Brockville in 1878. According to the complainant, a local store owner, thieves had entered his house removed food and several sundry items. There was no violence or property damage during the theft. Another woman was suspected of being an accomplice; police charged her with receiving stolen goods. Fortunately, for her, her landlord testified to her "good" character. This assessment proved propitious. Since police reports failed to link her directly to the theft she received an acquittal. No character witnesses, however, testified on behalf of the other two defendants. Evidence linked both mother, a housekeeper, (perhaps for the complainant) and daughter (also listed as a housekeeper) to the crime.<sup>85</sup> Based on hearsay evidence it was inferred that the daughter had entered the house through a window, and then either let her mother in or passed the stolen goods through the window. Both were found guilty. The mother, received the longest sentence of all the property cases reviewed for this study -- seven years at hard labour in Kingston Penitentiary.<sup>86</sup> The daughter convicted of receiving stolen goods was sentenced to six months in gaol at hard labour.<sup>87</sup>

Prostitutes and other disorderly characters not only lacked witnesses to attest to their character, they could, at times, suffer devastating assessments. On two different

occasions a lower court official, possibly police magistrate McNabb, (the initials appear to be his) wrote disparaging remarks on their files. Jane S., he noted has "been frequently convicted and [is] a very disreputable woman."<sup>88</sup> Likewise, on Caroline W.'s file, someone wrote, she is "about one of the worst characters in Toronto -- had been in P.P. before and gaol frequently."<sup>89</sup> The first woman stole \$30.00, the second, a watch. If correct judicial procedure was followed likely only the crown prosecutor read these remarks. They remained unknown to judge and jury. The verdict, in both cases was not guilty.

Overall, these examples, support a dichotomous view of the virtuous or fallen women. Industrious, good women were considered for leniency, possibly acquittal even when drunk. Fallen women -- prostitutes, larcenous housekeepers and corrupting mothers -- received harsh punishments.

As with other crimes the social meaning of larceny reflected the broader influences of time, place and gender. Among cases of larceny in Grey County it is clear that disputing parties were acquainted prior to the offence and this relationship was central to the theft. The key dynamic in these cases was less the identity of the thief than it was the ownership of the stolen item and, more broadly the economic and social relationship between litigants. In bald terms, cases proceeded to criminal court to resolve personal disputes between two or more feuding neighbours or business partners as often as they attempted to prove a felony. In that sense, both judge and

jury served in the rural/frontier county as an arbiter resolving civil disputes in a criminal court.

Urban trends highlight a different model that at its core reflects the nature of a hierarchical gendered set of social and economic relations within a diversified labour market. Three central issues emerge: protection of private property, class conflict and gender divisions. An analysis of property theft reveals as much about the relations between employers and employees as it does about the class based, gendered diversity of the industrial, capitalist state.

1. "An Act for Consolidating and Amending the Laws in this Province, Relative to Larceny and Other Offences Connected Therewith." PSC, 4 & 5 Vic., cap. 15, 1841. The distinction between grand and petty was abolished in 1837. "An Act to Abolish the Distinction Between Grand and Petit Larceny, and to Enable the Courts of General Quarter Sessions of the Peace to Try all Cases of Simple Larceny, Under Certain Restrictions, and to Amend the Law Respecting the Punishment of Larceny." SUC, 7 William IV, cap. 4, 1837. Banishment as punishment appeared only in the 1837 statute. Four years later when the Union government passed legislation to amend and consolidate the laws relative to larceny there was no mention of banishment. Earlier legislation in 1833 eliminated capital consequences for property crime. "An Act to Reduce the Number of Cases in Which Capital Punishment May be Inflicted: to Provide Other Punishment for Offences Which Shall no Longer be Capital After the Passing of This Act; to Abolish the Privilege Called Benefit of Clergy; and to Make Other Alterations in Certain Criminal Proceedings Before and After Conviction." SUC, 3 William IV, cap. 3, 1833.
2. The 1841 Act defined the specific circumstances for laying a charge of larceny. In addition it acknowledged the subtle distinction between larceny and other property offences such as fraud. "An Act for Consolidating and Amending the Laws in This Province, Relative to Larceny and Other Offences Connected Therewith." PSC, 4 & 5 Vic., cap. 15, sec. 4, 1841. On legal institutions and changes in civil courts in Ontario see, for example, Risk, "The Law and the Economy in Mid-Nineteenth-Century Ontario," 88-131. For a political perspective on property rights and the creation of courts see, Elizabeth Mensch, "The Colonial Origins of Liberal Property Rights," Buffalo Law Review, 31 (1982), 635-735.
3. Circumstances have always had a major influence within the property law hierarchy. As the final major property crime in common law, larceny became, within the general categorization of property crime, the catch all or default property felony. Within this loosely defined categorization of crime, charges for larceny often fell to those crimes that did not meet the more precise defining feature of robbery, burglary or housebreaking. Jerome Hall, Theft, Law and Society, Second edition (New York, 1952), 115-16, 141.
4. This chapter is based primarily on an analysis of approximately 300 cases of property crimes located in the criminal indictment case files and judge's bench books.
5. Davidson, A New History of the County of Grey, 355.
6. PAO, RG 22, Series 390-12, Judge Richards, Grey County, 1855, Hugh G. vs. William W., George W., Andrew W. and Robert W., 31-9.
7. Litigants had the same last names. M. v. M., The Stratford Beacon, 13 March 1863.
8. PAO, RG 22, Series 392, No. 1862, Grey County, Regina vs Ann M., 1861 and PAO, RG 22, Series 390-12, Judge Richards, Grey County, 1861, The Queen vs Ann M., 202-206. At the close of the trial counsel declared the note invalid because "a married woman cannot make a promissory note". Judge Richards did not think "it safe to convict on this" as

the note was "made by a married woman." *Ibid.* This may explain the not guilty verdict more than events relayed at trial.

9. PAO, RG 22, Series 390-13, Judge Hagarty, Perth County, 1858, *The Queen vs James C.*, 136-38.

10. Mrs. S. was found "not guilty." It is assumed from the verdict that the basket contents remained in her possession. Another document in the file indicates that the "feud" did not end here. Apparently Mrs. S. responded with a counter suit against Mr. H. PAO, RG 22, Series 392, No. 1893, Grey County, *The Queen vs. Lydia T. S.*, 1880 and PAO, RG 22, Series 390-441, Judge Cameron, Owen Sound, 1880, *The Queen vs. Lydia T. S.*, 295-97.

11. The defendants argued both claims and therefore it is not clear which arrangement is accurate. PAO, RG 22, Series 392, No. 3159, Leeds/Grenville, *Queen vs. Isidore B. and Orice P.*, 1860.

12. PAO, RG 22, Series 392, No. 3178, Leeds/Grenville, *Queen vs Alice W.*, 1860. Until the married women's property act was passed in the mid 1870s, with few exceptions, married women could not prosecute loss of property. In this case Mrs. H.'s husband brought forth a charge on her behalf.

13. PAO, RG 22, Series 392, No. 3169, Leeds/Grenville, *The Queen vs. Eliza H. and Mary J.*, 1860.

14. PAO, RG 22, Series 390-12, Judge Richards, Owen Sound, 1859, *Queen vs. Alexander H.*, 83-89.

15. PAO, RG 22, Series 390-479, Judge Patterson, Owen Sound, 1877, *Queen vs. Richard N.*, 267-71.

16. This is also not a clear case of theft. Local residents questioned whether or not the "robbery" as recounted by the complainant had even occurred. Furthermore, during the trial ownership of the stolen items was also disputed. In the end, the accused were found guilty and sentenced to three years in penitentiary. PAO, RG 22, Series 390-9, Judge Burns, Owen Sound, 1854, *The Queen vs Greenbury S., Rosetta S. and Martha W.*, 384-90.

17. PAO, RG 22, Series 392, No. 1862, Grey County, *Regina vs Ann M.*, 1861.

18. The percentage of committals is probably slightly higher; there were numerous remands where outcomes remain unknown. Remands were included as a non-conviction.

19. "An Act to Amend the Criminal Law of This Province." PSC, 18 Vic., cap. 92, 1855.

20. PAO, RG 22, Series 391, Superior Court of Ontario, Criminal Assize Indictment Clerk's Reports, Grand Jury Reports. Leeds/Grenville, 1860 and Toronto, 1875. The Upper Canada Law Journal, 8 (1862), 80-1.

21. See above, Chapter 4, 137-170. See also, Tina Loo, "The 'Ubiquitous' Ned and Madame Bendixon: Violence, Litigation and Society in Colonial British Columbia," paper presented to the Canadian Historical Association Annual Meeting, Victoria, BC, May 1990 and Lewthwaite, "Violence, Law, and Community in Rural Upper Canada," 353-86.
22. See above, Chapter 2, 54-96.
23. Laurie Fee, "Women on Trial: Serious Female Crime and the Assize Court in Grey, Halton, Lambton and Peterborough Counties, 1880-1930," (Unpublished M.A. Thesis, University of Guelph, Guelph, Ontario, 1988), 23. As Fee notes, only 39 of the total gaoled female population of 57 listed a place of residence. Ibid.
24. See McLean, "Home, Yard and Neighbourhood,"; Bradbury, "Women and Wage Labour in a Period of Transition," 115-31; Del Muise, "The Industrial Context of Inequality: Female Participation in Nova Scotia's Paid Labour Force, 1871-1921," *Acadiensis*, 20 (1991), 3-31.
25. PAO, RG 22, Series 392, No. 7016, York County, The Queen vs Annie B. 1872.
26. Lori Rotenberg, "The Wayward Worker: Toronto's Prostitute at the Turn of the Century," in *Women at Work, 1850-1930*, ed. by Janice Acton, Penny Goldsmith and Bonnie Shepard (Toronto, 1974), 53.
27. PAO, RG 22, Series 390-13, Judge Hagarty, Toronto, 1877, The Queen vs Mary Ann F., 223-25.
28. PAO, RG 22, Series 392, No. 6918, York County, The Queen vs Polly D., 1871.
29. PAO, RG 22, Series 392, No. 7668, York County, The Queen vs Frances B., Lillie W., Annie Gibson., Margaret M., Thomas J., Alfred M., 1879. After the preliminary hearing charges were dropped against everyone except George D., Lily W. and Margaret M. Apparently after the charge was laid George D. approached the complainant and offered to return the watch if he dropped the charges. Only George D. was found guilty.
30. Backhouse, *Prejudice and Petticoats*, 229.
31. Claudette Lacelle, *Urban Domestic Servants in 19th- Century Canada* (Canada, Minister of Supply and Services Canada, 1987), 89-104, 130-32. On the contractual obligations between master and servant see, Craven, "The Law of Master and Servant in Mid-Nineteenth-Century Ontario," 175-211.
32. PAO, RG 22, Leeds/Grenville, General Sessions and County Court Judges' Criminal Court, Judges' Notebook, 1877, Queen vs Amelia C., 157-62.
33. PAO, RG 22, Series 390-5, Judge Sullivan, Johnstown, 1848, The Queen against Adeline L., 53-56.

34. On nineteenth-century perceptions of the "the criminal servant" see Lacelle, Urban Domestic Servants, 120-30.
35. See also Lacelle, Urban Domestic Servants, 130.
36. PAO, RG 22, Leeds/Grenville, General Sessions and County Court Judges' Criminal Court, Judges' Notebook, 1877, Queen vs Amelia C., 157-162. See also Susannah Moodie's complaints about immigrant servants' attitudes. Moodie, Roughing it in the Bush, 140-41.
37. PAO, RG 22, Series 390-12, Judge Richards, York and Peel Counties, 1860, The Queen vs Mary Jane B., 227-31.
38. Lewthwaite, "Violence, Law, and Community," 357.
39. In another instance a woman brought over from Ireland by her employer left his employment after a disagreement over wages and payment of passage. The former servant sued him in the Division Court in Toronto for back payments. He responded with a charge of perjury against her. PAO, RG 22, Series 392, No. 7175, York County, The Queen vs Mary O., 1873.
40. The Master and Servant Act of 1847 was intended to deal with problems related to contractual and disciplinary problems in employment arrangements. Debates on the legislation specifically singled out household servants. Craven, "The Law of Master and Servant in Mid-Nineteenth-Century Ontario," 191, 187-91.
41. "An Act for the Regulation of Pawnbrokers and Pawnbroking." PSC, 14 & 15 Vic., cap. 82, 1851.
42. Any exceptions referred to criminal or civil law actions involving women only.
43. Ross, "'Fierce Questions and Taunts'" 588.
44. Ibid.
45. PAO, RG 22, Series 392, No. 6981, York County, The Queen vs John P. and Anne P., 1871.
46. PAO, RG 22, Series 452, Judge Galt, York County, 1873, The Queen vs Ann O., 184-85.
47. Ross, "Fierce Questions and Taunts," 590.
48. PAO, RG 22, Series 392, No. 7108, York County, The Queen vs Julia B., 1873, 48.
49. PAO, RG 22, Series 392, No. 7196, York County, The Queen vs Caroline W., 1873.

50. PAO, RG 22, Series 390-5, Judge Sullivan, York County, 1850, The Queen vs Andrew M., 25-26.
51. Thomas was found guilty. PAO, RG 22, Series 390-3, Judge Hagerman, Home District, 1840, The Queen vs. Thomas C., 249-51.
52. The verdict was guilty. PAO, RG 22, Series 390-9, Judge Burns, 1856, The Queen vs. Michael M., 292-93.
53. Bruce Lenman and Geoffrey Parker, "The State, the Community and the Criminal Law," in Crime and the Law, The Social History of Crime in Western Europe since 1500, ed. by V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker (London, 1980), 36.
54. He was found guilty. PAO, RG 22, Series 390-1, Judge Macaulay, Toronto, 1845, The Queen vs. Richard P., 88-94.
55. PAO, RG 22, Series 390-1, Judge Macaulay, Toronto, 1855, The Queen vs. Robert B., 76-83.
56. PAO, RG 22, Series 390-23, Judge Burton, Toronto, 1874, The Queen vs. Thomas S., 18-25.
57. PAO, RG 22, Series 392, No. 7185, York County, The Queen vs Margaret K. and Mary R., 1873.
58. PAO, RG 22, Series 392, No. 7149, York County, The Queen vs Matilda H., 1873.
59. On Victorian perceptions and responses to youth crime in Ontario see, Houston, "Victorian Origins of Juvenile Delinquency," 83-109.
60. PAO, RG 22, Series 390-1, Judge Macaulay, York County, 1855, The Queen vs. George D. and John C., 112-14.
61. PAO, RG 22, Series 390-13, Judge Hagarty, York County, 1877, Queen vs. Jurys C., 232-35.
62. He was found guilty. PAO, RG 22, Series 390-13, Judge Hagarty, Owen Sound, 1869, The Queen vs. John S., 378-79.
63. PAO, RG 22, Series 392, No. 7156, York County, The Queen vs Louisa L. and others, 1873.
64. "Special Toronto Correspondence of the Stratford Beacon," The Stratford Beacon, 17 October 1873.

65. She was sentenced to one month in gaol. There was a second charge of larceny presented against Mrs. M. at the same court hearing. The grand jury returned a "no bill" and the case was dismissed. The Stratford Beacon, 14 June 1861.
66. PAO, RG 22, Series 392, No. 6959, York County, The Queen vs Johanna M., 1871. The petticoat was worth \$3.50. Earlier she had been found guilty of stealing one shirt and a pair of pants and sent to gaol for two months. Ibid.
67. PAO, RG 22, Series 391, Superior Court of Ontario, Criminal Assize Indictment Clerk's Reports, Grand Jury Reports, York/Toronto, Spring, 1873. The police chief recommended that city council "amend the objectionable by-law which enables shop-keepers thus to expose their goods". TCA, Minutes of the City of Toronto, Chief Constable's Annual Report, 10 February 1873.
68. PAO, RG 22, Series 390-5, Judge Sullivan, York County, 1848, The Queen vs James D., 55-56.
69. The exception being the earlier example of the boarder who for other reasons marked his money.
70. PAO, RG 22, Series 392, No. 3183, Leeds/Grenville, The Queen vs Harriet I., 1861.
71. "General Correspondence to the Editors of the Law Journal," "Non-Payment of Crown Witnesses," by William W. S., The Upper Canada Law Journal, March 1862, 80-81.
72. Among all the four counties only Brockville listed benchbooks from the County Court Judges' Criminal Court.
73. PAO, RG 22, Series 390-12, Judge Richards, Owen Sound, 1859, The Queen vs Alex H., 83-89.
74. The Queen vs Charles B., The Stratford Beacon, 13 November 1857.
75. The Queen vs Mary C. Ibid, 13 December 1861. Moreover, the case provides evidence of plea bargaining. Mary C.'s counsel withdrew her earlier plea of not guilty and returned a plea of guilty to stealing a piece of dress goods from a local store.
76. PAO, RG 22, Series 390-19, Judge Gwynne, Owen Sound, 1874, The Queen vs Arthur S., 321-22.
77. PAO, RG 22, Series 390-5, Judge Sullivan, Home District, 1848, The Queen vs Philip R., 184-85.
78. Lenman and Parker, "The State, the Community and the Criminal Law," 3.

79. PAO, RG 22, Series 390-12, Judge Richards, United Counties of York and Peel, 1865, The Queen vs Abraham R., 182-209.

80. PAO, RG 22, Series 390-479, Judge Patterson, Owen Sound, 1877, The Queen v Richard N., 267-71.

81. George P. Fletcher, "The Metamorphosis of Larceny," Harvard Law Review, 89, (1976), 527.

82. PAO, RG 22, Series 390-3, Judge Hagerman, Home District, 1840, The Queen v Thomas C., 249-51.

83. PAO, RG 22, Series 390-5, Judge Sullivan, Home District, 1849, The Queen vs Margaret M., 331-34.

84. The stolen goods were traced back to her. She was sentenced to one month in gaol. The Queen vs Mary C., The Stratford Beacon, 14 June 1861.

85. Occupational evidence is from the gaol register. PAO, RG 20, Series F-6, Brockville Jail Register, 1878.

86. The closest sentence was in Brockville; a man received five years for robbery with violence. The Queen vs Alfred R., British Central Canadian (Brockville), 16 December 1863.

87. PAO, RG 22, Leeds/Grenville, General Sessions and County Court Judges' Criminal Court, Judges' Notebook, The Queen vs Sarah Jane P., Mary P. and Mary B., 1878. The court sat over several days.

88. PAO, RG 22, Series 392, No. 7315, York County, The Queen vs Jane H., Christina F. and Mary B., 1875.

89. PAO, RG 22, Series 392, No. 7196, York County, The Queen vs Caroline W., 1873.

## CONCLUSION

### RURAL JUSTICE, URBAN CRIMINALS

This study demonstrates that criminals were a far more diverse group than the appellation "common criminal" would suggest. Similarly the criminal justice system provided more than "simple justice." It provided a diverse set of practices which represented an equally complex set of social meanings. To the extent that rural justice attempted to acknowledge the individual needs of community residents, the categorization urban criminals denied their unique differences.

The evolving process of social development from a frontier, agricultural community to an urban, industrial society affected the nature and social functioning of criminal justice in surprisingly different ways. For example, if we consider vagrancy, the major public peace offence in rural areas, we observe how it served as a surrogate for social welfare until the end of the nineteenth century. In contrast, in urban areas patterns of prosecution and punishment for the most common crime, drunkenness, reflected the combined influence of reform movements, expansion of local municipal by-laws and police enforcement that accompanied urbanization. Increasingly, as Susan Houston asserts in her study of juvenile crime in Toronto, "[W]hat happened on the street was no longer the informal extension of household and commerce but a matter of public business."<sup>1</sup>

When we examined the impact of regulations it became clear that social development and gender explained the construction of crime and criminal behaviour, despite over-representations in the aggregate data by some ethnic, religious and racial

minorities. Stark disparities existed in patterns of committals between frontier/rural and urban gaols. Recently settled areas incarcerated a relatively proportional representation of males and females. Urban Toronto/York, on the other hand, like most other northern urban communities systematically committed significantly more women than men for public peace offences between 1855 and 1865 than at any other time in the later nineteenth century. Although such actions were clearly linked to notions of gendered separate spheres, other changes in municipal policing and by-laws underlines the direct influence of local agencies of enforcement on reform initiatives.

As legal anthropologist Simon Roberts reminds us, "[W]ith settlement, some of the control mechanisms . . . retain their importance, . . . [while], others acquire a new emphasis."<sup>2</sup> The gradual introduction of legal mechanisms through appointments of a provincial inspectorate, stipendiary magistrates and county crown attorneys ensured that redressible action was removed, in varying degrees, from traditional community sanctions and redirected to formal criminal law. Despite such efforts, important local services, such as policing and daily management of gaols, remained under municipal authority.

The evolving transformation to a legal authority confirmed the criminalizing function of the new nation state. As Attorney General John A. Macdonald declared in 1857, "[T]he object of the government" in positioning professionally trained county attorneys throughout the province "was to introduce a complete local system for the efficient administration of criminal justice."<sup>3</sup> The incremental diffusion of legal norms within civil society not only routinized regulation of urban public spaces, it also

highlighted class divisions in private working relationships. This is seen most clearly in property offences involving employers and workers and in particular servants. In the private homes of employers servants encountered class in its most transparent form. Likewise prostitutes, along with other profligate women and men, were relegated to the outcast "criminal class."

In as much as these comparisons emphasize dissimilarities they also identify similarities. Despite time and place two aspects of gendered relations were common to all communities: public male confrontations and wife assault. While there is evidence to suggest that legal action and cultural reconfigurations attempted to reduce violence, it is equally apparent that by the 1870s, violence remained inexorably intertwined in nineteenth-century patriarchal mechanisms of control.

As often as not studies of law and society turn to the age-old question of whether or not law advances or follows social change. The results of this study are inconclusive but offer insights on this contemporary dialectic. Two events in this study mark significant, but different influences. First, the dramatic rise in committals in public peace offences in the 1850s followed both an increase in municipal laws and policing. Again in the 1870s the debate around wife assault assumed that it would be judicial regulations not community sanctions that would play a key role in resolving the problem.

A more detailed examination of the evidence suggests that during the nineteenth century law increasingly prevailed as a site of social struggles. This is

seen, for example, in the efforts of temperance lobbyists who by the 1850s began to redirect their attentions away from religious and community based institutions towards legal sanctions. Accordingly temperance activists advanced state restrictions on liquor sales, expanded municipal laws for public drunkenness, and campaigned to impose punitive gaol sentences of "hard labour" to establish reforms. Perhaps law's greatest triumph as an agent of social regulation came in the 1870s when the provincial government overrode individual rights by endorsing legislation which forced long term hospitalization for "habitual drunkards." Although such efforts ultimately failed to achieve reformers' objectives, they nonetheless illustrate the power of law to administer social change.

Taken together the arguments presented in this study have implications for other historical research and contemporary debates. First, among other community studies of north eastern United States some legal historians argue that by 1830, the general shift from informal regulations practised by town councillors, church leaders and lay jurors to formal legal structures reflected a decline in "community" values.<sup>4</sup> Unlike the American research which is based on analyses of informal institutions, civil law and superior court judgements, this study of lower courts -- where in fact most individuals encountered the law -- concluded that the social welfare functions of "community" remained in force in Grey and Perth counties until the end of the nineteenth century.

Although observers often debate current diversities in law, the preceding research suggests that, historically, it has always been a part of legal traditions and

practice. Diversity in the nineteenth century was highlighted by stages of settlement and by sex. These conclusions offer important implications for how we think about the past. If, as suggested, crime is a mirror on society then the conclusions reached in this study suggest that the reflection depends, in part, on where the mirror is placed and who is being reflected.

A study of criminals and crime informs us not only of the evolving nature of criminal justice, in a broader sense, it delineates the fundamental transformation of social relations during state formation. A social history of law, gets beyond "law on the books" to include the experience of those being brought before the courts. Examining local enforcement practices and the precise nature and application of punitive penalties probes the very heartbeat of society. Exploring this interactive process among individuals, communities and the state assists in identifying some of the fundamental principles governing society -- who we are, our attitudes and our values -- in short, our culture.

1. Houston, "The 'Waifs and Strays' of a Late Victorian City," 131.
2. Roberts, Order and Dispute, 110.
3. NL, Canada West, Parliamentary Scrapbook Debates, 11 March 1857.
4. William E. Nelson, Americanization of the Common Law: The Impact of Legal Change on Massachusetts, 1760-1830 (Cambridge, 1975); William E. Nelson, Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825 (North Carolina, 1981); Bruce H. Mann, Neighbours and Strangers: Law and Community in Early Connecticut (Chapel Hill, 1987); and David T. König, Law and Society in Puritan Massachusetts (North Carolina, 1979).

APPENDIX A  
CRIMINAL CATEGORIES

**FEMALES CHARGED WITH CRIMES**

**1) OF OFFENCES AFFECTING THE STATE: INSTITUTIONS AND REGULATIONS**

**A. JUDICIAL INSTITUTIONS**

**1. Judicial Administration**

- contempt of assize court
- contempt of court
- gaol breaking
- perjury

**2. Offences Related to Judicial Proceedings**

- default of finding sureties
- in default of finding sureties to keep the peace
- default of paying fine
- default of paying fine for disorderly conduct
- default of paying sureties
- default of sureties
- in default of finding bail to appear to prosecute
- non-payment of costs of suit
- non-payment of fine
- want of sureties (to keep the peace)
- to find sureties of the peace

**B. MILITIA AND RECRUITING OFFENCES**

**C. REVENUE AND TRADE REGULATIONS**

- breach of inland revenue laws

**D. LABOUR OFFENCES**

- absenting self from the work of her employer
- deserting employer

## E. MARRIAGE/FAMILY LAW OFFENCES

-bigamy

## 2) OF OFFENCES PRINCIPALLY AFFECTING THE PUBLIC PEACE (COMMON NUISANCES):INDECENCY, IMMORALITY, PROFANITY, OR INSULTING LANGUAGE

### A. INDECENCY AND IMMORALITY

#### 1. Indecency

-indecent and disorderly  
-exposing herself in a shameful manner

#### 2.a. Prostitution: Trade Worker

-disorderly house  
-drunk in a house of ill fame  
-exposing herself in a shameful manner  
-frequenting disorderly house  
-frequenting bawdy house  
-inmates of disorderly house  
-indecent house  
-inmate house of ill-fame  
-prostitute  
-prostitution and drunkenness  
-resorting to house of ill-fame  
-frequenting a house of ill-fame  
-vagrancy and prostitution  
-vagrant and frequenting a house of ill-fame

#### 2.b. Prostitution: Madame

-drunk and keeping a bawdy house  
-keeping disorderly house  
-keeping house of ill-fame  
-vagrant keeping house of ill-fame

## B. PROFANITY AGAINST GOD AND RELIGION/LANGUAGE OFFENCES

### 1. Profanity

- profane language
- drunk and disorderly throwing stones and using blasphemous language

### 2. Abusive Language

- abusive language
- cursing
- using indecent and improper language
- using obscene language
- insulting language
- grossly insulting language

## C. PUBLIC PEACE (STREET SWEEPING)

### 1. Disorderly

- disorderly
- disorderly and using abusive language
- disorderly conduct
- disorderly character
- disorderly in the streets
- disorderly and trespassing
- disturbance
- making disturbance

### 2. Drunk

- drunk in the streets
- drunk and disorderly and...
- drunk etc.
- drunkenness
- drunk and incapable
- drunk and other scandalous actions
- drunk and vagrant

### 3. Vagrancy

- vagrancy

- idleness
- indigent
- loose idle person
- vagrant drunk and disorderly
- common vagrant
- wandering about

#### 4.a.Peace and Public Order: General

- breach of the peace
- breach of the peace ordinance
- keep the peace
- carrying a revolver
- obstructing licence inspector while in discharge of his duties

#### 4.b.Peace and Public Order: Family

### D. REGULATORY OFFENCES

#### 1.Municipal By-laws and Licensing

- breach of the by-laws of the corporation
- violating by-laws

#### 2.Liquor Offences

- selling liquor without a licence

### 3) OF OFFENCES AGAINST THE PERSON

#### 1.Assault

- assault
- threatening
- threatening to shoot
- affray assault
- disorderly conduct and assault
- threatening and want of sureties
- trespassing and threatening

#### 2.Assault and Battery

- assault and battery

### 3. Aggravated Assault

- aggravated assault
- wounding with intent to do bodily harm
- aiding and abetting stabbing with a knife
- assault by cutting the neck with a razor
- malicious injury

### 4. Assault/Obstruction Against Agents of the Law

- obstructing constable
- assault and battery on constable
- assaulting police

### 5. Domestic Assault

### 6. Sexual Assault

### 7. Murder

- murder
- of aiding and abetting a murder
- on suspicion of murder
- murder of an infant child

### 8. Attempted Murder

- trying to kill
- assault with attempt to kill
- attempt to murder
- assault with intent to commit murder

### 9. Self-murder

- attempt suicide

### 10. Manslaughter

- manslaughter

### 11. Abortion

- administering poison

### 12. Concealment of Birth

- concealing birth
- concealing the birth of child
- concealment of child birth and negligence

### 13. Infanticide

- infanticide

### 14. Negligence Causing Death of a Child

- causing death of child from negligence
- wilful neglect of an infant causing death
- wilful culpable negligence causing the death of child

### 15. Abandoning/Deserting a Child

- abandoning her child
- child desertion
- deserting her child

### 16. Stealing a Child

- stealing a child

## 4) OF OFFENCES AGAINST PROPERTY

### 1. Trespass

- trespass

### 2. Malicious Injuries to Property with Intent to Destroy

- abusing property
- breaking windows
- disorderly breaking windows
- injury to property
- poisoning well water

### 3. Injuring/Destroying Animals, Birds

- assisting to kill a heifer

-poisoning a cow

#### 4. Stealing Horses

#### 5. Larceny

- larceny
- milking cows
- on suspicion of larceny
- stealing goods
- larceny carrying arms
- stealing
- stealing a steer

#### 6. Burglary

#### 7. House Breaking

- house breaking and assault
- house breaking with intent

#### 8. Robbery\*(against the person)

- robbery
- assault, battery and robbery
- larceny and assault

#### 9. Arson

- arson
- accessory before the fact of arson
- threatening arson

#### 10. Receiver of Stolen Goods

- concealing stolen money
- receiving stolen goods
- receiving stolen property
- stolen property found in her possession

#### 11. Embezzlement

#### 12. Fraud

- fraud
- obtaining goods under false pretences
- obtaining money under false pretences

### 13. Forgery

- forgery
- paying bad money
- uttering a forged note

### 14. Fraud and Forgery\*

- fraud and forgery

## 5) OTHER REASONS FOR BEING IN JAIL

### 1. Insanity

- dangerous to be at large
- dangerous lunatic
- insane
- insane and dangerous
- insane and dangerous to be at large
- insane and suicidal
- insane lunatic
- lunatic
- maniac
- unsound mind
- vagrant and idiot
- vagrant insane
- vagrant lunatic
- violent and outrageous being insane by the excessive use of indecent [illegible?]

### 2. Debt

- debtor

### 3. Unknown Offences

- capais
- on remand and further remand

#### 4. Miscellaneous

- crown witness
- detained as a witness
- miscellaneous
- safe keeping

### **MEN CHARGED WITH CRIMES**

#### **1) OF OFFENCES AFFECTING THE STATE: INSTITUTIONS AND REGULATIONS**

##### **A. JUDICIAL INSTITUTIONS**

##### **1. Judicial Administration**

- abusing magistrate
- conspiracy to break gaol
- contempt of court
- contempt of justice's court
- escaping gaol
- inducing witness to leave the country
- libel
- perjury

##### **2. Offences Related to Judicial Proceedings**

- default of paying fine
- default of paying fine for assault
- default of paying fine for drunkenness
- default of finding sureties
- default of finding sureties to keep the peace
- default of sureties
- want of sureties
- want of sureties to keep the peace
- non-payment of fines
- want of bail
- want of bail for appearance at Quarter Session
- want of bail to keep the peace

##### **B. MILITIA AND RECRUITING OFFENCES**

- breach militia duty

- deserting HHC
- enlisting men for foreign service
- enticing her majesty's subjects to enlist in the American army
- enticing to desert
- neglecting service and disobeying lawful orders
- vagrancy and deserter

#### C. REVENUE AND TRADE OFFENCES

- altering forged note
- breach of inland revenue laws
- counterfeiting and uttering spurious coin
- passing counterfeit
- passing spurious money under false pretences
- smuggling
- taking illegal trade

#### D. LABOUR REGULATORY OFFENCES

- deserting his employment
- leaving employer
- leaving service of employer without leave
- practised medicine without being registered
- refusing to work for his employer

#### E. MARRIAGE/FAMILY LAW OFFENCES

- bigamy

### 2) OF OFFENCES PRINCIPALLY AFFECTING THE PUBLIC PEACE (COMMON NUISANCES): INDECENCY, IMMORALITY, PROFANITY, OR INSULTING LANGUAGE

#### A. INDECENCY AND IMMORALITY

##### 1. Indecency

- exposing his person on the streets

##### 2.a. Prostitution: Client

- frequenting disorderly house
- frequenting house of ill-fame and vagrancy
- inmate of a disorderly house

- resorting to house of ill-fame
- vagrant and frequenting house of ill-fame

#### 2.b.Prostitution: Pimp

- keeping house of ill-fame
- keeping disorderly house

### B. PROFANITY AGAINST GOD AND RELIGION/LANGUAGE OFFENCES

#### 1.Profanity

- blasphemy
- profanity
- swearing by God

#### 2.Abusive Language

- abusive language
- using abusive language
- uttering dreadful language
- grossly insulting and indecent language
- using insulting language
- using grossly insulting language

### C. PUBLIC PEACE (STREET SWEEPING)

#### 1.Disorderly

- disorderly
- disorderly conduct
- disorderly on the streets
- furious driving
- throwing stones in the street

#### 2.Drunk

- breach of police laws and drunkenness
- drunk and incapable of taking care of himself
- drunk
- drunk and disorderly
- drunk and disorderly etc.
- drunk and disorderly on two occasions

- drunk and incapable
- drunk and fighting
- drunk and riotous
- drunk and vagrant
- drunk on the streets

### 3. Vagrancy

- vagrant
- begging alms under false pretences
- incorrigible vagabond
- vagrancy and idleness
- wandering

### 4.a. Peace and Public Order: General

- breach of the peace
- carrying a revolver
- gambling
- nuisance
- refusing to allow a traveller to pass him on the highway
- riot

### 4.b. Peace and Public Order: Family

- neglecting to support wife
- refusing to support family
- wife desertion

## D. REGULATORY OFFENCES

### 1. Municipal By-laws and Licensing

- refusing to perform statute labour
- breach of police by-laws
- rescuing pigs from the pound
- putting rubbish on streets
- carting without a licence

### 2. Liquor Offences

- selling liquor without a license
- illicit distillation

### 3) OF OFFENCES AGAINST THE PERSON

#### 1. Assault

- assault
- assault and trespassing
- common assault
- carrying unlawful weapons
- fighting and raising an affray
- fighting on street
- pointing a pistol
- riot affray
- threatening
- threatening and want of sureties
- threatening to kill people
- threatening to stab
- violent and disorderly

#### 2. Assault and Battery

- assault and battery
- assault and beating
- aiding in shooting
- attempt to stab
- cutting and wounding
- feloniously wounding
- shooting
- unlawful wounding

#### 3. Aggravated Assault

- assault and threatening
- assault with intent
- assault with intent to maim
- assault with intent to kill or maim
- assault and wounding
- attempting to shoot with intent
- cutting with intent to maim to disfigure or disable
- malicious injury
- malicious wounding
- riot assault and battery
- stabbing
- stabbing and maiming
- violent assault with intent

- wounding with intent to do bodily harm
- wounding and doing grievous bodily harm
- wounding with intent

#### 4. Assault/Obstruction Against Agents of the Law

- assault and battery on constable
- assault on sheriff officer
- assaulting and obstructing constable
- assaulting bailiff
- assaulting constable
- assaulting police
- attempting to stab a policeman
- obstructing a constable and the peace
- obstructing police
- resisting police authorities

#### 5. Domestic Assault

- assaulting his wife
- beating his wife
- disorderly and beating his wife

#### 6. Sexual Assault

- indecent assault
- assault with attempt to rape
- rape

#### 7. Murder

- murder
- accessory to murder
- felonious killing
- wilful murder
- aiding and abetting in wilful murder
- killing by stabbing with a knife

#### 8. Attempted murder

- assault and battery with intent to kill
- assault with intent to kill
- shooting with intent to kill

9. Self-murder

- attempting to commit suicide
- attempting to drown himself

10. Manslaughter

- manslaughter

11. Abortion

12. Concealment of birth

13. Infanticide

14. Negligence Causing Death of Child

15. Abandoning/Deserting a Child

16. Stealing a Child

4) OF OFFENCES AGAINST PROPERTY

1. Trespass

- trespass

2. Malicious Injuries To Property with Intent To Destroy

- breaking garden fence
- damaging property
- injury to property
- malicious injury to property
- malicious trespass
- poisoning water well

3. Injuring/Destroying Animals, Birds

- cruelty to animals
- destroying birds
- dogging cattle
- killing deer
- ill using a cow
- maliciously shooting a dog

- maiming cattle

#### 4. Stealing Animals

- horse stealing

#### 5. Larceny

- accessory to stealing
- larceny
- on suspicion of larceny
- petty larceny
- stealing
- stealing money
- stealing a pair of boots and a pair of trousers
- stealing cordwood
- stealing fruit
- stealing lumber
- receiving property from sheriff
- stealing a steer

#### 6. Burglary

- burglary
- forcible entry
- housebreaking and larceny
- housebreaking and riot
- housebreaking and robbery

#### 7. House Breaking

- assault and house breaking
- breaking into passenger car
- house breaking
- house breaking with intent
- house breaking into a house with intent to commit a felony

#### 8. Robbery\*(against person)

- assault, battery and robbery
- assault with intent to rob
- assault and robbery
- on suspicion of robbery
- robbery

-robbery from the person

9. Arson

-arson  
-incendiarism  
-suspicion of arson

10. Receiver of Stolen Goods

-receiving stolen goods  
-having stolen goods in his possession

11. Embezzlement

-embezzlement

12. Fraud

-fraud  
-attempting to obtain money under false pretences  
-obtaining goods and chattels under false pretences  
-obtaining goods under false pretences  
-obtaining money under false pretences  
-obtaining property under false pretences  
-false pretences

13. Forgery

-forgery

14. Forgery and Fraud\*

5) OTHER REASONS FOR BEING IN JAIL

1. Insanity

-acting as if he is insane  
-assault and unsound mind  
-dangerous lunatic  
-dangerous to be at large  
-dangerous and deranged  
-idiot  
-insane

- insane and dangerous
- insane and unsafe to be at large
- lunacy
- maniac
- unsound mind and dangerous

## 2. Debt

- debtor

## 3. Unknown Offences

- accessory to a felony
- attempting to commit a felony
- bench warrant
- breach warrant of court of Queen's bench
- capias (bench warrant)
- conspiracy
- felony
- harbouring and concealing
- military related punishment (93 Regiment)
- misdemeanour
- remand
- summary punishment
- warrant remand

## 4. Miscellaneous

- constable for safe keeping to take before justice of the peace
- detained as witness for crown
- queen's evidence
- township reeve

\* To be considered in two categories: robbery (person and property); fraud and forgery (state and property).

## BIBLIOGRAPHY

## I PRIMARY SOURCES

## A. PROVINCE/DOMINION OF CANADA

1. Archival Holdings

Benchbooks of Court of Queen's Bench, Series 390-9, Robert Burns, 1850-63. PAO, RG 22.

Benchbooks of Court of Queen's Bench, Series 390-23, George Burton, 1874-81. PAO, RG 22.

Benchbooks of Court of Queen's Bench, Series 390-441, Matthew C. Cameron, 1879-81. PAO, RG 22.

Benchbooks of Court of Queen's Bench, Series 390-6, William Draper, 1847-75. PAO, RG 22.

Benchbooks of Court of Queen's Bench, Series 452, Sir Thomas Galt, 1869-81. PAO, RG 22.

Benchbooks of Court of Queen's Bench, Series 390-19, John W. Gwynne, 1868-79. PAO, RG 22.

Benchbooks of Court of Queen's Bench, Series 390-13, John Hagarty, 1856-81. PAO, RG 22.

Benchbooks of Court of Queen's Bench, Series 390-3, Christopher Hagerman, 1840-46. PAO, RG 22.

Benchbooks of Court of Queen's Bench, Series 390-1, James B. Macaulay, 1840-59. PAO, RG 22.

Benchbooks of Court of Queen's Bench, Series 390-479, Christopher Patterson, 1874-81. PAO, RG 22.

Benchbooks of Court of Queen's Bench, Series 390-12, William B. Richards, 1853-75. PAO, RG 22.

Benchbooks of Court of Queen's Bench, Series 390-5, Robert B. Sullivan, 1848-53. PAO, RG 22.

Grey County Jail Registers, 1857-81. PAO, RG 20, Series F-28.

Leeds/Grenville County Jail Registers, 1848-81. PAO, RG 20, Series F-6.

Leeds/Grenville, General Sessions and County Court Judges' Criminal Court, Judges' Notebook, 1876-78. PAO, RG 22.

Peel County Jail Registers, 1854-59. PAO, RG 20, Series F-4.

Perth County Calendar of Prisoners, 1853-64 and Perth County Jail Registers 1865-81. PAO, RG 20, Series F-40.

Perth County Coroners' Inquest Files, 1870-81. PAO, RG 22, Series 4295.

Superior Court of Ontario, Criminal Assize Clerk, Criminal Indictment Case Files, Series 392. [[Grey County, 1859-63, 1876, 1880-81; Leeds/Grenville, 1859-63, 1880-81; Perth County, 1859-65, 1880-81; York County, 1869-81]. PAO, RG 22.

Superior Court of Ontario, Criminal Assize Indictment Clerk's Reports, Grand Jury Reports, Series 391. [Grey County, 1859-63, 1875-81; Leeds/Grenville, 1859-81; Perth County, 1859-81; York/Toronto County, 1869-77, 1878-81]. PAO, RG 22.

York County Jail Registers 1841-53, 1860-73, October 1876 to December 1881. PAO, RG 22, Series F-43.

## 2. Government Records

Canada. Census of the Canadas, 1851-52, Vol. I.

\_\_\_\_\_. Census of the Canadas, 1861-62, Vol. I.

\_\_\_\_\_. Census of Canada, 1870-71, Vol. I.

\_\_\_\_\_. Census of Canada, 1880-81. Vol. 1.

\_\_\_\_\_. Census of Canada 1870-71, Vol. IV, Census of 1840.

\_\_\_\_\_. Census of Canada 1870-71, Vol. IV, Census of 1848.

\_\_\_\_\_. Consolidated Statutes of Canada, 1859.

- \_\_\_\_\_. Consolidated Statutes of Upper Canada 1859.
- \_\_\_\_\_. Debates of the House of Commons.
- \_\_\_\_\_. Debates of the Legislative Assembly of United Canada
- \_\_\_\_\_. Statutes of Canada.
- \_\_\_\_\_. Statutes of Upper Canada.
- \_\_\_\_\_. Provincial Statutes of Canada.

Canada West. Parliamentary Debates Scrapbook, 1857.

Ontario. "Annual Report of the Inspector of Asylums, Prisons, and Public Charities for the Province of Ontario." 1967-81, Sessional Papers, Vol. 1-14, 1868-82.

Ontario. Statutes of the Province of Ontario.

## B. MUNICIPAL DOCUMENTS

### a. Grey County

Owen Sound Town Council Minute Books and By-laws, 1857-82. Owen Sound City Hall, Clerk's Department.

Minutes of Grey County Council, 1852-71. PAO, RG 21, MS-244, Reel 3.

### b. Leeds/Grenville

Brockville Town Council By-laws, 1832-36, 1854-82. PAO, RG 21, MS-610, Reels 1, 2, 10.

Leeds/Grenville County Council Minutes, 1853-81. Municipal Offices of the County of Leeds/Grenville, Brockville.

### c. Perth County

Perth County Jail Registers, "Perth County Council Minutes Pertaining to the Jail," 1865-72. PAO, RG 20, Series F-40, Reel 121.

Stratford Council Minutes, 1854-81. Stratford City Hall, Clerk's Department.

#### d. York/Toronto

By-Laws of the City of Toronto. TCA.

Minutes of the Home District Municipal Council, 1842-49. PAO.

Minutes of the Municipal Council of the United Counties of York, Ontario, and Peel 1850-81.

Toronto City Council Minutes. 1834-82. TCA.

### III. LEGAL MANUALS AND JOURNALS

Clarke, Samuel R. The Magistrate's Manual: being annotations of the various acts relating to the rights, powers and duties of justices of the peace; with a summary of the criminal law. Hart and Rawlinson, 1878.

Dempsey, Richard. Magistrate's Handbook: Observations upon the Duties of Magistrates, compiled by desire of the Justices of the Peace Toronto, 1860.

Keele, William C. The Provincial Justice, or Magistrate's Manual 4th edition, Toronto, 1858 and 1860.

Kerr, William H. Magistrate's Acts of 1869: annotated for the use of magistrates 1871.

Upper Canada Law Journal (1855-67) renamed Canada Law Journal (1868-81).

Wilson, Adam. The Constable's Guide: a sketch of the office of constable Toronto, 1859.

### IV. CONTEMPORARY MONOGRAPHS AND COMPILATIONS

Denison, G.T. Recollections of a Police Magistrate Toronto, 1920.

Guillet, Edwin C. Pioneer Days in Upper Canada Toronto, 1963, originally published in 1933.

Jameson, Anna. Winter Studies and Summer Rambles in Canada, Vol. 1, Toronto, 1838.

Jelly, William. A Summary of the Proceedings of the Council of the District of Johnstown and the Council of the United Counties of Leeds and Grenville 1842-1942 Leeds/Grenville, 1943.

Jones, J.E. Pioneer Crimes and Punishment Toronto, 1924.

Moodie, Susannah. Life in the Clearings, Toronto, 1959, originally published in London, 1853.

\_\_\_\_\_. Roughing it in the Bush or Life in Canada Ottawa, 1988, originally published in London, 1852.

Read, D.B. The Lives of the Judges of Upper Canada and Ontario from 1791 to Present Time Toronto, 1888.

Strickland, Samuel. Twenty-Seven Years in Canada West or The Experience of an Early Settler Edmonton, 1970.

## V. NEWSPAPERS

The British Central Canadian (Brockville).

The Comet (Owen Sound).

The Daily Globe (Toronto).

The Ottawa Citizen.

The Owen Sound Advertiser.

The Prescott Telegraph.

The Recorder (Brockville).

The Stratford Beacon.

## II. SECONDARY SOURCES

### A. BOOKS

Allen, Judith A. Sex and Secrets, Crimes Involving Australian Women since 1880 Melbourne, 1990.

Arkin, Herbert and Raymond R. Colton. Tables for Statisticians New York, 1963.

Armstrong, Fred. A Handbook of Upper Canadian Chronology and Territorial Legislation London, 1967.

Akenson, D.H. The Irish in Ontario: A Study in Rural History Montreal and Kingston, 1984.

Backhouse, Constance. Petticoats and Prejudice, Women and Law in Nineteenth-Century Canada Toronto, 1991.

Barrett, Michele. Women's Oppression Today London, 1980.

Beattie, John M. Attitudes Towards Crime and Punishment in Upper Canada. 1830-1850: A Documentary Study Toronto, 1977.

\_\_\_\_\_. Crime and the Courts in England 1660-1800 Princeton, 1986.

Bentham, Jeremy. A Comment on the Commentaries: A Criticism of William Blackstone Commentaries on the Laws of England, ed. by C.W. Everett, Oxford, 1928.

Bercuson, D.J. and L.A. Knafla, eds., Law and Society in Canada in Historical Perspective Calgary, 1979.

Blackstone, William. Commentaries on the Laws of England, Vol. IV, of Public Wrongs Boston, 1962, originally published 1770.

Blomley, Nickolas K. Law, Space and the Geographies of Power New York, 1994.

Brode, P. Sir John Beverley Robinson: Bone and Sinew of the Compact Toronto, 1984.

Brown, Desmond. The Genesis of the Criminal Code of 1892 Toronto, 1989.

Burbidge, George. A Digest of the Criminal Law of Canada Toronto, 1890.

Careless, J.M.S. The Union of the Canadas, The Growth of the Canadian Institutions, 1841-1857 Toronto: 1967.

\_\_\_\_\_. ed. The Pre-Confederation Premiers: Ontario Government Leaders, 1841-1867 Toronto, 1980.

\_\_\_\_\_. Toronto to 1918: An Illustrated History Toronto, 1984.

Cassel, Jay. The Secret Plague: Venereal Disease in Canada 1838-1939 Toronto, 1987).

Cassell, Phillip ed. The Giddens Reader Stanford, 1993.

Cellard, André. Histoire de la folie au Québec de 1600 à 1850 Montréal, 1991.

Chevalier, Louis. Laboring Classes and Dangerous Classes in Paris During the First Half of the Nineteenth Century trans. Frank Jellinek, New York, 1973, originally published as Classes Laborieuses et Classes Dangereuses à Paris pendant la première moitié du XIX Siècle, (1958).

Chitty, Joseph. A Practical Treatise on the Criminal Law London, 1816.

Clark, S.D. Church and Sect in Canada Toronto, 1948.

\_\_\_\_\_. The Developing Canadian Community Toronto, 1962.

Clarke, Samuel. Treatise on the Criminal Law of Canada 1st ed. Toronto, 1872.

Cohen, Marjorie. Women's Work, Markets, and Economic Development in Nineteenth-Century Ontario Toronto, 1988.

Conley, Carolyn. The Unwritten Law, Criminal Justice in Victorian Kent New York and Oxford, 1991.

Cook, Ramsay and Wendy Michinson eds. The Proper Sphere, Women's Place in Canadian Society Toronto, 1976.

Cook, Sharon. "Through Sunshine and Shadow," The Women's Christian Temperance Union, Evangelism, and Reform in Ontario, 1874-1930 Montreal and Kingston, 1995.

Corrigan, Philip and Derek Sayer. The Great Arch, English State Formation as Cultural Revolution Oxford and Cambridge, 1985.

- Cornish, W.R. Crime and Law in Nineteenth Century Britain Dublin, 1978.
- Cowan, H.I. British Immigration to North America 1783-1837 Toronto, 1967.
- Craig, Gerald M. Upper Canada: The Formative Years 1784-1841 Toronto, 1963.
- Creighton, Donald. John A. Macdonald: The Old Chieftain Toronto, 1965.
- Curtis, Bruce. True Government by Choice Men? Inspection, Education, and State Formation in Canada West Toronto, 1992.
- \_\_\_\_\_. Building the Educational State: Canada West, 1836-1871 Sussex and London, 1988.
- Davidoff, Lenore and Catherine Hall, Family Fortunes: Men and Women of the English Middle Class, 1780-1850 London, 1987.
- Davidson, T. Arthur. A New History of the County of Grey Grey County, 1972.
- DeLacy, Margaret. Prison Reform in Lancashire, 1700-1850: A Study in Local Administration Stanford, 1986.
- Dubinsky, Karen. Improper Advances, Rape and Heterosexual Conflict in Ontario, 1880-1929 Chicago, 1993.
- Easterbrook, W.T. and H.G.J. Aitken. Canadian Economic History Toronto, 1961.
- Elliott, Bruce S. Irish Migrants in the Canadas, A New Approach, Montreal and Kingston, 1988.
- Errington, Jane The Lion, the Eagle and Upper Canada: A Developing Colonial Ideology Montreal and Kingston, 1987.
- Fee, Florence. Pioneers in the Queen's Bush Thornbury, Ont., 1984.
- Fingard, Judith. The Dark Side of Life in Victorian Halifax Porter's Lake, NS, 1989.
- Finnegan, F. Poverty and Prostitution: A Study of Victorian Prostitutes in York Cambridge, 1970.
- Firth, Raymond. Elements of Social Organization London, 1961.
- Forsey, Eugene. Trade Unions in Canada 1812-1902 Toronto, 1982.

Foucault, Michel. Discipline and Punish: The Birth of the Prison New York, 1977.

Freedman, Estelle B. Their Sister's Keepers: Women's Prison Reform in America, 1830-1930 Ann Arbor, 1981.

Friedman, Lawrence M. A History of American Law New York, 1973.

Gaffield, Chad. Language, Schooling, and Cultural Conflict Kingston and Montreal, 1987.

Gagan, David. Hopeful Travellers: Families, Land and Social Change in Mid-Victorian Peel County, Canada West Toronto, 1981.

Garland, David. Punishment and Welfare: A History of Penal Strategies Hants, England, 1985.

Glazebrook, G.P. de T. A History of Transportation in Canada Toronto, 1938.

Gleick, James. Chaos, Making a New Science New York, 1987.

Gordon, Linda. Heroes of Their Own Lives The Politics and History of Family Violence, Boston, 1880-1960 New York, 1989.

Graff, Harvey J. The Literacy Myth New York and San Francisco, 1979.

\_\_\_\_\_. The Legacies of Literacy Indianapolis, 1987.

Gramsci, A. Selections From Prison Notebooks, edited and translated by Quintin Hoare and Geoffrey Nowell Smith London, 1971.

Grant, John W. A Profusion of Spires Toronto, 1988.

Greer, Allan and Ian Radforth, eds. Colonial Leviathan Toronto, 1992.

Hall, Jerome. Theft, Law and Society, Second edition, New York, 1952.

Hall, Stuart, et al. Policing the Crisis: Mugging, the State and Law and Order London, 1978.

Harris, R.C. and J. Warkentin. Canada before Confederation New York, 1974.

Harris, Seymour F. Harris's Criminal Law 22nd ed. by Ian McLean and Peter Morrish, London, 1973, originally published as Principles of Criminal Law London, 1877.

- Hartmann, Mary S. Victorian Murderesses New York, 1977.
- Higley, Dahn D. O.P.P. The History of the Ontario Provincial Police Force Toronto, 1984.
- Hindus, M. Prison and Plantation: Crime, Justice and Authority in Massachusetts and South Carolina, 1767-1878 Chapel Hill, 1978.
- Hodgetts, J.E. Pioneer Public Service Toronto, 1955.
- Hoffer, P.C. And N.E.H. Hull Murdering Mothers: Infanticide in England and New England, 1558-1803 New York, 1981.
- Horwitz, Morton The Transformation of American Law, 1780-1860 Cambridge, 1977.
- Hull, N.E. Female Felons: Women and Serious Crime in Colonial Massachusetts Chicago, 1987.
- Ignatieff, Michael. A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850 New York, 1978.
- Jensen, Joan. Loosening the Bonds: Mid-Atlantic Farm Women, 1759-1850 Westford, Mass., 1986.
- Johnston, W. Stafford and Hugh J.M. Johnston. History of Perth County to 1967 Stratford, 1967.
- Jones, David. Crime, Protest, Community and Police in Nineteenth-Century Britain London, 1982.
- Katz, Michael B., Michael J. Doucet and Mark J. Stern, The Social Organization of Early Industrial Capitalism Cambridge, 1982.
- Kealey, Gregory. Toronto Workers Respond to Industrial Capitalism, 1867-1892 Toronto, 1980.
- Knafla, Louis. Law and Justice in a new Land: Essays in Western Canadian Legal History Toronto, 1986.
- Konig, David Thomas. Law and Society in Puritan Massachusetts North Carolina, 1979.
- Lacelle, Claudette. Urban Domestic Servants in 19th-Century Canada Canada, Minister of Supply and Services Canada, 1987.

Lane, Roger. Policing the City, Boston 1822-1885 Cambridge, 1967.

Larson, Magali Sarfatti. The Rise of Professionalism: A Sociological Analysis Berkeley and London, 1977.

Lebsock, Suzanne. The Free Women of Petersburg New York, 1984.

Little, J.I. Crofters and Habitants, Settler Society, Economy, and Culture in a Quebec Township, 1848-1881 Montreal and Kingston, 1991.

Loo, Tina. Making Law, Order, and Authority in British Columbia, 1821-1871 Toronto, 1994.

Macleod, R.C., ed. Lawful Authority: Readings on the History of Criminal Justice in Canada Toronto, 1988.

Mann, Bruce H. Neighbours and Strangers: Law and Community in Early Connecticut Chapel Hill, 1987.

Marx, Emmanuel. The Social Context of Violent Behaviour, A Social Anthropological Study in an Israel Immigrant Town London, 1976.

McKenzie, Ruth. Leeds and Grenville: Their First Two Hundred Years Toronto, 1984.

Miller, Orlo. The Donnellys Must Die Toronto, 1967.

Monkkonen, E. The Dangerous Class: Crime and Poverty in Columbus, Ohio, 1860-1885 Cambridge, 1975.

\_\_\_\_\_. Police in Urban America, 1860-1920 Cambridge, 1981.

Morton, W.L. The Critical Years, The Union of British North America, 1857-1873 Toronto, 1977.

Myres, Sandra. Westering Women and the Frontier Experience, 1800-1915 New Mexico, 1982.

Nelson, William Edward. Americanization of the Common Law: The Impact of Legal Change on Massachusetts, 1760-1830 Cambridge, 1975.

\_\_\_\_\_. Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825 North Carolina, 1981.

- Noel, Janet. Canada Dry: Temperance Crusades before Confederation Toronto, 1995.
- Ontario Provincial Police. Ontario Provincial Police 60th Anniversary 1909-1969 Toronto, Ontario Provincial Police, 1969? [sic].
- Pennington, Agnes Doris. Agnes Macphail, Reformer Toronto, 1989.
- Philips, David. Crime and Authority in Victorian England London, 1977.
- Piva, Michael J. The Borrowing Process: Public Finance in the Province of Canada, 1840-1867 Ottawa, 1992.
- Pred, Allan. Making Histories and Constructing Human Geographies, The Local Transformation of Practice, Power Relations, and Consciousness Boulder, Colorado, 1990.
- Prentice, Alison et al. Canadian Women, A History Toronto, 1988.
- Pue, W. Wesley and Barry Wright, eds. Canadian Perspectives on Law and Society, Issues in Legal History Ottawa, 1988.
- Radzinowicz's, Leon. History of English Criminal Law New York, 1948-68.
- Rhode, Deborah. Justice and Gender Cambridge and London, 1989.
- Riddell, William Renwick The Bar and the Courts of the Province of Upper Canada, or Ontario Toronto, 1928.
- Roberts, Simon. Order and Dispute, An Introduction to Legal Anthropology Oxford, 1979.
- Romney, Paul Mr. Attorney: The Attorney General for Ontario in Court, Cabinet and Legislature, 1791-1899 Toronto, 1986.
- \_\_\_\_\_. The Administration of Justice in Ontario 1784-1900 University of Manitoba, Winnipeg, Canadian Legal History Project, Working Paper Series, 1991.
- Rosen, Ruth. The Lost Sisterhood: Prostitution in America, 1900-1918 Baltimore, 1982.
- Rothman, David The Discovery of the Asylum: Social Order and Disorder in the Early Republic Boston and Toronto, 1971.

Rubin, G.R. and David Sugarman eds. Law, Economy and Society: Essays in the History of English Law, 1750-1914 Oxford, 1984.

Rudé, George. Criminal and Victim, Crime and Society in Early Nineteenth-Century England Oxford, 1985.

Russell, Sir William Oldnall. A Treatise on Crimes and Misdemeanours, Vol. II, 5th ed. London, 1923, originally published in 1847.

Rutherford, Paul. A Victorian Authority: the Daily Press in Late Nineteenth Century Canada Toronto, 1982.

Schmalz, Peter. The Ojibwa of Southern Ontario Toronto, 1991.

Schull, Joseph Ontario Since 1867 Toronto, 1978.

Shoemaker, Robert. Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c. 1660-1725 Cambridge, 1991.

Smith-Rosenberg, Carroll. Disorderly Conduct: Visions of Gender in Victorian America New York, 1985.

Splane, R.B. Social Welfare in Ontario 1791-1893 Toronto, 1965.

Stansell, Christine. City of Women: Sex, Class in New York, 1789-1860 New York, 1986.

Steinberg, Allen. The Transformation of Criminal Justice Chapel Hill and London, 1989.

Stenning, Philip. Appearing for the Crown: A Legal and Historical Review of Criminal Prosecutorial Authority in Canada Cowansville, 1986.

Stephen, James Fitzjames A Digest of the Criminal Law (Crimes and Punishments) Founded by Permission on Sir James Fitzjames Stephen's Digest of the Criminal Law Toronto, 1891.

Stephen, James Fitzjames. History of the Criminal Law of England London, 1883.

Stephen, Henry John. New Commentaries on the Laws of England 1846.

Strange, Carolyn. Imposing Goodness: Crime and Justice in 'Toronto the Good' 1793-1953 Toronto, A Project of the Archives/Heritage Centre of the Law Society of Upper Canada in collaboration with The Market Gallery, 1991.

- \_\_\_\_\_. Toronto's Girl Problem, The Perils and Pleasures of the City, 1880-1930 Toronto, 1995.
- Talbot, C.K. Justice in Early Ontario, 1791-1840 Ottawa, 1983.
- Taschereau, Mr. Justice Henri Elzéar.. Criminal Law Consolidation and Amendment Acts of 1869 Vol. 1, 1st ed., Montreal, 1874.
- Thompson, E.P. Whigs and Hunters London, 1977.
- \_\_\_\_\_. The Poverty of Theory & Other Essays New York, 1978.
- Tobias, J.J. Crime and Industrial Society in the Nineteenth-Century England Harmondsworth, England, 1967.
- Tucker, G.N. The Canadian Commercial Revolution, 1845-1851 New Haven, 1936.
- Ulrich, Ulrich. Good Wives, Image and Reality in the Lives of Women in Northern New England 1650-1750 New York, 1982.
- Valverde, Mariana. The Age of Light, Soap and Water: Moral Reform in English Canada, 1885-1925 Toronto, 1991.
- Vicinus, Martha. Independent Women: Work and Community for Single Women Chicago, 1985.
- Waite, P.B. ed. Pre-Confederation, Vol. II, Scarborough, 1965.
- Walkowitz, J. Prostitutes in Victorian Society: Women, Class and the State New York, 1980.
- Westfall, William. Two Worlds: The Protestant Culture of Nineteenth-Century Ontario Montreal and Kingston, 1989.
- White, Randall Ontario: A Political and Economic History, 1610-1985 Toronto, 1985.
- Winks, K.W. Blacks in Canada: A History Montreal and Kingston, 1971.
- Zedner, Lucia. Women, Crime, and Custody in Victorian England Oxford, 1991.
- Zukin, Sharon. Landscapes of Power: From Detroit to Disneyworld Berkeley, 1991.

## B. ARTICLES

Atchison, J.H. "The Municipal Corporations Act of 1849." 30 Canadian Historical Review, 107 (1949): 107-22.

Backhouse, Constance. "Nineteenth-Century Canadian Rape Law 1800-92," in Essays in the History of Canadian Law, Vol. II, ed. by David Flaherty, Toronto, 1983: 200-47.

\_\_\_\_\_. "Involuntary Motherhood: Abortion, Birth Control and the Law in Nineteenth Century Canada," Windsor Yearbook of Access to Justice, 3 (1983): 61-130.

\_\_\_\_\_. "Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada," University of Toronto Law Journal, 34 (1984): 447-78.

\_\_\_\_\_. "Nineteenth-Century Prostitution Laws: Reflections of a Discriminatory Society" Histoire sociale-Social History, 18 (1986): 387-432.

\_\_\_\_\_. "Married Women's Property Law in Nineteenth Century Canada" in Canadian Family History, ed. by Bettina Bradbury, Toronto, 1992: 320-59.

Baehre, Rainer. "Origins of the Penitentiary System in Upper Canada," Ontario History, 69 (1977): 185-207,

Baker, G. Blaine. "Legal Education in Upper Canada 1785-1889: The Law Society as Educator" in Essays in the History of Canadian Law, Vol. II, ed. by David H. Flaherty, Toronto, 1983: 49-142.

Ball, Rosemary. "'A Perfect Farmer's Wife' Women in 19th Century Rural Ontario," Canada, An Historical Magazine, 3 (December 1975): 2-23.

Banks, Margaret A. "The Evolution of the Ontario Courts 1788-1981" in David H. Flaherty ed. Essays in the History of Canadian Law, Vol. II, Toronto, 1981: 492-572.

Baumohl, Jim. "Inebriate Institutions in North America, 1840-1920," in Drink in Canada, Historical Essays, ed. by Cheryl Krasnick Warsh, Montreal and Kingston, 1993: 92-114.

Beattie, John M. "Criminality of Women in Eighteenth-Century England" Journal of Social History, 8 (1975): 80-116.

Bellomo, J.J. "Upper Canadian Attitudes Towards Crime and Punishment, 1832-1851" Ontario History, 64 (1972): 11-26.

Berkovits, Joseph Gondor. "Convict Labour in the Ontario Central Prison," in Essays in the History of Criminal Law, Vol. V, Crime and Criminal Justice, ed. by Jim Phillips, Tina Loo, and Susan Lewthwaite, Toronto, 1994: 478-515.

Blackwell, John D. "William Hume Blake and the Judicature Acts of 1849: The Process of Legal Reform at Mid-Century in Upper Canada," in David H. Flaherty ed. Essays on the History of Canadian Law, Vol. 1, 1981: 132-74.

Bloomfield, Elizabeth. "Lawyers as Members of Urban Business Elites in Southern Ontario, 1860-1920," in Essays in the History of Canadian Law Vol. IV, ed. by Carol Wilton, Toronto, 1990: 112-48.

Boritch, Helen and John Hagan, "Crime and the Changing Forms of Class Control: Policing Public Order in 'Toronto the Good,' 1859-1955," Social Forces, 66 (1987): 307-35.

Boritch, Helen. "Conflict, Compromise and Administrative Convenience: The Police Organization in Nineteenth-Century Toronto," Canadian Journal of Law and Society/Revue canadienne droit et société, 3 (1988): 141-74.

Boritch, Helen and John Hagan, "A Century of Crime in Toronto: Gender, Class, and Patterns of Social Control, 1859 to 1955," Criminology, 28 (1990): 567-99.

Bettina Bradbury, "The Fragmented Family: Family, Strategies in the Face of Death, Illness, and Poverty, Montreal, 1860-1885," in Childhood and Family in Canadian History, ed. by Joy Parr Toronto, 1982: 109-28.

\_\_\_\_\_. "Women and Wage Labour in a Period of Transition: Montreal, 1861-1881", Histoire sociale/Social History, 17 (1984): 115-31.

\_\_\_\_\_. "Surviving as a Widow in Nineteenth Century Montreal," Urban History Review/Revue d'histoire urbaine, 17 (1989): 148-60.

Burley, David. "'Good for all he would ask': Credit and Debt in the Transition to Industrial Capitalism -- The Case of Mid-nineteenth Century Brantford, Ontario," Histoire sociale/Social History, XX (1987): 79-99.

Careless, J.M.S. "Some Aspects of Urbanization in Nineteenth-Century Ontario," in Aspects of Nineteenth-Century Ontario: Essays Presented to James J. Talman, ed. by F.H. Armstrong, H.A. Stevenson and J.D. Wilson, Toronto, 1974: 65-79.

Clark, Anna. "Humanity or Justice? Wifebeating and the Law in the Eighteenth and Nineteenth Centuries" in Regulating Womanhood, Historical Essays on Marriage, Motherhood and Sexuality, ed. by Carol Smart, London, 1992: 187-206.

Corrigan, Philip and Derek Sayer. "How the Law Rules: Variations on Some Themes in Karl Marx," in Law, State and Society, eds. by Bob Fryer et al., London, 1981: 21-53.

Craven, Paul. "The Law of Master and Servant in Mid-Nineteenth-Century Ontario," in Essays in the History of Canadian Law, Vol. 1, ed. by David H. Flaherty, Toronto, 1981: 175-211.

\_\_\_\_\_. "Law and Ideology: The Toronto Police Court 1850-80." in Essays in the History of Canadian Law Vol. II, ed. by, David H. Flaherty, Toronto: 1983: 248-307.

Cross, Michael. "'The Laws Are Like Cobwebs': Popular Resistance to Authority in Mid-Nineteenth Century British North America," in Law in a Colonial Society: The Nova Scotia Experience, ed. by Peter Waite, Sandra Oxner and Thomas Barnes, Toronto, 1984: 103-23.

Davis, Jennifer. "The London Garotting Panic of 1862: A Moral Panic and the Creation of a Criminal Class in mid-Victorian England," in Crime and the Law, The Social History of Crime in Western Europe since 1500 ed. by V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker, London, 1980: 190-213.

\_\_\_\_\_. "A Poor Man's System of Justice: The London Police Courts in the Second Half of the Nineteenth Century," The Historical Journal, 27 (1984): 309-35.

Delottinville, Peter. "Joe Beef Of Montreal: Working-Class Culture and the Tavern, 1869-1889," Labour/Le Travailleur, 8/9 (1981/82): 9-40.

Doody, Margaret Anne "'Those Eyes are Made so Killing': Eighteenth-Century Murderesses and the Law" Princeton University Library Chronicle, 46 (1984): 49-80.

Dowes, David. "Property, God and Nature in the Thought of Sir John Beverley Robinson," McGill Law Journal/Revue de droit de McGill, 30 (1985): 365-413.

Fecteau, Jean-Marie. "Between the Old Order and Modern Times: Poverty, Criminality, and Power in Quebec, 1791-1840," in Essays in the History of Canadian Law, Vol. V, Crime and Criminal Justice, ed. by Jim Phillips, Tina Loo, and Susan Lewthwaite, Toronto, 1994: 293-323.

Fecteau, Jean-Marie. "Régulation sociale et répression de la déviance au Bas-Canada au tournant du 19e siècle (1791-1815)," Revue d'histoire de l'Amérique française 38 (1985): 499-521.

Fletcher, George P. "The Metamorphosis of Larceny," Harvard Law Review, 89, (1976): 469-530.

Garland, M.A. and J.J. Talman, "Pioneer Drinking Habits and the Rise of the Temperance Agitation in Upper Canada Prior To 1840," in Aspects of Nineteenth-Century Ontario, ed. by F.A. Armstrong, H.A. Stevenson and J.D. Wilson, Toronto, 1974: 171-93.

Gatrell, V.A. and T.B. Hadden, "Nineteenth Century Criminal Statistics and Their Interpretation," in Nineteenth-Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data, ed. by E.A. Wrigley, Cambridge, 1972: 336-86.

Gatrell, V.A.C. "The Decline of Theft and Violence in Victorian and Edwardian England," in Crime and the Law, The Social History of Crime in Western Europe since 1500, ed. by V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker, London, 1980: 238-370.

Gavigan, Shelley "Women's Crime and Feminist Critiques: A Review of the Literature" Canadian Criminology Forum/Le Forum canadien de criminologie 5 (1982): 40-53.

Gordon, Robert W. "Critical Legal Histories," Stanford Law Review, 36 (1984): 57-125.

Graff, Harvey "Crime and Punishment in the Nineteenth Century: A New Look At the Criminal," Journal of Interdisciplinary History, VII (1977): 477-91.

\_\_\_\_\_. "'Pauperism, Misery, and Vice': Illiteracy and Criminality in the Nineteenth Century," Journal of Social History, 11 (1977): 245-68.

Greenberg, Douglas. "Patterns of Criminal Prosecution in Eighteenth-Century New York," New York History, LVI (1975): 132-53.

Greer, Allan. "The Birth of the Police in Canada," in Colonial Leviathan, ed. by Allan Greer and Ian Radforth, Toronto, 1992: 17-49.

\_\_\_\_\_. "From Folklore to Revolution: Charivaris and The Lower Canadian Rebellion of 1837," in Historical Perspectives on Law and Society in Canada, ed. by Tina Loo and Lorna McLean, Toronto, 1994: 35-55.

Griswold, Robert. "Divorce and the Legal Redefinition of Victorian Manhood," in Meanings for Manhood, Constructions of Masculinity in Victorian America, ed. by Mark C. Carnes and Clyde Griffen, Chicago, 1990: 96-110.

Gurr, Teri Robert. "Historical Trends in Violent Crime: A Critical Review of the Evidence," Crime and Justice: An Annual Review of Research, 3 (1981): 295-353.

Harvey, Kathryn. "To Love, Honour and Obey: Wife-battering in Working-Class Montreal, 1869-79," Urban History Review/Revue d'histoire urbaine, XIX (1990): 128-40.

Hay, Douglas, "Property, Authority and the Criminal Law" in Douglas Hay, P. Linebaugh, J. Rule et al. Albion's Fatal Tree: Crime and Society in Eighteenth-Century England New York, 1975: 17-63.

\_\_\_\_\_. "War, Dearth and Theft in the Eighteenth Century: the Record of the English Courts," Past and Present, 95 (1981): 117-60.

\_\_\_\_\_. "Controlling the English Prosecutor," Osgoode Hall Law Journal, 21 (1983): 165-86.

Homel, Gene Howard. "Denison's Law: Criminal Justice and The Police Court in Toronto, 1877-1921," Ontario Historical, LXXIII (1981): 171-86.

Houston, Susan E. "Victorian Origins of Juvenile Delinquency: A Canadian Experience," in Education and Social Change, Themes from Ontario's Past, ed. by Michael B. Katz and Paul H. Mattingly, New York, 1975: 83-109.

\_\_\_\_\_. "The 'Waifs and Strays' of a Late Victorian City: Juvenile Delinquents in Toronto," ed. by Joy Parr, Childhood and Family in Canadian History Toronto, 1982: 129-42.

Hurst, William. Book Review of Morton Horwitz, The Transformation of American Law, 1780-1860 (Cambridge, 1977), The American Journal of Legal History, XXI (1977): 175-79.

Ignatieff, Michael. "State, Civil Society, and Total Institutions: A Critique of Recent Social Histories of Punishment," in Crime and Justice, An Annual Review of Research, Vol. 3, ed. by Michael Tonry and Norval Morris: 153-92.

Kealey, Linda. "Patterns of Punishment: Massachusetts in the Eighteenth Century," American Journal of Legal History, 30 (1986): 163-86.

- Lachance, A. "Women and Crime in Canada in the Early Eighteenth Century, 1712-1750" in Crime and Criminal Justice in Europe and Canada, ed. by L.A. Knafla, Waterloo, Ont., 1981: 157-78.
- Langbein, John H. "Albion's Fatal Flaws," Past and Present, 98 (1983): 96-98.
- Lee, Shirley J. "Gender Ideology and Black Women as Community in Ontario, 1850-70," Canadian Historical Review, LXXV (1994): 53-73.
- Lenman Bruce and Geoffrey Parker. "The State, the Community and the Criminal Law." in Crime and the Law, The Social History of Crime in Western Europe since 1500, ed. by V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker, London, 1980: 11-48.
- Lewthwaite, Susan. "Violence, Law, and Community in Rural Upper Canada," in Essays in the History of Canadian Law, Vol. V, ed. by Jim Phillips, Tina Loo, and Susan Lewthwaite, Toronto, 1994: 353-86.
- Linebaugh, Peter. "(Marxist) Social History and (Conservative) Legal History: A Reply to Professor Langbein," New York University Law Review, 60 (1985): 212-43.
- Lockwood, Glenn J. "Temperance in Upper Canada as Ethnic Subterfuge," in Drink in Canada, Historical Essays ed. by, Cheryl Krasnick Warsh, Montreal and Kingston, 1993: 43-69.
- Mangan, J.A. and James Walvin, eds. "Introduction," in Manliness and Morality: Middle-Class Masculinity in Britain and America, 1800-1940 Manchester, 1987: 1-6.
- Marquis, Greg. "The Contours of Canadian Urban Justice, 1830-1875" 15 Urban History Review/Revue D'Histoire Urbaine, 15 (1987): 269-73.
- \_\_\_\_\_. "The History of Policing in the Maritime Provinces: Themes and Prospects," Urban History Review/Revue d'histoire urbaine, XIX (1990): 84-99.
- \_\_\_\_\_. "'A Machine of Oppression Under the Guise of the Law': The Saint John Police Establishment, 1860-1890," in Historical Perspectives on Law and Society in Canada, ed. by Tina Loo and Lorna McLean, Toronto, 1994: 200-18.
- Matthews, W.T. "The Myth of the Peaceable Kingdom: Upper Canadian Society in the Early Victorian Period," Queen's Quarterly 94 (1987): 384-401.
- McCulloch, Michael. "Most Assuredly Perpetual Motion: Police and Policing in Quebec City, 1838-58," Urban History Review/Revue d'histoire, XIX (1990): 100-12.

McLaren, J.P. "Chasing the Social Evil: Moral Fervour and the Evolution of Canada's Prostitution Laws, 1967-1917" Canadian Journal of Law and Society, 1 (1986): 125-65.

\_\_\_\_\_. Review of Alain Corbin, Women for Hire: Prostitution and Sexuality in France after 1850 (translated by Alan Sheridan) Cambridge, Mass., 1990 in Journal of Women and the Law/Revue femmes et droit, 7 (1994): 213-22.

McLean, Lorna R. "Single Again: Widow's Work in the Urban Family Economy, Ottawa, 1871", Ontario History, LXXXIII (1991): 127-49.

McMahon, Donald J. "Law and Public Authority: Sir John Beverley Robinson and the Purposes of the Criminal Law," University of Toronto Faculty of Law Review, 46 (1988): 390-23.

Melling, Michael W. "Cleaning House in a Suddenly Closed Society: The Genesis, Brief Life and Untimely Death of the *Habitual Criminals Act*, 1969," Osgoode Hall Law Journal, 21 (1983): 315-62.

Mensch, Elizabeth. "The Colonial Origins of Liberal Property Rights," Buffalo Law Review, 31 (1982): 635-735.

Mitchinson, Wendy. "The WCTU: 'For God, Home and Native Land': A Study in Nineteenth-Century Feminism," in A Not Unreasonable Claim, Women and Reform in Canada, 1880s-1920s, ed. by Linda Kealey, Toronto, 1979: 151-68.

Morel, André. "La Réception du droit criminel anglais au Québec, 1760-1892," Revue juridique thématique, XIII (1978): 499-541.

Morgan, Cecilia. "Gender, Religion, and Rural Society: Quaker Women in Norwich, Ontario, 1820-1880," Ontario History, LXXXII (1990): 273-87.

Muise, Del. "The Industrial Context of Inequality: Female Participation in Nova Scotia's Paid Labour Force," Acadiensis, 20 (1991): 3-31.

Olsen, Ruth. "Rape -- an 'un-Victorian' aspect of life in Upper Canada," Ontario History, LXVIII (1976): 75-92.

Oliver, Peter. "'A Terror To Evil Doers': The Central Prison and The 'Criminal Class' in Late Nineteenth-Century Ontario," in Patterns of the Past: Interpreting Ontario's History ed. by, Roger Hall, William Westfall and Laurel Sefton MacDowell, Toronto, 1988: 206-37,

\_\_\_\_\_. "'To Govern by Kindness': The First Two Decades of the Mercer Reformatory for Women," in Essays in the History of Criminal Law Vol. V, Crime and Criminal Justice ed. by, Jim Phillips, Tina Loo, and Susan Lewthwaite (Toronto: 1994): 516-71.

Palmer, Bryan. "Discordant Music, Charivaris and Whitecapping in Nineteenth-Century North America," Labour/Le Travailleur, 3 (1978): 5-62.

Parker, Graham. "The Origins of the Canadian Criminal Code," in Essays in the History of the Canadian Law, Vol. I, ed. by David Flaherty, Toronto, 1981: 249-80.

Philips, David. "'A New Engine of Power and Authority': The Institutionalization of Law-Enforcement in England 1780-1830." in Crime and the Law, The Social History of Crime in Western Europe since 1500, ed. by V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker, London, 1980: 155-89.

Phillips, Jim. "Poverty, Unemployment and the Administration of the Criminal Law: Vagrancy Laws in Halifax, Nova Scotia 1864-1890" in Philip Girard and Jim Phillips Essays in the History of Canadian Law Vol. III, Toronto, 1990: 128-162.

\_\_\_\_\_. "The History of Canadian Criminal Justice, 1750-1920," in Criminology: A Reader's Guide, ed. by Jane Gladstone et al. Toronto, 1991: 65-124.

\_\_\_\_\_. "Women, Crime, and Criminal Justice in Early Halifax, 1750-1800," in Essays in the History of Canadian Law, Vol. V, ed. by Jim Phillips, Tina Loo, and Susan Lewthwaite, Toronto, 1994: 174-206.

Pitsula, James M. "The Treatment of Tramps in Late Nineteenth-Century Toronto," Historical Papers, (1980): 116-32.

Piva, Michael J. "Getting Hired: The Civil Service Act of 1857." Journal of the Canadian Historical Association/Revue de la Société historique du Canada, 3 (1992): 95-127.

Price, B. Jane "'Raised in Rockhead. Died in the Poor House': Female Petty Criminals in Halifax, 1864-1890" in Philip Girard and Jim Phillips eds., Essays in the History of Canadian Law, Vol. III, Toronto, 1990: 200-31.

Rawling, Bill. "Technology and Innovation in the Toronto Police Force, 1875-1925," Ontario History, 80 (1976): 187-244.

Reaney, James F. "Myths in Some Nineteenth-Century Ontario Newspapers" in Frederick H. Armstrong et al., Aspects of Nineteenth Century Ontario: Essays Presented to James J. Talman, Toronto, 1974: 253-66.

Riddell, William Renwick. "The Courts of Ontario," Published paper prepared for the Annual Meeting of the New York State Bar Association, New York, 1912.

\_\_\_\_\_. "The Jury System in Ontario," Published paper prepared for the Annual Meeting of the New York State Bar Association, New York, 1914.

\_\_\_\_\_. "The First English Criminal Court in Canada," Journal of Criminal Law, 8 (1917): 8-15.

Risk, R.C.B. "The Law and the Economy in Mid-Nineteenth-Century Ontario: A Perspective," in Essays in the History of Canadian Law, Vol. 1, ed. by David H. Flaherty, Toronto, 1981: 88-131.

Roberts, Elizabeth. "Women's Strategies, 1890-1940," in Labour and Love, Women's Experience of Home and Family, ed by Jane Lewis, Oxford, 1986: 223-47.

Rogers, Nicholas. "Serving Toronto the Good," in Forging the Consensus, ed. by Victor Russell, Toronto, 1984: 116-40.

Roper Michael and John Tosh, Introduction, "Historians and the politics of masculinity" in Manful Assertions Masculinities in Britain since 1800, ed. by Michael Roper and John Tosh. London, 1991: 1-24.

Ross, Ellen. "Fierce Questions and Taunts': Married Life in Working-Class London, 1870-1914," Feminist Studies, Inc., 3 (1982): 575-602.

Rotenberg, Lori. "The Wayward Worker: Toronto's Prostitute at the Turn of the Century," in Women at Work, 1850-1930, ed. by Janice Acton, Penny Goldsmith and Bonnie Shepard, Toronto, 1974: 33-69.

Rotundo, E. Anthony. "Boy Culture: Middle Class Boyhood in Nineteenth-Century America" in Meanings for Manhood, Constructions of Masculinity in Victorian America, ed. by Mark C. Carnes and Clyde Griffen, Chicago, 1990: 15-36.

Smandych, Russell C. "Beware of the 'Evil American Monster': Upper Canadian Views on the Need for a Penitentiary, 1830-1834," Canadian Journal of Criminology/Revue canadienne de criminology, 33 (1991): 125-47.

Smart, Carol. "Disruptive bodies and unruly sex: The regulation of reproduction and sexuality in the nineteenth century," in Regulating womanhood: historical essays on marriage, motherhood, and sexuality, ed. by Carol Smart, New York, 1992: 7-32.

Speisman, Stephen A. "Munificent Parsons and Municipal Parsimony: Voluntary v. Public Poor Relief in Nineteenth-Century Toronto", in A History of Ontario, Selected Readings, ed. by Michael J. Piva, Toronto, 1988: 55-70.

Spierenburg, Peter. "Theory and the History of Criminal Justice," in Crime and Criminal Justice in Europe and Canada, ed. by Louis Knafla, Waterloo, 1981: 319-28.

Stewart, Stormi. "The Elderly Poor in Rural Ontario: Inmates of the Wellington County House of Industry, 1877-1907," Journal of the Canadian Historical Association/Revue de la Société historique du Canada, (1992): 217-34.

Strange, Carolyn. "'The Criminal and Fallen of their Sex': The Establishment of Canada's First Women's Prison 1874-1901", Canadian Journal of Women and the Law/Revue journal des femmes et droit, 1 (1985): 79-92.

\_\_\_\_\_. "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario, 1880-1930," in Essays in the History of Criminal Law Vol. V, Crime and Criminal Justice, ed. by Jim Phillips, Tina Loo, and Susan Lewthwaite (Toronto, 1994): 207-51.

Sugarman, David. Book Review of M.J. Horwitz, The Transformation of American Law London, 1977 in British Journal of Law and Society, 7 (1980): 297-310.

Taylor, John. "The Kingston Ontario Penitentiary and Moral Architecture," Histoire sociale/Social History, 12 (1979): 385-408.

Tomes, Nancy. "A 'Torrent of Abuse: Crimes of Violence Between Working-Class Men and Women in London 1840-1875,'" Journal of Social History, 11 (1978): 328-45.

Tremblay, Pierre and André Normandeau. L'économie pénale de la société montréalaise, 1845-1913," Histoire sociale/Social History, XIX (1986): 177-99.

Vandeveldt, Kenneth J. "The New Property of the Nineteenth Century: The Development of the Modern Concept of Property," Buffalo Law Review, 29 (1980), 325-67.

Walkowitz, Judith. "The Making of an Outcast Group, Prostitutes and Working Women in Nineteenth-Century Plymouth and Southampton," in A Widening Sphere, ed. by Martha Vicinus, Bloomington, Ind., 1977: 72-93.

Warsh, Cheryl Krasnick. "'Oh, Lord, pour a cordial in her wounded heart': The Drinking Woman in Victorian and Edwardian Canada," in Drink in Canada.

Historical Essays, ed. by Cheryl Kransick Warsh, Kingston and Montreal, 1993: 70-91.

Weaver, John. "Crime, Public Order, and Repression: The Gore District in Upheaval, 1832-1851," Ontario History, LXXVIII (1986): 175-207.

\_\_\_\_\_. "Social Control, Martial Conformity and Community Entanglement: the Varied Beat of the Hamilton Police, 1895-1920," Urban History Review/Revue d'histoire urbaine XIX (1990): 113-127.

Welter, Barbara. "The Cult of True Womanhood, 1820-1860," American Quarterly, 18 (1966): 150-74.

Wise, S.F. "The Conservative Legacy in Upper Canada," Profiles of a Province Toronto, 1967.

Wright, Barry. Book Review of Philip Stenning, Appearing for the Crown: A Legal and Historical Review of Criminal Prosecutorial Authority in Canada Cowansville, 1986 in The Canadian Bar Review/La revue du barreau canadien, 67 (1988): 183-89.

Zehr, Jr., Howard J. "The Modernization of Crime in Germany and France, 1830-1913," Journal of Social History, 8 (1975): 117-133.

## C. THESIS AND UNPUBLISHED PAPERS

Beattie, John. "Women and Crime in England." Paper presented at the Graduate Seminar, University of Toronto, Toronto, January 1992.

Cole, Curtis. "A Learned and Honourable Body: The Professionalization of the Ontario Bar, 1867-1929." PhD thesis, University of Western Ontario, 1987.

Dodge, Bernadine. "Women and the Law in Ontario, 1850-1900." EdD thesis, Graduate Department of Education, University of Toronto, 1993.

Fee, Laurie. "Women on Trial: Serious Female Crime and the Assize Court in Grey, Halton, Lambton and Peterborough Counties, 1880-1930." MA thesis, University of Guelph, Guelph, Ontario, 1988.

Golz, Annalee E. "Abusive and Murdering Husbands: The Historical Relationship between Wife Battering and Wife Murder in Ontario, 1830-1920." Paper presented at

The Second Carleton Conference on the History of the Family, Carleton University, Ottawa, May 1994.

Kalny, Cheryl. "Daughters of Eve': Female Offenders and the Criminal Justice System, St Paul, 1858-1929." PhD Thesis, Marquette University, Wisconsin, 1989.

Loo, Tina. "The 'Ubiquitous' Ned and Madame Bendixon: Violence, Litigation and Society in Colonial British Columbia," Paper presented to the Canadian Historical Association Annual Meeting, Victoria, BC, May 1990.

McEwan, Ann Alexandra. "Crime in the Niagara District, 1827-1850." MA Thesis, University of Guelph, Guelph, Ontario, 1991.

McLean, Lorna R. "Home, Yard and Neighbourhood: Women's Work and the Urban Working-Class Family Economy, Ottawa, 1871," MA thesis, University of Ottawa, 1990.

Strange, Carolyn. "The Velvet Glove: Maternalistic Reform at the Andrew Mercer Ontario Reformatory for Females, 1874-1927," MA Thesis, University of Ottawa, 1983.